Program Review

DBE Program Administration and Oversight

December 7, 2015

FINAL REPORT
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Executive Summary

Review Purpose and Objectives

This review was conducted to provide a general assessment of the state of practice of the DBE program administration and oversight by State Departments of Transportation (DOTs) and the FHWA Division Offices. One focus of this review was to identify how State DOTs implement current program requirements and to determine the effectiveness of those approaches, i.e. whether the approaches are compliant with federal regulations. A second focus was to identify how Divisions provide stewardship and oversight of State DOTs’ DBE program implementation and to identify successful practices or gaps in the oversight provided. Thus, the review identified instances of noncompliance with current regulations that indicated the need for the FHWA Headquarters Office of Civil Rights (HCR) to enhance DBE Program administration and oversight nationally. We also assessed how the Divisions use risk based stewardship and oversight (RBSO) to inform their approaches, and established where opportunities exist for improved program administration and oversight.

Observations

State DOTs are charged with administering the federal DBE Program—carrying out the program objectives within the framework of other federal and state requirements, as well as public and private interests. For these reasons, and underscored by recent case law, the USDOT Offices of the Secretary and Inspector General (OIG) have identified many risk areas for the Program. During this review, we observed several instances in which site visit States do not effectively carry out some of the regulatory requirements. Not all staff in these States have kept pace with the iterative changes to the regulations and USDOT guidance both in terms of knowledge and implementation. When States were aware of issues in effectiveness, they said they often could not find specific answers to address their questions.

While States must administer the DBE Program, FHWA Divisions must provide adequate stewardship and oversight. We observed similar concerns as those that arose during FHWA’s 2011 ARRA compliance reviews. While a strong working relationship is a critical component of effective stewardship and oversight, there is a need for HCR to develop and implement tools that will strengthen the Division’s oversight activities. We also observed issues regarding program knowledge that would make it difficult for some Divisions to provide effective guidance and oversight of the State DOT’s DBE Program. A first, necessary step to improve program administration then is to ensure all Civil Rights Specialists as well as State DOTs have received the training necessary to help them better understand what compliance looks like for DBE Program administration.
Over a year ago, FHWA integrated risk management into its performance planning process to create an RBSO initiative. Perhaps because of the how recently this was done, we observed issues in how FHWA implements RBSO in the DBE Program. Division risk statements, collectively, have not been targeted toward compliance with specific DBE Program requirements. Thus, Division activities designed to mitigate identified DBE program risks have not clearly focused on ensuring regulatory compliance.

Recommendations

In brief, this National Review Team recommends:

1. The Program Office and Resource Center should collaborate to deliver interactive, targeted national training for State DOTs and Division Civil Rights Specialists regarding specific DBE compliance topics and related internal controls. This training should be coordinated with the activities suggested in Recommendations 2, 3 and 4.

2. The Program Office should develop and monitor a suite of program management and oversight tools for Division Offices' use in evaluating Program Plans, assessing compliance, using data analysis, enhancing internal controls and conducting effective program reviews.

3. FHWA should elevate the importance of DBE regulatory compliance in the annual strategic and unit planning processes and implement enhancements to the Corporate Risk, SIP, Unit Plans, and RBSO activities to emphasize compliance.

4. The Program Office should leverage expertise throughout the Agency to conduct training and mitigate program risks; partner with the Resource Center to enhance the existing Discipline Support System with a focus on building competencies, providing tools and connecting employees across the agency; and partner with the Office of Administration ensure PDP employees graduate with necessary skills and abilities.
Background

Why were we asked to do this review?

Since at least 2009, FHWA’s leadership has identified Civil Rights Program Administration as one of its top corporate risks. The Performance Year 2016 Corporate Risks document continues this trend by identifying Civil Rights Program Administration (including DBE program administration) as one of FHWA’s 2016 top corporate risks.

Since 2011, Division Risk Assessments have included 190 risk statements that identify the State DOT’s administration of all its civil rights programs (many specifying the DBE program in particular) as one of the Division’s top ten risks. Of those, 83 or approximately 44% stated that if the risk were not mitigated or eliminated it could have a major or catastrophic impact on the administration of that State DOT’s Federal-aid Highway Program.

In addition to agency-identified risk, the United States Department of Transportation Office of Inspector General (USDOT OIG or OIG) issued an audit report, Weaknesses in the Department’s Disadvantaged Enterprise Program Limit Achievement of its Objectives, on April 23, 2013. In this report, the OIG indicated weaknesses in the DOT’s oversight of the DBE program. It did not, however, provide an in-depth look at DBE program administration and oversight within each individual departmental mode. This review, then, provides an in-depth look at DBE program administration and oversight in FHWA.

In addition to conducting this review as a follow-up to the OIG report, FHWA recently adopted Risk Based Stewardship and Oversight (RBSO) as a means to manage and even mitigate identified risks to all aspects of the Federal-aid Highway Program, including Civil Rights. In light of this new approach, and given the history of risk associated with the DBE program, the Office of Civil Rights and the Directors of Field Services requested a general assessment of the state of practice of DBE Program administration and oversight.
Purpose and Objectives

Through this review, HCR and the Directors of Field Services hoped to obtain a more comprehensive understanding of:

- How Divisions currently provide technical assistance and oversight;
- How risk based stewardship and oversight techniques are currently used to manage the DBE program, if used at all, and how effective this approach is at managing program risk;
- What both State DOTs and Divisions identify as the specific issues leading to these risk determinations;
- How both State DOTs and Divisions are working to mitigate DBE program risk;
- How program plans are written and implemented; and
- How the States administer and the Divisions provide oversight of DBE goal attainment and Good Faith Efforts (GFE) in meeting those goals, DBE utilization after award, prompt payment and return of retainage requirements, analysis that a DBE is providing a Commercially Useful Function (CUF), counting of bulk items, trucking, DBE substitution and replacement, and contract sanctions for noncompliance.

The specific objectives of this national review were to:

1. Determine how Divisions provide technical assistance and oversight of the State’s DBE program at both the program and project levels, identifying where gaps may exist, successful practices and lessons learned.

2. Identify the approaches State DOTs use to provide DBE Program administration at both the program and project levels, with special emphasis on the administration and oversight of DBE goal attainment and Good Faith Efforts (GFE) in meeting those goals, DBE utilization after award, prompt payment and return of retainage requirements, analysis that a DBE is providing a Commercially Useful Function (CUF), counting of bulk items, trucking and DBE substitution and replacement and contract sanctions. Evaluate the effectiveness of these approaches, identifying gaps and lessons learned.

3. Assess how Risk-based Stewardship and Oversight (RBSO) is currently used in the administration of the DBE program at both the Division and State DOT, identifying lessons learned, successful practices and what is necessary for successful RBSO of this program.
4. Identify whether opportunities exist for enhanced Program Office aid to Divisions in carrying out their DBE program technical assistance and oversight responsibilities.
Scope and Methodology

The site visits for this review were conducted between March and May, 2015. We randomly selected six State DOTs for site visits, using a probability proportional to size methodology based on the Division stratification set out in the FHWA Strategic Workforce Assessment Summary Report dated August, 2014 (see page 46 of that report). Thus, we made site visits to one mega Division, one large Division, three medium Divisions, and one small Division.

To examine how Divisions provide technical assistance and oversight, we asked the site visit Divisions to provide us the information specified in the Advance Information Request. As part of this, we received copies of Compliance Assessment Program (CAP) reviews conducted by Division Staff that used the Civil Rights Technical Guide as well as other program assessments or program reviews conducted in the last three performance years. We conducted in-person interviews during our site visits with the Civil Rights Specialists assigned to each site visit Division Office. We also spoke with either the Division Administrator or Assistant Division Administrator of each site visit Division Office. When possible, we also interviewed the team leader/supervisor of the Civil Rights Specialists for that office and the Division’s Program Management Analyst (PMA).

To identify if issues existed in the technical assistance and oversight these Divisions have provided, we needed to know whether the States were administering their programs in compliance with the DBE regulations. By identifying those instances of noncompliance, if they existed, we could then focus on the improvements necessary for effective program administration and oversight. We also needed to know this to evaluate the effectiveness of the approaches State DOTs have chosen to use to fulfill DBE requirements at both the program and project levels. Thus, we interviewed Civil Rights staff, including the Disadvantaged Business Enterprise Liaison Officer (DBELO), from each site visit State DOT. We also interviewed staff from each site visit State DOT’s Central Office Construction office as well as the project managers or project level staff for the projects identified in the Advance Information Request and/or Civil Rights staff in DOT Districts or Divisions responsible for implementing the State’s DBE program for those select projects. We also examined the State DOT’s DBE special contract provisions and their current approved DBE Program Plan as well as project records from the projects identified through the Advance Information. We compared all of this data to the DBE regulations set out in 49 CFR Part 26 and in the official guidance of the USDOT set out in the Official Questions and Answers in order to determine whether the State DOTs we reviewed were implementing compliant DBE Programs.

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1 See Appendix for copy of the full Advance Information Request.
To supplement data collected from the site visits, we also conducted phone interviews with the following FHWA or USDOT staff:

- Teresa Banks, Civil Rights Team Manager, Resource Center
- Angel Correa, Chief, Corporate Recruitment and Career Programs Division, Office of Administration
- James Esselman, FHWA Senior Attorney-Advisor, Office of Chief Counsel
- Daniel Fodera, Lead Management Analyst, Program Management Improvement (PMI) Team, Director of Field Services
- Mike Graf, PMI Team Leader, Director of Field Services
- Firas Ibrahim, Stewardship and Oversight Team Leader, Office of Infrastructure
- Martha Kenley, National DBE Program Manager, Office of Civil Rights
- Serena Matthews-Parrish, Team Lead for Career Programs, Office of Administration
- Douglas Shoemaker, Special Agent-in-Charge at United States Department of Transportation – OIG NYC Region
- Robert Wright, LPA Program Manager, Office of Infrastructure

We conducted one formal survey for this review gathering program administration and oversight data from the Civil Rights Specialists. We also conducted one informal survey for this review, gathering data from the Division Administrators (DAs) and/or Assistant Division Administrators (ADAs) as to how they define success in DBE Program administration and oversight.

We reviewed FHWA’s Program Review Library to determine how many program reviews were conducted and by which Divisions in Performance Year (PY) 13-15 concerning DBE Program Administration. We considered all additions for those years that were loaded into the Program Review Library by June 15, 2015.

We also reviewed and analyzed the following:

- Any Division activities concerning DBE Program administration and oversight found in all PY15 Unit Plans;
- PY14-PY16 risk statements;
- The [November 2014 Final] Civil Rights Core Competencies;
- The [May 2014] Civil Rights Critical Job Elements (CJE)s Template; and
- The Critical Job Elements (CJE)s provided by the site visit Division Office Civil Rights Specialists; and
- All current, approved DBE Program Plans.  

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2 See Appendix for more information on the Program Plan Review project.
We also reviewed key documents related to DBE Program administration, risk management and Risk Based Stewardship & Oversight.
Team Members

David Bruce   National Review Team Leader
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Special thanks go to some of FHWA’s DBE Program experts who aided us on the DBE Program Review Project:

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Lynise DeVance
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Daniel Fodera
Joshua Guterman
Gerius Patterson
Observations and Recommendations

Observation #1: State DOT approaches to DBE program administration and use of internal controls oversight needs to be strengthened.

How are State DBE Programs organized?

The DBE program ensures that federally assisted contracts for highway, transit and aviation projects are made available for small business concerns owned and controlled by socially and economically disadvantaged individuals. As required by law, each recipient receiving certain types of federal transportation funding from DOT must implement a DBE program that is in compliance with the regulations and establish an annual DBE participation goal. Once a DBE firm is certified, it can compete for contract awards as a DBE, which can provide a competitive advantage over non-DBE firms. DBE work is mostly subcontract work for a non-DBE prime contractor that commits to spend an established percentage of funding on DBE subcontractors.

The USDOT, State, and local transportation agencies share unique roles and responsibilities in administering the DBE program, which are implemented through a tiered approach:

- Tier 1 -- DOT’s Office of the Secretary’s role includes developing the rules and regulations for the DBE program, providing official guidance to ensure compliance, and considering appeals from State certification decisions.

- Tier 2 -- Tier 2 –HCR, in partnership with the Resource Center, provides tools, technical assistance and training to FHWA Division Offices to assist with Divisions’ oversight and stewardship responsibilities.

- Tier 3 -- FHWA,—through its Division Offices—is responsible for providing the technical assistance and oversight necessary to ensure recipients follow the regulations. In addition to providing the FHWA Office of Civil Rights (HCR) required reports, each Division has flexibility in determining how to provide technical assistance and oversight of the State’s DBE program to help ensure attainment of program goals and compliance with the regulations.

- Tier 4 --Acceptance of Federal-aid Highway Funds requires recipients to administer a DBE program as approved by FHWA. State and local transportation agencies, the recipients and subrecipients, implement their DBE Programs. This includes certifying the eligibility of DBE firms, overseeing DBE contract performance and establishing contract-specific DBE goals. Each State DOT has
flexibility in structuring and administering its DBE program within those regulations. Thus, the processes States use to establish contract-specific goals or to oversee DBE contract performance can and do vary by State but must still be implemented pursuant to the DBE regulations.

The State DOTs we visited administered their DBE Programs in a variety of ways. States are required to appoint a DBE Liaison Officer (DBELO) who (1) has direct access to the agency head, (2) is responsible for implementing all aspects of the DBE Program; and States must have adequate staff to administer the program. Apart from these requirements, States are free to distribute DBE-related duties as they see fit. Examples of how this was done in site visit states include:

- All six site visit State DOTs assign some DBE Program administration duties to field staff.
- Five of six State DOTs assigned these duties primarily to district engineers and project inspectors.
- One State DOT employed dedicated Civil Rights staff to monitor project-level DBE compliance.
- In two State DOTs Civil Rights staff set project goals.
- In two State DOTs Construction staff set project goals.
- In one State DOT a team consisting of Construction and other agency staff (but not Civil Rights staff) set the project goals.

While HCR, Divisions, and States often refer to DBE Programs as being "centralized" or "decentralized," we found this distinction largely insignificant in practice. Two of the six States described their programs as decentralized because functions such as contract goal-setting were performed by the State DOT’s Central Office construction section, while CUF and prompt pay monitoring were performed by district personnel over whom the DBELO exercised little control. Another State, however, described its program as centralized despite the Civil Rights section not being part of the contract goal-setting process and with State DOT Central Office construction and the districts making many decisions without the DBELO’s input. Thus, whether a State DOT’s DBE program was self-described as “centralized” or “decentralized”, we found varying degrees of involvement by the Central Office Civil Rights staff and DBELO.

These varying degrees of involvement of the DBELO are not only a distinguishing feature of how State DOTs organize their DBE program but also appear to impact the

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4 The terms “centralized” and “decentralized” are not defined or otherwise used in the DBE regulations. Under FHWA’s Title VI regulations, 23 C.F.R. § 200.9, States are required to establish a “Civil Rights Unit,” but these regulations do not set parameters for how they must be organized.
DBELO’s ability to effect policy change and set agency civil rights priorities. For example, two of the State DOTs we visited had DBELOs with little power to influence agency policy. In one case, the DBELO primarily managed only the State’s DBE Supportive Services and certification programs. In the four other site visit States the DBELO appeared able to make policy changes and exercise programmatic control with relative success. In one of these states, the DBELO was able to implement new policies recommended by the American Recovery Reinvestment Act (ARRA) National Review Team (NRT) with great success because of his ability to effect policy change and set agency civil rights priorities.

How do States carry out DBE contract administration?

Contract Goals

The regulations give States a great deal of flexibility regarding contract goals:

(1) You may use contract goals only on those DOT-assisted contracts that have subcontracting possibilities.

(2) You are not required to set a contract goal on every DOT-assisted contract. You are not required to set each contract goal at the same percentage level as the overall goal. The goal for a specific contract may be higher or lower than that percentage level of the overall goal, depending on such factors as the type of work involved, the location of the work, and the availability of DBEs for the work of the particular contract. However, over the period covered by your overall goal, you must set contract goals so that they will cumulatively result in meeting any portion of your overall goal you do not project being able to meet through the use of race-neutral means.5

One of the states we visited for this review did not set contract goals as they strive to achieve their overall goal solely through race-neutral means. Four states we visited used the criteria set forth in the regulations and tailored the goals to suit each contract, in compliance with the regulations. One State DOT we visited used a pre-set table to assign construction contract goals, which does not meet the statutory requirements for narrow tailoring. In this state, contracts are most often assigned their goals according to the formulas. Their policy is to revise the tables periodically; however they have not been updated since 2010. Although goal-setting can be time consuming for States, the regulations, the Adarand decision, and subsequent USDOT guidance suggest that the

5 "What means do recipients use to meet overall goals?“ 49 C.F.R § 26.51(e)(1-2).
use of these types of tables based on fixed formulas, however complex, is not narrowly-tailored and thus not in compliance with the DBE regulations.\textsuperscript{6}

The State DOTs also varied on how they approached goal setting on professional services contracts. Examples of the range of approaches we observed included:

- One State DOT did not set goals on any professional services contracts;
- One State DOT advertises a 20% "aspirational" DBE goal and assigns "bonus points" to proposers who commit to using DBE firms. The points are assigned on top of the total score. Yet, neither the regulations, USDOT guidance, nor FHWA guidance for professional services contracts procured in compliance with the Brooks Act provides that states can (1) set aspirational goals on contracts or (2) award bonus points to proposers that bid on qualifications-based procurements.\textsuperscript{7}
- One State DOT assigned a goal to every professional services contract that matched the overall goal for the State, which is noncompliant with narrow tailoring requirements and 49. C.F.R. §26.51.

Good Faith Efforts (Pre-award)

The good faith efforts concept originated with the USDOT’s attempt to balance the aims of the DBE Program of (1) leveling the playing field and fostering DBE opportunities with (2) Adarand’s requirements for flexible, non-prescriptive "goals."\textsuperscript{8}\textsuperscript{9} In all five race-conscious states we found instances of noncompliant processes with the pre-award good faith efforts regulations located in 49 CFR 26.53. These states all adopted the responsibility approach, allowing for bidders to submit DBE commitment and/or GFE documentation after the bid.

In every project we reviewed that had been awarded based on GFE, the States awarded the contracts to the original lowest qualified bidder (LQB). Four of the five states allow bidders to make changes to the original commitment after submission of GFE documentation and assisted the LQB with achieving the goal. In one State,

\textsuperscript{6} See information on the Adarand decision in the Appendices of this report.
\textsuperscript{7} The regulations do not specifically address requirements for professional services contracts, but FHWA issued official guidance in 2011 to address this topic. The guidance clarifies that States may set race-conscious goals on these contracts, which USDOT emphasized by adding an objective to the 2014 DBE Final Rule: "[t]o promote the use of DBEs in all types of federally-assisted contracts and procurement activities conducted by recipients." 49 C.F.R. § 26.1(f). If the procurement is a competitive negotiation/qualifications-based selection subject to the Brooks Act, then they would use achievement of the DBE goal as an evaluation criterion, not to exceed 10% of the points. Under procurements not subject to the Brooks Act, the State may evaluate goal achievement as they would for construction contracts. (Procurement, Management, and Administration of Engineering and Design Related Services - Questions and Answers, http://www.fhwa.dot.gov/programadmin/172qa_07.cfm#q01).
\textsuperscript{8} 49 C.F.R. § 26.1(b), (f), and (h), respectively.
\textsuperscript{9} See Background section for more information.
implementation of the process varied from their written procedures. The State DOT awarded a contract to the LQB although they told us they knew the LQB had not submitted adequate GFE documentation. Nevertheless, they awarded the contract and stipulated that the LQB must achieve the contract goal following award. Another State assisted the LQB with locating additional DBE firms following submission of the GFE documentation by soliciting quotes from DBEs on the bidder's behalf. Neither of these practices, as implemented, is compliant with 49 CFR 26.53 (c) which states “You must make sure all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before committing yourself to the performance of the contract by the bidder/offeror.”

Personnel in another State told us they would never reject a LQB regardless of whether the DBE goal was met because of the additional cost of moving on to the next lowest bidder. We also asked these States whether they had any examples of rejection of a bid under a GFE administrative reconsideration, and none of the State DOTs could recall having conducted one.

In addition, most of the race-conscious States we visited have not yet conformed to the November, 2014, DBE Final Rule amending § 26.53(g) to limit the days after bid for GFE submissions to seven. Two States expressly state in their Program Plans they do not conform to the new rule and during interviews they had not yet changed the policy. One State allows the LQB extensions of time for at least seven additional days after bid submission.

Finally, we observed that the State DOTs visited did not adequately document their GFE review processes. The regulations discuss many types of GFE documentation bidders should provide to States for review. While the regulations do not prescribe what files to preserve for this process, if States do not document how they reached a GFE decision, then FHWA cannot determine with reasonable assurance, whether that decision complies with regulation. This was demonstrated in practice during our site visits as we had difficulty analyzing GFE determinations because (1) the States did not preserve sufficient GFE documentation from the bidders, and/or (2) could not produce write-ups that explained their decisions. In two States, for example, the GFE decision was documented with an email to the bidder that primarily recited the regulations but did not give the basis for the decision. Another State had to sift through the files from the contract folder to determine how it reached its own decision and verbally explain the reasoning to us.

1049 C.F.R., Appendix A to Part 26, § IV.
DBE Termination and Substitution / Post-Award Good Faith Efforts

In 2011, the USDOT revised the regulations to prescribe how due process must be provided DBEs when a prime contractor terminates a DBE that was used to meet a race-conscious goal.\(^\text{11}\) These provisions apply to all instances in which a prime seeks to (1) reduce the amount of work committed to a DBE, or (2) terminate the DBE subcontract, entirely.\(^\text{12}\)

Only one State DOT we visited fully implemented the requirements in accordance with regulations.\(^\text{13}\) In other states we found that primes were not required to notify the affected DBEs or allow them the opportunity to object. One State showed us a contract where the prime terminated a race-conscious DBE subcontract with no notification, and the State imposed no sanctions.\(^\text{13}\) We also found this State DOT's practice did not match the provisions set out in its approved Program plan.

Contrary to the substitution and replacement regulations, which are clear as to the requirements that must be met, State DOTs do not have specific post-award GFE requirements that they must meet.\(^\text{14}\) Four of our site visit States told us they did not require primes to exercise GFEs when the State initiated a change order affecting DBEs. Their reasoning was that GFE is required only when the prime was "at fault" for the changes. Similarly, the same States told us they do not consider quantity underruns that affect a DBE commitment to trigger GFE requirements for similar reasons. Our Division survey also indicates that there are a variety of situations in which States have chosen to require Primes to demonstrate GFE in identifying additional DBE work. See Figure 1, below.

\(^{11}\) 49 C.F.R. § 26.53(f).
\(^{13}\) For a definition of "race-conscious DBE", see the definitions included in the Key Definitions and Acronyms section of this report.
Commercially Useful Function (Part I)

Ensuring that a DBE performs a CUF is a bedrock component of a State DOT’s DBE Program since DBE participation can only be counted toward a contract goal and/or the State’s overall goal if the DBE carries out a CUF. CUF undergirds contract and overall goals, the development of DBEs as businesses, and gives legitimacy to the Program by providing a standard with which to prevent fraud, waste, and abuse.

CUF monitoring was primarily carried out by field staff in all six States we visited. Three of the State DOTs we visited used a CUF form to guide field staff in conducting interviews with DBEs to determine if they are performing a CUF. Two of these States used forms that tracked closely with the guidance from USDOT thus helping field staff conduct meaningful CUF interviews. However, we found use of a form did not necessarily mean the field staff were conducting a meaningful CUF interview. One State's form did not appear to record most of the information necessary to make a CUF determination. Rather, the form primarily required field staff to ask questions regarding the supervisor/employee's name, previous employer, and length of time working for the DBE. This State's form did record the owner of the equipment, but did not include any questions regarding how the work was performed, which is essential to a CUF determination.

Three of the States we visited did not capture the results of CUF reviews in a specific, written form of any kind. Rather field staff recorded what they considered CUF data in
daily work records (DWRs). The DWRs we reviewed did not capture all of the data necessary to adequately determine and record CUF compliance. Typically, field staff recorded just the names of the firms on the jobsite, the supervisor's name, and the types of equipment used. DWRs did not state whether field personnel interviewed DBE supervisors or personnel; observed the management of the work; questioned the ownership of the equipment or the source of materials; or any other factors relevant to a CUF review.

We also found variations in field staff’s understanding of why they were asking questions in order to make a CUF determination.14 A few field personnel appeared to understand the purpose of CUF monitoring and what factors they should investigate. Yet, in every State, at least one person we interviewed did not understand why they were asked to review CUF or the CUF requirements. The latter group, if they filled out a review form, checked the checkboxes but could not answer basic questions about why they were asking the questions.15

While Central Office Civil Rights personnel in all six States did appear knowledgeable about CUF requirements, only two States had regular interaction with field staff on individual projects. In three States Civil Rights personnel offered CUF training to the field at least annually. However, that alone did not result in us seeing a strong relationship between field staff implementing policies and understanding why they were doing so compared with what we saw when Central Office staff had regular interaction with project staff. Moreover, State DOT Central Office staff in these three States, including the DBELO, did not seem to be aware of this. We viewed this as the type of scenario where an effective monitoring system would have alerted the State DOT’s Central Office staff of this, enabling them to address the issue.16

Commercially Useful Function (Part II)

The CUF regulations apply equally to all Federal-aid contracts including those involving professional services. Yet we observed that most site visit States had not implemented CUF procedures for professional services contracts although they still counted this participation towards a contract and/or overall goal. Only one of the States we visited considered CUF on professional services contracts and even this State sometimes found it difficult to analyze and document CUF for a professional services contract.

14 We interviewed staff from two to four State DOT districts or regions in each site visit State.
15 This type of knowledge issue is what State DOTs should take steps to avoid, according to the OIG Special Agent who told us that when CUFs are performed by knowledgeable staff it can help reduce fraud, waste and abuse (as discussed on page 29).
16 This type of monitoring system would be equate to one of the many types of internal controls State DOTs can implement to meet the requirements of the Supercircular.
State DOT staff also told us that trucking and supply of bulk items are particularly difficult for States to track for CUF compliance.17 All States appeared to understand that trucking was subject to the CUF regulations although we saw a wide range in the effectiveness of the approaches to monitoring DBE trucking in our site visit States. During our site visits, two States said they attempt to interview drivers and collect truck delivery tickets to ensure a CUF. One State said it does not have procedures because it has no DBE truckers on its contracts, although we observed one used on a contract we reviewed. Another State adopted a "self-certification" form for truckers to complete to ensure CUF compliance. This State cited the extreme difficulty in monitoring as the reason for the policy. Finally, two States simply told us they do not monitor trucking because they believe it is so difficult to do. Most expressed a desire for USDOT to clarify how trucking should be monitored and how CUF determinations for truckers can legitimately be simplified. We could not find specific guidance in the regulations or USDOT websites that addressed this topic and that would provide the assistance that these States said they would like.

The States we visited expressed similar frustration with monitoring bulk suppliers as they did for trucking.18 The regulations require this to be done but do not specify how to make a CUF determination on bulk suppliers. Three States said monitoring these firms is simply too difficult, and they do not perform CUF reviews. One State said they do not have any DBE bulk suppliers. Another State requires a "self-certification" form from DBE bulk suppliers. We found in one State that they are attempting an innovative process to address CUF determinations for a supplier that is providing, for example, gravel or liquid asphalt for many projects. This State performs a 30-day rolling CUF review of the bulk suppliers' facilities, which is in writing and applies to all projects on which the DBE participates. We consider the rolling reviews to be an interesting and innovative process that appeared to be a more effective method for evaluating and documenting a DBE bulk supplier's CUF than that in other States.

Prompt Pay and Return of Retainage

The USDOT specifically addresses prompt pay in its official guidance. The official DBE Q&A states that, although the regulations do not prescribe a specific sanction that States must use, enforcement of the prompt payment clause itself is not optional.19 States must use some effective means to ensure compliance with prompt payment requirements for all subcontractors, not just DBE subcontractors. The Central Office

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17 For trucking, the regulations specify how the DBE many trucks the DBE must own and how credit can be given when the DBE leases trucks. For more information on DBE trucking, see 49 C.F.R.§ 26.55.
18 See 49 C.F.R. § 26.55(e)(2)(ii)(B) for the regulations concerning bulk item suppliers.
staff in two States told us they had not understood this so they had primarily advocated for prompt payment to DBE subcontractors rather than for all subcontractors.

The USDOT guidance also clarifies that States must implement affirmative steps to monitor and enforce the prompt pay regulations. Our site visit States used a variety of methods to monitor prompt pay, some of which were insufficient for the State to be able to demonstrate that it took affirmative steps to ensure subcontractors are paid promptly:

- Two States used an electronic system to track payments. There, the primes must enter payment data into the system, and subcontractors enter their verification electronically, as well. These systems appeared to allow these two States to track late payments more effectively, although neither State said they formally audit the data for completeness, timeliness or accuracy.

- Two States require primes to certify they paid subcontractors on time while the project is active. Only one of these States then had an affirmative process to validate the certifications. This State's construction manual says they will conduct "6-month" audits, but we did not find this policy consistently applied by the field. In fact, only one field person interviewed could recall an audit occurring.

- One State requires primes to certify prompt payment at the end of the contract, but the State DOT is not itself taking affirmative steps to verify even a sample of the prompt payment certifications.

- One State relied on contract language requiring prompt pay and subcontractor complaints.

Except for the States that used electronic systems, most were ultimately dependent on complaints from subcontractors as the primary means of ensuring compliance since the States had not taken affirmative steps to ensure the subcontractors were paid promptly. When we discussed prompt pay with field personnel, the majority were confident State policies were effective by virtue of the lack of complaints. When we noted the USDOT guidance specifically contradicts this, even their Central Civil Rights staff did not appear to be aware of this guidance.

**Contract Sanctions**

We did not find that States typically use the sanctions available in 49 C.F.R. 26.13(b) or in the FHWA Form 1273 to bring contractors into compliance with the DBE regulations. Only one State produced a documented instance of withholding a prime’s progress payment for a prime contractor’s noncompliance with prompt pay requirements. There, the Central Office received a complaint from a DBE firm and staff recommended that
the field office threaten to withhold the prime's pay estimate. This field office then withheld payment to the prime, until the issue was resolved. In the five other States, Central Office Civil Rights and field staff said they do have the authority to use sanctions but could not demonstrate instances where they did so.

All of the States we visited told us they would withhold a prime's progress payments, if they did use sanctions. However, staff in two States told us they were not clear how they could tie sanctions to other instances of noncompliance, such as CUF noncompliance, when they do not know how to determine the appropriate amount to sanction. Thus they did not see assessing sanctions as a viable means to increase compliance with many DBE regulations.

In addition to this, we were told several other reasons why State DOTs are hesitant to use contract sanctions for a contractor’s noncompliance with DBE Program requirements. In some States, Construction staff explained how it was difficult for contractors to comply with all of the DBE Program requirements. One State told us they did not think it right to withhold progress payments—presumably due to noncompliance—for a prime that “took a chance” on a DBE that had not previously worked with that prime. In others, Construction staff told us how strict compliance with the regulations would increase project costs and could delay progress on the project, all of which they did not believe is in the taxpayers’ best interests.

**DBE Utilization**

There is no regulatory standard for measuring successful utilization nor does utilization appear to be one of the explicit objectives of the program. However, in 2013 the Office of the Inspector General for the USDOT (OIG) issued an Audit Report regarding the effectiveness of the USDOT’s DBE Program: Weaknesses in the Department's Disadvantaged Business Enterprise Program Limit Achievement of Its Objectives. The Report stated, in part, that:

20 Instead, the objectives of the program specify that the program should remove barriers to entry and level the playing field for DBEs thus giving them a fair opportunity to compete rather than measuring the number of DBEs who participate on Federal-aid contracts. To the extent that utilization is measured in the regulations, it is as percentage of total Federal-aid dollars to DBE firms. See 49 C.F.R. §26.1 and 49 C.F.R.§26.11(a). And see Appendix B to Part 26 which includes statements in the instructions such as “9(I). Of all subcontracts awarded this reporting period, calculate the percentage going to DBEs. Divide the dollar amount in item 9(C) by the dollar amount in item 9(A) to derive this percentage. Round percentage to the nearest tenth.”

The Department has limited success in achieving its program objective to develop DBEs to succeed in the marketplace because recipients place more emphasis on getting firms certified as DBEs rather than assisting them to identify opportunities and market themselves for DBE work on federally funded projects. In addition, the Department does not require recipients to actively track or report utilization data showing the number of DBEs actually receiving work on federally funded DBE projects. As a result, the Department has no way to measure achievement of this program objective.

While the regulations do not define the term "utilization," the OIG appeared to use it to mean the percentage of certified DBE firms in a Unified Certification Program (UCP), and nationally, that successfully receive prime or subcontracts. DBE Utilization is also identified in the PY16 Corporate risk statements, so is currently a focus of the FHWA. Thus, we were asked to examine this as part of our review, with the results shown in Figures 2 and 3.

**How many DBEs have successfully participated on Federal-aid contracts during 2013 and 2014?**

![Figure 2: 2013 DBE Utilization](image1)

![Figure 3: 2014 DBE Utilization](image2)

Divisions reported a wide range of answers but it also appears that States reported consistent data between 2013 and 2014: we noted DBEs were utilized at between 20% and 30% with a median figure of 17.52% utilization for 2013 and 17.8% utilization for 2014. Nevertheless, we could not draw conclusions whether this was good or not due to a lack of governing standards.
How do State DOTs employ internal controls as a means to effect DBE compliance?

Internal controls should be in place to ensure that DBE Program staff can prevent, or detect and correct, instances of noncompliance with their own policies and procedures. Further, such policies and procedures should be designed to ensure compliance with federal and state laws and regulations. For example, one State DOT requires a six-month audit of the prompt pay certification on every Federal-aid project. DBE Program staff in that State’s Central Office were surprised to learn that staff in only two of five districts realized they were supposed to perform this audit. A supervisory or second level check, as part of the process, would have previously identified this situation as well as given them the opportunity to revise their processes and procedures to ensure Program compliance.

The requirements for recipients of federal-aid funds, including State DOTs, to have internal controls in place was recently codified into the 2 C.F.R. Part 200 “Supercircular” rules. These rules specify that all States, as "non-federal entities" that administer federal awards, are required to establish and maintain effective internal control over the Federal award in a manner that provides reasonable assurance that the non-federal entity is managing the federal award in compliance with federal statutes, regulations, and the terms and conditions of the federal award.²²

In two States staff in the Central DBE Program Office reviewed all completed CUF forms as a part of their regular process, which is an internal control over Field Staff’s implementation of policy or procedure. There was, however, a general acceptance in both States that this review was effective so did not require further verification.

Most of the State DOT DBE Program Managers we interviewed told us they were unaware that they are subject to the Supercircular’s requirements. Instead they told us how they have little time to establish and maintain internal controls, focus on process improvements or consider strategic changes to overall program administration. Yet they were often surprised to realize how many components of their DBE programs were out of compliance with the regulations. If State DBE Program Managers better understood that effective internal controls can be a proactive tool to inform them how compliantly their program is being administered, they may be more inclined to design and implement effective internal controls. In addition, monitoring of such controls would enable them to identify where the risk of noncompliance is greatest, helping them focus limited resources to best effect.

²²2 C.F.R. § 200.303.
Recommendation: The Program Office and Resource Center should collaborate to deliver interactive, targeted, national training for State DOTs and Division Civil Rights Specialists regarding specific DBE compliance topics that have been identified as needing heightened focus as well as the importance of related internal controls. The training should:

- Be narrow in scope;
- Include use of technology (video or web conference);
- Be interactive with State and Division Civil Rights Specialists;
- Be archived with case study materials available for later retrieval; and
- Highlight best practices that State DOTs have used that help them to administer a compliant DBE program,
Observation #2: Divisions currently use a variety of ways to deliver technical assistance and oversight. Nevertheless, opportunities exist to enhance FHWA’s oversight of state DBE Programs.

How do Divisions provide technical assistance and oversight of the State’s DBE program?

Division Civil Rights Specialists have little specific guidance on how to provide day-to-day technical assistance and/or oversight of the State DOT’s DBE Program. The Civil Rights Specialists' Core Competencies specify the knowledge, skills and abilities that Civil Rights Specialists must have to succeed at their work but do not mandate day-to-day activities to be performed. The Sample Critical Job Elements (CJEs) for Civil Rights Specialists provide samples for Division leaders to use as they deem appropriate. Nor do the CJEs guide Civil Rights Specialists in what they should be doing on a daily basis to provide effective technical assistance and oversight. The 2014 Civil Rights New Entrant’s Handbook does not completely fill this void as it specifies such things as “The FHWA Division must know basic principles of DBE program contract administration and compliance and oversight, and perform regular oversight activities to ensure program outcomes [such as “The State DOT has an up-to-date, FHWA-approved DBE Program Plan that meets all program objectives”] are met.”

FHWA’s current method of providing stewardship and oversight, Risk Based Stewardship and Oversight (RBSO), was implemented in March, 2014. The S&O Agreement Guidance indicates that program approvals, program reviews, program assessments, and project reviews are all effective methods Division staff can use to provide program oversight. Beyond this guidance, we did not find where the site visit Divisions are requiring Civil Rights Specialists to take many of the specific actions set out in the sample critical job elements that Civil Rights Specialists could take to provide day-to-day technical assistance and/or oversight of the DBE program.

The methods of oversight suggested by the S&O Agreement Guidance are consistent with how Division staff have provided program oversight for years. As shown in Figure 4, we found examples during our site visits of all these methods of providing oversight, some that are consistent across States and some that are more limited in use. Figure 4 also shows how Civil Rights Specialists from the site visit Divisions told us they provide technical assistance.

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24 RBSO Guidance can be found at [http://www.fhwa.dot.gov/federalaid/stewardship/140328.cfm](http://www.fhwa.dot.gov/federalaid/stewardship/140328.cfm)
## How Do Civil Rights Specialists From Site Visit Divisions Provide Technical Assistance and Oversight?

<table>
<thead>
<tr>
<th>Technical Assistance</th>
<th>Oversight</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attending meetings and interacting with State DOT Staff</td>
<td>Attending meetings and interacting with State DOT Staff</td>
</tr>
<tr>
<td>Responding to questions about how the DBE regulations and guidance should be applied at both the project and program level</td>
<td>Reviewing the Uniform Report to monitor the progress the State is making towards attaining its overall goal</td>
</tr>
<tr>
<td>Arranging for training, when requested</td>
<td>Gathering data to input into the Civil Rights dashboard</td>
</tr>
<tr>
<td>Functioning as a conduit between the State and HCR’s DBE Program Manager</td>
<td>Conducting CAP Level II Civil Rights reviews (Three Civil Rights Specialists)</td>
</tr>
<tr>
<td>Providing expert assistance to Division engineers when they have project level questions on DBE program implementation</td>
<td>Conducting Program Assessments, often focused on identifying CR program risks, including DBE risks (Two Civil Rights Specialists)</td>
</tr>
<tr>
<td>Providing training and/or information to Division Engineers concerning CUF and other aspects of DBE program implementation at the project level so that the Engineers can recognize instances of DBE noncompliance when conducting project level reviews</td>
<td>Conducting DBE program reviews (Two Civil Rights Specialists). Another Civil Rights Specialist is conducting a program review in PY16</td>
</tr>
<tr>
<td>Monitoring a detailed spreadsheet identifying the State DOT’s Civil Rights work plan and due dates, including DBE activities and reports, which the Civil Rights Specialist updates monthly in preparation for a regular discussion with Division leadership (one Civil Rights Specialist)</td>
<td>Performing regular data analysis to help oversee DBE program implementation (other than reviewing the Uniform Report). This includes analysis of goals and attainments on individual contracts and data quality checks of the data entered into the State DOT’s Civil Rights data collection systems.(One Civil Rights Specialist)</td>
</tr>
<tr>
<td>Conducting analysis of CAP results but does not discuss the results with the State; rather the results are discussed with the Civil Rights Specialist’s supervisor (One Civil Rights Specialist)</td>
<td>Regularly discussing DBE concerns with Division engineers to identify potential instances of noncompliance with DBE regulations. (One Civil Rights Specialist)</td>
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</tbody>
</table>

**Figure 4**
Beyond performing these specific activities, several Civil Rights Specialists indicated it is important they have a close working relationship with the Division’s engineers in order to be able to provide necessary technical assistance and oversight of the DBE Program. Through this close working relationship they can learn of emerging DBE issues without having to visit all of the projects that the engineers may visit. They also said it increases the likelihood that the Division engineers will ask questions of the Civil Rights Specialist, ensuring they understand DBE requirements. In some Divisions, the organizational structure is used to facilitate that working relationship while in others that working relationship appeared to be undeveloped.

Of all the time spent on the DBE program, the Division Civil Rights Specialists consistently said they spend most of it ensuring required reports are completed—which they said sometimes seemed to be their primary responsibility—and “putting out fires.” Beyond this, some of the Civil Rights Specialists seemed to struggle to identify specific examples of proactive technical assistance and oversight. Survey comments from one Civil Rights Specialist reinforced this: “I’m too busy putting out day to day 'administrative' fires as opposed to having the opportunity to effectively implement the DBE Program in a pro-active manner.”

In addition to “day-to-day” technical assistance and oversight, FHWA Civil Rights Specialists have several specific oversight responsibilities for the DBE Program set out in the regulations: approve overall DBE goals; approve DBE Supportive Services Statements of Work (SOW); approve shortfall analysis; and approve the DBE Program Plan. Civil Rights Specialists and their Division partners say that goals, SOWs, and shortfall analyses receive more focus and attention from HCR than approval and implementation of the Program Plan. This is likely the perception because all of these responsibilities are measured and managed by HCR except approval of the Program Plan and overseeing compliant implementation of the DBE Program. Nevertheless, we found Program Plans that included some provisions not in compliance with the DBE regulations and instances of program implementation that varied from the approved Program Plan and that, as implemented, were noncompliant.

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26 Survey conducted by the PMIT for this review concerning DBE Program Administration and Oversight. Survey sent to all Division Civil Rights Specialists on April 22, 2015.
28 As is discussed later in Observation 2, once the Program Plan is approved, it does not need to be reviewed by FHWA unless “significant” changes are made.
How do Divisions ensure DBE Program Plans comply with DBE regulations?

The State DOT’s DBE Program Plan is the core document that outlines how the State intends to implement and administer its DBE Program. There is no clear standard that defines what must be included in a Program Plan as the regulations provide flexibility to State DOT’s to develop their own Program plan. Nevertheless, what is included must address how regulatory requirements will be administered in compliance with 49 CFR Part 26. Approval of this program may not be delegated to States. Thus, Division Civil Rights Specialists must determine if the Program Plan as written is compliant and if it provides enough detail to demonstrate the State’s Program will be administered compliant with the regulations. Yet, for the Site visit States we found that approved plans contained provisions that are noncompliant with the regulations. In addition, we consistently noted situations where the provision as written was so general that we did not see how it could be said to describe the actual procedures that the State DOT follows.

To examine the extent of these concerns with DBE Program Plans, we put together a team of DBE Program experts to review all 52 Program plans for compliance and clarity of procedures. This team reviewed each plan, comparing its provisions to the current regulations. Like what occurred with the site visit States, this team found vague provisions and was unable to identify any DBE Program Plan in which every provision was in full compliance with current regulations. In addition, as Figure 5 indicates, many Program Plans contain provisions that are noncompliant with regulations that have remained unchanged for years.

<table>
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<th>Section of 49 C.F.R. Part 26</th>
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<th>Number of Plans that include this provision</th>
<th>Number that were compliant</th>
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<td>0</td>
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<tr>
<td>26.5 Definitions</td>
<td>2014</td>
<td>48</td>
<td>16</td>
</tr>
<tr>
<td>26.7 Non-discrimination Requirements</td>
<td>1999</td>
<td>48</td>
<td>41</td>
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<tr>
<td>26.11(c) Bidders List</td>
<td>2000</td>
<td>50</td>
<td>35</td>
</tr>
</tbody>
</table>

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28 See 49 C.F.R. § 26.21(c): "[y]ou are not eligible to received DOT financial assistance unless DOT has approved your DBE Program and you are in compliance with it and this part…."  
29 USDOT provides a sample plan but specifies that it does not have to be followed exactly as States have great flexibility in how they choose to administer their DBE Program.  
30 See the Appendix for the methodology of the Program Plan Review. These results are valid even for four plans approved in 2015. However, at least three Divisions indicated they have reviewed new Program Plans and are waiting for concurrence from HCR prior to approving them which we did not review as we evaluated only currently approved Program Plans. See Appendix for more information on when Program Plans were approved.
Figure 5

Collectively, we examined 1211 provisions in the 52 DBE Program Plans, of which only 816 or 67% of the provisions were deemed compliant. We also noted 169 instances where portions of the Plan merely recited the regulations rather than describing how the State DOT actually implements each regulatory provision. When program plans primarily include mere restatements of the regulations—as several did—it also calls into question the perceived utility of using the plan to carry out administration and oversight of the DBE Program.

31 We also noted 128 instances where the Program Plan explained in appropriate detail a State-specific practice or included State-specific forms.
**What methods do Divisions use to oversee implementation of the DBE Program Plans?**

As indicated, each State DOT is required to implement its plan as approved. To determine how a Civil Rights Specialist ascertains whether the plan is being implemented as approved, we included questions in the survey asking which methods of oversight the Civil Rights Specialists used to ensure the DBE Program Plan is being implemented as approved. We categorized the oversight activities identified during site visits (see Figure 8) into the same four categories used in the survey.

This data showed similarities as well as one constant: the most commonly used method to provide oversight is *Meetings and Interaction with DBE program staff*. Every Civil Rights Specialist we interviewed told us they view the relationship they have with the State as the most effective way to provide technical assistance and oversight of the State DOT’s DBE Program. The Civil Rights Specialists told us without this strong relationship the State DOT’s DBE Program staff would not be as willing to ask for help when needed or discuss problems to brainstorm solutions. They also said these strong relationships are critical to gaining the State’s cooperation to complete required reports or to take on the workload required, for example, to be a site visit State for a national review.

In addition to the site visit States, Civil Rights Specialists throughout the nation also view relationships as critical to successful stewardship and oversight. As indicated in Figure 6, survey responses indicated that every Division but one said they use *Meetings and interaction with DBE Program staff* to provide program oversight.

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32 See 49 C.F.R. § 26.21(c): “[y]ou are not eligible to receive DOT financial assistance unless DOT has approved your DBE program and you are in compliance with it and this part...."

33 And see 49 C.F.R. § 26.13: “[w]hat assurances must recipients and contractors make? ...The recipient’s DBE program, as required by 49 C.F.R. part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 C.F.R. part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.)."

34 As part of this review, we distributed a survey to all 52 Division Civil Rights Specialists concerning varied aspects of DBE Program Administration and Oversight. We received 49 responses, giving us a much broader perspective on how Division Civil Rights Specialists provide DBE Program Administration and Oversight than what could be obtained just from the site visits alone. See Appendix for a copy of this survey.

35 All six site visit States also completed the survey so their responses are also included in survey data.
Figure 6 also shows that both site visit Divisions and Survey respondents said they use other methods of oversight than the options provided. Some of the methods they identified in the “Other” category include but are not limited to:

- Participating in CUF reviews;
- Reviewing GFE data, field reviews;
- Conferring with engineering staff;
- Conducting training;
- Reviewing a Monthly DBE Report (spreadsheet) that is used to monitor YTD DBE participation, contract goal adjustments, GFE awards, and completeness of LPA DBE data; and/or
- Project site visits.

In their survey responses, FHWA Civil Rights Specialists also indicated they believe the most effective method of providing oversight is through meetings and interactions with DBE Program staff. As shown in Figure 7, they selected this option more than all other options combined, which also emphasizes the perceived importance of having good relationships with their State DOT’s Civil Rights staff.
How do Divisions use program reviews to provide oversight?

Thirty-five of the Divisions responding to the survey said they use program and process reviews as a means of oversight to ensure that DBE Program Plans are implemented as approved.36 The high number seems consistent with FHWA’s S&O Agreement guidance which states that program reviews can provide useful information that should aid in effective oversight.37

Program Reviews – [Provide] a thorough analysis of key program components and the processes employed by the State DOT in managing the program. The reviews are conducted to: 1) ensure compliance with federal requirements; 2) identify areas in need of improvement; 3) identify opportunities for greater efficiencies and cost improvement to the program; and/or 4) identify exemplary practices.

We briefly examined all of the DBE review reports in the Library and found they were typically either a form of program assessment or were actual program reviews that tended to focus on examining the State DOT’s processes and procedures for prompt pay, GFE, and CUF. Some reviews indicated they examined project records,

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36 As part of the Division’s survey response, we asked that any program reviews done to ensure the DBE program is implemented as approved be loaded into the FHWA Program Review Library.
interviewed project staff, and assessed the process being reviewed against the Program Plan and the regulations in order to determine whether their program was compliant.

A relatively small number of these reviews have been conducted over the years. As shown in Figure 8, of the 119 total Civil Rights program reviews conducted since PY 2002, 44 covered DBE Program administration. And, as shown in Figure 9, 19 Division Offices have conducted 30 DBE reviews since the Civil Rights Program was identified as a corporate risk in 2009.38

38 Note that an additional 17% of the Divisions have done a Civil Rights program review in a different area of Civil Rights such as ADA, Title VI, etc.) since Civil Rights was identified as a corporate risk in 2009.
However, nothing requires Division staff to conduct a DBE program review. Instead, Division staff may have determined that DBE program risk did not justify the expenditure of resources that would be required to conduct a program review. This would be consistent with the S&O Agreement guidance which states: “The FHWA will employ a risk management framework to evaluate program areas and balance risk with staffing resources, available funding, and transportation needs.” This is also consistent with how Divisions have traditionally decided to conduct program reviews (or not conduct a review). Thus it was not a surprise to us when the leadership in one Division we visited during this review questioned whether their DBE Program would be a high enough risk when compared to other program risks in their State to justify the resources that would be required to do a review.

In addition, the Civil Rights Specialists we interviewed told us they primarily focus on fulfilling HCR’s mandates. HCR does not require Civil Rights Specialists report on the program reviews they conduct nor did we find any documentation indicating that HCR has encouraged Civil Rights Specialists to conduct program reviews to mitigate the corporate risk associated with the DBE Program. If the Program Office emphasized the importance of program reviews to manage risk and provide effective DBE Program oversight, and if the Divisions included specific reviews in a Civil Rights Specialist’s CJEs, it could increase the number of program reviews conducted of the DBE program, providing better information to Civil Rights Specialists on where to focus their efforts and other resources.

However, simply conducting a program review does not necessarily equate to a Division’s effective oversight of the State DOT’s DBE program. Two of the site visit Divisions had conducted recent program reviews of the DBE program and our review of these reports identified weaknesses in how these reviews were conducted.

The first review we assessed concluded that contractors were not complying with the State DOT’s procedures, leaving the State DOT in noncompliance with the DBE regulations. The Division sent the State DOT a letter with this conclusion, however the State’s Construction staff questioned the data used in this review, so did not initiate any corrective action. Over the next year after this letter was sent, no follow-up action was taken and the Division was unable to make an undisputed determination whether the State was in compliance with the regulations, thereby leaving open an area of potential noncompliance.

FHWA has developed the Program Review Library and the Review Response Tracker in INPUT as tools to properly track and monitor all agency review activities. Of the 11 DBE program reviews completed in the last three performance years, seven Divisions

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39 INPUT is the Integrated National Planning and Updating Tool
have entered their recommendations into INPUT, four have not. Similar to the concern with Civil Rights Specialists understanding they need to post review reports to the Review Library, Civil Rights Specialists told us they did not understand they were supposed to enter recommendations into INPUT or track progress toward finalizing the recommendations.

We identified a second program review report done by a different site visit Division that concluded a State DOT practice was in compliance with the DBE regulations so did not require the State DOT to make changes to its practice. However, after we read this review report, we found this conclusion was inconsistent with the regulations and with the DOT’s official Q&A’s. Thus, the State DOT was allowed to continue a practice that is not compliant with the regulations.40

How do Divisions use program assessments to provide DBE oversight?

The S&O Agreement guidance leaves open how program assessments should be conducted since it specifies:

Program Assessments – This evaluation technique may take many forms, including joint risk assessments and self-assessments. These tools are based on the common concepts of identifying strengths, weaknesses, and opportunities and the identification and sharing of “best” practices to continually improve the program.

Slightly less than half of the Divisions responding to the survey indicated that they had conducted program assessments in PY13-15, however defined, as shown in Figure 10.
The Civil Rights Specialists who do use program assessments use a wide variety of tools to help them oversee DBE program administration. Examples they provided us included spreadsheets to monitor goal attainment; forms used for project reviews, Civil Rights risk assessments, etc. Some of these tools use data, while others appear to be based more on anecdotes and discussions. Consequently, the extent to which an individual program assessment would help a Civil Rights Specialist determine if the program is compliant and administered as approved would vary based on the type and depth of assessment procedures performed.

Several Civil Rights Specialists also indicated that they still used a version of the DBE Baseline Assessment to help them ensure their State DOT’s DBE program is being administered in compliance with the regulations. Although versions of the Baseline Assessment had been used since 2007, the last version of the DBE Baseline Assessment was developed for use in 2010-2011 after which HCR discontinued its use. Originally HCR had mandated the use of this baseline assessment tool (called the Civil Rights Program Assessment Tool, the CRPAT), to “Ensure the STA delivers a quality Federal-aid Highway Program that meets the requirements of Civil Rights laws, regulations, and other authorities.”

At the time these assessments were used, they were conducted as a cooperative effort among HCR, the Resource Center and the Divisions. Every Civil Rights Specialist we interviewed who had used some form of these assessments spoke of how they made it better and easier for the Division Civil Rights Specialist to provide oversight of the State

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41 We found 19 examples of completed CRPATs dated from 2007-2011 in the Program Review Library.
42 CRPAT Guidance from May 2010.
DOT’s DBE Program. However, as we discovered from the ARRA DBE reports and from the program plan review, the use of an Assessment does not necessarily equate to a compliant DBE program. We believe key weaknesses of the prior DBE Baseline Assessment included:

- The lack of mandated follow-through of an action plan by HCR. The 2010 Guidelines only specified that “Within 30 days of completing the program assessment, the Division office will provide a copy of the written report [which included recommendations and resolutions to those recommendations] to HCR.
- The decision to make the DBE component of the Baseline Assessment optional during ARRA.

How do Divisions use data analysis to provide DBE oversight?

Three Civil Rights Specialists in the site visit Divisions said they conducted regular data analysis in addition to reviewing the Uniform Report and three said they did not. Of the three who said they conducted regular data analysis, they said they did the following:

- Analyzed goals and attainments on individual contracts and conducted data quality checks of the data entered into the State DOT’s Civil Rights data collection systems.
- Reviewed DBE Small Business Utilizations Reports to see DBE progress as a result of the Small Business Element being added to the DBE program and provided assistance to STA as needed.
- Analyzed project inspection results, evaluating to see if process improvements are needed.

As shown in Figure 11, 37 Divisions told us that in addition to reviewing the uniform reports, they perform regular data analysis of the DBE Program in their State to help them ensure the program is being implemented as approved. Typically, the explanations indicated the data analysis included reviewing reports on goal progress, attainment, contract goal information, etc.  

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43 See pages 47-48 of this report for changes we believe necessary to make an assessment such as the CRPAT more effective in helping Civil Rights Specialists determine regulatory compliance and ensure they provide effective and sufficient program oversight.

44 See complete survey data in the Appendix, including explanations of other data analysis conducted by Division Civil Rights Specialists to help them ensure the program is being implemented as approved.
This type of data analysis is important to help monitor goal attainment but is likely not useful in helping the Division provide oversight of the State DOT’s DBE Program. In addition, data can be effectively used to help provide effective oversight only when it is reviewed in the context of an accurate understanding of the regulations so that the conclusions can be appropriately applied to DBE program administration. For example, one State we visited had exceeded its overall goal for two straight years, by over 5% each year. To ensure the DBE program is narrowly tailored, the DBE regulations require downward adjustments to contract goal setting if the goal is exceeded, but this was not done.

These same documents are also routinely provided to HCR who analyzes and reports on the data. HCR also routinely communicates with the Division staff for the States that did not meet their goals to ensure they submit a shortfall analysis with corrective measures—a requirement since the 2011 revisions to the regulations. However, in this one instance, despite goal attainment significantly above the overall goal for two years, HCR staff had not contacted the Division to ask how the State was responding. This appeared to be a missed opportunity to educate the Division on the concept of narrow tailoring and that exceeding the DBE goal is not necessarily an indicator of program success.

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45 See information on Adarand and narrow tailoring in the Background section of this review report. And see 49 C.F.R. § 26.51.
46 For FY14 (the most recent full year’s data), 33 State DOTs exceeded their overall goal, one met it exactly and 18 did not achieve their overall goal.
How do Divisions use project involvement to provide DBE oversight?

The S&O Agreement Guidance states: “project inspections are a valuable tool for determining adherence to applicable laws, regulations, and policies.”\textsuperscript{47} Consistent with this, as shown in Figure 12, 35 Divisions said they use project involvement to provide oversight of the State’s DBE Program.

Some Survey Respondents said they consider project level involvement through CAP or other forms of project reviews to be an essential method to provide oversight. Our site visits also show project level oversight is essential to helping the Civil Rights Specialists know if the approved DBE program is being implemented as approved.

Of the site visit Divisions, three indicated performing CAP Civil Rights Technical Guide reviews as their project involvement and three noted very little project involvement other than perhaps reviewing engineer’s reports. We found that these three Divisions who did CAP reviews for project involvement actually did very few of them. As part of our \textit{Advance Information Request}, we had asked for copies of any CAP Civil Rights Technical Guide Reviews completed by Division staff. The most copies we received from any one site visit Division of CAP reviews that used the Civil Rights Technical Guide was five reviews from the two years that the CAP program has been in effect.

We also examined these completed CAP Civil Rights reviews and found they had been inconsistently performed:

\begin{figure}[h]
\centering
\includegraphics[width=0.5\textwidth]{pie_chart.png}
\caption{How Many Specialists Provide DBE Program Oversight by Reviewing Projects?}
\end{figure}

\begin{itemize}
\item 14 or 29\% of Specialists do not review projects
\item 35 or 71\% of Specialists review projects
\end{itemize}

\textsuperscript{47} See the Federal-Aid Highway Program Stewardship and Oversight Agreement Guidance, March 2014, page 7 found at \url{http://www.fhwa.dot.gov/federalaid/stewardship/140328_so.pdf}. 
• In one State the CAP Civil Rights review was instrumental in helping the Assistant Division Administrator (ADA) identify a situation where it was questionable if the DBE was actually performing a commercially useful function as required by 49 C.F.R. § 26.55.48

• In another State the Civil Rights Specialist did not hold the State accountable to following its own approved procedures. Instead, the Civil Rights Specialist created a CUF form to document a CUF determination that had not been officially implemented by the State DOT or used by the State DOT staff on this project prior to the CAP review. Had the State DOT’s own procedures been followed, the Civil Rights Specialist could not have indicated “yes” the State had documentation showing the DBE performed a CUF.

• In another State, the Civil Rights Specialist made inconsistent determinations for CUF monitoring. On two reviews, the Civil Rights Specialist stated “Yes,” that the field inspector monitored CUF, but noted the State DOT’s designated CUF reviewer from construction did not perform the review. On another form this Civil Rights Specialist answered “No” based on identical facts.

Because the CAP CR Technical Guides are, of necessity, limited in nature to just a few questions and since they assess whether the State DOT is implementing its own policies and procedures, they are not designed to help determine if a program is being administered in compliance with the regulations. Thus CAP reviews alone cannot provide adequate program oversight. Nevertheless, our site visits showed project level oversight is essential to helping Divisions know if the approved DBE program is being implemented as approved. This was also similar to the survey comments we received.

The site visit Divisions also told us that it can be difficult to remedy the issues identified in project visits. Currently, Division Civil Rights Specialists, of necessity, rely primarily on the strength of their relationship to persuade the State DOT to modify its practices. None of the site visit Divisions had ever issued a Federal-aid Ineligibility Notification to a State DOT for failure to comply with DBE requirements. Staff in one Division told us they did not know how to determine which project costs would be ineligible for reimbursement for a State’s failure to ensure DBE requirements are implemented correctly. Instead, we were told the only options available would be to not reimburse any costs of that project or shut down the Federal-aid highway program entirely for a State DOT’s failure to comply with DBE requirements—although none could imagine doing so. Moreover, we do not know of existing guidance to provide information to Divisions on

48The firm in question is now facing possible decertification as a DBE. This supports the OIG’s contention that the true verification whether a DBE is performing a CUF is an important tool in preventing waste, fraud and abuse in the DBE Program. As it stands now, DOT’s OIG has determined the potential for waste, fraud and abuse is a high risk area that can be mitigated by knowledgeable aware staff asking the right questions and documenting responses.
specifically how, if necessary, to hold States accountable for noncompliance with DBE Program requirements by declaring certain project costs ineligible for federal reimbursement. 49

If the State has existing internal controls do the Divisions currently evaluate these internal controls?

In general, the Civil Rights Specialists we interviewed did not fully understand the concept of “internal controls”. For example, none of the Civil Rights Specialists we interviewed considered the Program Plan to be a potentially useful control document for:

1. Assessing whether the procedures the State proposes to use would result in general compliance with the regulations; or
2. Assessing whether the Program is being implemented as approved, once the procedures are approved.

Yet the Program Plan was a key document we used to assess whether the program was being implemented as approved and in compliance with the regulations.

Because of the important role internal controls play in ensuring program and project compliance, Civil Rights Specialists need to be able to determine if the designated internal control processes are not as effective as they perhaps could be. For example, the failure of the State’s CUF review process to identify deficiencies in a CUF determination made by field staff indicated a weakness in the internal control. If Division staff do not yet fully understand how to assess the efficacy of existing internal controls, it can be difficult to assess whether a State DOT’s policies, procedures, and other controls, as designed, should lead to compliant policies and procedures. They also need to understand the importance of evaluating whether such controls are also implemented as designed. This is not how FHWA has traditionally provided program oversight—at least outside of the financial arena—yet is an area seen as increasingly important in providing effective program oversight.

Recommendation:

A. The Program Office should develop guidance and tools that will help Division Office Civil Rights Specialists:

49 For example, there is no guidance that aids Divisions in calculating the amount of project costs that would not be reimbursed to the State DOT because of its [generally repeated] failure to implement appropriate CUF procedures or for other similar types of noncompliance.
• Review DBE Program Plans to ensure they contain accurate references to laws and regulations, and have sufficient detail to assess existing procedures designed to ensure compliance;
• Assess compliance of the DBE program as it is implemented by the State DOT;
• Use data analysis as part of Program administration;
• Conduct effective program reviews;
• Understand and evaluate internal controls; and
• Address weak internal controls and/or regulatory noncompliance.

As part of this recommendation, the Program Office should develop a process that would allow them to track the initiatives, planned actions and milestones resulting from Divisions’ use of this suite of tools; ensure actions are completed as planned and on schedule; and monitor to ensure deficiencies are promptly resolved.
Observation #3: FHWA’s risk-based, data-driven approach to providing program administration and oversight is not yet widely understood or applied to the DBE Program by Divisions or the Program Office.

How does RBSO apply to the DBE Program?

FHWA’s risk management policy states:

The international definition of risk is "the effect of uncertainty on objectives." In FHWA we define risk as "a future event that may or may not occur and has a direct impact on the program, stewardship or organizational objectives, to their benefit or detriment." The FHWA is committed to the responsible management of risks associated with achieving our program and national objectives. The goal of risk management within FHWA is to provide reasonable assurance that we understand the risks associated with achieving those objectives and that we are responding appropriately. FHWA is committed to establishing an appropriate risk management culture that will contribute to good corporate governance through a consistent risk management approach.50

We searched the Civil Rights SharePoint site, Policy Library and other sources of information that refer to the DBE program, but could not find easily understood guidance concerning what the DBE program should be trying to achieve i.e. its organizational objectives.51,52

FHWA’s RBSO approach integrates risk management into the performance planning process to identify stewardship and oversight (S&O) initiatives.53 RBSO includes S&O initiatives at the national and unit (Division) level for both programs and projects.54 This approach allows FHWA to develop S&O initiatives that focus on the threats to the Federal-Aid highway program and projects as well as to take advantage of opportunities to add value.

51 Information Available to Civil Rights Specialists— See Appendix.
52 Reporting other than the Uniform Report.
53 For FHWA stewardship is defined as the efficient and effective management of the public funds that have been entrusted to the FHWA. Oversight is defined as the act of ensuring that the Federal Aid Highway Program is delivered consistent with laws, regulations and policies. Federal-Aid Highway Program Stewardship and Oversight Agreement Guidance dated March 2014.
To carry out this approach, the *Risk Management Process User Manual* suggests that each unit in FHWA use a standardized process to assess the risks involved in achieving the program-related objectives and the unit-level, or national, performance objectives. For DBE Program administration—as with other programs—this process begins at the Division level, with staff following these steps:

1. Clarifying the context of the risk;
2. Identifying the objectives, including overarching, operational, compliance and reporting, that the unit intends to achieve for the program being administered;
3. Identifying the risk events that will impact the unit’s ability to achieve those objectives, whether positive or detrimental;
4. Determining the likelihood those risk events will occur and their probable impact, if they do occur;
5. Prioritizing risks; and
6. Identifying risk management activities in Unit Plan activities as well as identifying those activities that will help FHWA achieve its national initiatives as outlined in the Strategic Implementation Plan (SIP).

In addition, once the risks are identified and prioritized, each unit’s ‘Top Risks’ are rolled up nationally, giving FHWA the ability to develop strategies and monitor actions taken to mitigate key threat risks.

For the DBE program, the context of its risk involves an identification of all the stakeholders to the program that include but are not limited to: OST, HCR, Divisions, State DOTs, DBEs, and prime contractors, all of which may have different views on how the program should be administered. However, context and program objectives are also provided by 49 C.F.R. §26.21 which outlines the specific objectives of the DBE Program. These include but are not limited to:

- Ensuring nondiscrimination in the award and administration of DOT-assisted contracts;
- Creating a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
- Ensuring that the Department’s DBE program is narrowly tailored;
- Helping to remove barriers to the participation of DBEs in DOT-assisted contracts; and

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• Promoting the use of DBEs in all types of federally-assisted contracts and procurement activities conducted by recipients.\textsuperscript{56}

The USDOT designed the regulations to carry out these objectives. Stated another way, the objectives of the program should be met if a State DOT implements its DBE Program in compliance with the regulations. To explore how this is viewed in FHWA, we surveyed both the Division Administrators (DAs) and Assistant Division Administrators (ADAs) as well as the Civil Rights Specialists to learn how they would answer the following question: “What is the definition of success in the DBE Program administration and oversight?” Responses were in narrative form and most included more than one indicator of success, so we categorized each definition into all appropriate categories.

We received responses from 49 Civil Rights Specialists. They defined success most frequently as:

1. **Compliance of the DBE Program**, which was stated in 24 of the 49 responses.
2. **DBE goal is set correctly, attained, or exceeded**, which appeared in 12 of the responses.
3. **Strong relationships with the State DOTs and other partners in the program**, which received 11 responses.

We received 41 responses from DAs and ADAs. They defined success most frequently as:

1. **Compliance of the DBE program**, which was stated in 19 of the 41 responses.
2. **Moving the program from Race Conscious to Race Neutral due to the DBEs being able to compete equitably** which was stated 16 responses.
3. **DBE program is supported by HQ, RC, DO, State DOTs and the industry** which received 14 of responses.

We compared both sets of data and included that analysis in Figure 13:

\textsuperscript{56} See the Background section of this report for a complete list of the DBE Program’s objectives as specified in 49 CFR §26.21
The variety of answers, however, makes it difficult to consistently assess risk against varying objectives. In theory, if the program is administered in compliance with the regulations, all other definitions of success should eventually be met.\textsuperscript{57} This is consistent with how FHWA’s National DBE Program Manager defined success.

If we assume that “a compliant program” should be FHWA’s accepted definition of success and that equates to its objectives for DBE Program administration, then risks are assessed against that standard. Based on this, we analyzed the PY15 Division risk statements since that was the year in which our site visits took place. As shown in Figure 14, we chose two as examples that we thought more specifically assessed risk against the objective of compliance. We also chose two that we thought were vague and would be difficult to assess against an objective of compliance:

\textsuperscript{57} More specifically, all Other definitions of success that relate to the DBE Program itself, not how the Division provides oversight such as through relationships or RBSO or strategic planning and approaches.
Even in these contrasting examples none identify, with any specificity, the risks we found based on noncompliance with the regulations. We think that if the Civil Rights Specialists had used more of the methods of oversight identified in the RBSO guidance (program reviews, data analysis focused on compliance, comprehensive program assessments), they would have had more data to accurately identify risks to DBE Program compliance as well as risk statements that were more purposeful.

Despite the Civil Rights Program (including specifically the DBE Program) being an ongoing national risk—which most of the Civil Rights Specialists we interviewed knew—only one of the Civil Rights Specialists from the site visit Divisions said they factored the corporate risk statement into their own risk analysis. We also know from examining Divisions’ PY15 risk statements that 18 Divisions (34%) included risk statements related to DBE Program administration in their top ten risk statements—although they did not all appear to be tied directly to the corporate risk assessment.\textsuperscript{58,59} We also know from the data we reviewed for Observation 2 that at least one other Division factored the

\begin{table}
\centering
\begin{tabular}{|c|p{5cm}|p{10cm}|}
\hline
Is the risk Statement clearly measured against compliance? & \textbf{If Statement} & \textbf{Then Statement} \\
\hline
Yes & If DOT’s Civil Rights programs continue to improve and comply with Title 49, & then the potential for discrimination and fraud will be diminished. \\
Yes & If the DBE Plan, Goal Methodology and the GFE implementation are not approved or implemented, & then remediation steps must be taken, resulting in changing the DBE specifications and contracting processes. \\
No & If the State DOT and their Local Public Agency Sub-recipients do not properly administer the civil rights areas: Title VI, DBE, OJT, programs, in the following EEO, and projects, & then there could be discriminatory practices and less than equitable program delivery practices, which can result in costly litigation, fraud, abuse, and the inability to execute a non-discriminatory Federal-aid Program. \\
No & If DOT fails to successfully implement the Civil Rights Program requirements, & then its services and activities may have a discriminatory impact on the public, exposing the agency to enforcement proceedings and potential litigation that would burden resources. \\
\hline
\end{tabular}
\caption{Figure 14}
\end{table}

\textsuperscript{58} Two of these 18 Divisions were site visit Divisions.
\textsuperscript{59} Divisions can roll up to ten risks to the national database of risks so not all Divisions may have submitted ten risk statements to this database.
corporate risk into their risk mitigation activities although this Division did not include anything related to the DBE program in one of its PY15 top ten risk statements.\(^{60}\)

While we couldn’t identify a strong connection between the corporate risk assessment and the Divisions’ risk assessment processes from the data we reviewed, we did find a connection between Divisions’ unit plan activities and the corporate risk assessment. There are two national initiatives related to the DBE program in the PY15 SIP that were designed to help mitigate the corporate risk:

**National Initiatives:**

6.1 Increase DBE participation with particular emphasis on professional services (i.e. Design and Architectural & Engineering services) by working with State DOTs through the Supportive Services programs to develop Statements of Work that support DBEs in this emphasis area (Lead Officials: Division Administrators (except Division Engineers); Supporting Offices: HQ except HFL, HCR, HCC, and HIF).

6.3 Improve training and development of Division Civil Rights Specialists and staff members, as well as external partners, to effectively manage the DBE and On-the-Job Training supportive services programs including sharing of noteworthy practices on training and collaborations, DBE certification, and utilization (Lead Official: Whitlock; Supporting Offices: HQ and DO except HFL).\(^{61}\)

As shown in Figure 15, one-half of the Divisions linked to the corporate risk assessment by including at least one of the PY15 SIP’s national initiatives related to DBE Program administration in their unit performance plans.

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\(^{60}\) See discussion in Observation 2 of a Program Review that identifies both national and local risk as a reason why the review was done.

\(^{61}\) The PY16 SIP defines a National Initiative as “a change effort or priority activity, program or project that is associated with each NPO and NPM and makes operational the Agency’s long-term National Strategies.”
Also telling of the focus on National Initiatives was that the Civil Rights Specialists, State DBE Program Managers, and Division leaders all readily discussed issues related to the business development programs with us.62

**How can RBSO be used to bring a focus on compliance in the DBE program?**

Recently, FHWA has used the principles of RBSO to mitigate the risk of non-compliant administration of LPA programs. In 2007 FHWA self-identified this as a risk and began agency-wide activities to mitigate the risk. In its 2011 report the OIG followed up on these activities and recommended FHWA take additional action. We identified similarities between what the OIG found concerning LPA oversight with what we observed throughout this review.63 Figure 16 shows the similarities we identified:

<table>
<thead>
<tr>
<th>OIG 2011 Observations on LPA</th>
<th>PMI Team 2015 Observations on DBE</th>
</tr>
</thead>
<tbody>
<tr>
<td>We found at least one instance of noncompliance with federal requirements in</td>
<td>We found many instances of noncompliance with the DBE regulations and with approved DBE program</td>
</tr>
</tbody>
</table>

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62 The National Initiative for PY16 related to the DBE Program includes: 6.1 Assess the implementation of business development programs that help State DOTs increase DBE utilization on FHWA funded construction and consultant contracts (Lead Official: Whitlock; Supporting Offices: OTS, HCC and DO).

88 percent (52 of 59) of the LPA projects we reviewed in California, Louisiana, Tennessee, and Texas... Due to similarities in the approach to LPA oversight in other States, the extent of noncompliance and unsupported costs we found suggest the potential for broader vulnerabilities with LPA-administered ARRA projects in other parts of the country.

FHWA Division Offices do not assess the adequacy of State LPA oversight programs fully and uniformly, limiting FHWA’s ability to make meaningful comparisons between States regarding their level of compliance with federal requirements.

There is no longer an available program assessment such as the DBE Baseline Assessment, which would allow Civil Rights Specialists to assess the adequacy of DBE Program administration fully and uniformly. (See Observation 2)

FHWA Headquarters does not accurately report the status of States’ LPA oversight programs because State assessments are not based on objective criteria and do not sufficiently focus on whether States administer federally funded projects in compliance with federal requirements.

Without Baseline Assessments, Civil Rights Specialists do not have uniform objective criteria focusing on administering the program in compliance with federal requirements. Instead, Civil Rights Specialists report to HQ on goal attainment, DBE utilization and goal shortfall analysis. (See Observation 2)

FHWA Headquarters does not independently assess or enforce corrective action plans that are needed to improve states’ oversight of LPAs.

Although extremely rare, HCR has independently assessed and enforced corrective action plans that are needed to improve States’ oversight of DBE programs. However, Divisions have few tools available to assess remedies for State’s failures to administer their DBE Program as approved and in compliance with the regulations, making it difficult to administer any form of corrective action.

Figure 16

FHWA responded to the OIG report by developing a comprehensive plan to strengthen administration and oversight of the LPA program by identifying specific activities necessary to achieve defined objectives. This plan took effect on August 14, 2014 with the issuance of *FHWA Order on Stewardship and Oversight of Federal-aid Projects Administered by Local Public Agencies (LPAs)*. A similar process could also be applied to Division oversight of State DOTs’ DBE Program administration. Then Divisions would not be left struggling to identify the risk associated with DBE Program administration against myriad objectives or measures of success. With a consistent objective or measure of success—regulatory compliance—Civil Rights Specialists would be better able to use a consistent, data-driven approach to risk assessment, risk management, and program oversight which when combined should provide a reasonable assurance of compliance with federal laws and regulations and reduce the risk of noncompliance and that of waste, fraud, and abuse.
The LPA order also specified that there would be a formal follow-up to confirm the effectiveness of the changes made to LPA program administration. Likewise, after Civil Rights Specialists have worked with their State partners to improve DBE program compliance, the success of these actions could be verified through a Corporate Compliance Assessment Program (CAP) Guide for DBE program administration. This would be similar to what has been done for the LPA program, to what appears to be at this point in time, great improvements in LPA Program administration and oversight.

**Do State DOT DBE Program offices conduct strategic planning or their own risk analyses?**

We were asked to look at how State DOTs incorporate strategic planning and/or risk analysis into DBE Program administration as part of this review. We learned two of our site visit State DOTs have agency strategic plans, both of which include one DBE measure: Goal attainment. This is consistent with what FHWA uses as a measure of success for the “Civil Rights National Performance Objective.”

Only one State DOT DBELO we interviewed had taken some early steps toward using strategic analysis of DBE Program administration. This analysis included identifying initiatives that have worked in the past, what elements of the program need improvement and what the State DBELO needs to do to make it work in the future. However, the activities selected were based on discussions and historical information, not program reviews, objective data, or a risk based analysis.

None of the other State DBELOs indicated performing any risk analysis or strategic planning. They said that: 1) they did not understand the concept of risk management and/or 2) did not feel they had time to think strategically since their daily work focuses on defusing the crisis of the moment.

However, if FHWA implements a comprehensive approach to DBE Program administration and oversight to include a consistent and accurate risk assessment and corresponding risk management process, such a strategy may also impact State management practices. State DOTs may start to apply more strategic program management to the DBE program rather than focusing solely on “putting out fires.” Similarly, as Civil Rights Specialists use available opportunities to help DBELOs turn their attention to designing and implementing the internal controls reemphasized by 2 C.F.R. Part 200, that will also help States turn from “putting out fires” to more strategic program management.
Recommendation: FHWA should elevate the importance of DBE regulatory compliance in annual strategic and unit planning. Consideration should be given to the following:

- Emphasize regulatory compliance in the Corporate Risk Assessment;
- Include a national performance objective in the Strategic Implementation Plan related to DBE compliance;
- Include initiatives in the HCR Unit Plan designed to elevate regulatory compliance.
- Emphasize DBE regulatory compliance and accurate, objective assessment of DBE Program risk in the Division risk assessments and unit plans.
- Conduct a national assessment of the DBE Program, such as was implemented for the LPA Program. This should include the use of a DBE CAP Corporate Guide to gauge success of compliance initiatives.
Observation #4: Opportunities exist for the Program Office and Resource Center to use limited resources more strategically to aid Divisions in addressing the underlying issues of DBE Program noncompliance.

What additional aid do some Civil Rights Specialists need in order to be able to provide oversight sufficient to ensure compliance?

The noncompliant provisions we found in DBE Program Plans and the noncompliance we observed in State DBE Program administration for the site visit states signaled to us that some of the Division Civil Rights Specialists may not be as familiar with the DBE regulations and guidance as is necessary to perform their roles effectively.64

This is not a new situation. We examined other DBE Program administration national review results to assess whether the methods of oversight the Civil Rights Specialists currently use are more or less effective than those used in previous years. The most recent data is from ARRA when DBE compliance reviews were conducted of all 52 Federal-aid highway programs.65,66 These data indicate that FHWA’s ARRA National Review Teams (NRTs) found similar types and levels of noncompliance in DBE Program administration as what we identified during this review.

ARRA NRT report analysis also indicates that DBE Program administration, the DBE Program Plan, and contract provisions/special provisions, collectively, were the most frequently cited types of compliance observations. Typically, these ARRA observations concerned the age of the program document, the failure to include all required provisions in the program document, inconsistencies between the program document and contract/special provisions and/or the DBE Program Plan not being administered as approved—all things we noted during this review.

We also compared ARRA compliance observations to the compliance data we gathered from site visit States. These data showed we identified noncompliance in at least one (often more) area of DBE Program administration which was the same in ARRA compliance observations. In at least one situation we found the recently implemented

64 See Observations 1 and 2 for specific examples of the noncompliance we observed in State DBE Program Plans and in State DOT administration of their DBE Programs.
65 See Definitions in the Key Definitions and Acronyms section of this report. ARRA is the acronym for the American Recovery and Reinvestment Act of 2009.
66 Collectively, the overall ratings given each State DOT DBE program during ARRA indicated risk to the Federal-aid Highway Program. Fewer than half of the jurisdictions reviewed received an overall rating of green/satisfactory. Of those, most had at least one instance of noncompliance in DBE Program administration identified during the review. Eight State DOTs received a red/unsatisfactory rating on their first DBE program review which was more than any other program the NRT reviewed. The only other program for which State DOTs received red/unsatisfactory ratings was the Local Public Agency (LPA) program which had two State DOTs rated as unsatisfactory.
policy intended to resolve the ARRA compliance observation was also noncompliant with the regulations.

There are currently five competencies required of Civil Rights Specialists in this Discipline, as outlined in the Civil Rights Core Competencies:  

1. Civil Rights Program Laws, Regulations, and Statutory Requirements
2. Civil Rights Program Policies and Guidance
3. Civil Rights Program and Project Investigation Techniques
4. Civil Rights Program Outreach
5. Civil Rights Program and Project Technical Assistance.

Unless the Civil Rights Specialist understands the regulations and has the ability to apply both the regulations and official guidance to determine compliance and can clearly communicate all of this, a Civil Rights Specialist cannot demonstrate the key behaviors defined in the following excerpts from three of these competencies (as shown in Figure 17).

<table>
<thead>
<tr>
<th>Civil Rights Core Competencies</th>
<th>Key Behaviors</th>
</tr>
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</table>
| Civil Rights Program Laws, Regulations, and Statutory Requirements | • Ensures the proper implementation of, and enforces civil rights requirements and procedures applicable to the development and implementation of the STA and its sub-recipients’ programs and services by utilizing effective tools such as directives, orders, guidance statistical data analyses, and reports.  
• Interprets and administers the FHWA civil rights program’s regulations, laws, and statutes through research and application.  
• Applies legal and regulatory civil rights requirements (23 C.F.R., 23 USC 140, etc.) on each program or service to make determinations on program-wide or project-specific policies and procedures.  
• Applies legal and regulatory civil rights requirements (23 C.F.R., 23 USC 140, etc.) on each program or service to make determinations on program-wide or project-specific policies and procedures. |

Civil Rights Program Policies and Guidance | • Reviews and approves project and program documents and plans.  
• Conducts civil rights program, process reviews, or project inspections to identify areas of improvement and recommends corrective actions, if necessary.  
• Evaluates effectiveness of internal and external equal opportunity/civil rights programs using program plans, performance measure, data analysis, and reports to identify and set key program priorities.  
• Utilizes enforcement strategies such as conciliation, mediation, negotiation, or written citations to achieve compliance. |

Civil Rights Program and Project Technical Assistance | • Provides guidance and technical assistance to internal (including executive managers) and/or external customers to exchange project and

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We did not find frequent use of the tools outlined above in *Civil Rights Program Policies and Guidance* in our research for this review. The number of DBE program reviews completed, the lack of quantitative data or measures other than (primarily) goal attainment and generally low levels of project based involvement indicate that more frequent and/or effective use of the methods identified in these Core Competencies would enhance DBE program administration and oversight.

We do not believe that Civil Rights Specialists can develop these requisite KSAs from currently available resources. To reach this conclusion, we explored the types of training and information currently available to Division Civil Rights Specialists; new employee development; and the Discipline Support System for Civil Rights Specialists, finding gaps in both the detail and content of these resources which perhaps have diminished the effectiveness of the oversight Divisions have been able to provide.

### Training and Information currently available to Division Civil Rights Specialists

We first reviewed the suggested training that accompanies the Civil Rights core competencies. While not all of that training is current, much of it involves training courses provided by the Resource Center, which most of the Division Civil Rights Specialists we interviewed said they had taken. Two of the Civil Rights Specialists we interviewed specifically told us that the training identified as aids to develop the core competencies is too basic to be useful or not focused enough on the responsibilities of the Civil Rights Specialists. We also reviewed all of the CR information and training available through the USDOT, HCR and the FHWA Resource Center’s SharePoint site and other FHWA web pages. In summary, we discovered there is limited targeted information available to an FHWA Civil Rights Specialist to give them the KSAs necessary to correctly determine whether a Program Plan’s proposed provisions are compliant.

In addition to the on-line Civil Rights information, FHWA conducted a Civil Rights Boot Camp in 2013 for all Civil Rights Specialists with fewer than three years of experience. Three site visit Civil Rights Specialists who participated in this training told us it was useful. However, they also told us that since all six Civil Rights programs were covered in less than one week, it limited the utility of the training as a means to develop in-depth...
technical expertise. Nor is the information available online to other Civil Rights Specialists or for use as information refreshers, when needed.

Yet, it was not just Civil Rights Specialists with less than three years of experience who lacked some of the necessary KSAs to provide effective oversight. Currently there is no formal, facilitated option included among any of the training and development opportunities available to Civil Rights Specialists to help them work through these nuanced situations to determine if the Program is in compliance. Nor are there refresher courses online which Civil Rights Specialists can take on a self-paced, as needed basis.68

In addition to needing ongoing, targeted training on the practical application of DBE regulations, Civil Rights Specialists will also need training and guidance commensurate with the renewed emphasis on States’ internal controls.69 State staff are not yet prepared to design and implement these internal controls consistently and effectively nor are Division Civil Rights Specialists prepared to provide advice and assistance to help the State in doing so. In addition, the Civil Rights Specialists are not yet ready to assess the effectiveness of these internal controls, once implemented. However, we did not find that FHWA has training or information available to Civil Rights Specialists that will help them understand the purpose and function of internal controls or how they can be effectively assessed.

**New Employee Development**

We also explored how new employee development is overseen and/or monitored. At the time of our site visits, the experience levels of the Civil Rights Specialists varied from two years to more than ten years working as a Civil Rights Specialist for FHWA. In addition to this work experience, two of the Civil Rights Specialists had completed the Professional Development Program (PDP) for Civil Rights Specialists.

In the site visit States with recent PDP graduates, we found many instances of the State’s noncompliance with the regulations.70 So, we followed up with the PDP Office to understand how they provide oversight over the training of Civil Rights PDPs. Since there are generally no more than two Civil Rights PDPs in the training program at any one time, we were told that each Civil Rights Specialist in the PDP program develops their own training program under the tutelage of a specially assigned coach. The coach is a Civil Rights Specialist currently working for FHWA. Each PDP is given a training

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68 As an example, of what is available in another Discipline, see the Planning Discipline Boot Camp information at [http://our.dot.gov/office/fhwa.dss/planning/Page%20Library/BootCamp.aspx](http://our.dot.gov/office/fhwa.dss/planning/Page%20Library/BootCamp.aspx)
70 We considered a Civil Rights Specialist to be a recent PDP graduate if they had completed the PDP Program within the last five years.
budget and expected to complete various assignments and training courses that will give them a solid base to succeed as a Civil Rights Specialist in a Division Office.

However, HCR is not actively involved with planning training assignments for the Civil Rights Specialists to ensure they receive all the training necessary to succeed. This may not be unusual. PDP staff told us that until recently Program Offices were not involved with establishing training requirements or standards or overseeing PDP training programs. Recently, several Program Offices such as the Office of the Chief Financial Officer (OCFO) and the Office of Safety have requested to be much more involved in the training of PDPs. Similarly, the OCFO has found it beneficial to be involved in the selection of all Division Financial Specialists and Financial Managers.

Two Civil Rights Specialists we interviewed from site visit States told us HCR had assigned them mentors to aid in their career development. Neither, however, said they reported to HCR on the success or failure of this relationship. One Civil Rights Specialist told us that they had never contacted their mentor and that their mentor rarely contacted the Civil Rights Specialist. While it is possible this may have resulted from a mismatch between mentor and mentee, we were unable to identify any defined standards for frequency of contact, types of interactions or how the mentors should guide or oversee the mentees’ professional development. Instead, it seemed as if these Civil Rights Specialists were somewhat isolated, despite having formal mentors assigned to them.

The Discipline Support System

Our perception that some Civil Rights Specialists are somewhat isolated was not limited to new Civil Rights Specialists. Four of the site visit Civil Rights Specialists seemed to be working on their own, separate from any formal support system, whether by choice or necessity. There is typically only one Civil Rights Specialist in each office (or less, if the Civil Rights Specialist is a Shared Resource) so there are no other Civil Rights Specialists in the Division to bounce ideas off of or discuss concerns. For us, this indicated the need for a strong discipline support system since those are designed, in part, to connect employees across organizational and geographic boundaries.71

However, our site visits, albeit limited in number, indicated there is not yet a great deal of intra-discipline trust or teamwork within the DBE community. We did not hear mention of an active Civil Rights Discipline during our site visits. In addition, site visit Civil Rights Specialists repeatedly told us they were hesitant to contact their peers for assistance. Of greater concern to us, they said that if they did contact their peers to ask questions or for guidance that they would not necessarily trust the answers they received.

71 See the FHWA Strategic Workforce Assessment Summary Report, page 66.
As part of our analysis of the training and information available to enhance the technical skills of the Civil Rights Specialists we also reviewed the Civil Rights Discipline SharePoint site. While the site clearly has some good information, it also has what appear to be dated resources. Neither does it appear to have Field Civil Rights Specialists or Division leaders actively involved as Discipline Champions. The FHWA Strategic Workforce Assessment Summary Report specifies that “FHWA’s disciplines are a key organizational feature, as they are responsible for carrying out FHWA’s programmatic activities and cross-cut organizational elements, providing employee connectivity across the organization and potential paths for career progression.” Our perception is that the Civil Rights discipline is not as active or able to build the requisite KSAs as appears should be occurring nor that it has succeeded in building the sense of community that exists, for example, within the Planning, Right of Way, or Safety disciplines.

What type of enhanced aid did Division Civil Rights Specialists tell us they want from the Program Office and the Resource Center?

During site visits and in responses to the survey we conducted, Division Civil Rights Specialists were consistent in saying they wanted more training and guidance on DBE Program administration and oversight from HCR and the Resource Center. Our analysis of the survey data is shown in Figure 18.

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72 See the Appendix for our analysis of the training and information available to develop the KSAs of the Divisions’ Civil Rights Specialists.

73 We did not interview members of those disciplines to learn if these disciplines have weaknesses as well. However, our impression is that these disciplines are more active and are more successful in building peer networks. This may or may not be the case; it is solely our impression.
The Civil Rights Specialists’ desire for more targeted training for State DOT staff and more general guidance is consistent with the needs we identified in this review. As we have shown in Observation 1, the States we visited for this review are not compliant with some regulatory provisions; ARRA history indicates that was true of these States and other States as well. This observation leads to a reasonable conclusion that States in general are still struggling with compliance with at least some of the many regulatory provisions included in the DBE Program. Most of the State DBELOs we met during our site visits were interested in learning as much as possible from us—it was apparent most wanted to implement their programs in compliance with the regulations but would need additional training to do so.

According to the Civil Rights Specialists we interviewed, a bigger issue than the lack of targeted training is the difficulty they have in getting a timely response from HCR. One Division Civil Rights Specialist, in conjunction with Division leadership, told us that “HCR needs three ‘Marthas’ to be able to provide all the assistance the Divisions need.” The Civil Rights Specialists also told us they find it difficult to get the written answers to questions when needed.

None of the Civil Rights Specialists we interviewed indicated that they would contact their regional attorney from the Office of Chief Counsel (HCC) for program guidance.

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74 Martha Kenley is FHWA’s National DBE Program Manager.
administration questions. Their only interaction with the attorneys is when they need legal sufficiency determinations for the State’s overall goal calculations. The Civil Rights Specialist must receive this determination before approving the overall goal. If attorneys from HCC are also available to answer their questions, the Civil Rights Specialists are not aware of this or aware of what protocols they should follow to contact the attorneys. If this option for assistance is available to Division staff, Civil Rights Specialists told us they would need to know when it is appropriate to contact regional attorneys for assistance.

**What constraints make it difficult for HCR and the Resource Center to fulfill critical Division and State needs concerning compliant administration of the DBE Program?**

The number of HCR and RC staff available to provide or oversee the training and development of Civil Rights Specialists is very small and each person has other responsibilities, which demand time and attention. Moreover, there are no staff in HCR able to provide training and assistance to Civil Rights Specialists on how to use data to help ensure compliance.75

HCR currently has three positions that focus on the DBE program, one of whom has the background to conduct targeted DBE training:

- The National DBE Program Manager stated she is able to spend 40% of her time throughout the year overseeing implementation of the DBE program as it is administered nationally and by the State DOTs. She is also the team leader for HCR’s DBE and Workforce Development Team that includes Contractor Compliance, On-the-Job Training as well as the Supportive Services programs for DBE, OJT and NSTI;
- One GS-11 Program Analyst who focuses primarily on the DBE Supportive Services program; and
- One GS-9 Analyst who is learning the Program and assisting with goal methodology reviews.

Currently, the Resource Center has two Civil Rights Specialists involved with the DBE Program. One Resource Center Civil Rights Specialist is currently learning the DBE Program and is also involved in the other major civil rights program areas. The Resource Center’s primary Civil Rights Specialist for the DBE Program is able to

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75 We repeatedly heard on site visits that while Civil Rights Specialists submit reports to HCR, they don’t get enough feedback on them to be able to use the data to help manage the program. See Observation 2 concerning the Uniform Report and how data should have been an indicator that the Division needed to work with the State DOT to modify its goal setting practices because the overall goal had been exceeded for two years.
provide training and Tier 2 technical assistance on DBE program implementation and oversight. She is also the Resource Center’s Civil Rights Team Manager. Because she has other responsibilities in that role, she gave us a rough estimate that she spends 30% of her time on anything dealing with the DBE program. As a result, in PY15 the Resource Center was only able to deliver the following training courses:

2. DBE Certification Training (Martha Kenley lead – Olympia, WA) Dec 2014
3. DBE Certification Training (Colorado DOT and UCP - Denver), and DBE Contract Administration Training (CDOT)- October 2014
4. Conducting on-site DBE Certification Reviews (ALDOT) Dec 2014
5. DBE Program Overview and Contract Administration (KYTC) April 2015
6. DBE Good Faith Effort webinars (2) (ND, MN, WA,AK)
7. DBE Program Overview (NCDOT) May 2014

Moreover, the ability of HCR or even HCC to provide the assistance to Division Civil Rights Specialists so they can provide needed assistance to the State DOT DBE Program staff is complicated; HCR cannot provide national policy leadership for the DBE Program as is normally the purview of FHWA Headquarters’ Program Offices. The OIG noted in this in its 2013 audit report:

In the absence of department-wide best practices or guidance OAs occasionally issue informal, internal DBE guidance to their recipients. While the OAs are responsible for the oversight of the recipients DBE program implementation, DBE regulations do not permit the OAs to issue official program guidance without the Secretary’s or OGC’s approval. For example, FAA reports it is developing a Best Practices in Monitoring and Enforcement tool for its recipients. However, this guidance is informal, specific to FAA, and lacks OGC approval. Accordingly, this guidance may not express the official views of the Department and could conflict with the Department’s interpretations of the rules.

76 Tier 2 “advanced” TA/TD includes work activities such as developing detailed technical guidance, developing and delivering technical training, and evaluating new technical methods or technologies. This definition is found on page 5 of the FHWA Strategic Workforce Assessment Summary Report dated August 2014.

77 “Headquarters program offices should primarily focus on national policy leadership, program development and technology development,” the FHWA Strategic Workforce Assessment Summary Report dated August 2014, page 6.

Thus, no staff in HCR, including the National DBE Program Manager, can provide official guidance on DBE Program administration questions. When the Regulations and the Official Q&As do not provide sufficient guidance, only the USDOT is able to provide actual guidance, which is done on a case-by-case basis in response to direct questions—generally through conference calls to individual recipients. Any answers to questions from HCR cannot be considered guidance and cannot reflect the official stance of the USDOT.

This limitation can leave both Divisions and HCR in limbo concerning their ability to give timely assistance to State DOTs on questions concerning DBE program implementation. Nevertheless, Division leadership in one site visit Division emphasized that if or when Divisions do not get a timely response, it can end up hurting the Division’s relationship with the State DOT’s DBE Program staff.

If used strategically, what existing opportunities could aid HCR and the Resource Center in better equipping Divisions and State DOTs to ensure DBE program compliance?

With all of these needs and limitations, changes are needed in the approaches currently relied upon to prepare Civil Rights Specialists and State DOT staff to ensure the DBE Program is administered in compliance with the regulations. Moreover, to ensure that Civil Rights Specialists have the timely guidance and counsel they need to respond to issues and concerns at their State DOTs, HCR should consider how it can strategically expand its limited resources, using options that HCR has already piloted and/or that already exist within FHWA.

During the course of this review, HCR and the Resource Center partnered to provide a training session focused on interstate certification of DBEs. This training was provided virtually but was interactive and focused on one narrow topic. Review team members who listened to this training think this may be a model that could be used to enhance the training options that both HCR and the Resource Center typically provide. This training could also be delivered to Division Civil Rights Specialists separate from State DOT staff. Both site visit Civil Rights Specialists and Survey Respondents said that they want training separate and in addition to what is provided jointly to Divisions and the States. Division-only training would allow the Division Civil Rights Specialists to ask questions that they may not be willing to ask in the presence of State DOT DBE Program staff.

In addition, there are Civil Rights Specialists in Division Offices such as those who helped with the DBE Program Review project who have an excellent understanding of the regulations and how to apply them to determine DBE Program compliance so are considered subject matter experts. Field staff in other disciplines are used with great
success to assist Headquarters and Resource Center staff by teaching courses such as the Core Curriculum of Contract Administration. With the limited staff in HCR and the Resource Center, it may be beneficial to further develop select field staff in DBE program administration and oversight so that there is a ready pool of experts available to provide the needed training.

Recently HCR has successfully used field staff to function as “on-demand” DBE Subject Matter Experts to aid in conducting compliance reviews of State DOT programs. Similarly, we used the services of field staff to provide necessary subject matter expertise on this review. These types of assignments serve a dual purpose in that it gives better diversity of experience to field staff and can provide HCR the assistance it needs to fulfill its requests for assistance.

A similar “on-demand” option to develop employees would be for HCR to offer rotational assignments, even if on an “alternative duty location” basis rather than as on-site assignments. Other Program Offices routinely use rotational developmental assignments to enhance their staff and to address major tasks requiring additional work. The Program Management Improvement team successfully supplements its review staff by regularly providing developmental opportunities for any FHWA staff to participate on a national review. The FHWA Strategic Workforce Assessment Summary Report also encourages the use of rotational assignments as a good way to develop employees and help employees diversify their experience. Specifically it encourages “Aggressive use of Rotational assignments that allow employees to temporarily or virtually gain experience in a different role or unit.”  

Recommendation:

To help ensure better compliance in DBE Program administration and oversight, HCR should give consideration to the following:

- Leverage the assistance and expertise that can be found throughout the Agency to conduct training and/or aid in mitigating program risks.
- Work with the Resource Center and Field staff to enhance the existing Discipline Support System so it is current; focuses on the Civil Rights Core Competencies; provides needed tools and information to Civil Rights Specialists; and connects employees across organizational and geographic boundaries, building trust and technical expertise;
- Partner with the Office of Administration’s Corporate Recruitment and Career Programs Division to select and develop PDP employees so that they graduate from the PDP program with all necessary KSAs.

79 See the FHWA Strategic Workforce Assessment Summary Report, page 66.
## Successful Practices

<table>
<thead>
<tr>
<th>Division and Practice</th>
<th>Why Did We Consider This a Successful Practice?</th>
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<tbody>
<tr>
<td>The Maine Division’s Activity Tracking Spreadsheet</td>
<td>The Civil Rights Specialist created and uses this tool to monitor and ensure progress is made on agreements between the Division and the State DOT concerning DBE program administration. The State DOT regularly updates the spreadsheet for her that then becomes the basis of a monthly discussion with the Division’s leadership on DBE Program administration and oversight.</td>
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<tr>
<td>The Alabama Division’s data collection and analysis for a Prompt Payment Review (following an example from Tennessee)</td>
<td>This review shows how a Division can review a State DOT for internal controls on a process for which we found noncompliance and a lack of internal controls. While it isn’t a flawlessly executed review, the findings letter submitted to the State DOT for this review lays out the areas for improvement necessary to move the state into compliance and correctly holds them to the regulatory standard. In the review as completed, the Division Civil Rights Specialist asked the State DOT to collect data from contractors. The State DOT provided data showing dates the checks were received by primes (documentation showing dates checks received by primes is computer generated data), while the primes provided to the State DOT documentation showing the dates checks were received by subs (canceled checks provided by primes), and copies of the notarized certification statement from the primes to the STA indicating subs were paid. All of this data allowed him to determine if the State DOT’s approved procedures concerning prompt pay were successful in ensuring all subcontractors were paid promptly. As part of his assessment of what worked well on this review and what didn’t, the Division Civil Rights Specialist said that he learned the data provided by the State DOT was not fully accurate as to when the prime was paid. If he were to repeat this review in the future, he would adjust his process to incorporate the prime providing canceled checks (or some type of corroborating computer generated data) showing the dates it was paid by the STA in addition to providing canceled checks showing when it paid the subs.</td>
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<tr>
<td>Missouri DOT’s CUF Process</td>
<td>After ARRA, the Missouri DOT implemented a CUF form and implementation process that fulfills all regulatory requirements for assessing and includes internal controls designed to ensure the form is being accurately and fully completed by field staff. The Missouri DBELO used a multi-disciplinary team to modify its former process to ensure all Field staff we interviewed understood why the new procedure was being implemented and accelerate acceptance of the process.</td>
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<td>Missouri DOT’s Pilot Process which ensures bulk suppliers are performing a Commercially Useful Function</td>
<td>While still a pilot process, MoDOT performs a 30-day rolling CUF review of bulk suppliers' facilities, which is in writing and applies to all projects on which the DBE participates. We consider the rolling reviews to be an interesting and innovative process that appeared to be a more effective method for evaluating and documenting a DBE bulk supplier's CUF than that in other States.</td>
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<tr>
<td>NYSDOT’s use of an electronic data collection system to track prompt pay that incorporates information from both the Prime Contractor and all subcontractors</td>
<td>By requiring both the Prime Contractor and all subcontractors to enter payment data/receipt of payment information into an electronic data base, all requisite payment data is available for the State DOT to easily monitor a contractor’s compliance with prompt pay requirements.</td>
</tr>
<tr>
<td>Model Program Plans</td>
<td>The Program Plan Review Team made a subjective determination about each of the 52 DBE Program Plans regarding its possible use as a model that could be used to improve the organization and clarity of other Plans (once these plans are updated to comply with all current regulations). The Plan Review Team identified eight plans that individual team members said could be a model plan: Arizona, Colorado, Delaware, Florida, New Mexico, Oklahoma, Texas and Wisconsin.</td>
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Appendices

Appendix A: Review Charter
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Appendix E: Program Plan Review Project Scope and Methodology
Appendix F: Program Plan Date Information
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Appendix J: [Previous] Civil Rights Program Assessment Guide
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Appendix L: DBE Information Available to Civil Rights Specialists
Appendix M: Civil Rights Data from 2014 Milepost
Review Team Charter

Review Subject:
DBE Program Administration and Oversight

Target Audience:
FHWA’s Office of Civil Rights, Directors of Field Services, Division Administrators, State DOTs

Purpose of Review:
The DBE regulations provide information on how required program components are to be administered. Each State DOT has flexibility in structuring and administering its DBE program within those regulations. Similarly, each Division has flexibility in determining how to provide technical assistance and oversight of the State’s DBE program to help ensure attainment of program goals and compliance with the regulations.

Since at least 2009, FHWA’s leadership has identified Civil Rights Program Administration as one of its top corporate risks. The Performance Year 2016 Corporate Risks document continues this trend by identifying Civil Rights Program Administration (including DBE program administration) as one of FHWA’s 2016 top corporate risks. Other indicators that the administration of this program is deemed high risk include:

- Since 2011 Division Risk Assessments have included 190 risk statements which identify the State DOT’s administration of all its civil rights programs (many specifying the DBE program in particular) as one of the Division’s top ten risks. Of those, 83 or approximately 44% stated that if the risk were not mitigated or eliminated it could have a major or catastrophic impact on the administration of that State DOT’s Federal-aid Highway Program.
- In 2013, the DOT’s OIG issued its report *Weaknesses in the Department’s Disadvantaged Business Enterprise Program Limit Achievement of Its Objectives*, which critiqued DBE program administration in the DOT Operating Administrations.

FHWA recently adopted Risk Based Stewardship and Oversight (RBSO) as a means to manage and even mitigate identified risks to all aspects of the Federal-aid Highway Program, including Civil Rights. In light of this new approach, and given the history of risk associated with the DBE program, the Office of Civil Rights and the Directors of Field Services have requested a general assessment of the state of practice of DBE program administration and oversight. Through this review, they hope to obtain a more comprehensive understanding of:

- How Divisions currently provide technical assistance and oversight;
- How risk based stewardship and oversight techniques are currently used to manage the DBE program, if used at all, and how effective this approach is at managing program risk;
- What both State DOTs and Divisions identify as the specific issues leading to these risk determinations;
- How both State DOTs and Divisions are working to mitigate DBE program risk;
- How program plans are written and implemented; and
- How the States administer and the Divisions provide oversight of DBE goal attainment and Good Faith Efforts (GFE) in meeting those goals, DBE utilization after award, prompt payment and return of retainage requirements, analysis that a DBE is providing a Commercially Useful Function (CUF), counting of bulk items, trucking, DBE substitution and replacement, and contract sanctions for noncompliance.

Scope of Review:
We randomly selected six states (NJ, AL, CT, MO, NY and ME) as site visit locations for this review using a probability proportional to size methodology which facilitated the random selection of states with small, medium, large and mega-sized Federal-aid Highway programs. We anticipate conducting this review by visiting the states selected for review, interviewing FHWA Division staff,
State DOT officials, FHWA's Civil Rights Program Office staff, and FHWA's Civil Rights Resource Center staff. We plan to review DBE project documentation of several State DOT administered and/or locally administered projects.

In addition to site visits, we may also conduct a short survey of all remaining non-selected FHWA Division Offices concerning usage and success of RBSO of the DBE program, aspects of DBE program administration, and oversight and/or to corroborate information learned during the site visits.

**Review Objective(s):**

1. Determine how Divisions provide technical assistance and oversight of the State’s DBE program at both the program and project levels, identifying where gaps may exist, successful practices and lessons learned.

2. Identify the approaches State DOTs use to provide DBE program administration at both the program and project levels, with special emphasis on the administration and oversight of DBE goal attainment and Good Faith Efforts (GFE) in meeting those goals, DBE utilization, prompt payment and return of retainage requirements, analysis that a DBE is providing a Commercially Useful Function (CUF), counting of bulk items, trucking, DBE substitution and replacement, and contract sanctions. Evaluate the effectiveness of these approaches, identifying gaps and lessons learned.

3. Assess how Risk-based Stewardship and Oversight (RBSO) is currently used in the administration of the DBE program at both the Division and State DOT, identifying lessons learned, successful practices and what is necessary for successful RBSO of this program.

4. Identify whether opportunities exist for enhanced Program Office aid to Divisions in carrying out their DBE program technical assistance and oversight responsibilities.

**Team Leader(s):**

Dave Bruce, Program Management Improvement Team (PMIT)/National Review Team Leader

**Team Members:**

| Anne Luedders, PMIT, Review Lead | Kevin Resler, NV/UT Division, Subject Matter Expert | Rotational Employee |

**Team Sponsor(s):**

Warren S. Whitlock, Associate Administrator, Office of Civil Rights
Martin Knopp, Director of Field Services North

**Budget:**

$30,000

**Time Frame:**

Starting Date: January 26, 2015
Estimated Completion Date: August 7, 2015

**Potential Constraints:**

The limited amount of project documentation which can be reviewed may challenge the statistical representation of review results.

**Timing of Progress Reports:**

Progress reports will be provided to the review sponsors on an approximately monthly basis. The final report should be issued by August 7, 2015.

**Sponsor Signature and Date:**

Warren S. Whitlock 2-6-2015

**Sponsor Signature and Date:**

Martin Knopp, 2-6-2015
Key Definitions and Acronyms


Civil Rights Specialist – generic term used in this report to encompass all FHWA Civil Rights Specialists and Civil Rights Program Managers assigned to FHWA Division Offices.

CAP Review – Project review conducted according to the protocols established for the Compliance Assessment Program.

CAP Level II Review – Project review conducted according to the protocols established for the Compliance Assessment Program. In this report, a CAP Level II Civil Rights Review means that in PY15, Division staff chose to complete the CAP Civil Rights Technical Guide in addition to completing the CAP Core Question Guide for one or more of the projects randomly selected for CAP reviews.

Compliance – for the DBE program means that the recipient has correctly implemented the requirements of 49 C.F.R. Part 26.

CUF – a DBE must perform a Commercially Useful Function in order for the State to be able to claim credit toward the contract goal for the DBE’s work. See 49 C.F.R. § 26.55.

DBELO – Disadvantaged Business Enterprise Liaison Officer. The DBELO position is required by 49 C.F.R. § 26.25 and must be “responsible for implementing all aspects” of the State DOT’s DBE program.

DBE Program and DBE Program Plan – for this report, the terms may be synonymous. The DBE Program is the goals, objectives, policies and procedures that a State DOT, as a primary recipient of Federal-aid Highway funds, has determined it will use to meet its mandate to have a Disadvantaged Business Enterprise Program that is compliant with 49 C.F.R. Part 26 and that has been approved by FHWA. The DBE Program Plan is the document explaining how the State DOT will administer its DBE Program. See 49 C.F.R. § 26.21.

DBE Utilization – for this report only, DBE Utilization is the percent of certified firms in the State’s Unified Certification Program (UCP) that have received work on Federal-aid Highway projects. “Good” or “Low” DBE utilization is not defined by statute or regulation and may be meaningless when comparing states as what is “good” for one state may be “low” for another.

DOCR – The Office of Civil Rights for the U.S. Department of Transportation.

FAHP – Federal-aid Highway Program.
**GFE or Good Faith Efforts** – efforts to achieve a DBE goal or other requirements of 49 C.F.R. Part 26 which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement. See 49 C.F.R. §26.5.

**HCC** – FHWA’s Headquarters Office of Chief Counsel.

**HCF** – FHWA’s Headquarters Office of the Chief Financial Officer.

**HCR** – FHWA’s Headquarters Office of Civil Rights.

**HIF** – FHWA’s Headquarters Office of Infrastructure.

**LQB** – Lowest Qualified Bidder.

**Internal Control** – Pursuant to 2 C.F.R. §200.61, is a process, implemented by a non-Federal entity, designed to provide reasonable assurance regarding the achievement of objectives in the following categories:

(a) Effectiveness and efficiency of operations;

(b) Reliability of reporting for internal and external use; and

(c) Compliance with applicable laws and regulations.

**Narrow Tailoring** – See explanation in the Background section of this report.

**Objective** – At the strategic level it is a broad statement of a general direction or result to be achieved. At the division or unit level it is more narrowly defined. Risk guidance, page 13.

**OGC** – Office of General Counsel of the U.S. Department of Transportation.


**OSDBU** – the Office of Small and Disadvantaged Business Utilization, located within the Office of the Secretary of the U.S. Department of Transportation.

**Oversight** – The act of ensuring that the FAHP is delivered consistent with laws, regulations, and policies. See RBSO Guidance, 3/28/2014 page 64.

**Program Assessments** – This evaluation technique may take many forms, including joint risk assessments and self-assessments. These tools are based on the common concepts of identifying strengths, weaknesses, and opportunities and the identification and sharing of “best” practices to continually improve the program. RBSO Guidance, page 64.

**Program Delivery** – Federal highway programs are effectively and consistently delivered through successful partnerships, value-added stewardship, and risk-based
oversight. This definition is FHWA’s long-term strategic goal for program delivery. See the SIP, page 3.

**Program Reviews** – A thorough analysis of key program components and the processes employed by the State DOT in managing the program. The reviews are conducted to: 1) ensure compliance with Federal requirements; 2) identify areas in need of improvement; 3) identify opportunities for greater efficiencies and cost improvement to the program; and/or 4) identify exemplary practices. RBSO Guidance, page 64.

**Race-Conscious** – a measure or program that is focused specifically on assisting only DBEs, including women-owned DBEs. In the context of federally-assisted contracts, this refers to a percentage of the contract amount that a bidder must subcontract—or document good faith efforts---to DBE firms in order to be awarded a prime contract.

**Race-neutral** – a measure or program that is, or can be, used to assist all small businesses. In the context of contracts, this includes any time a DBE wins a prime contract through customary competitive procurement procedures or is awarded a subcontract on a prime contract that does not carry a DBE contract goal. For the purposes of this report, race-neutral includes gender-neutrality.

**Risk Assessment** – The process of identifying a risk event, determining the likelihood of the event happening, determining the impact (positive or negative) of the event on the delivery of the FAHP, and identifying an appropriate risk response strategy. RBSO Guidance, page 65.

**Risk-Based Approach** – Incorporating risk assessment and risk management into investment and strategic decision making (the means by which limited resources are focused). RBSO Guidance, page 65.

**Risk Management** – The systematic identification, assessment, planning, and management of threats and opportunities faced by FHWA projects and programs. RBSO Guidance, page 65.

**SIP** – FHWA’s Strategic Implementation Plan.

**Stewardship** – The efficient and effective management of the public funds that have been entrusted to the FHWA. RBSO Guidance, page 65.

**Technical Assistance** – Tier 1 “basic” TA/TD activities include work activities such as answering project level technical questions and serving as an advocate for deployment of new technology. Tier 2 “advanced” TA/TD includes work activities such as developing detailed technical guidance, developing and delivering technical training, and evaluating new technical methods or technologies. See FHWA Strategic Workforce Assessment Summary Report August 2014, page 5.
**Unit Performance Plan** – The annual performance plan prepared by an individual FHWA unit that address unit responsibilities and priorities taking into account the National Performance Objectives and National Initiatives identified in the FHWA’s Strategic Implementation Plan (SIP) as well as specific initiatives identified at the unit level based on risk. RBSO Guidance, page 65.
Advance Information Request
National Review of DBE Program Administration and Oversight

1. What is the number of program level reviews the Division has conducted of the CR Program in the last three calendar years? If the review reports aren’t posted in the FHWA Program Review Library, please provide copies.

2. What is the State’s current overall DBE goal compared to actual attainment? If the State did not meet its overall goal and an action plan (49 CFR §26.47(c)) was necessary, please provide copies.

3. Has Division staff completed any Level 2 Civil Rights CAP reviews? If so, please provide copies of the completed reviews.

4. How many GFE determinations prior to contract award has the State DOT made in the last two calendar years? Please provide the project numbers where a GFE determination was made. We’ll randomly select one or more of those projects to review the documentation concerning the GFE determination. We’ll then let you know which project(s) are selected for review two or three working days prior to the site visit starting date so the State DOT can gather the documentation.

5. We are interested in information which will help us understand the State DOT’s DBE utilization rates. Please provide
   • For each of the last two calendar years, separately list the number of certified DBEs which were listed—for any amount of time—on the UCP Directory.
   • The total number of Federal-aid contracts the State DOT has awarded each of the last two calendar years.
   • The number of DBEs, whether race-conscious or neutral, who have received (federally funded) contracts or sub-contracts in the last two calendar years.
   • For each of the last two years, the number of DBEs, whether race-conscious or neutral, who have received (federally funded) contracts or sub-contracts on
     ▪ Fewer than 5 projects;
     ▪ 5-20 projects;
     ▪ 21-50 projects; or
     ▪ More than 50 projects.
   • The NAICS codes for each DBE which has been used on more than 20 projects.

6. How many times in the past two calendar years has the State DOT approved the substitution or replacement of a DBE, whether race conscious or neutral, on awarded or completed projects? Please provide the project numbers on which this has occurred. We’ll randomly select one or more of those projects to review documentation concerning DBE substitution and replacement. We’ll then let you know which project(s) are selected for review two or three working days prior to the site visit starting date so the State DOT can gather the documentation.

7. We would like a copy of the State DOT’s DBE Special Provisions included with bid-documents for Federal-aid projects.

8. We want to examine project level documentation showing field implementation of the following State DOT processes: CUF determinations, prompt pay and return of retainage (whether payment
records or electronic reports), trucking CUFs and counting of bulk items. Please have ready to review with us during the site visit the State DOT’s documentation of the implementation of each of these processes for five (5) projects as identified:

A. With your State DOT, please consider your most recently completed Federal-aid construction projects and identify five (5) that 1) had contract goals; 2) at least two of which included trucking as part of the DBE participation attained for that project; 3) at least two of which counted bulk items as part of the DBE participation attained for that project; and 4) were constructed in at least three different districts, areas or regions of the State. For these projects, please provide:
   - The type of Federal-aid project such as re-surfacing project or road realignment project and its total cost;
   - The start and end dates of the Prime Contractor’s work on this project;
   - Contract goal and actual DBE participation;
   - A completed DBE commitment form or other form which the contractor provided to the DOT as required by 49 CFR §26.53(b);
   - Commitment information for any DBEs subcontracted to the project during construction; and
   - Date when the DBEs started work on their subcontract and approximate date their work was completed.

9. Please have at least one DOT project staff who had been assigned to each of these projects—and who had a role in DBE compliance—available in person or via conference call during the site visit to explain their role in DBE program administration on these projects.

10. We want to examine project level documentation showing implementation of the following State DOT processes on professional services contracts: CUF determinations and prompt pay and return of retainage (whether payment records or electronic reports) on professional services contracts which had DBE goals. During the site visit please have ready to review with us the documentation of the implementation of each of these processes for two of the State DOT’s most recently completed Federal-aid professional services contracts which had DBE goals. In addition, for each professional services contract, please provide:
   - The type of work performed by the professional services contractor and the total cost of the contract;
   - The start and end dates of consultant work on this contract;
   - Contract goal and actual DBE participation;
   - Completed DBE commitment form or other form which the consultant who received the professional services contract from the DOT provided the DOT, as required by 49 CFR §26.53(b);
   - Commitment Information for any DBEs subcontracted to this contract during its completion; and
   - Date when the DBEs started work on their subcontract and approximate date their work was completed.

11. Please have at least one DOT staff who had managed each of these professional services contracts—and who had a role in DBE compliance—available in person or via conference call to explain their role in DBE program administration on these projects.
Why is the DBE Program Administered As It Is?

Today’s DBE Program is designed to achieve the specific objectives outlined in 49 C.F.R. §26.1:

What are the objectives of this part? This part seeks to achieve several objectives:

(a) To ensure nondiscrimination in the award and administration of DOT-assisted contracts in the Department's highway, transit, and airport financial assistance programs;

(b) To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;

(c) To ensure that the Department's DBE program is narrowly tailored in accordance with applicable law;

(d) To ensure that only firms that fully meet this part's eligibility standards are permitted to participate as DBEs;

(e) To help remove barriers to the participation of DBEs in DOT-assisted contracts;

(f) To promote the use of DBEs in all types of federally-assisted contracts and procurement activities conducted by recipients.

(g) To assist the development of firms that can compete successfully in the marketplace outside the DBE program; and

(h) To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

However, the DBE Program did not start out with all of these objectives. In October 13, 1971, President Nixon approved Executive Order 11625 “Prescribing Additional Arrangements for Developing and Coordinating a National Program for Minority Business Enterprise.” Then, on March 31, 1980, the USDOT issued Minority Business Enterprise (MBE) and Women’s Business Enterprise (WBE) regulations that required all federal recipients to adopt an MBE/WBE program and created set-aside goals for MBE/WBEs. The program, as then implemented, was later confirmed that same year as constitutional through the Supreme Court’s decision in *Fullilove v. Klutznik*.1 In *Fullilove v. Klutznik* the Supreme Court ruled that Congress could constitutionally use its

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spending power to remedy past and current discrimination (with quotas and/or set-asides). In 1982, Congress set a 10% national DBE/WBE participation goal.

In the following fifteen years, two Supreme Court decisions, City of Richmond v. J.A. Croson Co. and Adarand Constructors, Inc. v. Pena, resulted in the USDOT making dramatic changes to the approach it had previously taken to implement its DBE program.2

City of Richmond v. J.A. Croson Co., 488 U.S. 469

In 1989, the U.S. Supreme Court held in Croson that a governmental program of affirmative action to remedy past and continuing discrimination in contracting violates the Equal Protection Clause of the 14th Amendment if it does not satisfy the “strict scrutiny” standard of review. The Court’s strict scrutiny standard has two parts. First, governmental entities must justify having a compelling governmental interest in remedying past discrimination. Second, entities must ensure the program is narrowly tailored toward remedying the past discrimination using these factors:

1. The necessity for relief and the efficacy of alternative remedies;
2. The flexibility and duration of the relief, including the availability of waiver provisions;
3. The relationship of the goals to the relevant labor market; and
4. The impact of the relief on the rights of third parties.” 3


In Adarand, the U.S. Supreme Court extended Croson to apply to federal affirmative action contracting programs that use race or ethnicity as a factor. There, the USDOT Central Federal Lands Highway Division awarded a contract to a prime contractor in which the prime would receive additional compensation for awarding subcontracts to firms with socially and economically disadvantaged owners. Although the facts in Croson differed in many respects from Adarand, the Court held the federal government to the same strict scrutiny standard through "reverse incorporation," in which the Fifth

2The DBE Program has continued to be challenged since Croson and Adarand. One of the most significant was in Western States Paving v. Washington State DOT (407 F.3d 983 (9th Cir. 2005), cert. denied, 546 U.S. 1170 (2006)). There, the Ninth Circuit held that, although the Federal DBE Program was constitutional on its face, Washington State DOT (WSDOT) failed to sufficiently narrowly-tailor its program as applied. Specifically, WSDOT did not collect statistical, relevant market data to support a claim that (1) race-conscious measures were necessary and (2) that all of the presumptively-disadvantaged businesses in its market area had suffered discrimination (disparate impact). In response to Western States, the USDOT created guidance for all states in the Ninth Circuit to collect statistical data on DBEs and potential-DBEs in their market areas, in addition to limiting race-conscious goals to only apply to disparately impacted demographic groups (http://www.transportation.gov/osdbu/disadvantaged-business-enterprise/western-states-paving-company-case-q-and-a).

Amendment’s Due Process Clause was held to bind the federal government to the same standards as state and local governments are bound under the 14th Amendment.

**USDOT Response to Adarand**

In 1999, the USDOT responded by promulgating new regulations⁴ that reworked the DBE Program to incorporate Croson/Adarand narrow tailoring principles. The new rules clarified that state governments, as Recipients of federal funds, are responsible for implementing the DBE Program. Chiefly, states were given more flexibility to tailor their Programs according to local market conditions, to emphasize race-neutral measures, and to incorporate more state discretion, overall. States were responsible for demonstrating, through data, (1) an Overall Goal percentage that represented market parity for disadvantaged businesses and (2) that portion of the Overall Goal it would meet through race-conscious measures. Further, if a State exceeded its Goal for two years in a row, it would be required to lower the Goal in the subsequent year. Race-conscious contract goals were likewise revamped. The 1999 Final Rule incorporated the concept of “good faith efforts,” such that any bidder who could not meet a race-conscious goal could demonstrate it had used all necessary and reasonable means to do so and the Recipient must not reject the prime’s bid.

A summary of the 1999 Final Rule narrow tailoring highlights is in Figure 1.⁵

<table>
<thead>
<tr>
<th><strong>Adarand Narrow Tailoring Requirement</strong></th>
<th><strong>1999 Final Rule Response</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Determination of goals by reference to the availability of qualified firms in the relevant industries.</td>
<td>Overall goals represent the level of DBE participation a recipient would expect absent discrimination, and must be based on evidence of the availability of ready, willing and able DBEs in the local market area.</td>
</tr>
<tr>
<td>Promotion of race-neutral alternatives</td>
<td>Contract goals are not required on every contract. Recipients must meet as much as possible of their overall goals by using race-neutral measures, like outreach and technical assistance. They should use race-conscious measures, like contract goals, only to make up the difference.</td>
</tr>
<tr>
<td>Limit use of rigid numerical mechanisms used to remedy discrimination.</td>
<td>Quotas are flatly prohibited. The use of set-asides is strictly limited to circumstances dealing with especially egregious cases of</td>
</tr>
</tbody>
</table>


discrimination where no other mechanism has worked to remedy the situation.

<table>
<thead>
<tr>
<th>Availability of waiver mechanisms.</th>
<th>Regulatory requirements: Recipients may apply for a program waiver to carry out their DBE programs in innovative ways.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Other aspects of narrow tailoring</td>
<td>Recipients have flexibility to craft their own goal-setting mechanisms to reflect local conditions and use the best locally available data.</td>
</tr>
</tbody>
</table>

Since the 1999 regulations first went into effect on February 2, 1999, there have been six clarifications and/or updates to these revisions: June 28, 1999, Nov 15, 2000, June 16, 2003, April 3, 2009, Jan 28, 2011, and, most recently, October 2, 2014. Compliance with the DBE regulations as currently written helps ensure today’s DBE program stays within the boundaries of the Constitution and fulfills all of its objectives.
**DBE Program Plan Review Scope and Methodology**

We requested a copy of the most current approved DBE Program Plan from each Division’s Specialist to use as the basis of this analysis. We identified 29 regulatory provisions to assess as part of this process. Then, for each of these regulatory provisions we answered the following series of questions, documenting the responses:

1. Is there information in the DBE Program Plan that addresses this Provision?
   a. If the DBE Program Plan does not include information on this provision, then no further analysis occurred.
2. If the DBE Program Plan had information concerning the regulatory provisions, was it compliant with the current regulations, as written?
   a. If it is not, that is documented and no further analysis occurs
   b. If the reviewer could not determine it was marked as “further analysis needed.”
3. If the information in the DBE Program Plan is compliant with the regulatory provision, as written, it was assessed to determine whether:
   a. Does it merely restate the regulations?
   b. Does it include State-specific practices or forms?
   c. Is it a potentially promising practice?
4. Is this plan as a whole a model for other states?

The team conducted the DBE Program Plan Review during a meeting held the week of June 1, 2015 in Lakewood, CO. The team discussed the process and how to assess the Program Plans so it was done as consistently as possible. The team also discussed each regulatory provision and what to look for in reviewing the Program Plan to ensure we assessed each provision as consistently as possible. Collectively the team reviewed all 52 DBE Program Plans. Each team member individually assessed between seven and nine randomly assigned DBE Program Plans, documenting his/her analysis and adding comments, as appropriate. The team jointly discussed questions which arose during the process to ensure there was ongoing consensus on processes and regulatory understanding.

Martha Kenley, the National DBE Program Manager and Kevin Resler, the DBE Subject Matter Expert for this review, conducted a quality assurance review as an internal control over the validity of this process. They randomly reviewed one or more DBE Program Plans assessed by each team member. For each regulatory provision they verified the assessment of each team member, ensuring the overall consistency of the analysis. The collective data was then analyzed for inclusion in this report, as appropriate.
DBE Program Plan Dates

49 C.F.R. §26.21(b)(2) does not require regular updates of DBE Program Plans as long as the State DOT remains compliant and that when significant changes occur, they are submitted to FHWA for approval. “Significant” is not defined by regulation or by USDOT policy or guidance, thus, it is not clear what constitutes a significant change.

Nevertheless, since there have been only four regulatory updates since 2000, arguably, regulatory changes should constitute enough of a “significant” change to necessitate the State revising the Program Plan which must then be approved by the FHWA Specialist. See Figure 9 for more information on the year the current DBE Program Plans went into effect.

![Figure 9](image)

When Were Current DBE Program Plans Put Into Effect?*

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of States</th>
</tr>
</thead>
<tbody>
<tr>
<td>2001-2006</td>
<td>3</td>
</tr>
<tr>
<td>2007</td>
<td>1</td>
</tr>
<tr>
<td>2008</td>
<td>1</td>
</tr>
<tr>
<td>2009</td>
<td>1</td>
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<tr>
<td>2010</td>
<td>2</td>
</tr>
<tr>
<td>2011</td>
<td>8</td>
</tr>
<tr>
<td>2012</td>
<td>18</td>
</tr>
<tr>
<td>2013</td>
<td>5</td>
</tr>
<tr>
<td>2014</td>
<td>9</td>
</tr>
<tr>
<td>2015</td>
<td>4</td>
</tr>
</tbody>
</table>

*Date Indicated on Current DBE Program Plan Document

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1 DBE Program Plan Review was completed the week of June 1, 2015.
2 Regulatory updates for the current DBE regulations went into effect on the following dates: Feb 2, 1999; June 28, 1999; Nov 15, 2000; June 16, 2003; April 3, 2009; Jan 28, 2011; and October 2, 2014.
3 Note the regulation change implemented in 2011 required the provisions fostering small business participation to be submitted to the appropriate DOT operating administration for approval as part of the DBE program by February 28, 2012. See 49 C.F.R. §26.39(b)/ Of the 18 plans approved in 2012, 10 are dated prior to or on February 28, 2012; 3 are dated in March and 1 on April 1, indicating the plans were likely submitted for approval prior to 2/28/2012. Of the remaining 4 plans, 2 are dated in June and 2 are dated in August. Since the small business provisions had to be submitted to HCR, it is possible that those 4 plans were also submitted prior to 2/28/2012. Thus, it is possible to assume that all the plans dated 2012 were submitted to FHWA prior to 2/28/2012, as required.
4 Of the 9 plans implemented in 2014, 2 were implemented in January, one in February, two in March, 1 in April, 1 in September, one in October and one in November. It is likely only the plans approved in the later part of year could incorporate the changes that took effect in October 2014.
Even if a regulatory change were not considered a “significant” change justifying a Program Plan update, we also discovered Program Plans which have provisions which are noncompliant with regulations that have been in existence, unchanged, for more than a decade. For example, 42 plans included provisions providing information on C.F.R. § 26.29(d) Prompt Payment and Retainage Enforcement. However, although this regulation has not been revised since June 16, 2003, only 23 of those 42 prompt payment provisions were compliant as written with this regulation, generally due to the lack of sufficient enforcement mechanisms.
DBE Program Administration and Oversight Survey

Each question is designed to help us gather national level data on DBE Program Administration and Oversight to supplement information we have gathered from the site visit states visited for this national review. You may need to contact your State DOT partners to gather some of the data needed to answer the questions. To save the survey, click the save button in the top left of the screen. You may also save your survey and complete it at a later date.

Please save your survey frequently, especially when uploading large files.

Please respond to each question in the survey and upload all supporting information no later than close of business on Friday, May 22, 2015. If you have questions on this, please contact Anne Luedders via email or at 720-963-3237.

Thank you for completing this survey!

Division Office: 

Review Objective #1: Determine how Divisions provide technical assistance and oversight of the State’s DBE program at both the program and project levels, identifying where gaps may exist, successful practices and lessons learned.

1. Does the approved DBE Program Plan accurately reflect how the State implements its DBE Program?

2. How do you ensure the DBE Program is being implemented as outlined in the most recently approved DBE Program Plan? Check all that apply.
   - Program/Process review(s) of state DOT procedures designed to ensure compliance with DBE program provisions outlined in 49 CFR 26
   - Other validation procedures designed to ensure compliance with DBE program provisions outlined in 49 CFR 26 (such using the CAP Level II Civil Rights questionnaire)
   - Meetings and interaction with DBE program staff
   - Other
   Please elaborate on all selections above (such as number of reviews, topics covered, date of most recent reviews, description of other procedures, etc.)

3. Which one method have you found to be most effective in helping you ensure the DBE Program is being implemented as outlined in the most recently approved DBE Program Plan?

4. Do you conduct any type of regular data collection and analysis (other than reviewing the semi-annual report) to help you oversee the implementation of the State DOT’s DBE program?

5. If you or anyone in your Division has completed any program reviews on DBE Program Administration and Oversight in PY 13, PY14, or PY15, can the review report(s) be found in the Review Library in INPUT?

6. Have you or anyone in your Division completed any assessments on DBE Program Administration and Oversight in PY 13, PY14, or PY15?

Review Objective #2: Identify the approaches State DOTs use to provide DBE program administration at both the program and project levels, with special emphasis on the administration and oversight of DBE goal attainment and Good Faith Efforts (GFE) in meeting those goals, DBE utilization, prompt payment and return of retainage requirements, analysis that a DBE is providing a Commercially Useful Function (CUF), counting of bulk items, trucking and DBE substitution and replacement and contract sanctions. Evaluate the effectiveness of these approaches, identifying gaps and lessons learned

7. In which of the following specific post-award situations would the State DOT require the Prime Contractor to demonstrate documented good faith effort (GFE) in identifying DBEs to perform additional work on a contract? Select all that apply:
   - When a DBE refuses to perform work
   - When there is a small underrun on a quantity of work which had been committed to a DBE
   - When there is a large underrun on a quantity of work which had been committed to a DBE
   - When the contract was awarded based on good faith efforts toward achieving the award
8. How does the State DOT monitor individual contract goal attainment (running tally)? Select all that apply:

☐ Monthly based on regular payment reports
☐ During project closeout reconciliation
☐ No defined process

Other, please explain:

9. How does your state ensure that primes are paying their sub-contractors in accordance with prompt pay requirements? Select all that apply:

☐ Complaints from subs.
☐ Certification by primes of paying subs within time requirements.
☐ Automated calculation/monitoring of payments with an electronic system.
☐ Manual process performed on an ongoing basis.
☐ Other.

Please summarize process all selections and/or provide Other comments or options:

10. Please check those areas for which the State has prepared regular reports or reviews documenting its implementation of Quality Assurance processes (a.k.a. internal controls) designed to ensure the following program areas are administered as approved in the Program Plan? Select all that apply?

☐ Goal attainment
☐ GFE
☐ DBE utilization
☐ Prompt pay
☐ Return of retainage
☐ CLIF
☐ Counting of bulk items
☐ Trucking
☐ Substitution and replacement of DBE subcontractors
☐ Contract Sanctions

Other Comments:

Please provide copies of the documentation:

11. Does the State have a process in place which successfully overcomes how difficult it can be to ensure DBEs truckers or bulk suppliers of petroleum or liquid asphalt products working off-site or during non-construction hours are performing a commercially useful function?

☐

12. We are interested in information which will help us understand how many DBEs have successfully participated on Federal-aid contracts. Please provide the following information for calendar years 2013 and 2014 (give data for each year separately)

<table>
<thead>
<tr>
<th></th>
<th>2013</th>
<th>2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>The number of certified DBEs which were listed—for any amount of time—on the UCP Directory for work performed by State DOT’s:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The number of unique DBEs, whether race conscious or neutral, who have received (federally funded) contracts or sub-contracts:</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Review Objective #3: Assess how Risk-based Stewardship and Oversight (RBSO) is currently used in the administration of the DBE program at both the Division and State DOT, identifying lessons learned, successful practices and what is necessary for successful RBSO of this program.

13. As an FHWA Civil Rights Program Manager, how do you define success in DBE Program Administration and Oversight?

14. Please rank order the data sources which you have found to be Most Important and/or useful to you as the Civil Rights Program Manager in identifying DBE risk to/for Division leadership. If you do not use one of the following data sources in identifying DBE risk to/for Division leadership, please mark it as Not Applicable (NA):

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Discussions with State Counterparts:</td>
<td>✔</td>
</tr>
<tr>
<td>Regular Reports (such as the Uniform Report):</td>
<td>✔</td>
</tr>
<tr>
<td>State generated Ad Hoc reports:</td>
<td>✔</td>
</tr>
<tr>
<td>Program Reviews</td>
<td>✔</td>
</tr>
</tbody>
</table>
15. Please identify from the following list what are/would be the top three risks for you as the Division’s Civil Rights Program Manager when you consider the State DOT’s administration and oversight of the DBE program.

Top Risk #1

Top Risk #2

Top Risk #3

Please list data or information used to identify these risks:

Review Objective #4: Identify whether opportunities exist for enhanced Program Office aid to Divisions in carrying out their DBE program technical assistance and oversight responsibilities.

16. How could the HQ and RC better meet your needs as the DBE Program Manager? Select all that apply.

- Targeted training geared towards FHWA CR Program Manager knowledges, skills and abilities
- Targeted training geared towards State DOT DBE Program Management and Oversight
- General Guidance Documents
- Tools to facilitate the implementation of RBSO of the DBE program
- Suite of tools and power point slides which Division staff can modify/personalize as needed
- More sources for Direct Technical Assistance
- Successful Practice Information
- Templates
- Other

Other Comments:

Records Management Notice

Although DOT SharePoint is not intended to be used as a repository for official records, offices currently using SharePoint to store records are responsible for ensuring the content is managed and retained according to their modal records management policies and records disposition schedules. See the DOT Records Management webpage for guidance.

Help and Support

Visit the DOT Collaboration Support site for assistance with Microsoft SharePoint.

FHWA Portal Landing Page

Visit the landing page of the FHWA portal. From there, you can find almost any site, SharePoint-based or otherwise, that you will need as an FHWA staff member or contractor.

New Sites

Do you want a site like the one you are viewing now? See the New Service link on the Support Request page.

Social Media

FHWA has official social media sites for sharing news, updates, videos, and images with the public.

Facebook

Youtube

Twitter

Flickr
<table>
<thead>
<tr>
<th>Approved_Plan</th>
<th>Approved_Plan_Explore</th>
<th>Implementation</th>
<th>Implementation_Explore</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td></td>
<td>Other validation procedures designed to ensure compliance with DBE program provisions outlined in 49 CFR 26 (such using the CAP Level II Civil Rights questionnaire);#Meetings and Interaction with DBE program staff</td>
<td>In PY14, the CAP review included the Civil Rights questionnaire on 8 of the 57 selected projects. DOT Civil Rights Director and FHWA DO Program Manager have regular meetings (every two weeks) to provide updates on initiatives and discuss any issues, concerns, questions, etc. In addition, the FHWA DO Program Manager is invited to all Unified Certification Board meetings and Participation Review Committee meetings.</td>
</tr>
<tr>
<td>Yes - with one or two exceptions</td>
<td></td>
<td>Other validation procedures designed to ensure compliance with DBE program provisions outlined in 49 CFR 26 (such using the CAP Level II Civil Rights questionnaire);#Meetings and Interaction with DBE program staff</td>
<td></td>
</tr>
<tr>
<td>Yes - with one or two exceptions</td>
<td></td>
<td>Program/Process review(s) of state DOT procedures designed to ensure compliance with DBE program provisions outlined in 49 CFR 26;#Other validation procedures designed to ensure compliance with DBE program provisions outlined in 49 CFR 26 (such using the CAP Level II Civil Rights questionnaire);#Meetings and Interaction with DBE program staff;#Other project reviews</td>
<td></td>
</tr>
<tr>
<td>Yes</td>
<td>Meetings and Interaction with DBE program staff;#Other;#Program/Process review(s) of state DOT</td>
<td>Risk Assessments, Monthly meetings</td>
<td></td>
</tr>
<tr>
<td>No</td>
<td>The DOT&amp;PF’s methodology received its legal sufficiency finding on April 16, 2015. The DOT&amp;PF is currently working on Program/Process review(s) of state DOT procedures designed to ensure compliance with DBE program provisions outlined in 49 CFR 26;#Meetings and Interaction with DBE program staff</td>
<td>LPA GFE Review (6/14) Monthly DBE Report (spreadsheet) is used to monitor YTD DBE participation, contract goal adjustments, GFE awards, and completeness of LPA DBE data. GFE documents posted on Caltrans’ website is used to review GFE decisions when successful bidder’s commitment is not</td>
<td></td>
</tr>
<tr>
<td>Yes</td>
<td>Program/Process review(s) of state DOT procedures designed to ensure compliance with DBE program provisions outlined in 49 CFR 26;#Other validation procedures designed to ensure compliance with DBE program provisions outlined in 49 CFR 26;#Other validation procedures designed to ensure compliance with DBE program provisions outlined in 49 CFR 26</td>
<td>1. Prompt Payment review of DBE 4/15, other program/process reviews are being planned for 2016 2. Accompanying DOT on CUF reviews, reviewing CUF review reports, participating in project meetings with primes regarding GFE requirements, Division engineers reviewing weekly reports from projects and alerting civil rights program manager about DBE issues 3. providing DDOT DBE training, meeting with DBE staff in-person or on the phone as needed (DDOT has not wanted to meet</td>
<td></td>
</tr>
<tr>
<td>No - with one or two exceptions</td>
<td>Meetings and Interaction with DBE program staff;#Other validation procedures designed to ensure compliance with DBE program provisions outlined in 49 CFR 26 (such using the CAP Level II Civil Rights questionnaire);#Program/Process review(s)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Yes</td>
<td>Program/Process review(s) of state DOT procedures designed to ensure compliance with DBE program provisions outlined in 49 CFR 26;#Other validation procedures designed to ensure compliance with DBE program provisions outlined in 49 CFR 26 (such using the CAP Level II Civil Rights</td>
<td>The Division conducts at least one special emphasis review on some aspect of the DBE program each year. For example, in 2013 and 2014, the Division added prompt payment and retainage return to its field review matrix. In 2015, the Division worked with DOT to develop a UCP peer review structure, and in 2016 the Division will perform an effectiveness review of the FDOT tracking system, Equal Opportunity Compliance (EOC) System. DOT’s Equal Opportunity Office and the Division have a cordial working relationship with regular meetings in most program areas including DBE and DBE Supportive</td>
<td></td>
</tr>
<tr>
<td>Yes</td>
<td>Program/Process review(s) of state DOT procedures designed to ensure compliance with DBE program provisions outlined in 49 CFR 26;#Other validation procedures designed to ensure compliance with DBE program provisions outlined in 49 CFR 26</td>
<td>Project site visits, Reviewing state CUF reports, Monitoring trend data, Reviewing GFE determinations.</td>
<td></td>
</tr>
<tr>
<td>Yes</td>
<td>Meetings and Interaction with DBE program staff</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Meetings and Interaction with DBE program staff:

- Program/Process review(s) of state DOT procedures designed to ensure compliance with DBE program provisions outlined in 49 CFR 26; #Other

Division conducts several DBE program reviews annually. Three reviews completed in 2013. DBE/OJT/SS Process Review done 2013; DBE Certification Process Review done 2013; Baseline Re-assessment Review done 2013; One review completed in 2014. DBE Prompt Payment Review done 2014; One review completed in 2015. DBE/OJT/SS Process Review done in 2015; Small Business Report analysis done on a regular basis. Report completed in 2014; weekly meetings and/or Project inspections (2+ a month). Topics covered are DBE, Contractor Compliance, OJT, Title VI, ADA.

At the time State DOT's Plan was approved (2001), it was deemed to satisfy the requirements of 49 CFR 26. Several revisions to 49 CFR 26 have been made since that time.

- Program/Process review(s) of state DOT procedures designed to ensure compliance with DBE program provisions outlined in 49 CFR 26; #Other validation procedures designed to ensure compliance with DBE program provisions outlined in 49 CFR 26 (such using the CAP Level II Civil Rights questionnaire); #Meetings and Interaction with DBE program

Review, comment on and ultimately approve Std. Specifications/General Special Provisions pertaining to DBE (and other Civil Rights elements) program implementation (several related to contract administration elements); participate in meetings (including public meetings, as needed) with various DOT staff, DBEs, AGC, and/or consultants; observe DBE training conducted by WSDOT and provide feedback as appropriate/needed; require quarterly reporting from WSDOT on general DBE program matters (CUFs, issues with goal setting, contract awards using GFE and/or awards challenged by 2nd low, et al; prompt payment issues); et al.

Meetings with the CR division and other DOT staff as needed and constant contact through emails and phone calls.

- Program/Process review(s) of state DOT procedures designed to ensure compliance with DBE program provisions outlined in 49 CFR 26; #Other validation procedures designed to ensure compliance with DBE program provisions outlined in 49 CFR 26

The Division office (Area Engineers and CR Specialist) performs DBE reviews on CAP and randomly selected projects at the State and local level. DOT included DBE training in a mandatory training class for all local agencies implementing pass-through projects. The CR Specialist works on a constant (daily) basis with the DBE program including meeting with the State at a program and project level to ensure compliance. The Division office also meets with DBEs and Prime contractors.

Other validation procedures designed to ensure compliance with DBE program provisions outlined in 49 CFR 26 (such using the CAP Level II Civil Rights questionnaire); Meetings and Interaction with DBE program staff;

Conducting site visit to Federal funded projects to review DBE, OJT and labor compliance documents.

Meetings and Interaction with DBE program staff;

- Program/Process review(s) of state DOT procedures designed to ensure compliance with DBE program provisions outlined in 49 CFR 26; #Other validation procedures designed to ensure compliance with DBE program provisions outlined in 49 CFR 26

The Division Office (Area Engineers and CR Specialist) conducts DBE reviews through CAP/PAR, PoDI and spot checks on randomly selected State and Local projects to ensure compliance. The Civil Rights Specialist communicates with the DOT on a daily basis to ensure compliance and offer technical assistance.

Meetings and Interaction with DBE program staff;

- Program/Process review(s) of state DOT procedures designed to ensure compliance with DBE program provisions outlined in 49 CFR 26; #Other validation procedures designed to ensure compliance with DBE program provisions outlined in 49 CFR 26

Meetings are critical, but the key interaction is with DBE staff, DBE contractors and consultants, and nonDBE contractors and consultants. Those direct conversations concerning current issues, where you are able to determine exactly how the

- Program/Process review(s) of state DOT procedures designed to ensure compliance with DBE program provisions outlined in 49 CFR 26; #Other validation procedures designed to ensure compliance with DBE program provisions outlined in 49 CFR 26

DoT's DBE program is being implemented as outlined with the following tools: DBE program procedures, Commercial Use Function (CUF) reviews, project site visits and reviewing Good Faith Efforts (GFE).

- Program/Process review(s) of state DOT procedures designed to ensure compliance with DBE program provisions outlined in 49 CFR 26; #Other validation procedures designed to ensure compliance with DBE program provisions outlined in 49 CFR 26

Project inspections (2+ a month). Topics covered are DBE, Contractor Compliance, OJT, Title VI, ADA.

Meetings and Interaction with DBE program staff;

Meetings with the CR division and other DOT staff as needed and constant contact through emails and phone calls.

Yes - with more than two exceptions

- Program/Process review(s) of state DOT procedures designed to ensure compliance with DBE program provisions outlined in 49 CFR 26; #Other validation procedures designed to ensure compliance with DBE program provisions outlined in 49 CFR 26

Meetings and Interaction with DBE program staff; #Meetings and Interaction with DBE program staff; #Other validation procedures designed to ensure compliance with DBE program provisions outlined in 49 CFR 26 (such using the CAP Level II Civil Rights questionnaire); Meetings and Interaction with DBE program staff;

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<table>
<thead>
<tr>
<th>Requirement</th>
<th>Current Status</th>
<th>Examples and Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Program/Process review(s) of state DOT procedures designed to ensure compliance with DBE program provisions outlined in 49 CFR 26; Other validation procedures designed to ensure compliance with DBE program provisions outlined in 49 CFR 26</td>
<td>Over the past three years the Division has conducted one DBE related program review on CUF. The Division also conducts CAP level II program reviews. We also conduct on site compliance reviews of projects which include DBE activities.</td>
<td></td>
</tr>
<tr>
<td>Yes - with more than two exceptions DOTs current DBE program is in non-compliance. They are currently working on action plan to bring the DBE program into compliance</td>
<td>Program Reviews: 2015.2.24 DBE Compliance Review, 2015.6.15 ODOT UCP review, 2014.8.25 Civil Rights program review. 2014 Civil Rights CAPs. We hold monthly meetings with DOT staff.</td>
<td></td>
</tr>
<tr>
<td>Yes</td>
<td>Program/Process review(s) of state DOT procedures designed to ensure compliance with DBE program provisions outlined in 49 CFR 26; Other validation procedures designed to ensure compliance with DBE program provisions outlined in 49 CFR 26</td>
<td>Semi-annually I select an area to be reviewed. On 4/15/2015, I reviewed prompt payment and return of retainage. In addition, I review CUF and shortfall analysis where contractors are penalized.</td>
</tr>
<tr>
<td>Yes</td>
<td>Program/Process review(s) of state DOT procedures designed to ensure compliance with DBE program provisions outlined in 49 CFR 26; Other validation procedures designed to ensure compliance with DBE program provisions outlined in 49 CFR 26</td>
<td>Onsite visits</td>
</tr>
<tr>
<td>Yes</td>
<td>Program/Process review(s) of state DOT procedures designed to ensure compliance with DBE program provisions outlined in 49 CFR 26; Other validation procedures designed to ensure compliance with DBE program provisions outlined in 49 CFR 26</td>
<td>Monitoring including: CUF reviews, participation in goal setting meetings, certification, onsite reviews with KYTC and review of annual reports.</td>
</tr>
<tr>
<td>Yes</td>
<td>Program/Process review(s) of state DOT procedures designed to ensure compliance with DBE program provisions outlined in 49 CFR 26; Other validation procedures designed to ensure compliance with DBE program provisions outlined in 49 CFR 26</td>
<td>The validation procedures are completed through routine CUF reviews. Additionally, routine reviews are done through bid letting and goal setting and awards.</td>
</tr>
<tr>
<td>Yes</td>
<td>Other validation procedures designed to ensure compliance with DBE program provisions outlined in 49 CFR 26 (such using the CAP Level II Civil Rights questionnaire)</td>
<td>We used the CAP review last performance year. The DBE program is an area the division plans to focus on this performance year with the hope of getting an updated DBE program plan in place.</td>
</tr>
<tr>
<td>Yes</td>
<td>Program/Process review(s) of state DOT procedures designed to ensure compliance with DBE program provisions outlined in 49 CFR 26; Other validation procedures designed to ensure compliance with DBE program provisions outlined in 49 CFR 26</td>
<td>Most recent process review final draft prepared 02/2015 FHWA Joint Program Review of DBE Participation in Engineering and Design related service contracts</td>
</tr>
<tr>
<td>Yes - with one or two exceptions Mostly the plan does not reflect current staffing and lacks some updates</td>
<td>April 2014 (Project Close-Out Process) and April 2015 (DBE Certification Update Process)</td>
<td>prompt payment and subcontractor payment process have been recently completed (last few years). Most reviews in the DBE program are related to project issues (CUF)</td>
</tr>
<tr>
<td>Yes - with more than two exceptions The Nebraska plan has needed to be updated for a number of years</td>
<td>Program/Process review(s) of state DOT procedures designed to ensure compliance with DBE program provisions outlined in 49 CFR 26; Other validation procedures designed to ensure compliance with DBE program provisions outlined in 49 CFR 26 (such using the CAP Level II Civil Rights questionnaire)</td>
<td>The valuation procedures are completed through routine CUF reviews. Additionally, routine reviews are done through bid letting and goal setting awards.</td>
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<td>Yes</td>
<td>Meetings and Interaction with DBE program staff; Program/Process review(s) of state DOT procedures designed to ensure compliance with DBE program provisions outlined in 49 CFR 26; Other validation procedures designed to ensure compliance with DBE program provisions outlined in 49 CFR 26</td>
<td>The Nebraska plan has needed to be updated for a number of years (last approved update was in 2006). The Division has sent back comments in 2012 and we are currently working on action plan to bring the DBE program into compliance.</td>
</tr>
<tr>
<td>Yes</td>
<td>Program/Process review(s) of state DOT procedures designed to ensure compliance with DBE program provisions outlined in 49 CFR 26; Other validation procedures designed to ensure compliance with DBE program provisions outlined in 49 CFR 26 (such using the CAP Level II Civil Rights questionnaire)</td>
<td>Meetings and Interaction with DBE program staff; Program/Process review(s) of state DOT procedures designed to ensure compliance with DBE program provisions outlined in 49 CFR 26; Other validation procedures designed to ensure compliance with DBE program provisions outlined in 49 CFR 26</td>
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<tr>
<td>Yes - with more than two exceptions</td>
<td>It doesn't necessarily capture how they complete all that they do and in some areas it doesn't close the loop on implementation procedures.</td>
<td>Program/Process review(s) of state DOT procedures designed to ensure compliance with DBE program provisions outlined in 49 CFR 26;#Other validation procedures designed to ensure compliance with DBE program provisions outlined in 49 CFR 26</td>
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<td>Yes - with more than two exceptions</td>
<td>It doesn't necessarily spell out in detail how they complete all that they do and in some areas it doesn't close the loop on implementation procedures.</td>
<td>Program/Process review(s) of state DOT procedures designed to ensure compliance with DBE program provisions outlined in 49 CFR 26;#Other validation procedures designed to ensure compliance with DBE program provisions outlined in 49 CFR 26 (such using the CAP Level II Civil Rights Assessment)</td>
</tr>
<tr>
<td>Yes - with one or two exceptions</td>
<td>DOT has made additions to program that have not been added to the last approved document</td>
<td>Program/Process review(s) of state DOT procedures designed to ensure compliance with DBE program provisions outlined in 49 CFR 26;#Meetings and Interaction with DBE program staff;#Other validation procedures designed to ensure compliance with DBE program provisions outlined in 49 CFR 26</td>
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<td>Yes</td>
<td>Program/Process review(s) of state DOT procedures designed to ensure compliance with DBE program provisions outlined in 49 CFR 26;#Other validation procedures designed to ensure compliance with DBE program provisions outlined in 49 CFR 26</td>
<td>Program/Process Reviews: We do not have a DBE Program Review schedule at the moment. Our last DBE Program Review/Investigation was in 2012 and it led to very significant DBE program process improvements.</td>
</tr>
<tr>
<td>Yes</td>
<td>Meetings and Interaction with DBE program staff</td>
<td></td>
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<tr>
<td>Yes - with more than two exceptions</td>
<td>Based on a recent review of CUF Monitoring, I discovered that DOT was virtually doing nothing more than pencil-whipping CUF forms to give the appearance that they had a monitoring program. Because DOT uses some of its FHWA apportionment to pay employee salaries, we brought the OIG in to investigate the matter, and it's not looking very good. For</td>
<td>Other validation procedures designed to ensure compliance with DBE program provisions outlined in 49 CFR 26 (such using the CAP Level II Civil Rights questionnaire);#Program/Process review(s) of state DOT procedures designed to ensure compliance with DBE program provisions outlined in 49 CFR 26;#Meetings and Interaction with DBE program staff</td>
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<td>Yes</td>
<td>Program/Process review(s) of state DOT procedures designed to ensure compliance with DBE program provisions outlined in 49 CFR 26;#Other validation procedures designed to ensure compliance with DBE program provisions outlined in 49 CFR 26</td>
<td>1-2 REVIEWS PER YEAR, MONTHLY MEETINGS WITH STATE'S LEADERSHIP AND MONTHLY MEETING WITH COMMUNITY BASED ORGANIZATIONS</td>
</tr>
<tr>
<td>Yes - with more than two exceptions</td>
<td>Current Plan not up to date with GFE award process and CUF process.</td>
<td>Program/Process review(s) of state DOT procedures designed to ensure compliance with DBE program provisions outlined in 49 CFR 26;#Other validation procedures designed to ensure compliance with DBE program provisions outlined in 49 CFR 26</td>
</tr>
<tr>
<td>Yes</td>
<td>Meetings and Interaction with DBE program staff</td>
<td>Program Assessments- typically yearly. Most recent DBE and OJT Supportive Services Program Assessment Completed</td>
</tr>
<tr>
<td>Yes - with more than two exceptions</td>
<td>The current approved DBE Program Plan is dated 2004 and does not include recent developments such as the establishment of procedures for</td>
<td>Other validation procedures designed to ensure compliance with DBE program provisions outlined in 49 CFR 26 (such using the CAP Level II Civil Rights questionnaire);#Meetings and Interaction with DBE program staff;#Other</td>
</tr>
<tr>
<td>Yes - with more than two exceptions</td>
<td>My answer is &quot;Yes with more than two exceptions&quot; because this survey requires answers based on NCDOT’s latest approved plan which was in Meetings and Interaction with DBE program staff; Other validation procedures designed to ensure compliance with DBE program provisions outlined in 49 CFR 26 (such using the CAP Level II Civil Rights questionnaire)</td>
<td>I interact regulary with DOT DBE staff and am involved in many of their major activities such as project goal setting, overall goal setting, good faith effort determinations, special provision updates, etc. I also do things such as routinely review DBE compliance review reports, attend certification appeals, and I participate on several committees (both routine and ad hoc) in an advisory role.</td>
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Meetings and Interaction with DBE program staff

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<thead>
<tr>
<th>One_Method</th>
<th>One_Method_Other</th>
<th>One_Method_Explained</th>
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<tbody>
<tr>
<td>Meetings and Interaction with DBE program staff</td>
<td>Although reviews are definitely a valuable tool to test compliance, reviews are even more effective if you know the process well. Not only would you know the process, you’ve probably been able to input and shape the way the process works if you are “at the table”, i.e. at those meetings and interactions. Changes that come from reviews are often done out of compliance and not because they see the value.</td>
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<td>Program/Process review(s) of state DOT procedures designed to ensure compliance with DBE program provisions outlined in 49 CFR 26</td>
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<td>Meetings and Interaction with DBE program staff</td>
<td>These are the most effective means of making changes that I have discovered, but you need the stewardship and relationship component of oversight in order to make daily impacts on the program and ensure the smooth delivery and response to process reviews.</td>
<td></td>
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<td>Meetings and Interaction with DBE program staff</td>
<td>Other validation procedures designed to ensure compliance with DBE program provisions outlined in 49 CFR 26 such using the CAP Level II Civil Rights review</td>
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<tr>
<td>Meetings and Interaction with DBE program staff</td>
<td>Monitoring data described in 4. Review and monitoring of State’s CUF oversight. Review of GFE determinations. Discussion of State’s certification quality control review each of top DBE firms.</td>
<td></td>
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<tr>
<td>Program/Process review(s) of state DOT procedures designed to ensure compliance with DBE program provisions outlined in 49 CFR 26</td>
<td>It is difficult to determine what XXDOT is doing because of the lack of written procedures. Program/Process reviews may help motivate them to develop them.</td>
<td></td>
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<tr>
<td>Program/Process review(s) of state DOT procedures designed to ensure compliance with DBE program provisions outlined in 49 CFR 26</td>
<td>The Division uses all three, but the most effective measure is viewing project compliance through the CR CAP/PAR reviews. Project level reviews help steer the program plan to ensure consistency and accountability.</td>
<td></td>
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<tr>
<td>Other validation procedures designed to ensure compliance with DBE program provisions outlined in 49 CFR 26 such using the CAP Level II Civil Rights review</td>
<td>Project visits. I want to see what is actually happening in the field. By speaking with District personnel I get a good sense of the health of the DBE program.</td>
<td></td>
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<tr>
<td>Meetings and Interaction with DBE program staff</td>
<td>Also, feedback received from DBEs has been a good indicator of how the program is being implemented. A State can have good procedures, but actual implementation in the field can be very different (as we have unfortunately experienced here in XX</td>
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<tr>
<td>Meetings and Interaction with DBE program staff</td>
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<tr>
<td>Meetings and Interaction with DBE program staff</td>
<td>Meetings with the DBE program staff and field staff encourages partnerships and makes sure everyone is on the same page regarding compliance procedures are concerned.</td>
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<tr>
<td>Meetings and Interaction with DBE program staff</td>
<td>Program and project reviews are helpful tools to ensure compliance, however, the DBE program in XX demands the majority of FHWA’s CR specialist’s time in which I work with the State to guide project decisions and program revisions and work with the contracting community to ensure their understanding and commitment to the program.</td>
<td></td>
</tr>
<tr>
<td>Program/Process review(s) of state DOT procedures designed to ensure compliance with DBE program provisions outlined in 49 CFR 26</td>
<td>Conducting site visits and review of DBE schedule and payments.</td>
<td></td>
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<tr>
<td>Meetings and Interaction with DBE program staff</td>
<td>The XX Division has performed all three but the most effective has been on-site project visits, review of project documentation and visual inspection with State DOT project engineers/supervisors. Project level inspections by the Civil Rights Specialist and Area Engineers ensure accountability and compliance.</td>
<td></td>
</tr>
<tr>
<td>Meetings and Interaction with DBE program staff</td>
<td>See above. Meetings and direct conversations with DBE program staff, WisDOT project staff and support staff, DBE contractors, DBE organizations (NAMAC), nonDBE contractors, and industry associations (WTBA) are the key interactions in promoting the DBE program.</td>
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<tr>
<td>Meetings and Interaction with DBE program staff</td>
<td>Both FHWA and XXDOT believe open communication is the critical element for a successful program.</td>
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<tr>
<td>Meetings and Interaction with DBE program staff</td>
<td>Reviewing a DBE Program with HCR or resource center or legal.</td>
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<td>Meetings and Interaction with DBE program staff</td>
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<td>Other validation procedures designed to ensure compliance with DBE program provisions outlined in 49 CFR 26 such using the CAP Level II Civil Rights review</td>
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<tr>
<td>Mini reviews conducted semi-annually and ongoing review of CUF documentation</td>
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Program/Process review(s) of state DOT procedures designed to ensure compliance with DBE program provisions outlined in 49 CFR 26

Meetings and Interaction with DBE program staff

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Program/Process review(s) of state DOT procedures designed to ensure compliance with DBE program provisions outlined in 49 CFR 26

Meetings and Interaction with DBE program staff

Meetings and Interaction with DBE program staff

Other validation procedures designed to ensure compliance with DBE program provisions outlined in 49 CFR 26 such using the CAP Level II Civil Rights review

In the past, the projects selected for CAP Level II reviews did not have the pertinent Civil Rights activities. This could have been avoided if the Civil Rights Program had been part of the decision making process as opposed to being a third party in the discussion.

Meetings and Interaction with DBE program staff

I highly value the relationship I've developed with my STA partners (even on the tough days!) and work to maintain it on a daily basis.

Meetings and Interaction with DBE program staff

I highly value the relationship I've developed with my STA partners (even on the tough days!) and work to maintain it on a daily basis.

Meetings and Interaction with DBE program staff

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Meetings and Interaction with DBE program staff

Program/Process review(s) of state DOT procedures designed to ensure compliance with DBE program provisions outlined in 49 CFR 26

AND ALSO THE MONTHLY MEETINGS
<table>
<thead>
<tr>
<th>Program/Process review(s) of state DOT procedures designed to ensure compliance with DBE program provisions outlined in 49 CFR 26</th>
<th>Program Assessments and in person meetings with staff have been the most beneficial ways of ensuring the program is being implemented.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Meetings and Interaction with DBE program staff</td>
<td>Meetings and Interaction with DBE program staff</td>
</tr>
<tr>
<td>Data_Collection</td>
<td>Data_Collection_Yes</td>
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<td>-----------------</td>
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<tr>
<td>Yes</td>
<td>The state keeps stats by bid opening (goals set, achievement at bid opening, and a cumulative/running total of commitment) and the division office receives copies. Having this information at each bid letting allows for additional goals to be placed if achievement is not meeting the target or ensuring goals are not placed on projects if the goal is being achieved. This, along with the regular meetings, allows for active and continuous discussion while changes can still be affected rather than after the fact. Discussions are currently underway to develop additional measures to assist with administering the program. Example:</td>
</tr>
<tr>
<td>Yes</td>
<td>I look at all bids and track participation myself. This helps in watching where the DOT is in terms of meeting its goal</td>
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<tr>
<td>Yes</td>
<td>Using award information and information from the EBO software to eventually trend DBE goal advertisement, commitment, and attainment data. At this time, I only have a few months of data, so I am using it to look at project specific issues and anticipate trends for the year.</td>
</tr>
<tr>
<td>Yes</td>
<td>Montana produces a monthly report on the bid lettings and DBE participation. I track that in a separate spreadsheet, that I got from Lance in CA Division.</td>
</tr>
<tr>
<td>No</td>
<td>For almost the past year, we have been focused on the development of the methodology and did not utilize any measures other than a spot check on certification to assist with oversight. Again, the interaction with the DOT&amp;PF is almost daily so the Division was aware of any problem spots.</td>
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</table>
Monthly DBE Report (spreadsheet) is used to monitor YTD DBE participation, contract goal adjustment, GFE awards and completeness of LPA data. See 2014-9.xlsx. Also, this data is used for shortfall analysis. Shortfall Analysis. Here's an example of how the above report was used. See 2014 Shortfall Analysis and 2015 Corrective Action Plan. Contract Goal Adjustments. This attached document is an example of feedback to Caltrans about the overall level of contract goals needed for the rest of the year to meet its overall goal. Contract Goal Calibration Tool. This attached document describes the tool used by Caltrans to adjust its contract goal formula to get the needed amount of contract goal adjustment. GFE documents are posted on Caltrans’ website. This information is used to review GFE decisions when Caltrans awards a contract to a bidder that falls significantly short of the goal. This recently resulted in training of Caltrans staff with addition lessons learned from this oversight. Award Tracker Report. This is a monthly report of all awarded construction contracts with DBE goals and individual DBE listed in commitments with participation amounts. This report is used to track monitor which DBEs are getting significant amount of work (targeted for CUF and certification oversight) and exclusive use by a prime. Gini coefficient is used to evaluate the equality of the distribution of DBE participation. See the attached document to see how this performance measure is used to measure the cumulative impact of a variety of activities to achieve a more equitable distribution of DBE participation. Major project DBE oversight activities. Attached is an example of a site visit (Major Project Site Visit Report). Site visit reports for design-build projects along with Caltrans’ monitoring activities are used to document the GFE (or lack there of) of the design-build contractor to meet the contract goal. Liquidated damages for the difference between the goal and the DBE participation are imposed if GFE is inadequate.

Prompt Payment review -learned that DBE was not being paid on time, sanctions were not being imposed, DDOT was not reviewing prompt payments and invoicing correctly, DBE staff was not adjusting goal when the prime was purchasing the DBEs materials. I would like information about other types of data collection and analysis that I can do that would assist me.

The Division receives monthly reports on DBE commitment as well as reports on how the small business program is performing. The Division collects quarterly reports on the supportive services efforts and the number of DBEs certified and receiving assistance. Finally, the Division has access to FDOT’s EOC system and can access performance reports on demand.

I analyze trends. See letter, which is pending approval from HCC. The Division is attempting to make the argument that the state must place race-consious goals on projects.

Civil Rights Specialist reviews monthly DBE goal attainment reports- assists me in determining annual goal achievement or if adjustments need to be made and STA can be advised and provided technical assistance; Specialist reviews DBE Small Business Utilizations Reports to see DBE progress as a result of Small Business Element being added to DBE program and provides assistance to STA as needed. Specialist does Prompt Payment Reviews of STA; Specialist does periodic certification program reviews of STAs DBE program.

South Dakota Department of Transportation does an good job of administering the DBE Program and is low risk.
<table>
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<tr>
<th>Response</th>
<th>Description</th>
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<tbody>
<tr>
<td>Yes</td>
<td>Helps me to better understand what activities the State is engaged in; identify potential problems (red flags, et al); and track trends.</td>
</tr>
<tr>
<td>Yes</td>
<td>CDOT submits monthly DBE reports to track their goal process. The State's Transportation Commission DBE subcommittee request this effort.</td>
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<tr>
<td>Yes</td>
<td>I participate on the DBE goal setting committee so I can have an opportunity to stay informed on the goal setting process and the state's efforts in achieving DBE goals.</td>
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<tr>
<td>Yes</td>
<td>I have required the State to submit quarterly DBE certification reports to ensure the Certification process is administered in a consistent manner.</td>
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<tr>
<td>Yes</td>
<td>During project onsite visits I collect data on all DBEs working on the project. See attached sample Onsite visit report. During DBE certification process review I collected data found on DBE files.</td>
</tr>
<tr>
<td>Yes</td>
<td>I collect letting summaries, DBE/SS semi-annual updates, collect letters of certifications and recommendations of de-certifications.</td>
</tr>
<tr>
<td>Yes</td>
<td>CDOT submits monthly DBE reports to track their goal process. The State's Transportation Commission DBE subcommittee request this effort.</td>
</tr>
<tr>
<td>Yes</td>
<td>The Tennessee Division receives reports after each project letting on DBE award commitments. The Division collects quarterly reports from the DBE/SS consultant on certified DBEs and Business Development assistance.</td>
</tr>
<tr>
<td>Yes</td>
<td>Reports available from WisDOT, including DBE percentage usage and payment on mega projects, across the construction program, and across the consultant program. Shows how well the program is actually working across different geographic areas and program areas (construction and consulting mostly). Also includes consultant contract awards and number of good faith waivers. Also attend WisDOT construction engineering and designing engineering consulting interviews.</td>
</tr>
<tr>
<td>Yes</td>
<td>Every year I do a program review of one area - last year was certification.</td>
</tr>
<tr>
<td>Yes</td>
<td>Again, monitoring the monthly bid letting reporting (Bidders Summary, Bids Awarded) information to determine DBE participation.</td>
</tr>
<tr>
<td>Yes</td>
<td>MDOT submits their quarterly reports to track their goal process.</td>
</tr>
<tr>
<td>Yes</td>
<td>Project inspections - collecting information on common issues/findings. Then analyzing to see how to improve procedures.</td>
</tr>
<tr>
<td>Yes</td>
<td>Monthly information to keep up with goal attainment and letting information, also monitor prompt payments and project closings.</td>
</tr>
<tr>
<td>No</td>
<td>We track DBE goal attainment on a quarterly biases.</td>
</tr>
<tr>
<td>No</td>
<td>My time is consumed with other QAQC involving a more qualitative review.</td>
</tr>
<tr>
<td>Yes</td>
<td>Review DBE goals and attainment to look for trends and patterns from year-to-year. This information is documented in the goal methodology document.</td>
</tr>
<tr>
<td>Yes</td>
<td>Through bid letting goal data on primes.</td>
</tr>
<tr>
<td>No</td>
<td>Vermont is a race neutral state.</td>
</tr>
<tr>
<td>Yes</td>
<td>Due to ODOT not meeting their annual goal in FY 14, ODOT and FHWA conducted an analysis of participation data captured by Site Manager and discovered a flaw within the system to be the inability to capture the actual value of DBE subcontracts awarded on a federal-aid project. This analysis led to ODOT committing in FY 15 to obtaining additional software tools to allow accurate tracking and reporting of DBE participation, payments and similar regulatory requirements. At this time the OK Division does not have a full time Civil Rights officer. The Division does not have a full time Civil Rights officer on staff, therefore the response is limited and additional information can be provided if requested at a later date.</td>
</tr>
<tr>
<td>Yes</td>
<td>Review data to identify trends in achieving DBE goals (project and overall goals).</td>
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<tr>
<td>Question</td>
<td>Response</td>
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<tr>
<td>Yes</td>
<td>We use closeout data sheets to look for independence and occasionally look at pre-bid versus actual use...especially if there were issues on the project. INDOT uses this data for a DBE &quot;compliance&quot; finding in regards to DBE utilization plan (preaward to post award) goal attainment.</td>
</tr>
<tr>
<td>No</td>
<td>Limited amount of time.</td>
</tr>
<tr>
<td>Yes</td>
<td>Through bid letting and goal data on prime contractors and bid letting for primes and sub-contractors</td>
</tr>
<tr>
<td>No</td>
<td>I'm too busy putting out day to day &quot;administrative&quot; fires as opposed to having the opportunity to effectively implement the DBE Program in a pro-active manner. (Please refer to #13 - DBE Program Administration and Oversight for additional information)</td>
</tr>
<tr>
<td>No</td>
<td>I'm currently working with a colleague to set up this oversight.</td>
</tr>
<tr>
<td>No</td>
<td>I'm currently working with a colleague to set up this oversight.</td>
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<tr>
<td>No</td>
<td>We discuss contracts and if a contractor is not going to meet their goals. They share information that GDOT will meet their overall goal throughout the year.</td>
</tr>
<tr>
<td>Yes</td>
<td>DOT provides monthly reporting on DBE Prime and Sub Participation</td>
</tr>
<tr>
<td>Yes</td>
<td>Division engineers gather and review DBE compliance data for individual project reviews.</td>
</tr>
<tr>
<td>No</td>
<td>DOT provides monthly reporting on DBE Prime and Sub Participation</td>
</tr>
<tr>
<td>Yes</td>
<td>SOMETIME DATA FROM CLOSED PROJECTS</td>
</tr>
<tr>
<td>Yes</td>
<td>See #2. This data collection helps me to know the current issues the STA faces as well as ensure compliance.</td>
</tr>
<tr>
<td>No</td>
<td>Currently the DOT does not collect data on other reportable areas of the DBE Program. For example, they do not currently have a way to track the effectiveness of the DBE S5 money they receive. This is an issue that the Division has been discussing with the DOT.</td>
</tr>
<tr>
<td>Yes</td>
<td>The Division office collects data on the number of DBEs certified/decertified quarterly. This has helped to determine the effectiveness of outreach conducted by the DOT, and the relationship between types of DBEs certified and types of work being put out to bid by the DOT. DOT attributes its shortfall primarily to a disconnect between these factors. DOT is also encouraged to submit monthly DBE commitments/payments/utilization figures to the Division office for more regular tracking.</td>
</tr>
<tr>
<td>Yes</td>
<td>I routinely review DBE compliance review reports. I also try to obtain an annual DBE compliance report (please see attached). Additionally, we analyze trend data on DBE goal attainment and DBE payments - please see attached.</td>
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<td>Review Uploaded</td>
<td>Review Uploaded_ Explain</td>
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<tr>
<td>Yes</td>
<td>None done other than CAP.</td>
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<tr>
<td>Yes</td>
<td>prompt payment review</td>
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<tr>
<td>No</td>
<td>During those years, we have only conducted reviews of Civil Rights procedures as they apply to our POCI projects, not about the program as a whole. I will be hosting the kick off meeting for our first DBE process review next month. The POCI reports were provided to the NRT during the review.</td>
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<tr>
<td>Yes</td>
<td>LPA GFE Review</td>
</tr>
<tr>
<td>No</td>
<td>It will be uploaded once it is finalized - in May 2015 (Prompt Payment Review)</td>
</tr>
<tr>
<td>No</td>
<td>UCP program and FIRE audit of tracking system will be uploaded to review library upon completion</td>
</tr>
<tr>
<td>No</td>
<td>The Division reviewed the State's DBE Program implementation, as part of a DBE complaint investigation in FY 2013. As this was not a formal &quot;review&quot;, but rather a review associated with a complaint investigation - it would not be appropriate to include the report in the Program Review Library.</td>
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<tr>
<td>Yes</td>
<td>A DBE assessment was done as part of a PODI/POCI/CAP program review</td>
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<tr>
<td>No</td>
<td>PY 15 conducted a prompt payment process review.</td>
</tr>
<tr>
<td>Yes</td>
<td>DBE CUF Review was completed on 5/6/2012.</td>
</tr>
<tr>
<td>No</td>
<td>N/A</td>
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<tr>
<td>No</td>
<td>The review reports are not finaled and not available to be uploaded to the Review Library available</td>
</tr>
<tr>
<td>Yes</td>
<td>DBE Supportive Services &amp; Prompt Payment</td>
</tr>
<tr>
<td>No</td>
<td>The Division's OR 217 DBE Investigation can be made available upon request.</td>
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<tr>
<td>No</td>
<td>We have not completed a process review of the DBE program in the fiscal years outlined above.</td>
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<td>Division completed reviews, but they are not currently listed in the library.</td>
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<thead>
<tr>
<th>Scenario</th>
<th>Explanation</th>
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<tbody>
<tr>
<td>When a DBE refuses to perform work; When the contract was awarded based on good faith efforts toward achieving the award</td>
<td>The DBE Program Document includes two sections titled “Termination of Use” and “Unfulfilled Obligations”. Both require the department’s approval and a concurrence from the DBE. A similar discussion is included in the special provision. The process includes a form to be completed and signed by both the prime and DBE identifying the exact amount paid agreed to be performed, the project engineer monitors the requests to sub-let to be sure that DBE is used, primes must complete a form monthly identifying payments to DBES, and then at the end of the project there is a form signed by both the prime and DBE identifying the final amount paid to the DBE. If this does not equal or exceed the amount committed to, sanctions are considered. If there is still time left on the project, the prime is required to find additional participation to make up the difference.</td>
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<tr>
<td>When a DBE refuses to perform work; When the contract was awarded based on good faith efforts toward achieving the award</td>
<td>Yes</td>
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<tr>
<td>When the contract was awarded based on good faith efforts toward achieving the award</td>
<td>Only when the fallen-away DBE participation is need to meet the contract goal are GFE required. Note: a small underrun is usually an overestimate in the engineer’s estimated quantity and a large underrun is usually due to a change order initiated by the State DOT.</td>
</tr>
<tr>
<td>When a DBE refuses to perform work; When there is a large underrun on a quantity of work which had been committed to a DBE; When the contract was awarded based on good faith efforts toward achieving the award</td>
<td>I don’t understand response #2 and #3. the DBE goal is set before bidding, the primes typically include the DBE commitments when they submit their bids.</td>
</tr>
<tr>
<td>When there is a large underrun on a quantity of work which had been committed to a DBE; When the contract was awarded based on good faith efforts toward achieving the award</td>
<td>State is race neutral and does not require GFE demonstration.</td>
</tr>
<tr>
<td>When a DBE refuses to perform work; When there is a small underrun on a quantity of work which had been committed to a DBE; When there is a large underrun on a quantity of work which had been committed to a DBE; When the contract was awarded based on good faith efforts toward achieving the award; When there is a small underrun on a quantity of work which had been committed to a DBE.</td>
<td>When there is a small underrun on a quantity of work which had been committed to a DBE. Depends upon when identified and if a change order is issued. We currently have an exception to the replacement requirements if CDOT eliminates the work identified for a DBE. This is being changed in the revisions to require GFE documentation no matter when/what amount. If DOT does not eliminate the work via change order, which they generally don’t on underruns, then GFE documentation is required and replacements required when reasonable. When there is a large underrun on a quantity of work which had been committed to a DBE. --- Same as for small underrun. When the contract was awarded based on good faith efforts toward achieving the award. --- No, if we find GFEs were made prior to bid, but not enough participation was obtained to meet the goal, the goal is amended to reflect the commitments. I could see this going either way, but we decided to amended goal so that we could have a fair bar for sanctions at the end of the contract.</td>
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<td>When a DBE refuses to perform work; When there is a large underrun on a quantity of work which had been committed to a DBE; When the contract was awarded based on good faith efforts toward achieving the award; When there is a small underrun on a quantity of work which had been committed to a DBE; When the contract was awarded based on good faith efforts toward achieving the award.</td>
<td>In any situation in which the project DBE goal is affected by a DBE’s commitment, DOT would require GFEs. However, in a situation in which the DBE is not removed, but does not reach their committed amount due to a small underrun on line items in which the estimate for work was overbid, and the DBE goal is already met, DOT would not require GFEs.</td>
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<td>When a DBE refuses to perform work; When there is a large underrun on a quantity of work which had been committed to a DBE; When the contract was awarded based on good faith efforts toward achieving the award; When there is a small underrun on a quantity of work which had been committed to a DBE; When the contract was awarded based on good faith efforts toward achieving the award.</td>
<td>Good Faith Effort does not apply - 100% race neutral program. DOT does however require DBE solicitation before any subcontract can be awarded.</td>
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<tr>
<td>When a DBE refuses to perform work; When the contract was awarded based on good faith efforts toward achieving the award. When the contract was awarded based on good faith efforts toward achieving the award.</td>
<td>You are assuming that there is a race-conscious goal. Only No. 4 makes this clear. Absent a RC goal 1, 2, and 3 do not apply.</td>
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<td>Good Faith Effort does not apply - 100% race neutral program. DOT does however require DBE solicitation before any subcontract can be awarded.</td>
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<td>Scenario</td>
<td>Action</td>
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<td>When there is a large underrun on a quantity of work which had been committed to a DBE; When the contract was awarded based on good faith efforts toward achieving the award</td>
<td>Currently DOT is in the process of updating their GFE process per FHWA’s Compliance review</td>
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<td>When a DBE refuses to perform work; When there is a small underrun on a quantity of work which had been committed to a DBE; When there is a large underrun on a quantity of work which had been committed to a DBE; When the contract was awarded based on good faith efforts toward achieving the award</td>
<td>The Agency of Transportation rarely implements contract specific goals.</td>
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<td>When there is a small underrun on a quantity of work which had been committed to a DBE; When the contract was awarded based on good faith efforts toward achieving the award</td>
<td>DOT is a race neutral state.</td>
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<td>When there is a small underrun on a quantity of work which had been committed to a DBE; When there is a large underrun on a quantity of work which had been committed to a DBE; When the contract was awarded based on good faith efforts toward achieving the award</td>
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<td>DOT is a race neutral state.</td>
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If GFE is relied upon, the State reviews prior to award. - DBE Use plan is part of CAP/PODI/POCI protocols (GFE or not)
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<th>When a DBE refuses to perform work;</th>
<th>When there is a small underrun on a quantity of work which had been committed to a DBE;</th>
<th>When the contract was awarded based on good faith efforts toward achieving the award.</th>
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<td>Although the State has the prerogative to require GFE for small underruns in goal attainment, this is typically handled at the end of a project, rather than at the earliest opportunity. As I said earlier, because there was virtually no monitoring program, DOT was relying strictly on final payment data to determine compliance.</td>
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<td>When a DBE refuses to perform work;</td>
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<td>When there is a large underrun on a quantity of work which had been committed to a DBE;</td>
<td>When the contract was awarded based on good faith efforts toward achieving the award;</td>
<td>When there is a large underrun on a quantity of work which had been committed to a DBE;</td>
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<td>The DOT has a monitoring system in place that notifies them of any changes made to the DBE percentage of a project.</td>
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<td>The DOT has informed me that they do not have a formal Good Faith Effort review that occurs in these instances, but that the do document in files the circumstances that contribute to substitutions of DBEs, underruns on work, and differences between commitments and final payments.</td>
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<td>When the contract was awarded based on good faith efforts toward achieving the award;</td>
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<td>Monthly based on regular payment reports; During project closeout reconciliation</td>
<td>Prime contractors must submit a form (SFN 60638) monthly identifying the payments made the DBEs. In addition, if any of the work cannot be performed by the DBE that was originally selected, the contractor must submit a form (SFN 60595) requesting to replace that DBE. Finally, when the DBE has fulfilled their contract, the Prime and DBE must sign a form (SFN 14268) certifying how much the DBE was paid.</td>
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<td>No defined process</td>
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<td>Monthly based on regular payment reports</td>
<td>There is also an informal assessment of the remaining work items to come and when they will occur on the project timeline as a whole.</td>
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<td>Monthly based on regular payment reports</td>
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<td>During project closeout reconciliation; Monthly based on regular payment reports</td>
<td>Currently, this is done at project closeout. However, Caltrans has just started collecting DBE payments on a monthly basis and will track DBE payments on a monthly basis.</td>
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<td>During project closeout reconciliation; Monthly based on regular payment reports</td>
<td>DBE goals are monitored at the project level by the construction managers and reported at biweekly meetings. The DBE goal is also totaled at project close-out.</td>
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<td>During project closeout reconciliation; Monthly based on regular payment reports</td>
<td>Each XXDOT District provides a monthly report of all active FHWA Highway Contracts in their respective District. This report provides current status on each project as it pertains to meeting the DBE goal. In addition to current DBE attainment (payments) the District provides written comments to address any projects that may appear to be off track. This includes the identification of project delays, work scope changes, and any other issue potentially impacting DBE goal attainment. The Bureau of Equal Opportunity’s DBE Field Agent reviews each District report and provides a Department wide summary feedback report. The feedback report requests additional information projects as needed and provides direction to assist the Districts in ensuring the DBE requirements are being met.</td>
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<td>Monthly based on regular payment reports; During project closeout reconciliation</td>
<td>XDOT now has a running tally reporting system based on monthly entry of payments. The system, Equal Opportunity Compliance (EOC), is in its 2nd full year and, in 2016, will be reviewed by the Division for effectiveness.</td>
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<td>Monthly based on regular payment reports; During project closeout reconciliation</td>
<td>The Division sent a letter to ITD two years ago telling ITD its data collection system and process is broken and does not collect correct data, as Uniformed kept changing year over year. ITD agreed finally agreed to procure and new system and are in the process of implementing the new data collection system. It should be ready to go live in three months. After which, the Division plans a review of the data collection process and will validate the outputs. This review has been stalled for two years due to ITDs complacency. The Division finally directed ITD that it must have a system or be found in non-compliance. Following, ITD procured a system but the process took nearly a year. The review is planned for PY16.</td>
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<td>Monthly based on regular payment reports; During project closeout reconciliation</td>
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<td>Monthly based on regular payment reports; During project closeout reconciliation</td>
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<td>Monthly based on regular payment reports</td>
<td>DBE goals are monitored at the project field offices by XDOT construction staff and Civil Rights staff by looking at prompt payment forms as well as during project closeout by the States Civil Rights office.</td>
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<td>Monthly based on regular payment reports</td>
<td>Could be more frequently than monthly. The Civil Rights Compliance System (CRCS) tracks payments. The Equal Rights Officers (EROs) who use the CRCS also track weekly payrolls. Therefore they are in a position to know what DBEs should be working, and should be submitting payrolls, and then are also getting paid.</td>
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<td>No defined process</td>
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<td>Monthly based on regular payment reports; During project closeout reconciliation</td>
<td>WYDOT provides monthly DBE goal attainment reporting to FHWA, XXDOT Executive Staff, and XX Contractors Association.</td>
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<td>Monthly based on regular payment reports; During project closeout reconciliation</td>
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<td>Monthly based on regular payment reports</td>
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<td>Monthly based on regular payment reports; During project closeout reconciliation</td>
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<td>During project closeout reconciliation; Monthly based on regular payment reports</td>
<td>Through the EBO system</td>
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<td>Monthly based on regular payment reports; During project closeout reconciliation</td>
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<td>Monthly based on regular payment reports; During project closeout reconciliation</td>
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<td>During project closeout reconciliation; Quarterly based on required DBE Quarterly Report</td>
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<td>During project closeout reconciliation</td>
<td>The utilization reports are provided to the Division</td>
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<td>During project closeout reconciliation</td>
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<td>Monthly based on regular payment reports; During project closeout reconciliation</td>
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<td>During project closeout reconciliation</td>
<td>XXDOT currently collects the data on a bi-monthly basis however, this method is being reconsidered as a result of the DBE NRT site visit.</td>
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<td>No defined process</td>
<td>XX is a race neutral state</td>
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<td>No defined process</td>
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<tr>
<td>Monthly based on regular payment reports; During project closeout reconciliation</td>
<td>Ators also perform quarterly (and final) audits on projects to identify missing payment reports and the current level of DBE goal attainment on the project. Currently XXDOT requires contractors to submit certified monthly reports on payments made to subcontractors, including DBEs. Payment information is entered into the Civil Rights Compliance Tracking database and populates the DBE Tracking Report, which shows both the committed and the paid-to-date amounts to each DBE on each project. The tracking report assists the project management staff and civil rights field coordinators with monitoring payment progress against the committed amount.</td>
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<td>Monthly based on regular payment reports; During project closeout reconciliation</td>
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<tr>
<td>Monthly based on regular payment reports</td>
<td>Monthly, through regular checking on Site Manager, supplemented with quarterly reports.</td>
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<td>During project closeout reconciliation</td>
<td>XX DOT is implementing the PRISM compliance monitoring system so that payment information can be tracked real-time.</td>
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<td>Monthly based on regular payment reports; During project closeout reconciliation</td>
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<td>Monthly based on regular payment reports</td>
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<td>During project closeout reconciliation; Monthly based on regular payment reports</td>
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<td>During project closeout reconciliation</td>
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<td>Complaints from subs.;#Manual process performed on an ongoing basis.</td>
<td>The DOT has a form that is required to be submitted by the Prime contractor on a monthly basis which identifies all payments made to DBEs and for what bid item. Although not perfect since it is only a record of DBE payments, it is something.</td>
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<tr>
<td>Automated calculation/monitoring of payments with an electronic system.</td>
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<td>Complaints from subs.</td>
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<tr>
<td>Automated calculation/monitoring of payments with an electronic system.</td>
<td>EBO flags prompt payment delays, and repeat issues are followed up on.</td>
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<tr>
<td>Complaints from subs.</td>
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<tr>
<td>Other.</td>
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<tr>
<td>Complaints from subs.;#Certification by primes of paying subs within time requirements.;#Automated calculation/monitoring of payments with an electronic system.;#Manual process performed on an ongoing basis.</td>
<td>DOT posts detailed payment information to prime contractors on its website. Any sub can file a Stop Notice if it is not paid in a timely manner. It will know if it should have been paid by reviewing prime contractor payments. DOT will withhold 125% of the disputed amount, no questions asked. It is the responsibility of the prime to clear the Stop Notice by submitted evidence of payment to the sub. LPAs are subject to the same state statute and regulations.</td>
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<tr>
<td>Complaints from subs.;#Automated calculation/monitoring of payments with an electronic system.;#Other.;#Certification by primes of paying subs within time requirements.</td>
<td>Each DOT District provides a monthly report of all active FHWA Highway Contracts in their respective District. This report provides current status on each project as it pertains to meeting the DBE goal. In addition to current DBE attainment (payments) the District provides written comments to address any projects that may appear to be offtrack. This includes the identification of project delays, work scope changes, and any other issue potentially impacting DBE goal attainment. The Bureau of Equal Opportunity’s DBE Field Agent reviews each District report and provides a Department wide summary feedback report. The feedback report requests additional information projects as needed and provides direction to assist the Districts in ensuring the DBE requirements are being met.</td>
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<tr>
<td>Complaints from subs.;#Certification by primes of paying subs within time requirements.;#Automated calculation/monitoring of payments with an electronic system.</td>
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<tr>
<td>Automated calculation through EOC is for DBEs only. All subcontract PP and Retainage return is handled through certification and unpaid bill claims, though major projects (I-4 Ultimate, currently) do random screenings to ensure PP.</td>
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<tr>
<td>Complaints from subs.;#Manual process performed on an ongoing basis.</td>
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<td>Complaints from subs.;#Certification by primes of paying subs within time requirements.;#Manual process performed on an ongoing basis.</td>
<td>Complaints of non-payments by primes are investigated. Primes also self-certify that subs are being paid properly. In addition, State does periodic prompt payment reviews.</td>
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<tr>
<td>Automated calculation/monitoring of payments with an electronic system.</td>
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<td>Complaints from subs.;#Certification by primes of paying subs within time requirements.;#Manual process performed on an ongoing basis.</td>
<td>On DOT-administered contracts, primes have recently been required to report (with certification) payments to subcontractors monthly through an electronic system. Previously, primes submitted amounts of payments made to DBEs on a quarterly basis. On local agency-administered contracts, primes are reporting payments manually to local agencies on a quarterly basis by submitting a quarterly report form. The Division has given DOT until the end of FY 2015 to make a change to this process for local agencies - to collect this information from primes on a monthly basis.</td>
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<tr>
<td>Automated calculation/monitoring of payments with an electronic system.</td>
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<td>DOT is in the process of implementing CRL AASHTOware that will better help with prompt pay (along with other items) and make it an electronic system.</td>
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<tr>
<td>Complaints from subs.;#Certification by primes of paying subs within time requirements.;#Automated calculation/monitoring of payments with an electronic system.</td>
<td>DOT utilizes a certification document to address prompt payment monthly. They have also purchased software to track payments electronically with contractor and subcontractor acknowledgement (in testing phase now).</td>
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<td>Again, the CRCS is used for this purpose.</td>
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<td>Complaints from subs.;#Certification by primes of paying subs within time requirements.;#Automated calculation/monitoring of payments with an electronic system.;#Manual process performed on an ongoing basis.</td>
<td>Through EBO, although this is not a completely automatic system. Compliance staff must be vigilant in checking payment release dates on a day to day basis. although payment dates are tracked, I don’t believe there’s anything in the system that alerts the compliance officer that a payment is overdue, etc.</td>
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<tr>
<td>Certification by primes of paying subs within time requirements.;#Manual process performed on an ongoing basis.</td>
<td>The State of has a 7 day prompt payment requirement. In addition, Agency of Transportation created an electronic method which tracks payments to ensure timely receipts.</td>
<td></td>
</tr>
<tr>
<td>Automated calculation/monitoring of payments with an electronic system.</td>
<td>The State of has a 7 day prompt payment requirement. In addition, Agency of Transportation created an electronic method which tracks payments to ensure timely receipts.</td>
<td></td>
</tr>
<tr>
<td>Certification by primes of paying subs within time requirements.;#Manual process performed on an ongoing basis.</td>
<td>Mostly a complaint driven process, though monitoring on larger projects occurs. The State requires prime contractors to submit a Subcontractor payment Tracking form</td>
<td></td>
</tr>
<tr>
<td>Complaints from subs.; Certification by primes of paying subs within time requirements.; Other.</td>
<td>Prompt Payment clause is part of the contract.</td>
<td></td>
</tr>
<tr>
<td>Complaints from subs.; Certification by primes of paying subs within time requirements.; Manual process performed on an ongoing basis.</td>
<td>This matter is being revisited as a result of the NRT site visit.</td>
<td></td>
</tr>
<tr>
<td>Complaints from subs.; Manual process performed on an ongoing basis.</td>
<td>The State uses an electronic system to capture data, but is reliant on the subs to enter the data, so it's really an &quot;honor system&quot;; however, I have requested the state initiate an internal control via a review done on a regular basis to verify dates of payment, including supporting documentation, and an analysis which they are about to start.</td>
<td></td>
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<tr>
<td>Manual process performed on an ongoing basis.</td>
<td>Use of cancelled checks and a written construction manual policy on handling a prompt payment complaint.</td>
<td></td>
</tr>
<tr>
<td>Complaints from subs.; Certification by primes of paying subs within time requirements.; Automated calculation/monitoring of payments with an electronic system.; Manual process performed on an ongoing basis.; Other.</td>
<td>DOT requires contractors to submit certified reports on payments made to subcontractors, including DBEs on a monthly basis. Payment information is entered into the Civil Rights Compliance Tracking database and populates the DBE Tracking Report, which shows both the committed and the paid-to-date amounts to each DBE on each project. The tracking report assists the project management staff and civil rights field coordinators with monitoring payment progress. DOT's Office of Civil Rights field coordinators also perform quarterly and final audits on projects to identify missing payment reports. For larger, more complex projects, these project reviews occur on a monthly basis and typically involve a monthly meeting with the project management staff, civil rights field coordinator, and contractor staff.</td>
<td></td>
</tr>
<tr>
<td>Complaints from subs.; Certification by primes of paying subs within time requirements.; Other.</td>
<td>This has been an issue and will hopefully be resolved when the PRISM Compliance System is fully implemented.</td>
<td></td>
</tr>
<tr>
<td>Certification by primes of paying subs within time requirements.; Automated calculation/monitoring of payments with an electronic system.; Other.</td>
<td>State uses new process from B2GNow currently, but it relied on a manual process with paper forms prior to this system.</td>
<td></td>
</tr>
<tr>
<td>Automated calculation/monitoring of payments with an electronic system.</td>
<td>DOT uses an electronic system it developed in-house to track payments. Prime contractors confirm payments and dates and subcontractors confirm the accuracy of the information in the system.</td>
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<td>Complaints from subs.; Certification by primes of paying subs within time requirements.</td>
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<td>QA_Process</td>
<td>QA_Process_Explain</td>
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<tr>
<td>Goal attainment;#GFE;#DBE utilization;#Prompt pay;#Return of retainage;#CUF;#Counting of bulk items;#Trucking;#Substitution and replacement of DBE subcontractors</td>
<td>This would be amazing.</td>
<td></td>
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<tr>
<td>Goal attainment</td>
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</table>

**Goal attainment;#GFE;#DBE utilization;#Counting of bulk items;#Trucking;#Substitution and replacement of DBE subcontractors**

DOT uses its Monthly DBE Report (spreadsheet) to track its overall DBE goal attainment, calculate the amount of contract goal adjustment needed, and overall the rate of GFE awards. DOT Civil Rights Office approves LPA contract goals (> $2 million for construction, > $500,000 for A&E); it reviews and provides feedback on LPA’s GFE evaluations for contracts with above the same limits listed above. LPAs risk no Federal participation if it doesn’t follow DOT GFE evaluation feedback. See LPA DBE Office Bulletin. DOT does not withhold retainage. DOT implements risk-based CUF oversight by reviewing CUF of DBEs that get the most work and following up on CUF complaints (mainly from prime contractors). Attached is an example of a CUF report – Riley CUF Investigation. Prior to award DOT verifies the truck leases for bulk item suppliers. In one instance, the DBE participation was denied and the DBE with the third largest amount of participation is no longer used by primes. Increased CUF oversight (scrutiny) of bulk suppliers has resulted in a very significant reduction in use of bulk suppliers. Prior to award DOT verifies that the listed DBE has enough trucks to perform the committed work (via truck registration or non-use permit). this procedure has reduced trucking commitments to nil. On the one design-build project with a lot of trucking, information on each and every truck is documented and summarized in a spreadsheet. Attached is more details about these procedures -- FW DBE Trucking. Most of these, DOT has said that they review documents. DOT has prepared reports for some projects when requested. Reports for the DOT secretary are for Goal Attainment, DBE Utilization and Small Business Development. Regular project level reporting require reviews of CUF and implement contract sanctions, as appropriate. Currently, working on process for verification & crediting of regular dealer and trucking. DOT has an internal project monitoring system which utilizes the attached documents and has the ability to create reports on request. These documents are the tools to provide the input for the electronic system as well as provided the documentation and approvals that go in the project files. DOT is currently revising all of its DBE program documentation and tools as they adopt a new software compliance package and revised program document. DOT does not use retainage but relies on DBE bonding ability. DOT Contractor Compliance Review Report Evaluation and concurrence or not. DOT does not withhold retainage. DOT implements risk-based CUF oversight by reviewing CUF of DBEs that get the most work and following up on CUF complaints (mainly from prime contractors). Attached is an example of a CUF report – Riley CUF Investigation. Prior to award DOT verifies the truck leases for bulk item suppliers. 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<tbody>
<tr>
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<td>Goal attainment;#GFE;#Prompt pay;#CUF;#Trucking</td>
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<tr>
<td>Contractor Compliance EEO reports</td>
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</tr>
<tr>
<td>per the attached report our SHA is lacking in internal controls. This will be improved upon per our SHA action plan.</td>
</tr>
<tr>
<td>I don’t require the State to produce regular reports outside of the semi-annual report, unless I’m conducting a review with a specific purpose.</td>
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<tr>
<td>Prompt pay;#CUF;#Substitution and replacement of DBE subcontractors</td>
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</tr>
<tr>
<td>Prompt pay;#DBE utilization;#Goal attainment;#Substitution and replacement of DBE subcontractors;#GFE</td>
</tr>
<tr>
<td>The state has used liquidated damages for not meeting the DBE goal on a contract. We have put together a CUF form to be used on projects. However there has never been any regular reports or reviews that NDOR is performing regarding quality assurance to the DBE program provided to the division office.</td>
</tr>
<tr>
<td>Goal attainment;#DBE utilization;#Prompt pay;#CUF;#Substitution and replacement of DBE subcontractors;#Contract Sanctions</td>
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<td>Goal attainment;#GFE;#CUF;#Substitution and replacement of DBE subcontractors;#Contract Sanctions;#DBE utilization</td>
</tr>
<tr>
<td>The state has eliminated the use of retainage.</td>
</tr>
<tr>
<td>Goal attainment;#DBE utilization;#Prompt pay;#CUF;#Substitution and replacement of DBE subcontractors;#Contract Sanctions</td>
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<tr>
<td>DOT does not make use of retainage on DBE contracts. Please note: trucking and bulk suppliers are a small and infrequent subset of DBEs here.</td>
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<tr>
<td>Precon Meeting (and Checklist) – Internal review of required civil rights submittals and compliance monitoring requirements, including project management staff roles/responsibilities on each project. (Attachment – Question 10 – B44DOT Precon Meeting).</td>
</tr>
<tr>
<td>-DBE Tracking Log (shows DBE commitments, subcontract, and payment amounts, receipts of DBE Work Plans, whether CUF reviews have been logged, and Termination/Substitution notes for each project) (Attachment – Question 10 – DBE Tracking Log).</td>
</tr>
<tr>
<td>-Quarterly Audits by OCR field coordinators (Attachment – Question 10 – Quarterly Audit Report).</td>
</tr>
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<tr>
<td>DBE utilization</td>
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<td>CUF;#GFE;#Goal attainment;#DBE utilization</td>
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<td>Yes</td>
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</table>
While no systematic approach YET exists, the State is aware of the need for such. field staff are aware, and CUF reviews are regularly conducted on projects. DOT is trying to develop protocols that will yield reliable confidence that no pass thru is occurring.

The state has a CUF form that is to be filled out when the DBE is performing work. However, we have found from the CAP review last year this form isn't filled out routinely by the project managers.

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DOT doesn't have any DBE certified trucking companies

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DBE Work Plan Proposal – All committed DBEs, including trucking and supplier DBEs, are required to submit a work plan explaining how they plan to perform the work on a project so the agency can preview CUF compliance concerns. DOT's DBE provisions and the form instructions require Suppliers and Trucking DBEs to provide specific information intended to assist the State with performing the CUF evaluation.

- Trucking – DOT requires committed DBE Trucking firms to submit weekly a DBE Daily Trucking Log detailing use of owned and leased (DBE/non-DBE) trucks on the project. DOT's Construction Manual, also requires the project management staff to perform an independent full shift verification of the DBE trucking on the project as part of the CUF review.

- Regular Dealer / Supplier – During DOT’s internal preconstruction meeting, DBE suppliers are identified and a strategy for performing a CUF is developed by project management staff with OCR field coordinator technical advice and assistance.

- Asphalt Supplier Example: Typically an DOT project inspector attends the off-site batch plant where the asphalt binder deliveries are being made to confirm it is the DBE's trucks and drivers delivering the product, for at least a sample of the loads. The delivery tickets from the drivers and the bills of lading/ quality certifications from the manufacturer are reconciled and reviewed to confirm the DBE was responsible for ordering and delivering the product. DOT indicated that they evaluate sample invoices, proof of payment (if needed) to confirm the DBE’s control and management of the ordering, delivery, and payment processes.

- The use of diesel fuel supplies projects to meet DBE goals is new, and the agency is still considering how to best monitor DBE fuel use on the project. The project management staff have been visually confirming delivery of the fuel (at least sample loads when off-site) to contractors and collecting delivery tickets and DBE invoices. Some projects, Project Managers have been reconciling DBE fuel supply invoices for a project against equipment fuel nozzle logs on another project, the fuel invoices will be reconciled against bid item established bid item fuel factors, taking into account the portion of work being performed by contractors who actually purchased fuel from the DBE.

The state conducts frequent DBE contract reviews and looks for this subset of issues when warranted.

IN restoring the monitoring program element, I have recommended that a trucking worksheet be created. Petroleum deliveries off-site to the asphalt plant have been a challenge, as each the CUF process is laborious, if done correctly.

THEY WORK WITH THE UCP

Trucking plans are required for all projects using transportation services to meet the contract commitment. Contractors must submit copies of agreements with DBEs for materials, supplies or services.
<table>
<thead>
<tr>
<th>State Process</th>
<th>DOT Process Establishing</th>
<th>Explain</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>DOT has developed a form dedicated to the trucking issue that must be submitted by the trucking firm to the project engineer and the prime contractor.</td>
<td></td>
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<tr>
<td>No</td>
<td>Process requires self-certification from DBEs and a QA document (invoice, material ticket). I am certain this is not effective. This is why I am conducting a CUF process review this summer. I also conducted internal training for the Area Engineers this month on what CUF should look like this year (with the new process in place) and what the CFR requirements are.</td>
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<tr>
<td>No</td>
<td>Bidders are required to provide evidence that the DBE truck owns enough trucks to do the committed work (truck registration or non-use permit) prior to award. Since implementing this procedure DBE trucking commitments are deminimus. Bidders are required to provide their long-term truck leases for their DBE oil/asphalt suppliers prior to award. Extra targeted CUF oversight</td>
<td></td>
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<tr>
<td>No</td>
<td>DOT has not provided processes. The Division has requested them.</td>
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</tr>
<tr>
<td>Yes</td>
<td>DOT has a documented process for ensuring CUF in trucking as well as one for Manufacturers and Suppliers. See Chapter 2 (2.7.5 through 2.7.8) of <a href="http://www.dot.state.fl.us/equalopportunityoffice/ContractComplianceWorkbook.shtml">http://www.dot.state.fl.us/equalopportunityoffice/ContractComplianceWorkbook.shtml</a>. Note, this is a field practitioner manual, not simply the specification.</td>
<td></td>
</tr>
<tr>
<td>No</td>
<td>District Safety and Compliance Officers (SCOs) perform onsite reviews. Also, the Contractor Compliance Officer performs regular reviews of the trucking. He has found and reported many issues, that we have worked to rectify and correct. As well, requires bidders to provide proof that the DBE owns the truck(s) in order to carry out the work. Trucking companies must provide leases, registration, CDL, etc.</td>
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<tr>
<td>Yes</td>
<td>State requires tickets be provided showing the materials hauled, the quantities, the project number, and the truck number.</td>
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<tr>
<td>No</td>
<td>As stated above, the State is currently working on this.</td>
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<tr>
<td>No</td>
<td>The process here in the state needs to be revisited. Guidance from HQ. on the subject would be valuable.</td>
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<tr>
<td>Yes</td>
<td>DOT has been working with AGC and Fuel suppliers to determine the processes needed for performing a CUF in this area of work. I have attached the preliminary document created to help monitor DBE commitments specifically for this industry. Prior to this form, TxDOT has allowed DBE fule credit on Design Build projects in which the process was approved by DOT and monitored in the field.</td>
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<tr>
<td>No</td>
<td>This is a major concern for the State and Division office</td>
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<tr>
<td>Yes</td>
<td>The state uses quarry operators/employees to confirm DBE trucking operations during non-construction hours and at off site locations.</td>
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<tr>
<td>No</td>
<td>Documentation of activities</td>
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<tr>
<td>Yes</td>
<td>DBE CUF review completed on all DBE's on every Federal-aid project.</td>
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<tr>
<td>Yes</td>
<td>The Office of Business Development (OBD), compliance investigators and compliance analyst perform site reviews. Also, the trucking coordinator perform regular reviews of the trucking. DOT requires bidders to provide proof that the DBE owns the truck(s) in order to carry out the work.</td>
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<tr>
<td>No</td>
<td>Currently our SHA is lacking in this area</td>
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<tr>
<td>Yes</td>
<td>DOT just create a CUF short form specifically for these types of arrangements, or at least for the liquid asphalt arrangement. Upon closer examination, I also found that our CUF guidance document was insufficient in this area, in that it was silent on the matter requiring drivers to be &quot;employees&quot; of the company where the DBE deals in bulk items and distribution equipment is used in lieu of a stock yard or other location from which materials are sold. I found that the state was following our own guidance and used that as an excuse for not asking the DBE for payroll samples, showing withholding of FICA, SSN, etc on the drivers whose names appear on delivery slips. Where drivers are contracted truckers, for example, there is no CUF being performed. I believe</td>
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<tr>
<td>No</td>
<td>This issue is a concern for the State DOT and Division</td>
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<tr>
<td>No</td>
<td>We learned in conducting the PY 15 CAP review that this is an opportunity area. The Division is planning to conduct a review PY 16 and use those findings from the review to make recommendations to the state as it relates to monitoring suppliers.</td>
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<tr>
<td>No</td>
<td>Not allowed on asphalt in DOT</td>
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<td>No</td>
<td>While no systematic approach YET exists, the State is aware of the need for such. Field staff are aware, and CUF reviews are regularly conducted on projects. DOT is trying to develop protocols that will yield reliable confidence that no pass thru is occurring.</td>
<td></td>
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<tr>
<td>No</td>
<td>The state has a CUF form that is to be filled out when the DBE is performing work. However, we have found from the CAP review last year this form isn’t filled out routinely by the project managers.</td>
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<td>No</td>
<td>The state has a CUF form that is to be filled out when the DBE is performing work. However, we have found from the CAP review last year this form isn’t filled out routinely by the project managers.</td>
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<tr>
<td>No</td>
<td>Not allowed in DOT</td>
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<td>No</td>
<td>This matter is being revisited as a result of the NRT site visit.</td>
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<td>No</td>
<td>DOT doesn’t have any DBE certified trucking companies</td>
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<tr>
<td>No</td>
<td>DOT hasn’t any DBE certified trucking companies</td>
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<td>Yes</td>
<td>DBE Work Plan Proposal – All committed DBEs, including trucking and supplier DBEs, are required to submit a work plan explaining how they plan to perform the work on a project so the agency can preview CUF compliance concerns. DOT’s DBE provisions and the form instructions require Suppliers and Trucking DBEs to provide specific information intended to assist the State with performing the CUF evaluation.</td>
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<tr>
<td>Yes</td>
<td>DOT Work Plan Proposal – All committed DBEs, including trucking and supplier DBEs, are required to submit a work plan explaining how they plan to perform the work on a project so the agency can preview CUF compliance concerns. DOT’s DBE provisions and the form instructions require Suppliers and Trucking DBEs to provide specific information intended to assist the State with performing the CUF evaluation.</td>
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<td>Yes</td>
<td>Regular Dealer / Supplier – During DOT’s internal preconstruction meeting, DBE suppliers are identified and a strategy for performing a CUF is developed by project management staff with OCR field coordinator technical advice and assistance.</td>
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<td>Yes</td>
<td>Asphalt Supplier Example: Typically anDOT project inspector attends the off-site batch plant where the asphalt binder deliveries are being made to confirm it is the DBE’s trucks and drivers delivering the product, for at least a sample of the loads. The delivery tickets from the drivers and the bills of lading/ quality certifications from the manufacturer are reconciled and reviewed to confirm the DBE was responsible for ordering and delivering the product. DOT indicated that they evaluate sample invoices, proof of payment (if needed) to confirm the DBE’s control and management of the ordering, delivery, and payment processes.</td>
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<td>Yes</td>
<td>The use of diesel fuel supplies projects to meet DBE goals is new, and the agency is still considering how to best monitor DBE fuel use on the project. The project management staff have been visually confirming delivery of the fuel (at least sample loads when off-site) to contractors and collecting delivery tickets and DBE invoices. One some projects, Project Managers have been reconciling DBE fuel supply invoices for a project against equipment fuel nozzle logs on another project, the fuel invoices will be reconciled against bid item established bid item fuel factors, taking into account the portion of work being performed by contractors who actually purchased fuel from the DBE.</td>
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<td>Yes</td>
<td>The state conducts frequent DBE contract reviews and looks for this subset of issues when warranted.</td>
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<td>Yes</td>
<td>IN restoring the monitoring program element, I have recommended that a trucking worksheet be created. Petroleum deliveries off-site to the asphalt plant have been a challenge, as each the CUF process is laborious, if done correctly.</td>
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<td>THEY WORK WITH THE UCP</td>
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<td>No</td>
<td>Trucking plans are required for all projects using transportations services to meet the contract commitment. Contractors must submit copies of agreements with DBEs for materials, supplies or services.</td>
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At a minimum, compliance. The ultimate goal, buy-in. So that it moves from doing it out of compliance to desire, both the DOT and the contracting community. Ultimately, reaching that completely race neutral state.

Having an overall state goal reflective of business patterns absent discrimination and reaching that goal to the extent RN possible (eventually) with all DBEs performing a CUF and being credited appropriately.

Success would be a goal, (we have an interim goal and are currently working through a disparity study) that is truly representative of the population.

Providing oversight to a DBE program that has the full support and understanding by the state DOT from top to bottom.

Oversight objectives and methods: Data quality control (data is complete and accurately reported), risk-based and complaint directed oversight of CUF issues, monthly monitoring of DBE participation and GFE awards (providing feedback on contract goal adjustment needed and reviewing GFE evaluations when bidder failed to meet the goal by a significant margin), fair distribution of DBE participation among DBEs (measured by changes in Gini coefficient) and variety of actions taken for a more equitable distribution of DBE participation (CUF and certification scrutiny of top DBE firms (RBSO) and targeted marketing of DBE/SS to firms with lower amounts of DBE participation to increase their participation).

Having written processes that are reviewed regularly demonstrating compliance, having a knowledgeable DBE staff and demonstrating this knowledge through their actions - adherence to the DBE regulatory requirements -this involves everyone throughout DOT including leadership demonstrating through their actions (issuing sanctions, federal aid non participatory -for noncompliance). No one person or one office can do this alone.

Successful administration and oversight of the DBE program is defined by overall goal attainment accompanied by regular and reasonable compliance activities.

Having very good communications and relationships with staff regarding the DBE Program. exceeds its annual DBE goal. has exceeded the Civilian Labor Force Demographics for DBE participation on projects. The number of contractors that graduate from the DBE program and become successful primes in XX. The state actively works at getting DBEs on projects, and sanctioning EEO noncompliant primes.

State has a good certification process and DBEs are getting work and are successful.

I define success when State Transportation Agency is in compliance with all DBE rules and regulations and DBEs are benefitting from the program based on the DBE goals and objectives.

No surprises!

We measure success by whether we meet the statewide DBE goal, while also ensuring DBE firms can compete for federal aid contracts.

Success in DBE Program Administration and Oversight is when all goals, plans, and objectives in this area are met following all applicable regulatory requirements.

Success in DBE program administration and oversight is the ability to ensure that the program is administered in accordance with the regulatory requirements leading to the successful graduation of program participants to Prime contractors and the eventual movement to a completely RN program.

I define success when State DOT’s personnel involve in the DBE program administration (e.g. DBE specialist, project engineers and inspector) understand and implement meeting the DBE goal and no complaints filed

A successful DBE program would show a commitment and an adherence to all DBE regulations with an understanding that demonstrating this commitment includes issuing sanctions for non-compliance. It would be an understanding throughout DOT that the DBE goal is a Departmental goal that is a shared responsibility. Finally, it would be a program where a more varied group of DBEs obtain work.

For the above information, I do not keep that data on hand. Will have to go to the State to obtain. However, the fact that you have asked for this data represents a great risk. See response to 16 below and herein. To answer Q.13 - That the program is being implemented consistent with Federal law and regulations. That DBE firms are able to compete for and obtain prime contracts and subcontracts in both the DOT construction and consulting programs. Consequently, that there is a level playing field for DBE firms in the FHWA Federal-aid Highway program here in . Which means, if on the nonDBE side there are approximately 20% of the firms that obtain 80% of the dollars then it is reasonable to expect that on the DBE side approximately 20% of the certified DBE firms will obtain 80% of the dollars. The DBE program does not guarantee any DBE a contract. Just like no nonDBE is ever guaranteed a contract. The highway construction and highway consulting industries are tough, competitive, dog-eat-god environments and the best thrive, the average survive, and the weak die. Week nonDBE firms do not get contracts. Weak DBE firms do not get contracts. This is how it should be. Stop trying to tilt the DBE program towards the weak DBEs. The purpose of the program should be to grow strong DBE firms, construction and consulting, that will survive when the DBE program ends.

Success is defined as having a compliant program with few problems. DOT and I work closely to resolve all issues.

DBE goals are being met, and DBE firms are becoming a sustainable business in the process. The Contractors Association actively supports and encourages industry participation. DOT continues Increasing the number of DBE’s thru advertising during GroBiz Conference. Help DOT navigate new and State Statutes, and in State preference programs.

I define success in the Administration and Oversight by utilizing the tools ( DBE program procedures, CUF’s reviews, program site visits and other reports) to measure the program and make changes where needed.

Having a program that meeting regulation compliance.

Success is the combination of meeing the program requirements while consistently improving toward accomplishing the intent of the program. The intent of the program is to create opportunities for minorities that would be present minus the presence of discrimination.

The SHA has a program that attains the DBE goal and has regular and reasonable compliance activities.

When the STA’s structure is effective and staffing is adequate and trained; and, reviews of various program components show consistently good administration of the program, despite a few areas from time to time that may need improvement. When those areas are identified and the state is responsive in addressing them, we are successful.

My definition of success in DBE Program Administration and Oversight, is monitoring using an interdisciplinary approach. To achieve this would take educating Civil Rights Specialist in addition to training the Division and State engineers who are our “eyes and ears” in the field.

That the annual goals are being met and the number of race neutral participant’s percentages are increasing.
Success will occur when the Civil Rights Program Managers (Civil Rights Program Managers) can operate in a proactive manner as opposed to being reactive in the implementation of the DBE Program. The reactive approach is counterintuitive to the intent of the overall DBE Program.

Success is clearly identifying program accomplishments and needs for improvements while working in partnership with the State DOT and other disciplines in the DO and OCR to meet DBE Program goals.

My primary focus is on assuring an ever increasing percentage of race neutral work to DBE firms.

That the annual goals are being met and the numbers

Success will occur when the Civil Rights Program Managers (FHWA & State DOTs) can proactively create and implement a strategic DBE Program. In my humble opinion, the program is currently being administered as a clerical function absent the authority and tools required to be effective. The FHWA Civil Rights Program Manager should have the authority to guide the STAs based on business forecasts and the needs of the stakeholder’s (STA & Small Businesses). Unfortunately, the intent of the DBE program becomes myopic which results in an emphasis on clerical activities.

As stated above, I believe the foundation of success is built upon the relationship/collaboration we develop and maintain with our state partners. Then with the: verification of their effective and compliant implementation of their DBE Program; providing the appropriate technical assistance, education, training and partnership when needed and in a timely manner; we have a program that is continuously improving and is substantially compliant with a goal of 100% compliance.

By providing assistance as needed, meeting with the state on a regular basis, and conducting reviews

Success means fidelity to the regulations, equitable treatment of all program participants (DBEs, non-DBEs, primes, LPAs), and movement toward achieving all statutory program aims.

Ensuring compliance with the regulations and achieving the regulatory aims of the program.

I define success in DBE Program Oversight as a strong relationship built on respect between the State DOT and the Division office which allows for transparent and open communication on all elements of the program. The DOT understands that the program is a State administered, federally funded program, and makes decisions/ provides direction for the programs unilaterally when appropriate, and in conjunction with the Division office, if necessary. The Division office is confident and trusting that the DOT makes good faith efforts to comply with all federal regulations and laws. The Division office also regularly verifies that the DOT is compliant. Successful oversight should produce increasingly successful programs, and strong relationships.

Successful program admin and oversight occurs when there is full federal and state program buy-in and support at all levels, from senior management to those DBE professionals that manage the day to day activities of the program. Success also requires that DBE program managers and administrators be very knowledgeable of program requirements, but also that they have a clear understanding of the intent of those requirements which must be clearly communicated from the top.
<table>
<thead>
<tr>
<th>Rank_Discussion</th>
<th>Rank_Reports</th>
<th>Rank_Ad_Hoc</th>
<th>Rank_Program_Reviews</th>
<th>Rank_Other_Assessments</th>
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Other Assessment is referring specifically to the Baseline Assessment.

Reports from the field (meeting notes from projects), DOT staff who want to remain anonymous but let me know what is really going on, Division engineers bringing DBE issues to my attention.

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</table>

A NRT review of the program was completed in 2010, and an overall CR program assessment was completed in 2011. Both provided assurance that the program is satisfactory. Beginning in 2013, staffing has had several changes, but believe it is now somewhat stable.

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<thead>
<tr>
<th>Rank_Reports</th>
<th>Rank_Ad_Hoc</th>
<th>Rank_Program_Reviews</th>
<th>Rank_Other_Assessments</th>
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</table>

There is value in listening to the feedback from the contracting community. It's imperative the we (FHWA) understand the wants, needs and obstacles from a business perspective while administering the DBE/Small Business program.

<table>
<thead>
<tr>
<th>Rank_Reports</th>
<th>Rank_Ad_Hoc</th>
<th>Rank_Program_Reviews</th>
<th>Rank_Other_Assessments</th>
<th>Rank_Cap_Core</th>
<th>Rank_Other_CR</th>
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</table>

Interaction with DBEs and other stakeholders.

Case studies WOULD be very helpful. Problem to solution practiced across the nation. Q&A are also very helpful.
I couldn't select N/A

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<tr>
<th>1</th>
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The greatest value is obtained from listening to the concerns from the contracting community. I believe the current practice of administering the DBE program from the top down is an ineffective approach.

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CUF review reports
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<tr>
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<th>Risk_Rank_4 Explain</th>
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<tr>
<td>Contract Sanctions</td>
<td>Contract Goal setting</td>
<td>Substitution and Replacement</td>
<td></td>
</tr>
<tr>
<td>Prompt Pay</td>
<td>Trucking</td>
<td>The State’s lack of effective quality assurance/internal control procedures</td>
<td>new staff responsible for program</td>
</tr>
<tr>
<td>The State’s lack of effective quality assurance/internal control procedures</td>
<td>CUF</td>
<td>Contract Goal setting</td>
<td>#1 will promote effective procedures in all elements of the program #2 because of the risk of fraud, waste, and abuse of federal funds #3 and overall state goal setting methodology - these set the program! If you have appropriate goals, GFE and substitution/replacement become less of an issue (among other things) because the goals are realistic and attainable</td>
</tr>
<tr>
<td>Contract Goal setting</td>
<td>DBE Supportive Services</td>
<td>The number of DBEs who obtain prime contracts or sub-contracts on Federal-aid projects</td>
<td></td>
</tr>
<tr>
<td>Quality of the State’s data used for DBE program management or reporting</td>
<td>Prompt Pay</td>
<td>Use of a running tally</td>
<td></td>
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<tr>
<td>Other (please specify)</td>
<td>Other (please specify)</td>
<td>Other (please specify)</td>
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<tr>
<td>Quality of the State’s data used for DBE program management or reporting</td>
<td>Quality of the State’s data used for DBE program management or reporting</td>
<td>Contract Sanctions</td>
<td>Lack of written procedures and processes, lack of using contract sanctions - non compliance continues because no one is held accountable</td>
</tr>
<tr>
<td>CUF</td>
<td>Goal Attainment</td>
<td>Return of Retainage</td>
<td></td>
</tr>
<tr>
<td>Use of a running tally</td>
<td>CUF</td>
<td>The State’s lack of effective quality assurance/internal control procedures</td>
<td>2016 Risk scores indicated a need to test the new EOC tracking system. DOT has an extensive and exhaustive CUF process, which though positive, can be off putting to Contractors in a race neutral environment. Reasonable interpretation of rules coupled with an understanding of industry practice is necessary to mitigate risk. While CUF is omnipresent, it falls to the contract compliance program to monitor. As far as I can tell, DOT has no process for assessing its overall program administration. Rather, it expects the Division to do this.</td>
</tr>
<tr>
<td>The State’s lack of effective quality assurance/Internal control procedures</td>
<td>The number of DBEs who obtain prime contracts or sub-contracts on Federal-aid projects</td>
<td>Goal Attainment</td>
<td>Uniformed Reports. DOT DBE tracking system or lack thereof.</td>
</tr>
<tr>
<td>Quality of the State’s data used for DBE program management or reporting</td>
<td>Goal Attainment</td>
<td>Use of a running tally</td>
<td></td>
</tr>
<tr>
<td>Goal Attainment</td>
<td>Contract Goal setting</td>
<td>Use of a running tally</td>
<td></td>
</tr>
<tr>
<td>Goal Attainment</td>
<td>The number of DBEs who obtain prime contracts or sub-contracts on Federal-aid projects</td>
<td>Prompt Pay</td>
<td>Uniform Report of DBE Commitments/Awards and Payments 2015; Prompt Payment Review 2014</td>
</tr>
<tr>
<td>DBE Certification</td>
<td>The State’s lack of effective quality assurance/Internal control procedures</td>
<td>CUF</td>
<td>Third party complaints; discussions with State DOT/DBEs/AGC; CAP and/or process reviews</td>
</tr>
<tr>
<td>CUF</td>
<td>DBE Certification</td>
<td>The number of DBEs who obtain prime contracts or sub-contracts on Federal-aid projects</td>
<td>Because of a lack of State resources, not all CUF are getting done. DBE certification relates to time and resources spent on reviewing DBEs from out of states. For so long the State has focused on getting more firms certified, but yet our numbers may show that only a small number of individual DBEs are actually get contracts. Based on discussions with DOT, some out of state DBEs want to get on the directory and are not attempting to get any work in DOT this means they are not actively pursuing work in the state.</td>
</tr>
<tr>
<td>DBE Certification</td>
<td>CUF</td>
<td>Prompt Pay</td>
<td></td>
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<tr>
<td>DBE Certification</td>
<td>Other (please specify)</td>
<td>Other (please specify)</td>
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<tr>
<td>Goal Attainment</td>
<td>Trucking</td>
<td>Quality of the State’s data used for DBE program management or reporting</td>
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<tr>
<td><strong>CUF</strong></td>
<td>Goal Attainment</td>
<td>Prompt Pay</td>
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<tr>
<td><strong>The number of DBEs who obtain prime contracts or sub-contracts on Federal-aid projects</strong></td>
<td>Substitution and Replacement</td>
<td>The State’s lack of effective quality assurance/internal control procedures</td>
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<tr>
<td><strong>Other (please specify)</strong></td>
<td>DBE Certification</td>
<td>The number of DBEs who obtain prime contracts or sub-contracts on Federal-aid projects</td>
<td>For Other, the risk is that US DOT will make changes to the DBE rules that have a negative impact on the successful DBE program here. For DBE certification, the risk is that other states will improperly conduct certification and either unduly burden firms with inappropriate paperwork (too much) or will allow ineligible firms to be certified (too little). For No. 3 DOT has a strong number of DBE consultants that obtain prime contracts, however we have a very limited number of DBE construction contractors that are able to obtain prime contracts. For risk No. 1, see comment above in 13. US DOT and FHWA seem to want to tilt the program towards the weak DBE firms. Some people seem to think it would be great if every certified DBE in every state got one or two contracts. In fact that would be terrible, because it would mean that no DBE got more than 1 or 2 contracts. Therefore when the DBE program ends every single DBE firm would go out of business. The purpose of the program is to grow strong DBE firms that graduate during the program (and WisDOT has had many firms graduate) and firms that grow strong during the program and survive when the DBE program ends. The strong DBE firms should grow and prosper in the same manner that the strong nonDBE grow and prosper. Don't weaken the strong DBE firms by trying to take work away from them by trying to force feed work to weak DBE firms.</td>
</tr>
<tr>
<td><strong>Prompt Pay</strong></td>
<td>Return of Retainage</td>
<td>Goal Attainment</td>
<td>I am not certain of the process DOT uses to monitor prompt pay or return of retainage, but plan to do a review of these. Also, ADOT submits monthly report on DBE goal attainment to the DA.</td>
</tr>
<tr>
<td><strong>Other (please specify)</strong></td>
<td>Other (please specify)</td>
<td>Other (please specify)</td>
<td>#1 - Staffing, #2- Over utilization of current DBE’s, #3- Funding uncertainty</td>
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<tr>
<td><strong>Goal Attainment</strong></td>
<td>The number of DBEs who obtain prime contracts or sub-contracts on Federal-aid projects</td>
<td>Quality of the State’s data used for DBE program management or reporting</td>
<td>Uniformed reports and DOT’s DBE tracking system</td>
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<tr>
<td><strong>GFE</strong></td>
<td>CUF</td>
<td>Prompt Pay</td>
<td>CUF</td>
</tr>
<tr>
<td><strong>DBE Certification</strong></td>
<td>The number of DBEs who obtain prime contracts or sub-contracts on Federal-aid projects</td>
<td>DBE Supportive Services</td>
<td>These three Risks are all related to the comments that were made by or discussions that took place during the DBE Oversight Review teams visit. They are directly related to utilization. Utilization is low. Areas that we can look at in order to improve the utilization are DBE certification and DBE SS.</td>
</tr>
<tr>
<td><strong>The State’s lack of effective quality assurance/internal control procedures</strong></td>
<td>CUF for bulk items</td>
<td>DBE Certification</td>
<td>Per the DBE compliance reviews conducted in the last year.</td>
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<td><strong>CUF for bulk items</strong></td>
<td>GFE</td>
<td>Use of a running tally</td>
<td><strong>Goal Attainment</strong></td>
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<td><strong>Goal Attainment</strong></td>
<td>The State’s lack of effective quality assurance/internal control procedures</td>
<td>CUF</td>
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<td>DBE Certification</td>
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<td>Quality of the State’s data used for DBE program management or reporting</td>
<td>The State’s lack of effective quality assurance/internal control procedures</td>
<td>Use of a running tally</td>
<td>CUF</td>
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<td>Quality of the State’s data used for DBE program management or reporting</td>
<td>The number of DBEs who obtain prime contracts or sub-contracts on Federal-aid projects</td>
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<td>The number of DBEs who obtain prime contracts or sub-contracts on Federal-aid projects</td>
<td>Contract Goal setting</td>
<td>Goal Attainment</td>
<td>Prompt Pay</td>
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<tr>
<td>DBE Supportive Services</td>
<td>DBE Certification</td>
<td>Trucking</td>
<td>DBE Certification</td>
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<td>Quality of the State’s data used for DBE program management or reporting</td>
<td>The number of DBEs who obtain prime contracts or sub-contracts on Federal-aid projects</td>
<td>Contract Goal setting</td>
<td>CUF</td>
</tr>
<tr>
<td>Risk #1: errors and lack of availability of data from reports (formal and informal). Risk #2: loss of CR staff (down to 1) means no CR staff performing reviews. Risk #3: single audit finding verified by sample performed by Division.</td>
<td>Contract Goal setting</td>
<td>Goal Attainment</td>
<td>Prompt Pay</td>
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<td>The State’s lack of effective quality assurance/internal control procedures</td>
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<td>DBE Certification</td>
<td>Prompt Pay</td>
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<tr>
<td>Prompt Pay</td>
<td>GFE</td>
<td>Return of Retainage</td>
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<tr>
<td>GFE</td>
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<tr>
<td>Targeted training geared towards State DOT DBE Program Management and Oversight; Other</td>
<td>Consistent and timely guidance.</td>
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<tr>
<td>Targeted training geared towards State DOT DBE Program Management and Oversight; General Guidance Documents</td>
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<tr>
<td>Targeted training geared towards FHWA CR Program Manager knowledge, skills and abilities; Other</td>
<td>Tools to facilitate the implementation of RBSO of the DBE program; Suite of tools and power point slides which Division staff can modify/personalize as needed; More sources for Direct Technical Assistance; Successful Practice Information; Templates</td>
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<tr>
<td>General Guidance Documents; Targeted training geared towards State DOT DBE Program Management and Oversight; Successful Practice Information</td>
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<tr>
<td>Targeted training geared towards State DOT DBE Program Management and Oversight; Other</td>
<td>Tools to facilitate the implementation of RBSO of the DBE program; Suite of tools and power point slides which Division staff can modify/personalize as needed; More sources for Direct Technical Assistance; Successful Practice Information; Templates; Targeted training geared towards State DOT DBE Program Management and Oversight; Other</td>
<td></td>
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<tr>
<td>Targeted training geared towards FHWA CR Program Manager knowledge, skills and abilities; General Guidance Documents; Tools to facilitate the implementation of RBSO of the DBE program; Suite of tools and power point slides which Division staff can modify/personalize as needed; More sources for Direct Technical Assistance; Successful Practice Information; Templates</td>
<td>On demand training videos, staff that you can call to help you (need more that understand the program and can assist you), stronger backing from Headquarters and leadership for the Division</td>
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<tr>
<td>Tools to facilitate the implementation of RBSO of the DBE program; General Guidance Documents</td>
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<tr>
<td>Targeted training geared towards State DOT DBE Program Management and Oversight; General Guidance Documents; Tools to facilitate the implementation of RBSO of the DBE program; Templates; Targeted training geared towards FHWA CR Program Manager knowledge, skills and abilities</td>
<td>More National Reviews of the entire DBE Program in each state.</td>
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<tr>
<td>Tools to facilitate the implementation of RBSO of the DBE program; General Guidance Documents; Other</td>
<td>Policies and procedures that communicate a consistent message for implementation (consistent SOPs); HQs could also do a better job of being more responsive to questions/ issues brought to them by the field; allow more field staff to attend national conferences/meetings where DBE is prevalent on the agenda (the Southern Transportation Civil Rights Training Symposium is a good example - could use more of these type forums in other parts of the country; networking with/ learning about what other States/ Divisions are doing can be extremely beneficial to field offices); provide training on DBE goals/ procedures as relates to alternate contracting methods (Design Build, Public Private Partnerships, et al).</td>
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<tr>
<td>General Guidance Documents; Tools to facilitate the implementation of RBSO of the DBE program; Suite of tools and power point slides which Division staff can modify/personalize as needed; Successful Practice Information; Templates</td>
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</table>
The Division will be transitioning to a new CR Specialist in the coming months, DOT's CR Program manager is new to her position (less than 1 year), and the DBE Coordinator has been in her position less than 6 months. Most of the above options would be beneficial to the success of the program.

To be honest, the best way for HQ or the Resource center to better help the Division Office would be for HQ and the Resource Center to become smarter about the DBE program. Specifically, to get past the belief that nonDBE contractors and consultants are the enemy, are evil, and cannot be trusted. And that Good Faith Waivers are bad. The key to a successful state DBE program is trust. The stateholders work together to draft guidance for good faith efforts. The industry trusts that the State will reasonably interpret and apply that guidance. The State trusts contractors when they submit their documents and their waiver requests. The state then grants the request and uses the remaining goal setting authority on other projects. NonDBE prime contractors are therefore not motivated to lie and therefore you do not have CUF violations. Instead the goal setting authority is used to provide honest work for legitimate DBE firms. And, here is Wisconsin, the trust leads to meeting/exceeding the annual goal such that the last lets of each FY are usually without race conscious goals.
Targeted training geared towards State DOT DBE Program Management and Oversight; General Guidance
Documents; Tools to facilitate the implementation of RBSO of the DBE program; Suite of tools and power point slides which Division staff can modify/personalize as needed; Successful Practice Information; Templates

Targeted training geared towards FHWA CR Program Manager knowledges, skills and abilities; Targeted training geared towards State DOT DBE Program Management and Oversight; General Guidance Documents; Suite of tools and power point slides which Division staff can modify/personalize as needed; Successful Practice Information; More sources for Direct Technical Assistance

General Guidance Documents

Targeted training geared towards FHWA CR Program Manager knowledges, skills and abilities; Targeted training geared towards State DOT DBE Program Management and Oversight; General Guidance Documents; Suite of tools and power point slides which Division staff can modify/personalize as needed; Successful Practice Information; Templates

Successful Practice Information; Templates; Tools to facilitate the implementation of RBSO of the DBE program

There needs to be consistency in the implementation of the program. Best practices are not readily available.

Targeted training geared towards FHWA CR Program Manager knowledges, skills and abilities; Targeted training geared towards State DOT DBE Program Management and Oversight; General Guidance Documents; Tools to facilitate the implementation of RBSO of the DBE program; Suite of tools and power point slides which Division staff can modify/personalize as needed; More sources for Direct Technical Assistance; Successful Practice Information; Templates

General Guidance Documents; Suite of tools and power point slides which Division staff can modify/personalize as needed; Successful Practice Information; Templates

Targeted training geared towards FHWA CR Program Manager knowledges, skills and abilities; Suite of tools and power point slides which Division staff can modify/personalize as needed; More sources for Direct Technical Assistance

Suite of tools and power point slides which Division staff can modify/personalize as needed; Targeted training geared towards FHWA CR Program Manager knowledges, skills and abilities; Targeted training geared towards State DOT DBE Program Management and Oversight; General Guidance Documents; Tools to facilitate the implementation of RBSO of the DBE program; Successful Practice Information; Templates

Other; Templates; Successful Practice Information; Suite of tools and power point slides which Division staff can modify/personalize as needed; Tools to facilitate the implementation of RBSO of the DBE program

Provide the neutrality to provide oversight of the Civil Rights Program.

Targeted training geared towards FHWA CR Program Manager knowledges, skills and abilities; Targeted training geared towards State DOT DBE Program Management and Oversight; General Guidance Documents; Suite of tools and power point slides which Division staff can modify/personalize as needed; More sources for Direct Technical Assistance; Templates
<table>
<thead>
<tr>
<th>General Guidance Documents; #Templates; #More sources for Direct Technical Assistance; #Suite of tools and power point slides which Division staff can modify/personalize as needed; #Successful Practice Information</th>
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</thead>
<tbody>
<tr>
<td>Thank you!</td>
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<tr>
<td>More sources for Direct Technical Assistance; #Templates; #Targeted training geared towards State DOT DBE Program Management and Oversight; #Targeted training geared towards FHWA CR Program Manager knowledges, skills and abilities</td>
</tr>
<tr>
<td>Targeted training geared towards State DOT DBE Program Management and Oversight; #More sources for Direct Technical Assistance; #General Guidance Documents</td>
</tr>
<tr>
<td>Targeted training geared towards FHWA CR Program Manager knowledges, skills and abilities; #Targeted training geared towards State DOT DBE Program Management and Oversight; #General Guidance Documents; #Tools to facilitate the implementation of RBSO of the DBE program; #Suite of tools and power point slides which Division staff can modify/personalize as needed; #More sources for Direct Technical Assistance; #Successful Practice Information; #Templates</td>
</tr>
<tr>
<td>The RC is not useful at all--they say they do not have training for our particular needs. HCR is helpful with particularized answers, but it's dependant on Martha's availability.</td>
</tr>
<tr>
<td>Targeted training geared towards State DOT DBE Program Management and Oversight; #Targeted training geared towards FHWA CR Program Manager knowledges, skills and abilities; #Tools to facilitate the implementation of RBSO of the DBE program; #More sources for Direct Technical Assistance; #Successful Practice Information; #Templates</td>
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</table>


## State Transportation Agency (STA) Responsibilities

### Subpart A: General

1. Does your DBE Program create and maintain a bidders list of all firms who bid or quote and captures the age and average gross receipts of the firms? (49 CFR 26.11 (c))

2. Does all financial agreements have the required DBE program assurance statements incorporated? (49 CFR 26.13(a))

3. Does all prime and subcontracts have required DBE program assurance statements incorporated? (49 CFR 26.13(b))

### Subpart B: Administrative Requirements

1. Does your DBE program currently approved by FHWA incorporate all of the latest USDOT regulatory requirements and guidance as amended? (49 CFR 26.21(b))

2. Do the STA’s DBE program apply to all sub-recipients? 49 CFR 26.21(a)(1))

3. Is the DBE program document with a policy statement distributed internally and externally? (49 CFR 26.23)

4. Do your DBE Liaison Officer have a clear line of communication and authority for direct and independent access to the CEO? (49 CFR 26.25)

5. Is the DBE Liaison Officer responsible for the day-to-day implementation of all aspects of your DBE program? (49 CFR 26.25)

6. Does the STA have a prompt payment/retainage provision in its contract that identifies one of the three options? (49 CFR 26.29(b)(1)(2)(3))

7. If retainage is held from prime contractors are incremental acceptances performed? (49 CFR 26.29 (b)(3))

8. Does your DBE program provide appropriate means to enforce prompt payment and return of retainage? (49 CFR 26.29(a)(1))

9. Does your DBE program provide for specific contract administration monitoring techniques that ensures prompt payments are made? (Consideration: contract clause, receipt of cancelled check) (49 CFR 26.29(e)(2)(3))

10. Is the STA’s DBE directory maintained and updated consistently? (Consideration: monthly) (49 CR 26.31)

11. Does the STA DBE program have to address over-concentration? (49 CFR 26.33)

12. Does the STA conduct compliance reviews, audits and/or assessments of all program participants, (e.g., contractors, and other state and local governments/agencies)? (49 CFR 26.37(a))

13. Does the STA have a monitoring and enforcement mechanism that ensures work committed to DBEs is actually performed? (49 CFR 37(b))

14. Does the STA have a mechanism, such as a computer program, that provides for a running tally of DBE commitments, awards and payments? (49 CFR 26.37(b))

15. Does your DBE program apply to all federal-aid highway funds expended on contracts? (Consideration, construction, professional services, management services, etc.) (49 CFR 26.21(a) (1))
### DBE-Goals & Good Faith Efforts

#### Subpart C: Goals/Good Faith Efforts/Counting:

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<th>Yes</th>
<th>No</th>
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<tbody>
<tr>
<td>1.</td>
<td>Is the STA’s overall goal setting methodology in the step one process based on demonstrable evidence of the relative availability of ready, willing, and able DBEs to participate in DOT-assisted contracts in your market? (Consideration: one of the examples recognized by USDOT) (49 CFR 26.45(b))</td>
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<td>2.</td>
<td>To establish the Step 1 base figure, do you use data source(s) such as DBE directory, bidders list, disparity study, and/or census bureau data? (49 CFR 27.45(c)(d))</td>
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<td>3.</td>
<td>Does your Step 2 adjustment of your base figure indicate types of evidence such as disparity study, current capacity, etc.? (49 CFR 26.45 (f)(3))</td>
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<td>4.</td>
<td>When you submit your annual overall goal by August 1 of each year, does it include: methodology, summary listing of evidence, and projections for race neutral and race conscious goal attainment? (49 CFR 26.45(f)(1)(3); also (49 CFR 26.51) (c)(d))</td>
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<tr>
<td>5.</td>
<td>Does the STA have a currently approved DBE overall annual goal for the current fiscal year? (49 CFR 26.45) &amp; (49 CFR 26.47)</td>
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<td>6.</td>
<td>Was the DBE annual goal submitted for approval by the beginning of the applicable fiscal year? (49 CFR 26.45(f)(1))</td>
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<td>7.</td>
<td>If you are a recipient of any of the three administrations (FHWA, FAA, and FTA), did you set a separate goal for each of the administrations? (49 CFR 26.45) (e)(1)(2)</td>
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<td>8.</td>
<td>In establishing your overall goal, do you provide for public participation to include: consultation with minority, women and general contractor groups, etc.? (49 CFR 26.45) (g)(1))</td>
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<td>9.</td>
<td>Do you publish a notice announcing your proposed overall goal for 30 days and inform the public that you will accept comments for 45 days? (49 CFR 26.45) (g)(2))</td>
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<td>10.</td>
<td>Does the STA attempt to meet the maximum portion of their overall goal by race neutral means? (49 CFR 26.51(a))</td>
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<tr>
<td>11.</td>
<td>Does the STA count as race neutral contracts won by DBE primes, DBE subcontracts when there is no contract goal, and primes that do not consider DBE status? (49 CFR 26.51(a))</td>
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<td>12.</td>
<td>As a means of achieving race neutral participation, does the STA utilize options such as unbundling large contracts, providing technical assistance, implementing supportive services, etc.? (49 CFR 26.51(b)(1-9))</td>
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<td>13.</td>
<td>Does the STA establish contract goals based upon factors such as type of work, location, DBE and availability, that cumulatively result in meeting only the portion of the overall goal that cannot be met through race-neutral means? (49 CFR 26.51(e)(2))</td>
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<td>14.</td>
<td>Does the STA contract provisions incorporate the good faith effort guidance in Appendix A of the DBE program requirements? (49 CFR 26.53(a)(2))</td>
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<td>15.</td>
<td>Does the STA reduce or eliminate contract goals when it is determined that the overall goal will be exceeded? (49 CFR 26.51(f)(2))</td>
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<td>16.</td>
<td>Does the STA in its running tally capture DBE participation on all contracts with or without contract goals? (49 CFR 26.51(g))</td>
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<td>17.</td>
<td>Are all bidders required to submit DBE information, i.e., name, description of work, and dollar amount before award of the contract? (49 CFR 26.53(b)(2) &amp; (c))</td>
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<td>18.</td>
<td>When a DBE goal has been established, are bidders required to submit DBE information at any time before the STA commits to the performance of the contract? (49 CFR 26.53(b)(3))</td>
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<td>19.</td>
<td>Does the STA require as a condition of award the submission of the DBE information including the name, description of work, dollar amount, written documentation of commitment, and written confirmation from the DBE that it is participating in the contract? (49 CFR 26.53) (b)(2) &amp; (c)</td>
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<td>20.</td>
<td>Does the evidence of good faith efforts provided by the bidder document those efforts to meet the goal, even though such efforts did not succeed in obtaining enough DBE participation to do so? (49 CFR 26.53(a)(2))</td>
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## Subpart C: Goals/Good Faith Efforts/Counting (Continued)

<table>
<thead>
<tr>
<th>Question</th>
<th>Yes</th>
<th>No</th>
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<tbody>
<tr>
<td>21. Does the STA provide an opportunity for administrative consideration when it determines the apparent successful bidder failed to meet good faith efforts? (49 CFR 26.53(d))</td>
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<tr>
<td>22. Are reconsideration decisions made by an official who did not take part in the original good faith effort determinations? (49 CFR 26.53(d)(2))</td>
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<tr>
<td>23. If a goal has been established in a design-build, turnkey project, does the recipient maintain oversight of the master contractor goals and other requirements? (49 CFR 26.53) (e)</td>
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<tr>
<td>24. Does the STA require prime contractors to make good faith efforts when replacing DBE subcontractors for any reason? (49 CFR 26.53(f)(1) &amp; (2))</td>
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<tr>
<td>25. Does the STA have a procedure that requires STA approval of the substitution and/or replacement of DBEs for good cause when replacing DBE subcontractors for any reason? (49 CFR 26.53(f)(1) &amp; (2))</td>
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<tr>
<td>26. Does the STA contract provisions include administrative remedies that will be invoked if prime contractors fail to comply with good faith efforts? (49 CFR 26.53 (f)(3))</td>
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<tr>
<td>27. Does the STA count toward contract goals the value of work only if the DBE performs a Commercially Useful Function (CUF), when a DBE is responsible for a distinct element of the contract work and it carries out its responsibilities by actually performing, managing and supervising the work involved? (49 CFR 26.55(c)(1))</td>
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<tr>
<td>28. Does the STA count toward contract goals the value of work performed by DBE's own forces and does not count equipment leased and/or material purchased from the prime contractor? (49 CFR 26.55(a)(1))</td>
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<tr>
<td>29. When a DBE subcontracts part of his/her work to a non-DBE, does the STA have a mechanism to deduct that amount from the overall contract goal? (49 CFR 26.55)(a)(3))</td>
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<tr>
<td>30. In a joint venture, does the STA count only the defined portion of work a DBE performs with his/her own forces? (49 CFR 26.55(b))</td>
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<tr>
<td>31. Does the STA DBE program require the DBE to perform at least 30% of their work and does not allow DBEs to serve as an extra participant in the contract? (49 CFR 26.55(c)(2)(3))</td>
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<tr>
<td>32. Does the STA count towards the contract goal the value of materials and supplies used on the contract work only if the DBE is responsible for paying for the material and supply? (factor – joint checks) (49 CFR 26.55)(c)(2))</td>
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<tr>
<td>33. When a STA presumes that a DBE is not performing a CUF, do they allow the DBE to present evidence to rebut this presumption? (49 CFR 26.55)(c)(4))</td>
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<tr>
<td>34. Does the STA DBE program allow DBE truckers to count leased trucks from DBEs and non-DBE truckers toward the goal appropriately? (49 CFR 26.55)(3)(4)(5))</td>
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<td>35. Does the STA DBE program allow for appropriate counting for manufacturers, regular dealers and packagers and brokers? (49 CFR 26.55)(e)(1) &amp; (2)(ii)(c))</td>
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<tr>
<td>36. If a DBE firm’s certification eligibility is removed during performance of a subcontract, does the STA have a process to deduct that subcontract amount from the overall goal? (49 CFR 26.55)(f)(g))</td>
<td></td>
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<tr>
<td>37. Does the STA have a process to ensure a contractor’s final compliance with DBE obligations based on payment to DBEs? (49 CFR 26.55)(h))</td>
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## Subpart D: Certification Standards

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<thead>
<tr>
<th>Question</th>
<th>Value</th>
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<tbody>
<tr>
<td>1. Does your UCP require individuals who are not presumed to be socially and economically disadvantaged to prove to you by a preponderance of evidence that they are socially and economically disadvantaged? (49 CFR 26.61)(d)</td>
<td></td>
</tr>
<tr>
<td>2. Does your UCP consider all the facts in the record viewed as a whole when making determinations concerning an individual's or firm's eligibility, (i.e., ownership, membership, control, etc.)? (49 CFR 26.61(e))</td>
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### Subpart D: Certification Standards (Continued)

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<tr>
<td>3.</td>
<td>When questioning an individual's claim of membership in a particular group, does your UCP provide written explanation of your reasons, and request additional information consistent with that asked of all groups? (49 CFR 26.63(a)(2)(3))</td>
<td>Yes No ?</td>
</tr>
<tr>
<td>4.</td>
<td>Does your UCP in making membership group determinations consider: whether a person has held himself out to be a member over a long period of time; whether person is regarded as member of group by relevant community, etc.? (49 CFR 26.63(b))</td>
<td>Yes No ?</td>
</tr>
<tr>
<td>5.</td>
<td>Does your UCP allow individual demonstration of social and economic disadvantage for persons claiming membership in a presumed disadvantaged group but who you determined not to be a member? (49 CFR 26.63(b)(1))</td>
<td>Yes No ?</td>
</tr>
<tr>
<td>6.</td>
<td>Does your UCP deny certification to firms who meet the SBA size requirements but who exceed the 3 year average annual gross receipts under the USDOT size limit threshold? (49 CFR 26.65(b))</td>
<td>Yes No ?</td>
</tr>
<tr>
<td>7.</td>
<td>Are all rebuttably presumed disadvantaged group members required to submit a signed, notarized certification that each disadvantaged owner is socially and economically disadvantaged? (49 CFR 26.67(a))</td>
<td>Yes No ?</td>
</tr>
<tr>
<td>8.</td>
<td>Does your UCP require a personal net worth statement and supporting documentation from each individual owner applying to participate as a DBE, and whose ownership and control are relied upon for DBE certification? (49 CFR 26.67(2)(i)(ii))</td>
<td>Yes No ?</td>
</tr>
<tr>
<td>9.</td>
<td>In determining an individual's personal net worth, does your UCP: (1) exclude ownership interest in the applicant firm; (2) exclude equity in primary residence; (3) does not use contingent liability; and (4) include only present value held in vested pension plans? (49 CFR 26.67(2)(iii)(A)(B)(C)(D))</td>
<td>Yes No ?</td>
</tr>
<tr>
<td>10.</td>
<td>Does your UCP release an individual's personal net worth statement and supporting documentation only to US DOT in certification appeal proceedings? (49 CFR 26.67(2)(iv))</td>
<td>Yes No ?</td>
</tr>
<tr>
<td>11.</td>
<td>When an individual has exceeded the personal net worth threshold ($750,000), does your UCP deem him/her economically disadvantaged status to be rebutted? (49 CFR 26.67(b)(4))</td>
<td>Yes No ?</td>
</tr>
<tr>
<td>12.</td>
<td>When determining ownership, does your UCP evaluate the 51% ownership of: firm's ownership interest; each class of voting stock, each class of partnership interest, and each member interest? (49 CFR 26.67(b)(1)(2)(3))</td>
<td>Yes No ?</td>
</tr>
<tr>
<td>13.</td>
<td>Does your UCP in evaluating whether a firm's ownership is real and substantial, review who enjoys the customary benefits of ownership, shares in the risks and profits, etc. (49 CFR 26.69(c))</td>
<td>Yes No ?</td>
</tr>
<tr>
<td>14.</td>
<td>Does your UCP count assets held in a revocable living trust only when the same disadvantaged individual is the sole grantor, beneficiary, and trustee? (49 CFR 26.69(d)(1)(2))</td>
<td>Yes No ?</td>
</tr>
<tr>
<td>15.</td>
<td>When expertise is relied upon as a part of a disadvantaged owner's contribution, does your UCP require the owner's expertise be: in specialized field, critical to firm's operation, documented in the record and having a significant financial investment made in the firm? (49 CFR 26.69(f)(1)(2))</td>
<td>Yes No ?</td>
</tr>
<tr>
<td>16.</td>
<td>If a socially and economically disadvantaged individual's interests or other assets in the applicant firm were obtained by divorce settlement, through inheritance, or the death of a former owner, does the UCP always deem such interests acceptable? (49 CFR 26.69(g)(1)(2))</td>
<td>Yes No ?</td>
</tr>
<tr>
<td>17.</td>
<td>For determining ownership, does your UCP disallow assets obtained by individuals because of a gift transfer without adequate consideration? (49 CFR 26.69(h)(1)(2))</td>
<td>Yes No ?</td>
</tr>
<tr>
<td>18.</td>
<td>Does your UCP require non-participating spouses in an applicant firm irrevocably renounce and transfer rights of ownership interest when interest is held jointly or as community property? (49 CFR 26.69(j))</td>
<td>Yes No ?</td>
</tr>
<tr>
<td>19.</td>
<td>In determining whether a potential DBE is an independent business, does your UCP: scrutinize relationships with non-DBEs, evaluate present and recent employer/employee relationships, consider consistency with industry practice, etc.? (49 CFR 26.71(b)(1)(2)(3)(4))</td>
<td>Yes No ?</td>
</tr>
<tr>
<td>20.</td>
<td>Are corporate charters, by-laws, employment contracts, etc., reviewed in evaluating an applicant's ability to control? (49 CFR 26.71(c))</td>
<td>Yes No ?</td>
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### Subpart D: Certification Standards (Continued)

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<tr>
<th>Question</th>
<th>Yes</th>
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<tr>
<td>21. Does your UCP require socially and economically disadvantaged individuals to possess the power to make day to day as well as long term management, policy, and operations decisions? (49 CFR 26.71(d))</td>
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<tr>
<td>22. Is it acceptable in your UCP for DBE firms to have non-socially and economically disadvantaged individuals involved in the firm as long as such individuals are not disproportionately responsible and the DBE owner retains power to hire and fire the person to whom such authority is delegated? (49 CFR 26.71(e)(f))</td>
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<td>23. Does your UCP require the socially and economically disadvantaged owners to possess understanding of, and managerial and technical competence and experience directly related to the type of work of the business? (49 CFR 26.71(g))</td>
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<td>24. In determining control, does your UCP require the social and economically disadvantaged owner to possess the license or credential necessary for a particular line of work according to your state or local law requirements? (49 CFR 26.71(h))</td>
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<td>25. When a socially and economically disadvantaged individual is engaged in employment outside the applicant firm, does your UCP evaluate the circumstances based on such issues as: possible conflicts of interest, time and attention devoted to DBE firm, etc.? (49 CFR 26.71(j))</td>
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<tr>
<td>26. Does your UCP certify firms only for the specific types of work a potential DBE has the ability to control and possess the equipment and key personnel it possesses to perform the work? (49 CFR 26.71(m)(n) &amp; 26.83(c)(4)(5))</td>
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<tr>
<td>27. Is your UCP’s evaluation of DBE firms’ eligibility based on present circumstances only? (49 CFR 26.73(b))</td>
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### Subpart E: Certification Procedures

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<th>Question</th>
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<tbody>
<tr>
<td>1. Is your UCP fully in effect and being fully implemented in accordance with the approved UCP agreement? (49 CFR 26.81 (a)(2))</td>
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<td>2. Do all certification decision makers have expertise on certification regulations, policies, and procedures? (Consideration: training within last 2-3 years, etc.) (49 CFR 26.81(a)(2))</td>
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<tr>
<td>3. Does your UCP provide for one-stop shopping? (49 CFR 26.81(b)(2))</td>
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<td>4. Does your UCP agreement have a challenge process when a member questions a certification decision made by another member? (49 CFR 26.83 &amp; (49 CFR 26.83(d)(e)(3))</td>
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<td>5. Does your UCP require a firm to be certified in its home state before you will process that application? (49 CFR 26.83) &amp; (49 CFR 26.83(d)(e)(3))</td>
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<td>6. Does your UCP maintain a unified certification directory that is electronically on the internet and in print? (49 CFR 26.81(g))</td>
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<td>7. If the firm is working, are job site visits being performed before certification decisions are rendered? (49 CFR 26.83(c)(1))</td>
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<td>8. Do you verify the type of work the firm states it can perform as part of your DBE certification procedures? (49 CFR 26.83(c)(4)(5))</td>
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<td>9. Once a firm is certified, do they remain certified until their eligibility is removed? (49 CFR 26.83(h))</td>
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<td>10. Does your UCP require an annual affidavit with supporting documentation? (Consideration: tax returns) (49 CFR 26.83(j))</td>
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<td>11. Does your UCP process applications within 90 days of receiving a complete application, (i.e., all supporting documents from the applicant firm? (49 CFR 26.83(k))</td>
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<td>12. Does your UCP accept the certification application packages from SBA applicants in lieu of requiring them to complete your application? (49 CFR 26.84(a))</td>
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### Subpart E: Certification Procedures (Continued)

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<th>Question</th>
<th>Yes</th>
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<tr>
<td>13. Does your UCP transmit DBE applications to the SBA upon requests from the DBE or the SBA? (49 CFR 26.85(a)(b))</td>
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<td>14. Does the denial letter include the reasons for denial, opportunity to appeal, and timeframe to apply when your UCP denies a request for initial consideration? (49 CFR 26.85 (a)(b)(c))</td>
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<td>15. Does your UCP require ineligibility complaints to be in writing in order to be processed? (49 CFR 26.87(a))</td>
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<td>16. Does your UCP follow the specific process for removing a firm’s eligibility, (i.e., opportunity for informal hearing, separation of functions, grounds for decision, etc.)? (49 CFR 26.87(d)(e)(f)(g))</td>
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<td>17. When the prime contractor executes a subcontract prior to your notification that the DBE firm is ineligible, do you count the subcontract amount toward the prime contractor’s goal? (49 CFR 26.87(j)(2))</td>
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<td>18. Does your UCP require appeals of denials only to US DOT within 90 days of recipients’ final decision? (49 CFR 26.89(a)(1)(2)&amp; (C) )</td>
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<td>19. Does your UCP remove a firm’s DBE eligibility based solely upon US DOT’s denial decision? (49 CFR 26.91 (b))</td>
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### Subpart F: Compliance and Enforcement

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<th>Question</th>
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<tbody>
<tr>
<td>1. Does the STA have a compliance complaint procedure that affords the ability for anyone to file a written complaint of the STA’s alleged failure to comply with the DBE program requirements? (49 CFR 26.103(a))</td>
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<td>2. Does the STA in this procedure have an avenue to receive, investigate, and actively take corrective action if necessary? (49 CFR 26.103(d))</td>
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<td>3. Does the STA have a process and procedure that includes appropriate enforcement actions (i.e., suspension, debarment, etc.) against fraudulent activities by DBEs and non-DBEs? (49 CFR 26.107(b))</td>
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<td>4. Does the STA have a mechanism to receive and respond to requests for information and to safeguard from disclosure confidential personal and business information of DBEs? (49 CFR 26.109)</td>
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QUESTIONS AND ANSWERS

SUBPART A - GENERAL

**Question 1:** Does your DBE Program create and maintain a bidders list of all firms who bid or quote and captures the age and average gross receipts of the firms? (49 CFR 26.11(c))

**Answer:** You must create and maintain a bidders list that includes the following: Firm name; Firm’s address; Firm’s status as a DBE or non-DBE; Age of the firm; and, Annual gross receipts of the firm. The USDOT has given the flexibility to the State DOT to determine the most effective means in capturing this information. Most often the identity of bidders and quoters is captured through the handling of bidding documents and/or contract administration procedures. The other information, age and gross receipts, may be captured through surveys and questionnaires at a later time from the firms once identified.

**Question 2:** Do all financial agreements have the required DBE program assurance statements incorporated? (49 CFR 26.13(a))

**Answer:** Each financial assistance agreement you sign with a DOT operating administration and sub-recipient must have physically incorporated in it the standardized assurance statement prescribed under 26.13(a) that all parties will not discriminate based on race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26.

**Question 3:** Do all prime and subcontracts have required DBE program assurance statements incorporated? (49 CFR 26.13(b))

**Answer:** Each contract you sign with a contractor and sub-recipient must have physically incorporated in it the standardized assurance statement prescribed under 26.13(b) which states that: 1) these parties will not discriminate based on race, color, national origin, or sex in the performance of any DOT-assisted contract; 2) The contractor shall carry out the requirements of 49 CFR 26 in the award and administration of DOT-assisted contracts; and 3) Failure by the contractor to carry out these requirements is a material breach of contract, which may result in contract termination or other remedy as deemed appropriate by the recipient.

SUBPART B – ADMINISTRATIVE REQUIREMENTS

**Question 1:** Does your DBE program currently approved by FHWA incorporate all of the latest USDOT regulatory requirements and guidance as amended? (49 CFR 26.21(b))

**Answer:** Your DBE program must conform to all of the latest USDOT regulatory requirements and guidance. All changes must be submitted to FHWA for approval. The receipt of Federal assistance is conditioned on having an approved up-to-date DBE program that is in compliance with 49 CFR 26.
**Question 2:** Does the STA’s DBE program apply to all sub-recipients? *(49 CFR 26.21(a)(1))*

**Answer:** The FWHA’s approval of a STA’s program applies to all of the STA’s DOT-assisted programs including those federal funds transferred to other state and local agencies (i.e., MPO’s, City and County governments) and are expended on federally assisted contracts.

**Question 3:** Is the DBE program document with a policy statement distributed internally and externally? *(49 CFR 26.23)*

**Answer:** The DBE program document and policy statement must be circulated internally and externally as an expression of the STAs commitment to the program, and outlines the objectives of the program, and sets forth the responsibilities of the STA in its program implementation.

**Question 4:** Does your DBE Liaison Officer have a clear line of communication and authority for direct and independent access to the CEO? *(49 CFR 26.25)*

**Answer:** The DBE Liaison Officer shall have direct and independent access to the CEO on DBE matters as the principal person in the STA that is charged with the responsibility to implement all aspects of the DBE program.

**Question 5:** Is the DBE Liaison Officer responsible for the day-to-day implementation of all aspects of your DBE program? *(49 CFR 26.25)*

**Answer:** The Liaison Officer is responsible for carrying out all aspects of the DBE program.

**Question 6:** Does the STA have a prompt payment/retainage provision in its contract that identifies one of the three options? *(49 CFR 26.29(b)(1)(2)(3))*

**Answer:** To ensure prompt payment/return of retainage from the prime contractor to the subcontractor, one of the following methods must be adopted by the STA for use on federally assisted contracts:

1. STA declines to withhold retainage and prohibit prime from withholding retainage from subcontractors.
2. STA declines to withhold, but requires a contract clause obligating prime contractor to make prompt and full payment of the retainage to its subcontractors with 30 days after the subcontractor’s work is satisfactorily completed.
3. Provide for incremental acceptances of portions of the prime contract where the STA decides to continue to withhold retainage. Pay retainage to prime contractors of that portion of the prime contract satisfactorily completed, and require prime to pay all retainage to the subcontractor within 30 days of the satisfactory completion of the accepted work.

The USDOT set forth these conditions to be adopted because it identified the withholding of retainage, and the lack of paying fully and timely, a significant barrier to DBE firms to perform on federally assisted contracts. The USDOT openly spoke to the need for STAs and prime contractors to change the way they have been doing business. Since this requirement was introduced in 2003, it has become very reassuring that a large majority of STAs had eliminated the withholding of retainage.

**Question 7:** If retainage is held from prime contractors are incremental acceptances performed? *(49 CFR 26.29(b)(3))*

**Answer:** Provide for incremental acceptances of portions of the prime contract where the STA decides to continue to withhold retainage and require the prime to pay all retainage to the subcontractor within 30 days of the satisfactory completion of the accepted work. The timeframe on when incremental acceptances are to be made is left to the discretion of the STA. It is however, reasonable to expect that incremental acceptances would be performed immediately upon satisfactory completion of the accepted work.
Question 8. Does your DBE program provide appropriate means to enforce prompt payment and return of retainage? (49 CFR 26.29(a)(1))
Answer: The STA must have the necessary mechanisms to monitor and enforce the prime contractors prompt and full payment of retainage. Again, with the flexibility USDOT built into the program, it was the STA to determine their approach towards meeting this and other requirements of the program. The USDOT did not present one prescribed way of meeting it, so there maybe various methods employed by a recipient to meet this requirement. The most common enforcement practice is for the prime contractor to provide a payment certification that would certify that all payments have been made and would normally be submitted with a progress estimate for payment. The enforcement of this method is through non-payment of the progress payment, until proper evidence that all previous payments due are paid.

Question 9: Does your DBE program provide for specific contract administration monitoring techniques that ensures prompt payments are made? (Consideration: contract clause, receipt of cancelled check) (49 CFR 26.29(e)(3))
Answer: The STA must have the necessary mechanisms to monitor and enforce the prime contractors prompt and full payment of retainage. The STA has discretion to determine their approach towards meeting this and other requirements of the program. The USDOT did not present one prescribed way of meeting it, so there maybe various methods employed by a recipient to meet this requirement.

Question 10: Is the STA’s DBE directory maintained and updated consistently? (Consideration: monthly) (49 CFR 26.31)
Answer: While the regulation requires the updating of the DBE directory at least annually, it is imperative for effective administration of the program, to take all necessary and reasonable steps to maintain an updated directory in a timely manner (monthly to match normal letting schedules). Also, pursuant to the UCP program requirements, updates to electronic version is to be made as soon as they are available.

Question 11: Does the STA DBE program have to address over-concentration? (49 CFR 26.33)
Answer: A STA must develop a mechanism to deal with over-concentration. If it is determined to be an issue of concern to third parties that DBE firms are over-concentrated in a particular type of work, the STA must be prepared to take specific remedial action. To ensure over-concentration is not a problem, the STA should be monitoring this area.

Question 12: Does the STA conduct compliance reviews, audits and/or assessments of all program participants, e.g., contractors, and other state and local governments/agencies? (49 CFR 26.37(a))
Answer: The STA must ensure that all program participants are in compliance with 49 CFR Part 26. The STA must have appropriate mechanisms for monitoring and enforcement set forth in its DBE program.

Question 13: Does the STA have a monitoring and enforcement mechanism that ensures work committed to DBEs is actually performed? (49 CFR 26.37(b))
Answer: The STA must ensure DBEs do the work committed to them. To ensure this is happening, the STA must in its normal contract administration take the necessary steps to compare actual subcontract awards to commitments and payments to awards.
Question 14: Does the STA have a mechanism, such as a computer program, that provides for a running tally of DBE commitments, awards and payments? (49 CFR 26.37(c))

Answer: The STA must have a mechanism, i.e., software program that is fully capable to collect, track and report commitments, awards and payments to DBEs on a continual and timely (once a month to match STAs letting schedules) basis.

Question 15: Does your DBE program apply to all federal-aid highway funds expended on contracts? (Consideration, construction, professional services, management services, etc.) (49 CFR 26.21(a)(1))

Answer: If you are a FHWA recipient receiving Federal funds and let federally-assisted contracts, you must have a DBE program that applies to all Federal funds and meet the administrative requirements for DBE programs for federally-assisted contracting. Also refer to Answer#2 of this section.

SUBPART C – GOALS/GOOD FAITH EFFORTS/COUNTING

Question 1: Is the STA’s overall goal setting methodology in the step one process based on demonstrable evidence of the relative availability of ready, willing, and able DBEs to participate in DOT-assisted contracts in your market? (Consideration one of the examples recognized by USDOT)? (49 CFR 26.45 (b))

Answer: Overall goal must be based on demonstrable evidence of the availability of ready, willing, and able DBEs determined from various potential data sources; including, but not limited to those examples identified by USDOT. This figure is then measured against the relative number of all businesses ready, willing, and able to participate on STA’s DOT-assisted contracts taken from the same data source(s). Each example has its plus and minus, with no one example leading the pack. The USDOT has expressed from their point of view, that the bidder’s list has the least weakness for the goal setting methodology.

Question 2: To establish the Step One base figure, do you use data sources such as DBE directory, bidders list, disparity study, and census bureau data? (49 CFR 27.45(c)(d))

Answer: A base figure must be determined at the beginning of your goal setting process. DBE directory, bidders list, disparity study, and census bureau data; are examples and not meant to be an exhaustive list. Other methods may be used. Also a combination of sources can be used.

Question 3: Does your Step Two adjustment of your base figure indicate types of evidence, such as disparity study, current capacity, etc.? (49 CFR 26.45 (f)(3))

Answer: You must include with your goal submission the evidence that you used to make, or not make, any adjustments to your base figure. The goal setting methodology must detail the type, and source of the evidence used in the consideration of making a step 2 adjustment. Capacity in the USDOT frame of reference is the same as past participation achieved by DBEs, generally calculated by using the mean over a three year period.
**Question 4:** When you submit your annual overall goal by August 1 of each year, does it include: methodology, summary listing of evidence, and projections for race neutral and race conscious goal attainment? (49 CFR 26.45) (f)(1)(3) and (49 CFR 26.51)(c)(d))

**Answer:** You must include with your goal submission the evidence that you used to make, or not make, adjustments to your base figure (Step 1). With your goal submittal, you should include the methodology, summary of evidence, and projections for race neutral and race conscious goal attainment. The race-neutral projection is the key for establishing the race-neutral and race-conscious breakdown; as it is calculated first from past participation on essentially non-goal contracts and subtracted from the overall goal figure in determining the race-conscious portion.

**Question 5:** Does STA have a currently approved DBE overall annual goal for the current fiscal year? (49 CFR 26.45 and 49 CFR 26.47)

**Answer:** STA must submit to FHWA its overall annual goal for review each fiscal year. You are in non-compliance if you do not have an approved DBE program or overall goal.

**Question 6:** Was the DBE annual goal submitted for approval by the beginning of the applicable fiscal year? (49 CFR 26.45(f)(1))

**Answer:** STA must submit its goal for review on August 1 of each year, unless a different date has been established or recipient requests a time extension from FHWA. This submittal date is important in order to provide sufficient time to handle the STA submission, obtain a legal sufficiency review, and for FHWA to approve the goal setting methodology before the beginning of the new fiscal year when the appropriation of new federal-aid highway program funds is made.

**Question 7:** If you are a recipient of any of the three modes (FHWA, FAA, and FTA), did you set a separate goal for each of the modes? (49 CFR 26.45) (e)(1)(2))

**Answer:** You should express each of your overall goal(s) as a percentage of the amount of the Federal-aid funds you will spend on FHWA-, FTA-, and FAA-assisted contracts. A goal must be submitted separately for each Federal source (FHWA FTA, FAA). No one administration has the responsibility to act on the goal submittal for any of the other two administrations.

**Question 8:** In establishing your overall goal do you provide for public participation to include: consultation with minority, women and general contractor groups, etc.? (49 CFR 26.45(g)(1))

**Answer:** You must provide for public participation, including the consultation with various groups and organizations. The consultation with various groups and organizations is a key component to the setting of the proposed goal.

**Question 9:** Do you publish a notice announcing your proposed overall goal for 30 days and inform the public that you will accept comments for 45 days? (49 CFR 26.45) (g)(2))

**Answer:** A notice must be published announcing your proposed goal for 30 days and informing the public that comments will be accepted for 45 days. The notice must be published in a general circulation and minority focused media. This is the second step to the consultation process for seeking comment from the general public on the proposed goal.

**Question 10:** Does the STA attempt to meet the maximum portion of their overall goal by race neutral means? (49 CFR 26.51(a))

**Answer:** You must meet the maximum feasible portion of your overall goal by using race-neutral means. This means that in determining the race neutral and race conscious breakdown, you must first project that maximum feasible portion that you expect can be achieved by race neutral measures.
**Question 11:** Does the STA count as race neutral contracts won by DBE primes, DBE subcontracts when there is no contract goal, and primes that do not consider DBE status? *(49 CFR 26.51(a))*

**Answer:** Contracts won by DBE primes, DBE subcontracts when there is no contract goal, and DBE subcontracts where a prime contractor did not consider the DBE status in awarding the subcontract, are all methods of race-neutral DBE participation. The measurement of when a prime did not consider the firm’s DBE status in it’s selection, is to count all work going to a DBE above the contract goal figure as race neutral.

**Question 12:** As a means of achieving race neutral participation does the STA utilize options such as unbundling large contracts, providing technical assistance, implementing supportive services, etc.? *(49 CFR 26.51(b)(1-9))*

**Answer:** The STA should utilize to the maximum feasible extent, such practices as unbundling contracts to a contract dollar compatible with the capacity of DBE firms; to provide financial, managerial, and technical assistance programs, and supportive services training, and services that will improve the capability of DBE firms to compete for and perform on contracts.

**Question 13:** Does the STA establish contract goals based upon factors such as type of work, location, DBE, and availability that cumulatively results in meeting only the portion of the overall goal that cannot be met through race-neutral means? *(49 CFR 26.51(e)(2))*

**Answer:** Contract goals can be based upon factors such as type of work, location, and DBE availability. The goal should essentially represent the percent of the dollar amount of contracting opportunities for DBEs that exist on that contract. Goals must be set so they will cumulatively result in meeting that portion of the overall goal not being met through race-neutral means.

**Question 14:** Does the STA contract provisions incorporate the good faith effort guidance in Appendix A of the DBE program requirements? *(49 CFR 26.53(a)(2))*

**Answer:** The STA good faith effort contract provisions must be consistent with the types of efforts described in Appendix A of the DBE program requirement.

**Question 15:** Does the STA reduce or eliminate contract goals when it is determined that the overall goal will be exceeded? *(49 CFR 26.51(2))*

**Answer:** If the STA determines its overall goal will be exceeded, it must reduce or eliminate the use of contract goals. The STA through its maintain a running tally of DBE participation throughout the fiscal year must make all appropriate adjustments in the use of race-conscious measures in meeting its overall annual goal.

**Question 16:** Does the STA in its running tally capture DBE participation on all contracts with or without contract goals? *(49 CFR 26.51(g))*

**Answer:** The STA must report DBE participation in all contracts with and without contract goals awarded during the fiscal year in order to effectively adjust due to both race neutral and race conscious achievements the use of contract goals only as necessary to just meet the annual goal. One important consideration in being prepared to make such adjustments is to know the dollar amount that needs to be achieved based on the overall goal before the contract year begins for comparison purposes against the actual RC/RN achievements for making the key decision on when and how much to make any adjustment.
**Question 17:** Are all bidders required to submit DBE information, i.e., name, description of work, and dollar amount before award of the contract? (49 CFR 26.53) (b)(2) and (c)

**Answer:** Dependent on whether STA makes the receipt of the information as a matter of responsiveness or responsibility, you can receive information from all bidders or just the apparent low bidder. The receipt of this information in the form of a commitment, when in the presence of a contract goal, is a condition upon which the award of the contract is given by the STA. (Consideration: It has extensively been the preferred method to receive the information with the bid as a matter of responsiveness. This practice has so many more decisive advantages to receiving the information than receiving it so many days after receipt of a bid by the apparent low bidder.)

**Question 18:** When a DBE goal has been established, are bidders required to submit DBE information at any time before the STA commits to the performance of the contract? (49 CFR 26.53(b)(3))

**Answer:** At the STA’s discretion, bidders are required to submit the appropriate DBE information under sealed bid procedures, as a matter of responsiveness, or with initial proposals (consultant), under contract negotiation procedures, or at the time the STA sets forth in the contract before the STA commits to the performance of the contract.

**Question 19:** Does the STA require as a condition of award, the submission of the DBE information including the name, description of work, dollar amount, written documentation of commitment, and written confirmation from the DBE that it is participating in the contract? (49 CFR 26.53(b)(2)(c))

**Answer:** The STA must make sure all DBE information is complete and adequately document the bidder’s good faith efforts as a condition of awarding the contract.

**Question 20:** Does the evidence of good faith efforts provided by the bidder document those efforts to meet the goal, even though such efforts did not succeed in obtaining enough DBE participation to do so? (49 CFR 26.53(a)(2))

**Answer:** The STA must not deny award of the contract on the basis that the bidder simply failed to meet the goal if the bidder documents adequate good faith efforts. The adequate good faith efforts are those the bidder undertook prior to submitting its bid on the contract.

**Question 21:** Does the STA provide an opportunity for administrative consideration when it determines the apparent successful bidder failed to meet good faith efforts? (49 CFR 26.53(d))

**Answer:** The STA should have an administrative reconsideration process that affords a bidder the opportunity to seek a further ruling on the adequacy of its good faith efforts.

**Question 22:** Are reconsideration decisions made by an official who did not take part in the original good faith effort determinations? (49 CFR 26.53(d)(2))

**Answer:** An official who did not take part in the initial determinations by the STA of inadequate good faith efforts by the bidder must make reconsideration decisions.
Question 23: If a goal has been established in a design-build, turnkey project, does the recipient maintain oversight of the master contractor goals and other requirements? (49 CFR 26.53 (e))
Answer: Recipients must maintain oversight of the master contractor’s activities to ensure that they are conducted consistent with the requirements of this part. This monitoring is especially important in the case of a design-build project because the master consultant can only provide a plan of action (subcontractor plan) it intends to take throughout the project since the exact contracting opportunities and timing of any subsequent awards is unknown at the start of a design-build.

Question 24: Does the STA require prime contractors to make good faith efforts when replacing DBE subcontractors for any reason? (49 CFR 26.53(f)(1)&(2))
Answer: The STA must require the prime contractors to make good faith efforts to find another DBE subcontractor to substitute for the original DBE when the DBE is either unable or unwilling to perform.

Question 25: Does the STA have a procedure that requires STA approval of the substitution and/or replacement of DBEs for good cause when replacing DBE subcontractors for any reason? (49 CFR 26.53(f)(1)&(2))
Answer: The STA must give written consent prior to a prime contractor terminating a DBE subcontractor (or an approved substitute DBE firm) when that DBE is either unable or unwilling to perform the work. There are procedures in some States that require the DBE to actually signoff on its termination. There are DBE program rules that effectively prohibit termination for convenience and then performing the work by the prime itself or use an affiliate.

Question 26: Does the STA contract provisions include administrative remedies that will be invoked if prime contractors fail to comply with good faith efforts? (49 CFR 26.53 (f)(3))
Answer: If prime contractors fail to comply with good faith efforts, the STA contract provisions must include appropriate administrative remedies that will be invoked. The most common administrative remedy is to withhold payment to the prime equal to the short fall that occurred since the prime failed to comply with the good faith efforts provision. It is not intended that the STA exercise this oversight activity at the very end of the contract, but should be monitoring the actual participation of DBEs firms throughout the contract so any necessary adjustments can be made by the prime in a timely fashion towards meeting the goal.

Question 27: Does the STA count toward contract goals the value of work only if the DBE performs a Commercially Useful Function (CUF) when a DBE is responsible for a distinct element of the contract work and it carries out its responsibilities by actually performing, managing and supervising the work involved? (49CFR 26.55(c)1))
Answer: You count the total contract value of the work the DBE performs itself. The STA needs to have sufficient resources and process and procedures that effectively determine whether a DBE performs a CUF. In addition to this monitoring responsibility, the STA needs to have appropriate supporting documentation for counting this work as performed by a DBE.

Question 28: Does the STA count toward contract goals the value of work performed by the DBE’s own forces and does not count the DBE’s cost of equipment leased from the prime contractor and/or material purchased from the prime contractor? (49 CFR 26.55(a)(1))
Answer: DBE subcontractor ‘s purchases of supplies and equipment and leases from the prime contractor cannot be counted.
Question 29: When a DBE subcontracts part of his/her work to a non-DBE, does the STA have a mechanism to deduct that amount from the overall contract goal? (49 CFR 26.55(a)(3))
Answer: Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals. The STA’s normal subcontracting approval procedure is an effective way to monitor such possible situations.

Question 30: In a joint venture does the STA count only the defined portion of work a DBE performs with his/her own forces? (49 CFR 26.55(b))
Answer: Count the dollar value of the contract equal to the defined portion of the work that the DBE performs with its own forces toward the DBE goals.

Question 31: Does the STA DBE program require the DBE to perform at least 30% of their work and does not allow DBEs to serve as an extra participant in the contract? (49 CFR 26.55(c)(2)(3))
Answer: A DBE is not performing a CUF when it is not performing the work themselves and if the DBE under this rule subs out more than 70% of the work. There are additional instances when a DBE could be considered as serving as an extra participant in the contract or project such as being a pass through in the payment of materials and supplies.

Question 32: Does the STA count towards the contract goal the value of materials and supplies used on the contract work only if the DBE is responsible for paying for the material and supply? (factor – joint checks) (49 CFR 26.55(c)(1))
Answer: The DBE must be responsible, with respect to materials and supplies used on the contract, for paying for the material. The use of joint checks has been allowed in the DBE program under certain conditions and/or circumstances. Even under this situation all payments need to be made by the DBE.

Question 33: When a STA presumes that a DBE is not performing a CUF, do they allow the DBE to present evidence to rebut this presumption? (49 CFR 26.55(c)(4))
Answer: The DBE may present evidence to rebut the presumption of not performing a CUF when a STA has initially determined that a DBE is not performing a CUF. The STA must have a CUF reconsideration process established as part of its normal contract administration procedures.

Question 34: Does the STA DBE program allow DBE truckers to count leased trucks from DBEs and non-DBE truckers toward the goal appropriately? (49 CFR 26.55(3)(4)(5))
Answer: The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract. If the STA adopted the revised trucking counting rule in the June 16, 2003 DBE Program Final Rule, the DBE who leases trucks from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by DBE-owned trucks on the contract. Additional participation by non-DBE lessees receives credit only for the fee or commission it receives as a result of the lease arrangement. The appropriate Department Operating Administration must approve this approach.
Question 35: **Does the STA DBE program allow for appropriate counting for manufacturers, regular dealers and packagers and brokers?** (49 CFR 26.55)(e)(1)&(2)(ii)(c))

**Answer:** If materials or supplies are obtained from a DBE manufacturer, count 100% of the cost of the materials or supplies. If materials or supplies are purchased from a DBE regular dealer, count 60% of the cost of materials or supplies. To be a regular dealer, the firm must be an established, regular business that engages as its principal business and under its own name, in the purchase and sale or lease of the products in question. Packagers, brokers, manufacturers’ representative, or other persons who arrange or expedite transactions are not regular dealers. Often times the definition of what constitutes a manufacturer from a regular dealer and a regular dealer from a broker becomes a matter of circumstances of the particular situation and to be determined on a case-by-case basis. For example, if the material is crushed aggregate, then in order to be a manufacturer the firm needs to have the prerequisite equipment to crush and screen the aggregate for sell pursuant to the STA’s gradation requirements. If no such process is being performed by the DBE, but has the necessary distribution equipment to pick up and drop off as a normal course of business the firm might be considered a regular dealer.

Question 36: **If a DBE firm’s certification eligibility is removed during performance of a subcontract, does the STA have a process to deduct that subcontract amount from the overall goal?** (49 CFR 26.55)(f)(g))

**Answer:** Do not count the dollar value of work performed under a contract with a firm after it has ceased to be certified toward your overall goal. However, the prime contractor may still be capable of crediting the work even after the firm is decertified towards the contract goal.

Question 37: **Does the STA have a process to ensure a contractor’s final compliance with DBE obligations based on payment to DBEs?** (49 CFR 26.55)(h))

**Answer:** Until the amount being counted has been paid to the DBE, do not count the participation of a DBE subcontractor toward a contractor’s final compliance with its DBE obligations on a contract.

**SUBPART D - CERTIFICATION STANDARDS**

Question 1: **Does your UCP require individuals who are not presumed to be socially and economically disadvantaged to prove to you by a preponderance of evidence that they are socially and economically disadvantaged?** (49 CFR 26.61)(d)) Appendix E to Part 26

**Answer:** This section of the regulations places the burden of proof on the firm seeking certification that they meet the requirements for DBE certification. Based on this certification by the prospective DBE, the STA must subsequently reputedly presume that the firm is socially and economically disadvantaged.

Question 2: **Does your UCP consider all the facts in the record as a whole when making determinations concerning individual and firm’s eligibility (i.e., ownership, membership, control, etc)?**  (49 CFR 26.61(e))

**Answer:** The STA or certifying agency must make the determination whether the DBE applicant has met their burden of demonstrating that each of the eligibility standards have been met by considering all the facts in the record and viewed as a whole.
**Question 3:** When questioning an individual’s claim of membership in a particular group, does your UCP provide written explanation of your reasons, and request additional information consistent with that asked of all groups? (49 CFR 26.63)(a)(2)(3))

**Answer:** The STA or certifying agency must provide a written explanation to the DBE applicant of their reasons for questioning his or her group membership and requesting additional information from the applicant to further support or provide clarification for the applicant’s claim. The STA or certifying agency must take care not to impose a disproportionate burden on members of a particular group, so as not to be in violation of 49 CFR 26.7(b) and/or Title VI of the Civil Rights Act of 1964 and 49 CFR part 21.

**Question 4:** Does your UCP in making membership group determinations consider whether a person has held him or herself out to be a qualifying member over a long period of time and/or whether the applicant is regarded as member of group by the relevant community, etc.? (49 CFR 26.63)(b))

**Answer:** In determining group membership, the STA or certifying agency must ascertain whether the applicant has held him or herself out to be a member of the group over a long period of time and if the applicant is regarded as a member of the relevant community. The applicant should be able to document their claim to membership by association, recognition and identification.

**Question 5:** Does your UCP allow individual determinations of social and economic disadvantaged for persons claiming membership in a presumed disadvantaged group, but who you determined not to be a member? (49 CFR 26.63(b)(1) & Appendix E)

**Answer:** If the applicant has failed to meet the eligibility standards by failing to substantiate their claim by a preponderance of evidence to be a member, the applicant has the ability to further pursue certification by submitting documentation that supports their claim to membership by their association, and community recognition and identification.

**Question 6:** Does your UCP deny certification to firms who meet the SBA size requirements, but who exceed the 3-year average annual gross receipts under the USDOT size limits threshold? (49 CFR 26.65(b))

**Answer:** If at anytime a firm and its affiliates meets the Small Business Administration size standards for business category, but exceeds the USDOT limit, the firm is not considered eligible. If the firm should fail to meet the SBA limits, first, then no further determination needs to be made with respect to 3-year annual gross receipts established by the USDOT.

**Question 7:** Are all rebuttably presumed disadvantaged group members required to submit a signed, notarized certification that each disadvantaged owner is socially and economically disadvantaged? (49 CFR 26.67) (a))

**Answer:** The STA or certifying agency must require all applicants to submit a signed notarized certification that each presumptively disadvantaged owner is, in fact, socially and economically disadvantaged.

**Question 8:** Does your UCP require a personal net worth statement and supporting documentation from each individual owner applying to participate as a DBE, and whose ownership and control are relied upon for DBE certification? (49 CFR 26.67)(2)(i)(ii))

**Answer:** With the exception of airport concessionaire’s, all DBE certification applicants must provide a personal net worth statement with supporting documentation that he or she has a personal net worth that does not exceed the currently established $750,000 threshold.
Question 9: In determining an individual’s personal net worth, does your UCP: (1) exclude ownership interest in the applicant firm; (2) exclude equity in primary residence; (3) not use exclusive contingent liability; and (4) include only present value held in vested pension plans? (49 CFR 26.67)(2)(iii)(a)(b)(c)(d))

Answer: In determining personal net worth items (1) and (2) must be excluded. A contingent liability cannot be used to mitigate a personal net worth. You must include the value held in vested pension plans less the tax or interest consequences accrued if the assets were distributed at the present time.

Question 10: Does your UCP release an individual’s personal net worth statement and supporting documentation only to US DOT in certification appeal proceedings? (49 CFR 26.67)(2)(iv))

Answer: Notwithstanding any provision of federal or state law, you must not release an individual’s personal net worth statement or any documentation supporting it to any third party without the written consent of the submitter. The only exception to this is during the transmittal of this information to the USDOT for appeal proceedings or another UCP subject to the same confidentiality provisions of 49 CFR 26.

Question 11: When an individual has exceeded the personal net worth threshold ($750,000), does your UCP deem him/her economic disadvantaged status to be rebutted? (49 CFR 26.67)(b)(2)(3)(4))

Answer: An individual’s presumption of economic disadvantage status is rebutted when their PNW exceeds the maximum threshold of $750,000. While an individual may be a member of one of the presumptive groups, whether that individual is in fact socially and economically disadvantaged is rebuttable. Since this figure is a hard cap, upon failure of the individual to prove their PNW is below the cap, the individual and his or her firm is not eligible to participate in the DBE program.

Question 12: When determining ownership, does your UCP evaluate the 51% ownership of: firm’s ownership interest, each class of voting stock, each class of partnership interest, and each member interest? (49 CFR 26.69)(b)(1)(2)(3))

Answer: The 51% ownership rule applies in the following cases:

- Corporation: Individuals must own at least 51% of the voting stock and 51% of the aggregate of all stock outstanding.
- Partnership: Individuals must own 51% of each class of partnership interest. This must be reflected in the firm’s partnership agreement.
- Limited Liability: Individuals must own at least 51% of each class of member interest.

Question 13: Does your UCP in evaluating whether a firm’s ownership is real and substantial, review who it is that enjoys customary benefits of ownership, who shares in the risks and profits, etc. (49 CFR 26.69)(c))

Answer: The firm’s ownership by socially and economically disadvantaged individuals must be real, substantial and continuing, meaning; going beyond Pro Forma ownership as reflected in ownership documentation. The disadvantaged owner must be the individual who enjoys customary benefits of ownership and who shares in the risks and profits.
**Question 14:** Does your UCP count assets held in a revocable living trust only when the same disadvantaged individual is the sole grantor, beneficiary, and trustee? (49 CFR 26.69)(d)(1)(2)

**Answer:** The UCP does count securities and assets held in trust when the owner of such instruments is a disadvantaged individual. The beneficial owner of a trust must be a disadvantaged individual who exercises effective control over the management, policy making, and daily operational activities of the firm. Assets held in a revocable living trust may only be counted in the situation where the same disadvantaged individual is the sole grantor, beneficiary of the trustee.

**Question 15:** When expertise is relied upon as a part of a disadvantaged owner’s contribution, does your UCP require the owner’s expertise be: in specialized field, critical to firm’s operation, documented in the record and having a significant financial investment made in the firm? (49 CFR 26.69)(f)(1)(2)

**Answer:** Expertise may be relied upon as part of a disadvantaged owner’s contribution when:

- a. The owner’s expertise is in a specialized field.
- b. The expertise is of outstanding quality.
- c. The expertise is in areas critical to the firm’s operations.
- d. The expertise is indispensable to the firm’s potential success.
- e. The expertise is specific to the type of work firm performs.
- f. The expertise is documented in the records of the firm which clearly shows the contribution of that expertise and its value.
- g. The individual whose expertise is relied upon must have a significant investment in the firm.
- h. All interest or other assets in the firm must be held by a socially and economically disadvantaged individual for purposes of determining ownership.

**Question 16:** If a socially and economically disadvantaged individual’s interests or other assets in the applicant firm were obtained by divorce settlement, through inheritance, or the death of a former owner; does the UCP always deem such interests acceptable? (49 CFR 26.69)(g)(1)(2)

**Answer:** Ownership is deemed to be held by a socially and economically disadvantaged individual if all interests in the business were obtained by that individual as a result of a divorce, legal separation or inheritance.

**Question 17:** For determining ownership, does your UCP disallow assets obtained by individuals because of a gift or transfer without adequate consideration? (49 CFR 26.69)(h)(1)(2)

**Answer:** Unless demonstrated by clear and convincing evidence that the gift or transfer was made by a disadvantaged individual for allowable reasons, the UCP may only allow such assets when it can be demonstrated by the applicant that the gift or transfer was made for reasons other than obtaining DBE certification. In addition, the disadvantaged individual must actually control the management, policy and operations of the firm.

**Question 18:** Does your UCP require that the non-participating spouse in an applicant firm irrevocably renounce and transfer rights of ownership interest when interest is held jointly or as community property? (49 CFR 26.69)(j)

**Answer:** The UCP must require that when marital assets are used to establish ownership, and it is held jointly or as community property, the non-participating spouse must irrevocably renounce and transfer rights of ownership interest in a manner sanctioned by the laws of the state in which either spouse or the firm is domiciled.
Question 19: In determining whether a potential DBE is an independent business, does your UCP: scrutinize relationships with non-DBEs, evaluate present and recent employer/employee relationships, consider consistency with industry practice, etc.? (49 CFR 26.71)(b)(1)(2)(3)(4)

Answer: In determining DBE business independence, the UCP must scrutinize relationships with non-DBE firms in such areas as personnel, facilities, equipment, financial and/or bonding support and other resources. You must consider whether recent and present employer/employee relationships with the non-DBE firms or employees of the non-DBE firm compromise the independence of the potential DBE firm. You must examine what, if any, pattern of exclusive or primary dealings exist in the firm's relationship with prime contractors. You must consider if the relationships are consistent with standard industry practice.

Question 20: Are corporate charters, by-laws, employment contracts, etc., reviewed in evaluating an applicant's ability to control? (49 CFR 26.71)(c))

Answer: There can be no restrictions through corporate charter provisions, by-law provisions, contracts or any other formal or informal devices that inhibit or restrict business decision-making by the disadvantaged individuals.

Question 21: Does your UCP require socially and economically disadvantaged individuals to possess the power to make day to day as well as long term management, policy, and operations decisions? (49 CFR 26.71)(d)

Answer: Socially and economically disadvantaged owners must possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day, as well as long term decisions on matters of management, policy, and operations.

Question 22: Is it acceptable in your UCP for DBE firms to have non-socially and economically disadvantaged individuals involved in the firm as long as such individuals are not disproportionately responsible and the DBE owner retains power to hire and fire the person to whom such authority is delegated? (49 CFR 26.71)(e)(f)

Answer: Individuals who are not socially and economically disadvantaged may be involved in a DBE firm as owners, managers, employees, stockholders, officers and/or directors. However, these individuals must not possess or exercise the power to control the firm or be disproportionately responsible for the operation of the firm. Such delegations of authority must be revocable and the socially and economically disadvantaged owners must retain the power to hire and fire any person to whom such authority has been delegated.

Question 23: Does your UCP require the socially and economically disadvantaged owner to possess understanding of, and managerial and technical competence, and experience directly related to the type of work of the business? (49 CFR 26.71)(g)

Answer: The socially and economically disadvantaged owners must have an overall understanding of the management of the company, and have the managerial and technical competence, and experience directly related to the type of business that the company is engaged in and the firm’s operations.

Question 24: In determining control, does your UCP require the social and economically disadvantaged owner to possess the license or credential necessary for a particular line of work according to your state or local law requirements? (49 CFR 26.71)(h)

Answer: If the state or local law requires a person to have a particular license or other credential in order to own and/or control a certain type of firm, then the socially and economically disadvantaged individual who owns that type of business must possess the required license or credential.
Question 25: When a socially and economically disadvantaged individual is engaged in employment outside the applicant firm, does your UCP evaluate the circumstances based on such issues as: possible conflicts with the management of the firm, time and attention devoted to DBE firm, etc.? (49 CFR 26.71)(j))

Answer: In order to be viewed as controlling a firm, the socially and economically disadvantaged owner cannot engage in employment or other business interests that conflict with the management of the firm, or prevent the individual from devoting sufficient time and attention to the affairs of the firm to control its activities.

Question 26: Does your UCP have a process to determine specific types of work a potential DBE has the ability to control and posses the equipment and key personnel to perform the work? (49 CFR 26.71)(m)(n) & 26.83(c)(4)(5))

Answer: The UCP must have a provision that allows the STA or certifying agency to consider whether the firm owns equipment necessary to perform its work. However, the STA or certifying agency must recognize that leasing equipment is a normal industry practice and should not use this practice to determine that a DBE owner does not control his or her company. The STA or certifying agency must make sure that the leasing of equipment does not involve a relationship with a prime contractor or other party that compromises the independence of the firm. You must grant certification only for specific types of work in which the socially and economically disadvantaged owner has been able to demonstrate his or her ability to control the firm. This specific type of work needs to be clearly defined in forms consistent with the type of work such firm will be competing to perform. Such designation as “general contractor” does not fit this definition.

Question 27: Is your UCP’s evaluation of the eligibility of potential DBE firms based on present circumstances only? (49 CFR 26.73)(b))

Answer: The STA or certifying agency must evaluate the eligibility of a firm based on present circumstances. You must not refuse to certify a firm based solely on historical information indicating lack of ownership and control at some time in the past.

SUBPART E – CERTIFICATION PROCEDURES

Question 1: Is your UCP fully in effect and being fully implemented in accordance with the approved UCP agreement? (49 CFR 26.81(a)(2))

Answer: The UPC agreement must provide the following:
  a. The UPC will follow all certification procedures.
  b. The UPC shall cooperate fully with oversight review and monitoring activities of the USDOT.
  c. The UPC shall implement USDOT directives and guidance.
  d. The UPC shall include an implementation schedule to ensure the UCP is fully operational no later than 18 months following approval of the agreement.

Question 2: Do all certification decision makers have expertise on certification regulations, policies, and procedures? (Consideration: training with last 2-3 years, etc.) (49 CFR 26.81(a)(2))

Answer: All certification decision makers must have expertise on certification regulation, policies, and procedures. The UCP agreement shall commit recipients to ensure sufficient resources and expertise to carryout the requirements for certification.
**Question 3:** Does your UCP provide for one-stop shopping? (49 CFR 26.81(b)(2))

**Answer:** The UCP shall provide “one-stop shopping” to applicants for certification such that an applicant is required to apply only once for a DBE certification that will be honored by all USDOT recipients in the state.

**Question 4:** Does your UCP agreement have a challenge process when a member questions a certification decision made by another member? (49 CFR 26.81(b)(2))

**Answer:** The purpose of a UCP is to eliminate any opposing decisions rendered by any of the certifying agencies in the UCP. That is why it is also called a “one-stop-shopping” process. Because it is a one stop shopping certification process and once a decision is rendered, it becomes binding on all members of the UCP. It is deemed appropriate that the UCP have an integral process that offers all certifying agencies to review and question the decision that is about to be made by any one certifying agency.

**Question 5:** Does your UCP require a firm to be certified in its home state before you will process that application? (49 CFR 26.81(d)) & (49 CFR 26.83(d)(e)(3))

**Answer:** A UCP is not required to process an application for certification from a firm when its principal place of business is located in another state. The home state however, shall share its information and documents concerning the firm with other UCPs that are considering the firm’s application. When another recipient, usually another STA or authorized certifying agency, makes a written request for certification information, you must make the information available to the other recipient. When another STA has certified a firm, you have discretion to certify the firm in reliance on the certification of the other state; or require the applicant to go through your application process without regard to the action of the other STA or certifying agency.

**Question 6:** Does your UCP maintain a unified certification directory that is electronically on the internet and in print? (49 CFR 26.81(g))

**Answer:** Each UCP shall maintain a unified DBE directory listing all firms certified by the UCP including those from other states certified under the provisions of these regulations. The intent of the language “including those from other states…” means DBEs certified in other states who have also been certified in your state regardless of whether or not that firm is actively engaged in or pursuing contracts in your state. The UCP directory shall be made available to the public electronically as well as in print.

**Question 7:** If the firm is working, are job site visits being performed before certification decisions are rendered? (49 CFR 26.83(c)(1))

**Answer:** The STA or certifying agency must perform an on-site visit to job sites if there are such sites on which the firm is working at the time of the eligibility investigation. You may also rely upon the site visit report of any other SAT with respect to a firm applying for certification.

**Question 8:** Do you verify the type of work the firm states it can perform as part of your DBE certification procedures? (49 CFR 26.83(c)(4)(5))

**Answer:** You must determine the work history of the firm, including contracts it has received and work it has completed. You should also require a statement from the firm listing the type of work it prefers to perform as part of the DBE program and its preferred locations for performing that work. You should obtain a list of equipment owned or available, pertinent licenses of the firm, and a list of key personnel that supports the operation of the firm to perform the work it seeks to do as part of the DBE program.
Question 9: Once a firm is certified, do they remain certified until their eligibility is removed? (49 CFR 26.83(h))
Answer: Once you have certified a firm, it remains certified, unless and until its certification has been removed through procedures detailed under 49 CFR 26.87. You may not require DBEs to reapply for certification as a condition of continuing to participate in the program unless the factual basis on which the certification was made changes.

Question 10: Does your UCP require an annual affidavit with supporting documentation? (Consideration: tax returns) (49 CFR 26.83(j))
Answer: All DBEs must provide to the STA or certifying agency every year on the anniversary of the date of their certification, an affidavit sworn to by the firm's owners before a person who is authorized by state law to administer oaths or an unsworn declaration executed under penalty of perjury of the laws of the United States. This affidavit must affirm that there have been no changes in the firm's circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements.

Question 11: Does your UCP process applications within 90 days of receiving a complete application, i.e., all supporting documents from the applicant firm? (49 CFR 26.83(k))
Answer: The STA or certifying agency must make decisions on applications for certification within 90 days of receiving all required information from the applicant. You may extend this time period only once for no more than 60 days upon written notice to the firm, explaining fully and specifically the reasons for the extension. Failure to process the application within this time frame could be deemed a constructive denial of the application, and can be a basis upon which a firm can appeal to USDOT.

Question 12: Does your UCP accept the certification application packages from SBA applicants in lieu of requiring them to complete your application? (49 CFR 26.84(a))
Answer: When an SBA-certified firm applies for certification pursuant to the DOT/SBA MOU and subpart E, 26.83-26.85, you must accept the certification applications, forms, and packages submitted by a firm to the SBA for either the 8(a), (8)d or SDB programs.

Question 13: Does your UCP transmit DBE applications to the SBA upon requests from the DBE or the SBA? (49 CFR 26.85(a)(b))
Answer: Upon receipt of a signed written request from a DBE-certified firm, you must transfer to the SBA a copy of the firm's application package. You must transfer this information within 30 days of receipt of the request.

Question 14: Does the denial letter include the reasons for denial, opportunity to appeal, and timeframe to apply when your UCP denies a request for initial consideration? (49 CFR 26.86 (a)(b)(c)(d))
Answer: Whenever a firm is denied certification, the STA or certifying agency must provide the firm a written explanation of the reasons for the denial and its appeal rights to USDOT. If the denied firm is also certified by the SBA, you must notify the SBA in writing of this action; including the reasons for the denial. When a firm is denied you must establish a time period of no more than 12 months that must lapse before the firm may reapply. You may, upon approval of the FHWA, provide a shorter waiting period for reapplication.

Question 15: Does your UCP require ineligibility complaints to be in writing in order to be processed? (49 CFR 26.87(a))
Answer: Any person may file a complaint with the STA or certifying agency that a currently certified firm is ineligible and specify the alleged reasons why the firm is ineligible. The STA or certifying agency is not required to accept a general allegation that a firm is ineligible or an anonymous complaint.
**Question 16:** Does your UCP follow the specific process for removing a firm’s eligibility, i.e., opportunity for informal hearing, separation of functions, grounds for decision, etc.? (49 CFR 26.87(d)(e)(f)(g))

**Answer:** If the STA or certifying agency believes there is reasonable cause to remove a certified firm’s eligibility, the STA or certifying agency must first notify the firm that it intends to remove their eligibility. You must give the firm an opportunity for an informal hearing to give the firm a chance to respond to the reasons for the proposal to remove its eligibility and to provide information and arguments concerning why it should remain certified.

**Question 17:** When the prime contractor executes a subcontract prior to your notification that the DBR firm is ineligible, do you count the subcontract amount toward the prime contractor’s goal? (49 CFR 26.87(j)(2))

**Answer:** If a prime contractor has executed a subcontract with a DBE firm before you have notified the firm of its ineligibility, the prime contractor may continue to use the firm on the contract and may continue to receive credit toward its DBE goal for the firm’s work.

**Question 18:** Does your UCP require appeals of denials only to US DOT within 90 days of recipients’ final decision? (49 CFR 28.89 (a)(1)(2)&(c))

**Answer:** If a firm has been denied certification, the firm may make an administrative appeal to the US-DOT. The appeal letter must be sent to the USDOT within 90 days of the date of the STA or certifying agency’s final decision.

**Question 19:** Does your UCP remove a firm’s DBE eligibility based solely upon US DOT’s denial decision? (49 CFR 26.91(b))

**Answer:** Yes, the UCP must remove a firm’s DBE eligibility unless the USDOT reverses the STA’s decision. In this case, the USDOT will direct the state to certify the firm in question.

**Question 20:** Does your removal of eligibility procedure require due process before appeal to US DOT? (49 CFR 26.87)

**Answer:** The process as outlined under (49 CFR 26.87) must be followed. In general the removal process includes:

a. **Recipient initiated:** Usually through standard renewal procedures or an on-site visit, the recipient or STA or certifying agency determines that a firm is or has become ineligible.

b. **Through a third party complaint,** where the STA or certifying agency initiates a records review investigation

c. **Written notification of the DBE firm** that there is reasonable cause to believe the firm is ineligible or,

d. **Written notification to the complainant** that reasonable cause does not exists.

e. **Providing an opportunity for an informal hearing** to allow the firm in question to provide information or an argument that supports their claim of eligibility.

In such proceedings to determine eligibility and or removal the STA or certifying agency bears the burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards.
SUBPART F – COMPLIANCE AND ENFORCEMENT

Question 1: Does the STA have a compliance complaint procedure that affords the opportunity for anyone to file a written complaint of the STA’s alleged failure to comply with the DBE program requirements? (49 CFR 26.103(a))
Answer: This section of the regulations affords the ability for anyone who believes that a STA has failed to comply with its obligations to file a written complaint. While this provision is specific to filing with an operating administration, it seems appropriate for the STA to have a systematic way to handle such complaints of its administration and implementation of the DBE program.

Question 2: Does the STA in this procedure have an avenue to receive, investigate, and actively take corrective action, if necessary? (49 CFR 26.103(d))
Answer: The STA should not only have a convenient way to handle the receipt and investigation of a complaint, but it must be in a position to take such measures to bring the STA into compliance. If not, it may be up to the operating administration to invoke such enforcement actions available to it to ensure compliance in order to remain eligible for FHWA financial assistance.

Question 3: Does the STA have a process and procedure that includes appropriate enforcement actions (i.e., suspension, debarment, etc.) against fraudulent activities by DBEs and non-DBEs? (49 CFR 26.107)
Answer: The STA must have enforcement actions available to it in its normal course of operations against firms who do not meet the eligibility criteria, but who attempt to participate in the program based on false, fraudulent or deceitful statements or representations, or a firm; in order to meet DBE contract goals, uses or attempts to use on a similar basis another firm that does not meet the eligibility criteria.

Question 4: Does the STA have a mechanism to receive and respond to a request for information and to safeguard from disclosure confidential personal and business information of DBEs? (49 CFR 26.109)
Answer: The STA in responding to requests for information must adhere to the federal rules as USDOT complies with respect to releasing any information concerning the DBE program not prohibited by federal law. The exception is notwithstanding any federal, state and local law, you must not release information that may reasonably be construed as confidential, personal, and business information without the consent of the firm that submitted the information. This information is however to be provided upon request by USDOT in any certification appeal proceeding under 26.89.
Civil Rights Program Assessment Tool Guidelines  
Fiscal Years 2010/2011

Purpose

As recipients of Federal-aid, State Transportation Agencies are responsible for ensuring their Civil Rights programs, activities, and those of their recipients, subrecipients, and contractors, do not discriminate. The purpose of the Civil Rights Program Assessment Tools (CRPAT’s) is to ensure the STA delivers a quality Federal-aid Highway program that meets the requirements of Civil Rights laws, regulations, and other authorities. As Divisions begin conducting their Civil Rights program assessments, FHWA will use this information to focus on improvements to the existing programs and examine any changes that took place since the original Civil Rights Baseline Assessments were conducted in 2007 and 2008.

Background

As part of the original Civil Rights Baseline Assessment, 50% of the States were assessed during FY 2007, and the remaining 50% were completed in FY 2008. As a result of the baseline assessment, it was decided that the Division Offices would reassess the administration of the STA’s Civil Rights program every three years. The CRPAT guidelines are designed to ensure a uniform approach to this task. The following are the objectives and expected outcomes of this national Civil Rights strategy.

Objectives

- To assist Division Offices and STAs to enhance their ability to deliver the Federal-aid Highway Civil Rights program in a manner consistent with the FHWA’s strategic goals and objectives.
- To assist Division offices with evaluating and improving the STAs implementation of the following major Civil Rights program areas: Title VI, ADA, Contractor Compliance, State Internal EEO, and DBE.
- To reassess what has taken place since the original Baseline Assessment.

Expected Outcome

- A new Civil Rights program assessment utilizing the CRPAT’s will occur three years from the original Baseline Assessments.
- After conducting the new assessment, Divisions will prepare a brief report (not to exceed 8 pages). The report should include a synopsis of program observations, recommended improvements, and/or best/good/innovative practices.
- An action plan to address recommendations and resolutions requiring follow-up.
Program Assessment Tools & Guidelines

The FHWA Headquarters Office of Civil Rights (HCR), Resource Center Civil Rights Technical Service Team (TST), and Division Office representatives have assembled the following tools to conduct Civil Rights program assessments.

The components include:

- The Program Assessment Tool Guidelines
- A CRPAT for each major program area: Title VI, ADA, Contractor Compliance, State Internal EEO and DBE\(^1\)
- A Question and Answer Section for Each CRPAT
- A Sample Agenda for conducting CR Program Assessments
- The FHWA Report Format (The use of this template will help to ensure a uniform approach to accomplishing this task.)

Program Assessment Approach

The civil rights program assessments will be conducted by the Division Office Civil Rights Program Manager/Specialist. It is important to understand that the program assessments are not compliance reviews. Rather, the HCR Office plans to utilize these assessments to help maintain a uniform and consistent nationwide approach to Civil Rights Program delivery.

It is anticipated that the assessment will take 3-5 days to complete. The Division offices should ensure individuals participating in the assessment have a copy of the appropriate tools and regulations. The representative will use the guidelines provided to conduct the assessment and to report the results. The data will be collected electronically via the internet or by hard copy if no internet is available on site at the STA. However, the data will need to be entered into the electronic format in order to be analyzed and stored. The completed program assessments will remain with the Division personnel for future reference. The HCR and the Resource Center is available to assist the Division with conducting the assessment, or provide technical assistance as requested.

Civil Rights Program Assessment Tools (CRPATs)

The program assessments will be conducted utilizing the CRPAT’s to ensure consistency and uniformity. The CRPAT’s are supplemented with questions and answers (Q & As) to consider when making observations and recommendations of the Civil Rights program. Each Civil Rights program area includes four basic elements; organization and staffing, program plans and documents, program implementation (including policies and procedures), and data collection and analysis. Ensure these four elements are considered and addressed when making overall observations and recommendations in the assessment report.

---

\(^1\) During 2010 it is not a requirement to assess the DBE Program because: DBE ARRA reviews will be conducted in each State during FY 2010, Divisions are required to implement DBE Action Plans, and DBE Leadership Assessments are required by DAs. However, the DBE assessment tool will be available during FY 2010 for those who want to use it.
Completing the CRPAT’s

The CRPAT’s contains specific questions that correspond to the requirements in the Civil Rights statutes, regulations, guidance, Executive Orders, or other authorities. Citations are provided for each question for easy reference. An online format has been developed to capture the data. An internet connection is critical to facilitate completion of the assessment. If no internet connection is available on site, the data will need to be captured on a hard copy, and later transferred to the electronic database.

The assessment does not include numerical scores or ratings. Instead, participants will answer questions using a “Red, Yellow or Green” indicator and can provide comments if needed. Based upon the responses provided to the questions coupled with program expertise, the Civil Rights program manager/specialist will determine whether the question addressed should be given a Red, Yellow, or Green indicator. Probing questions are included to clarify the responses before choosing Red, Yellow, or Green.

**Indicator Connotation**

**Red:**
Stop - The program needs corrective action and leadership attention.

**Yellow:**
Caution – The program needs improvements or is already a work in progress.

**Green:**
Go – Program has quality oversight and sound execution; continue program in its present state

It is important to mention, that in order to gain an accurate assessment of the overall program, all questions must be answered to the best of your ability.

Below are the links to the CRPAT’s:  DBE

**ADA**

[ADA Program Assessment Tool](#)

**Contractor Compliance**

[Contractor Compliance Program Assessment Tool](#)

**DBE**

[Disadvantaged Business Enterprise (DBE) Program Assessment Tool](#)

**State Internal EEO**

[State Internal EEO Program Assessment Tool](#)
Title VI

Title VI Program Assessment Tool

Final and Draft Report Review Process:

Within 30 days of completing the program assessment, the Division office will provide a copy of the written report to HCR.
Table of Contents

Executive Summary.................................................................................................................................1

Background........................................................................................................................................2

Purpose and Objective................................................................................................................................2

Scope and Methodology .......................................................................................................................2

Division Staff/Team Members .............................................................................................................2

Civil Rights Program Assessment Synopsis ......................................................................................3

Observations and Recommendations ..................................................................................................3

Preceding Baseline Assessment .........................................................................................................4

Conclusion..........................................................................................................................................4

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This report template is the format to be used for the Civil Rights Program Assessment Report

(Note: the use of this template report helps to ensure a uniform approach to accomplishing this task).

Executive Summary

- Contains your main message
- Sets tone and direction for the rest of the report
- Summarizes observations and recommendations
- Describes what actions you want taken as a result of this review
- Not to exceed 1 ½ pages
Background

In 2007 and 2008, FHWA Headquarters Civil Rights (HCR) Office in coordination with the Division Offices conducted a Civil Rights Program Baseline Assessment (CRPBA) of all State DOT's. During this initial CRPBA, 50% of States' programs were assessed in FY 2007, and the remaining 50% in FY 2008. Hereafter, the HCR Office requires the Divisions Civil Rights Office to conduct a Civil Rights Program Assessment (CRPA) every three years.

Purpose and Objective

As recipients of Federal-aid, State Transportation Agencies (STAs) are responsible for ensuring that their civil rights programs, activities, and those of their recipients, subrecipients, and contractors, do not discriminate. Accordingly, the main purpose of these Civil Rights Program Assessments is to ensure that the STAs deliver a quality Federal-aid highway program that meet the requirements of civil rights laws, regulations, and other related statutes. As the Divisions complete these assessments across the country, an objective for the FHWA HCR Office is to look at ways to make national improvements to the existing civil rights programs. The HCR Office also intends to examine the program changes that took place as a result of the 2007 and 2008 baseline assessments in order to determine the effectiveness of those changes.

Scope and Methodology

During this Civil Rights Program Assessment, the (Insert State) FHWA Division Civil Rights Program Manager/Specialist used the Program Assessment Tools to assess the condition of the (Insert STA) overall Civil Rights Program. The CRPAT’s contains a series of questions derived from the basic regulatory requirements in each program that help to assess the health of the individual programs (i.e. Title VI, Contractor Compliance (CC), State Internal Equal Employment Opportunity (SIEEO), Americans with Disabilities Act (ADA), and the Disadvantaged Business Enterprise Program (DBE)). Each CRPAT was used to arrive at an overall Civil Rights Program indicator. This indicator is depicted as a red, yellow, or green icon. The information was obtained onsite and was entered into a data collections portal.

Division Staff/Team Members

(Provide a small spreadsheet or list with names and titles of those who conducted and participated in the Civil Rights Program Assessment).
Civil Rights Program Assessment Synopsis

A Civil Rights Program Assessment synopsis describes the condition of the overall Civil Rights Program Administration. There are three color-coded program indicators (Red, Yellow, and Green), which indicate the health of the major civil rights program areas in relation to the following four program elements:

- Civil Rights Organization and Staffing
- Program Plans and Documents
- Program Implementation – Policies and procedures
- Data Collection and Analysis

(Provide Red, Yellow, or Green Program Indicator to the Right of the Program)  
Overall Program indicator

(Insert Program Here)

Observations and Recommendations

Observation indicator

(Provide Red, Yellow, or Green Observation Indicator to the Left)

Observation #1: What is the key observation for the above CR Program area (i.e. Title VI, ADA, etc.) with respect to the program elements (Civil Rights Organization and Staffing, Program Plans and Documents, Program Implementation – Policies and procedures, Data Collection and Analysis)?

Recommendation: What do you recommend to improve the situation and/or condition?

Resolution (if any): What is agreed upon to resolve the issue (a resolution agreed to at the conclusion of the assessment but before the report was written)?
Observation indicator

- [ ] Red Light
- [ ] Yellow
- [ ] Green Light (Provide Red Light, Yellow, or Green Light Indicator)

Observation #2:

Recommendation:

Resolution (if any):

Note: If there are more observations follow the same format as above.

Preceding Baseline Assessment

Please provide a brief summary concerning what has taken place since the previous Baseline Assessment. Describe any continued concerns, observations, and/or status of previous recommendations.

Conclusion and Action Plan

The conclusion should include a statement regarding the program that has been reviewed, in addition it should indicate if an action plan is required to address recommendations and resolutions requiring follow-up.

Good/Best/Innovative Practices

If you have any good/best/innovative practices please describe them here.
Report prepared by:

(Insert FHWA Division Office Information Here)
(Insert State here) FHWA Division Office
Street Address
City, ST Zip Code
Phone:
FAX:

For additional copies of this report, contact us.
## Civil Rights Baseline Assessment Itinerary (Sample)

### Day One

<table>
<thead>
<tr>
<th>Time</th>
<th>Activity</th>
</tr>
</thead>
</table>
| 8:30 - 10:00 | Opening Conference with Division Administrator (or Designee) – Optional  
|           | Opening conference with State DOT Director (or Designee) - Optional  
|           | - Provide Introductions  
|           | - Provide overview of the Civil Rights Baseline Assessment  
|           | - Provide what we want to accomplish  
|           | - Provide Questions and answers  
| 10:00 - 12:00 | Begin Title VI Assessment                                                                        |
| 12:00 - 1:00 | Lunch                                                                                             |
| 1:00 - 3:00  | Continue with Title VI                                                                          
|           | Record key observations & recommendations for the Title VI program area                          |

### Day Two

<table>
<thead>
<tr>
<th>Time</th>
<th>Activity</th>
</tr>
</thead>
<tbody>
<tr>
<td>8:30 - 12:00</td>
<td>American with Disabilities Act (ADA)/Sec 504 Assessment</td>
</tr>
<tr>
<td>12:00 - 1:00</td>
<td>Lunch</td>
</tr>
<tr>
<td>1:00 - 4:00</td>
<td>Contractor Compliance (CC) Program Assessment</td>
</tr>
<tr>
<td></td>
<td>Record key observations &amp; recommendations for ADA &amp; CC program areas</td>
</tr>
</tbody>
</table>

### Day Three

<table>
<thead>
<tr>
<th>Time</th>
<th>Activity</th>
</tr>
</thead>
<tbody>
<tr>
<td>8:30 - 12:00</td>
<td>State Internal EEO (SIEEO) Assessment</td>
</tr>
<tr>
<td>12:00 - 1:00</td>
<td>Lunch</td>
</tr>
<tr>
<td>1:00 - 5:00</td>
<td>Disadvantaged Business Enterprise (DBE) Program Assessment – Optional in FY 2010</td>
</tr>
<tr>
<td></td>
<td>Record key observations &amp; recommendations for SIEEO and DBE program areas</td>
</tr>
</tbody>
</table>

### Day Four

<table>
<thead>
<tr>
<th>Time</th>
<th>Activity</th>
</tr>
</thead>
</table>
| 8:30 - 10:00 | Closeout with Division Administrator (or Designee) – Optional  
|           | Closeout with State DOT Director (or Designee) - Optional  
|           | - Present Executive Brief  
|           | - Overview of week’s activities  
|           | - Opportunity for input and feedback  
|           | - Appreciation and Recognition  
|           | - Provide Timeline for the final report                                                          |
1. What division are you answering for? ____________________________________________

2. Division contact:
   Name:  ___________________________________________________
   Email Address:______________________________________________

A. General:

3. Has the STA submitted signed Title VI nondiscrimination **assurances** to the Division which certifies that discrimination based on race, color, national origin, sex, age or disability/handicap are prohibited in Federally-funded programs? (23 CFR 200.9(a)(1) & (2); (23 CFR 200.5(p)).

   Has the STA submitted a signed assurance within last 5 years or longer?

4. Does the STA have a **Civil Rights unit**, e.g., an office, section or department? (23 CFR 200.9(b)(1)).

   Are the functions of your Civil Rights Unit implementation fragmented or centralized?

5. Is the Civil Rights unit **adequately staffed** to effectively implement the State's Civil Rights requirements? (23 CFR 200.9(b)(2))

   Do you define “adequate” relative to the size of your program and your responsibilities? That is to say, according to the number of complaints received, investigated and addressed; the pre and post award reviews, audits and on-sites conducted, etc.

   Are the experience, expertise, competence and knowledge of the unit staff also considered in determining adequacy? That is, can the staff concretely demonstrate effective and or efficient implementation of the State’s Civil Rights requirements versus simply knowing what is expected of them to meet their responsibilities?

6. Has your STA included in its directives, **specific discriminatory practices that are prohibited**? (49 CFR 21.5(b)).

   Do your STA’s directives prohibit practices such as, but not limited to: segregation or separate treatment in any part of the program; different standards or requirements for participation; discrimination in any employment resulting from a program?

B. Implementation:

1. Does the STA have a **Title VI Coordinator**? (23 CFR 200.9(b)(1)).

   Is the Title VI Coordinator the head of the Civil Rights unit/office?

2. Does the Coordinator have **easy access to the Head of the STA**? (23 CFR 200.9 (b)(1)).

   Must the Coordinator obtain permission from his/her supervisor or someone else before talking with the Head of the STA?

3. Has the STA designated a **Title VI Specialist with the responsibility to monitor Title VI activities** and prepare required reports? (23 CFR 200.9(b)(1)).

   Is the Title VI Specialist responsible for the day to day administration of the Title VI program? *(23 CFR Part 230.121)*
### B. Implementation:

<table>
<thead>
<tr>
<th></th>
<th>Question</th>
<th></th>
<th></th>
<th>Comments</th>
</tr>
</thead>
</table>
| 4 | Has the STA provided or coordinated **Title VI training**? *(23 CFR 200.9(b)(9))*
  Has training been provided within 1-3 years?                                                                                                      |   |   |          |
|   | Who were the attendees in terms of number, disciplines, recipients and stakeholders?                                                                                                                        |   |   |          |
| 5 | Has the Title VI Specialist submitted a **Title VI Implementation Plan** to the Division Office for approval? *(23 CFR 200.9(b)(11)).
  Is the implementation plan signed, widely distributed and contains methods of administration?                                                   |   |   |          |
| 6 | Has the STA **developed Title VI information for dissemination to the general public** and, where appropriate, in languages other than English? *(23 CFR 200.9(a)(b)(12)).
  Is the information timely, relevant and easy-to-understand format?                                                                                 |   |   |          |
|   | Does the STA have a demographic profile of the affected areas?                                                                                                                                            |   |   |          |
|   | Are the means of information dissemination diversified? Examples of dissemination vehicles: TV, radio, newspapers, town meetings, flyers, brochures, placement in public areas, etc |   |   |          |
| 7 | Has the Title VI Specialist prepared an **annual accomplishment report** for the past year, and **goals for the next year**? *(23 CFR 200.9(b)(10))*(Note: There is no need for a separate update if the accomplishment report contains one.) |   |   |          |
| 8 | As a Federal recipient through continuing State programs, has the STA established a **Title VI compliance program for itself and its subrecipients**? *(23 CFR 200.9(b)(5)(6), & (7)).* |   |   |          |

### C. Procedures:

<table>
<thead>
<tr>
<th></th>
<th>Question</th>
<th></th>
<th></th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Has the STA developed <strong>procedures for processing and resolving Title VI complaints</strong> received directly by the STA? *(23 CFR 200.9(b)(3))</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Are the complaints and copies of the <strong>reports of investigation forwarded to the Division Office within 60 days</strong> of the date the complaint was received by the STA? *(23 CFR 200.9(b)(3))</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
| 3 | Does the STA have **personnel trained in complaint investigations**? *(23 CFR 200.9(b)(3)).
  Where and how was training obtained? Through FHWA training sessions, programs offered by the Graduate School in the U.S. Department of Agriculture, consultants in the areas of complaints and investigations, or other certified trainers?|   |   |          |
| 4 | Does the STA have a **Title VI log** that identifies each Complainant by race, color, sex, or national origin, *(23 CFR 200.9(b)(3)), age or disability *(23 CFR 200.5)(p)(6)); by recipient; nature of complaint; date the complaint was filed and the investigation completed; disposition; and other pertinent information? *(23 CFR 200.9(b)(3)).|   |   |          |
| 5 | Does the STA have **procedures to collect and analyze statistical data** *(e.g., race, color, sex, national origin) of participants and beneficiaries of the STA programs *(i.e., relocatees, impacted citizens, and affected communities)*? *(23 CFR 200.9(b)(4)).|   |   |          |
| 6 | Has the STA established **procedures to identify and eliminate discrimination when found**? *(23 CFR 200.9(b)(14)).                                                                                       |   |   |          |
| 7 | Has the STA established **procedures for promptly resolving deficiencies and reducing to writing the remedial action** agreed to be necessary, within 90 days? *(23 CFR 200.9(b)(15)). |   |   |          |
### C. Procedures:

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>8.</td>
<td>Has the STA established <strong>procedures for pre-award and post-award approval reviews</strong> of State programs and applicants for compliance with Title VI requirements (i.e., highway location, design and relocation, persons seeking contracts with the State)? (23 CFR 200.9(b)(13)).</td>
<td>R</td>
<td>Y</td>
</tr>
<tr>
<td>9.</td>
<td>In accordance with the State's signed assurances and regulation guidelines, does the STA take <strong>affirmative action to correct deficiencies found by the FHWA</strong>? (23 CFR 200.9(a)(3)).</td>
<td>R</td>
<td>Y</td>
</tr>
<tr>
<td>10.</td>
<td>Does your STA take <strong>prompt</strong> action to achieve voluntary compliance as its first objective? (23 CFR 200.11(d)).</td>
<td>R</td>
<td>Y</td>
</tr>
<tr>
<td>11.</td>
<td>Does your STA place an <strong>emphasis on community outreach and public education</strong> to inform funding recipients of the obligations imposed on them by Title VI? (23 CFR 200.9(b)(12)).</td>
<td>R</td>
<td>Y</td>
</tr>
<tr>
<td>12.</td>
<td>Are <strong>Title VI and related requirements included in the applicable State program directives</strong>? (23 CFR 200.9(b)(8))</td>
<td>R</td>
<td>Y</td>
</tr>
</tbody>
</table>

### D. Program Reviews:

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Has the STA developed a program to conduct <strong>Title VI reviews of program areas</strong>? (23 CFR 200.9(b)(5)). <strong>How often are the reviews conducted?</strong></td>
<td>R</td>
<td>Y</td>
</tr>
<tr>
<td>2.</td>
<td>Has the STA conducted <strong>annual Title VI Reviews of its [major] program areas</strong> to determine the effectiveness of program area activities at all levels? (23 CFR 200.9(a)(4)(b)(6)).</td>
<td>R</td>
<td>Y</td>
</tr>
<tr>
<td>3.</td>
<td>Has the STA conducted <strong>Title VI reviews of subrecipients</strong> (i.e., cities, counties, consultants, contractors, colleges, universities, MPOs, and other recipients of Federal-aid highway funds)? (23 CFR 200.9(b)(7)). <strong>Is there an established schedule by which reviews are conducted? Are they conducted annually, biannually, staggered?</strong></td>
<td>R</td>
<td>Y</td>
</tr>
<tr>
<td>4.</td>
<td>Has your STA used <strong>onsite compliance reviews</strong> to discover discriminatory practices? (See DOT Order 1000.12; and in general, 23 CFR 200.9) <strong>How often are the reviews conducted?</strong></td>
<td>R</td>
<td>Y</td>
</tr>
</tbody>
</table>
STATE TRANSPORTATION AGENCY (STA) RESPONSIBILITIES:

A. GENERAL ISSUES:

Question 1: What Division are you answering for?

Question 2: Division Contact Information:
(a) Division Staff name:
(b) Email Address:

Question 3: Has the STA submitted signed Title VI nondiscrimination assurances to the Division which certifies that discrimination based on race, color, national origin, sex, age or disability/handicap are prohibited in Federally-funded programs? (23 CFR 200.9(a)(1) & (2); (23 CFR 200.5(p)).

Answer: According to 23 CFR 200.9(a)(1), and especially Title 49, CFR part 21 (U.S. Department of Transportation Title VI Regulations), as a condition of receiving Federal financial assistance, all recipients are required to have signed assurances that no person in the United States shall, on the grounds of race, color, or national origin (Title VI of Civil Rights Act of 1964), sex (The Federal-Aid Highway Act of 1973), age (Age Discrimination Act of 1975), or disability/handicap (Section 504 of the Rehabilitation Act of 1973), be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the recipient receives Federal financial assistance from the Department of Transportation, including the Federal Highway Administration.

There are essentially two important purposes of assurances: 1) they remind prospective recipients of their nondiscrimination obligations, and 2) they provide a basis for the Federal Government to sue to enforce compliance with these statutes.

Question 4: Does the STA have a Civil Rights unit, e.g., an office, section or department? (23 CFR 200.9(b)(1)).

Answer: According to 23 CFR 200.9(b)(1), the STA must establish a civil rights unit. A “unit” connotes an independent entity. Not a sub or fragmented element of another division or subdivision, e.g., human resources. The independence of the Civil Rights unit prevents conflicts of interest and ensures impartiality and objectivity. The establishment of a Civil Rights Unit should include an organizational chart of the unit showing names and titles of staff including its location in the STA’s organizational
structure. Additional recommendations may be derived from the U.S. Department of Justice, Civil Rights Division’s publication, “Checklist for Analysis of a Federal Agency’s Title VI Enforcement Effort,” Title VI Forum, vol. 4., no. 2 (Fall 1979).

**Question 5**: Is the Civil Rights unit adequately staffed to effectively implement the State’s Civil Rights requirements? (23 CFR 200.9(b)(2))

**Answer**: According to 23 CFR 200.9(b)(2), the STA’s Civil Rights unit must be adequately staffed to effectively implement the State’s Civil Rights requirements. The meaning of “adequate” is relative to each STA program and overall staff responsibilities. There is no “magic figure” concerning the number of staff assigned implementation responsibilities. An important consideration is whether the STA’s staff can, in fact implement the State’s Civil Rights requirements effectively as opposed to merely knowing what is expected of them. In effect, there must be adequate resources to effectively implement the States’ Civil Rights requirements. The adequacy of the unit also includes, but not be limited to: the number of complaints addressed in the past year(s); the number of pre and post-reviews conducted; and the experience, expertise and knowledge of the staff in fulfilling its responsibilities.

**Question 6**: Has your STA included in its directives, specific discriminatory practices that are prohibited? (49 CFR 21.5(b)).

**Answer**: Pursuant to 49 C.F.R. § 21.5(b), the following discriminatory practices should be prohibited by STA directives: denial to an individual any service, financial aid, or other benefit provided under the program; distinctions in the quality, quantity, or manner in which the benefit is provided; segregation or separate treatment in any part of the program; restriction in the enjoyment of any advantages, privileges, or other benefits provided to others; different standards or requirements for participation; methods of administration which directly or through contractual relationships would defeat or substantially impair the accomplishment of effective nondiscrimination; discrimination in any activities related to highway and infrastructure or facility built or repaired in whole or in part with Federal funds; and discrimination in any employment resulting from a program, the primary purpose of which is to provide employment

### B. IMPLEMENTATION:

**Question 7**: Does the STA have a Title VI Coordinator? (23 CFR 200.9(b)(1)).

**Answer**: According to 23 CFR 200.9(b)(1), the STA must designate a Title VI Coordinator to be responsible for the overall implementation of the Civil Rights Program. Reports and guidance suggest that the head of the Civil Rights unit/program should be the Title VI Coordinator (US Commission on Civil Rights 1996 Title VI Enforcement
Question 2: Does the Coordinator have easy access to the Head of the STA? (23 CFR 200.9 (b)(1)).

Answer: According to 23 CFR 200.9(b)(1), the Title VI Coordinator should have a responsible position in the organization as well as easy access to the head of the STA. The head of the civil rights unit should report to a senior executive-level authority within the STA. Bureaucratic protocol must not impede implementation.

Question 3: Has the STA designated a Title VI Specialist with the responsibility to monitor Title VI activities and prepare required reports? (23 CFR 200.9(b)(1)).

Answer: According to 23 CFR 200.9(b)(1), the Title VI Specialist shall be responsible for initiating and monitoring Title VI activities and preparing required reports. The Title VI Specialist should be responsible for the day to day administration of the Title VI program with ability to coordinate and prepare required reports.

Question 4: Has the STA provided or coordinated Title VI training? (23 CFR 200.9(b)(9))

Answer: The quality of an STA’s civil rights program depends upon the expertise of the staff conducting it. For this reason, it is essential that each STA provide regular and comprehensive training in Title VI enforcement to all staff responsible for external civil rights compliance, including the STA’s program administration staff. According to 23 CFR 200.9(b)(9), the STA’s [Title VI Specialist] is responsible for conducting training programs on Title VI and related statutes for State program managers, specialists and other recipients and stakeholders. Effective enforcement of Title VI requires that other offices participating in Title VI enforcement receive training from, report to, and are monitored by the STA’s civil rights office.

Question 5: Has the Title VI Specialist submitted a Title VI Implementation Plan to the Division Office for approval? (23 CFR 200.9(b)(11)).

Answer: According to 23 CFR 200.9(b)(11), beginning October 1, 1976, each STA is required to annually submit an updated Title VI implementation plan to the Division Office Administrator (formerly the “Regional Federal Highway Administrator”) for concurrence and approval. The plan must map out the implementation procedures, strategies, and activities to facilitate and assure nondiscrimination. A complete implementation plan sets forth the STA’s goals and priorities for the coming year, and indicates the allocation of specific staff and resources to specific tasks in order to accomplish the STA’s goals. Such plans also include goals and objectives for
conducting outreach, education, technical assistance and staff training, compliance reviews, collecting and analyzing data and conducting complaint investigations. Further, the implementation plan should be available to the public.

**Question 6:** Has the STA developed Title VI information for dissemination to the general public and, where appropriate, in languages other than English? (23 CFR 200.9(a)(b)(12)).

**Answer:** According to 23 CFR 200.9(b)(12), not only is the STA required to develop such information, but also, it is required to develop and disseminate it, where appropriate, in languages other than English. *(Also See Executive Order 13166, 8/11/2000).* The primary purpose of community outreach and public education is to inform funding recipients of the obligations imposed on them by Title VI, and to inform actual and potential beneficiaries of the rights afforded them by Title VI. The responsibilities of funding recipients include taking reasonable measures to disseminate written material in the appropriate languages when a significant number of beneficiaries, potential beneficiaries, or the affected community require information in a language other than English. Examples of such information dissemination vehicles include, but are not limited to:

- television,
- radio,
- newspapers,
- town meetings,
- flyers, brochures, pamphlets
- placement in public areas,
- handbooks, and manuals.

Demographic profiles of a State’s affected areas will help a STA determine the appropriate information and dissemination vehicle.

**Question 7:** Has the Title VI Specialist prepared an annual accomplishment report for the past year, and goals for the next year? (23 CFR 200.9(b)(10))

**Answer:** This is required by 23 CFR 200.9(b)(10). There is no need, however, for a separate update if the accomplishment report contains one. The accomplishment report should include not only the STA’s major accomplishments, but also, goals of next year; instances where Title VI issues were identified and discrimination prevented; activities and efforts of the Title VI Specialist and program area personnel in monitoring Title VI; a description of scope and conclusion of any special reviews conducted; the identification of major problems and corrective action(s) undertaken; and a summary and status report on any Title VI complaints filed with the STA, and how they were addressed.
Question 8: As a Federal recipient through continuing State programs, has the STA established a Title VI compliance program for itself and its subrecipients? (23 CFR 200.9(b)(5), & (7)).

Answer: As primary recipients, STAs generally serve as conduits of Federal financial assistance and pass through funds to subrecipients. In these instances, the State or local agency is responsible not only for enforcing Title VI with respect to subrecipients or sub-grantees, but also for assessing its own Title VI compliance efforts. FHWA’s primary function is to oversee and monitor Title VI enforcement as conducted by the primary recipient – the State (49 CFR 21.7(b)). According to 23 CFR 200.9(b)(5), States receiving Federal assistance through continuing State programs must establish a Title VI compliance program for themselves and their subrecipients.

C. PROCEDURES:

Question 1: Has the STA developed procedures for processing and resolving Title VI complaints received directly by the STA? (23 CFR 200.9(b)(3))

Answer: According to 23 CFR 200.9(b)(3), the STA must develop procedures for prompt processing and disposition of Title VI complaints received directly by the State and not by FHWA. These procedures should be clearly communicated to civil rights staff, and the Title VI Coordinator or Specialist should ensure that the staff understands them. Moreover, the procedures should meet the needs of each specific Federal assistance program it conducts.

Question 2: Are the complaints and copies of the reports of investigation forwarded to the Division Office within 60 days of the date the complaint was received by the STA? (23 CFR 200.9(b)(3))

Answer: According to 23 CFR 200.9(b)(3), a complaint and a copy of the report of investigation must be forwarded to the Division Office within 60 days of the date the complaint was received by the STA.

Question 3: Does the STA have personnel trained in complaint investigations? (23 CFR 200.9(b)(3)).

Answer: According to 23 CFR 200.9(b)(3), complaints shall be investigated by STA personnel trained in compliance investigations. Effective staff training not only provides education on Title VI compliance and enforcement policies and procedures, but also, ensures that the civil rights staff understands the relationship between Title VI and other civil rights statutes. Effective training also keeps staff apprised of legal developments.
affecting Title VI, including new civil rights laws, and can facilitate staff identification of subtle forms of discrimination. Examples of training programs that might be helpful to civil rights personnel include FHWA training sessions; those offered by the Graduate School in the United States Department of Agriculture; consultants in the areas of complaints and investigations; and other certified trainers.

**Question 4:** Does the STA have a Title VI log that identifies each Complainant by race, color, sex, or national origin, (23 CFR 200.9(b)(3)), age or disability (23 CFR 200.5)(p)(6); by recipient; nature of complaint; date the complaint was filed and the investigation completed; disposition; and other pertinent information? (23 CFR 200.9(b)(3)).

**Answer:** According to 23 CFR 200.9(b)(3), each STA processing Title VI complaints is required to maintain a log with the following information: Identification of each complaint by race, color, sex, or national origin; the recipient; the nature of the complaint; the dates the complaint was filed and the investigation completed, the disposition; the date of the disposition; and other pertinent information such as age or disability. (See 23 CFR 200.5(p)(6)) This kind of information is essential to monitoring compliance.

**Question 5:** Does the STA have procedures to collect and analyze statistical data (e.g., race, color, sex, national origin) of participants and beneficiaries of the STA programs (i.e., relocatees, impacted citizens, and affected communities)? (23 CFR 200.9(b)(4)).

**Answer:** According to 23 CFR 200.9(b)(4), the STA must have procedures to collect and analyze statistical data (e.g., race, color, sex, national origin, etc.) of participants and beneficiaries of STA programs. Beneficiaries include relocatees, impacted citizens, and affected communities. Collecting, analyzing and maintaining statistical data are crucial elements of a Title VI/nondiscrimination enforcement program. Also, they constitute an effective mechanism by which to numerically assess the reach and impact of program funds. Further, statistical data collection is a means to determine if FHWA financial assistance is reaching communities and populations that need the assistance, as well as a means to quantitatively monitor the performance of a Title VI/nondiscrimination program. The data collected must, of course, be accurate, current, and sufficient. In addition to Census data, examples of other sources that a STA can utilize include data collected by State Education Departments, community leaders, community-based organizations, and local, data-collecting agencies.

**Question 6:** Has the STA established procedures to identify and eliminate discrimination when found? (23 CFR 200.9(b)(14)).
Answer: According to 23 CFR 200.9(b)(14), a STA must establish procedures to identify and eliminate discrimination when found to exist; these procedures include proactive programs to prevent discrimination.

Question 7: Has the STA established procedures for promptly resolving deficiencies and reducing to writing the remedial action agreed to be necessary, within 90 days? (23 CFR 200.9(b)(15)).

Answer: According to 23 CFR 200.9(b)(15), a STA must establish procedures for promptly resolving deficiencies and reducing to writing the remedial action agreed to be necessary, all within a period not to exceed 90 days. Deficiencies can take the form of technical violations, such as failing to include an equal opportunity statement on a poster, or filling out an assurance form incorrectly, or more serious, overt discriminatory practices that have the effect of denying equal access to program funds.

Question 8: Has the STA established procedures for pre-award and post-award approval reviews of State programs and applicants for compliance with Title VI requirements (i.e., highway location, design and relocation, persons seeking contracts with the State)? (23 CFR 200.9(b)(13)).

Answer: According to 23 CFR 200.9(b)(13), a STA must establish procedures for pre-grant (award) and post-grant(award) approval reviews of State programs and applicants for compliance with Title VI (i.e., highway location, design and relocation, and persons seeking contracts with the State).

Question 9: In accordance with the State’s signed assurances and regulation guidelines, does the STA take affirmative action to correct deficiencies when found by the FHWA? (23 CFR 200.9(a)(3))

Answer: According to 23 CFR 200.9(a)(3), in accordance with a State’s signed assurances and regulation guidelines, the STA must prepare to take affirmative action to correct deficiencies if found. Such affirmative action must be taken within a reasonable time period, not to exceed 90 days. Examples of affirmative action include such preventive measures as: routine checks prior to releasing funds to ensure recipients have submitted assurances of Title VI compliance; onsite compliance reviews; submission of periodic compliance reports.

Question 10: Does your STA take [prompt] action to achieve voluntary compliance as its first objective? (23 CFR 200.11(d)).

Answer: Prompt action to achieve voluntary compliance should be the first objective with respect to all instances in which noncompliance is found. (See 23 CFR 200.11(d)).
In the event that compliance cannot be achieved voluntarily, Title VI provides other means to secure compliance. (49 CFR 21.13) It permits Federal agencies to use other means authorized by law to bring about compliance. In addition to referral to DOJ for litigation in Federal court, these “other means” include administrative avenues such as: a) seeking consultation with, or assistance from another Federal agency (such as the Office of Federal Contract Compliance at the Department of Labor) with authority to enforce nondiscrimination requirements or, b) consulting with, or seeking assistance from State or local agencies with nondiscrimination enforcement authority.

**Question 11:** Does your STA place an emphasis on community outreach and public education to inform funding recipients of the obligations imposed on them by Title VI? (23 CFR 200.9(b)(12)).

**Answer:** Without regular and comprehensive outreach and education, members of the public generally do not have the information necessary to pursue and protect their rights under Title VI by filing complaints against discriminating recipients. Therefore, one sign of a poor outreach and education program may be a small number of complaints filed with a funding agency. Outreach and education efforts also afford agencies an opportunity to inform potential recipients of assistance programs and the nondiscriminatory policies and requirements of Title VI. They enable potential recipients to learn grant application procedures. Agencies also learn about community concerns and receive public input in the development of Title VI enforcement programs.

Public participation provides for public involvement of all persons (including Native Americans, minorities and low-income persons), affected public agencies, Federal employees, applicants for Federal assistance, beneficiaries, and other interested persons. (See 23 CFR 200.9)

**Question 12:** Are Title VI and related requirements included in the applicable State program directives? (23 CFR 200.9(b)(8))

**Answer:** According to 23 CFR 200.9(b)(8), a STA must review State program directives in coordination with State program officials, and, where applicable, include Title VI and related nondiscrimination requirements.

Further, a STA’s directives or administrative orders should establish basic procedures for complaint processing, post-award reviews, achieving compliance, and imposing sanctions for noncompliance. The directives should include the issuance of specific procedures or compliance manuals that aid in the daily operation of Title VI enforcement. These procedures should be more detailed and specific than the procedure embodied in the directives.
D. PROGRAM REVIEWS:

**Question 1:** Has the STA developed a program to conduct Title VI reviews of program areas? (23 CFR 200.9(b)(5)).

**Answer:** This is required by 23 CFR 200.9(b)(5). In addition, FHWA advises every STA that a well developed Title program should include an implementation plan that: a) describes the nature of the program and the responsibilities of the operating divisions, office or unit that administers the federally assisted program; b) indicates the number of programs administered annually, an estimated total of the amount of Federal financial assistance distributed annually, and the approximate number of grants and recipients and sub-recipients involved; c) includes proactive programs to prevent discrimination; and d) includes enforcement procedures that correspond with the objectives of their federally assisted programs and activities.

**Question 2:** Has the STA conducted annual Title VI Reviews of its [major] program areas to determine the effectiveness of program area activities at all levels? (23 CFR 200.9(a)(4)(b)(6)).

**Answer:** According to 23 CFR 200.9(b)(6), a STA must conduct an annual Title VI review of its program areas to determine the effectiveness of program area activities at all levels. Also, the variety and complexity of the covered programs require that the STA’s Title VI procedures be tailored to meet the needs of each specific assistance program it conducts. They should address the entire compliance process, from application and pre-award requirements, through compliance review and complaint processing. Procedures or manuals also may provide program participants and beneficiaries with step-by-step instructions on filing complaints against funding recipients. Such instructions assist beneficiaries in exercising fully their rights under Title VI.

**Question 3:** Has the STA conducted Title VI reviews of subrecipients (i.e., cities, counties, consultants, contractors, colleges, universities, MPOs, and other recipients of Federal-aid highway funds)? (23 CFR 200.9(b)(7)).

**Answer:** According to 23 CFR 200.9(b)(7), a STA must conduct Title VI reviews of sub-recipients (i.e., cities, counties, consultant, contractors, college, universities, MPOs, and other recipients of Federal-aid highway funds).

**Question 4:** Has your STA used onsite compliance reviews to discover discriminatory practices? (See DOT Order 1000.12; and in general, 23 CFR 200.9)

**Answer:** Generally, STAs should conduct routine checks prior to releasing funds to
ensure that recipients have submitted assurances of Title VI compliance. A pre-award review of recipients can assist the STA in determining whether the prime contractor operates in a discriminatory manner. Such reviews can also be used to require applicants to take preventive measures to ensure that discrimination will not occur in their programs as a condition of receiving Federal funds. Regardless of whether the pre-award review is a desk-audit review or an onsite review (i.e., an extensive investigation of a recipient’s program conducted in the field at program offices), if the STA discovers a Title VI violation, the agency must attempt to secure the prime contractor’s voluntary compliance. If that attempt fails, the agency has the option of withholding or denying Federal funds. [See DOT Order 1000.12, Chapter IV, 1. Also See 23 CFR 200.9(b)(3)(5)(11)(12)(13) & (15); and 200.11]

Further, once a recipient has received Federal funds, the STA must review the prime contractor periodically to ensure that the recipient remains in compliance with Title VI. As with the pre-award reviews, post-award reviews may take the form of either desk-audit reviews or more extensive onsite compliance reviews. As discrimination may not always be overt and, therefore, may be more difficult to identify, onsite compliance reviews have become an increasingly important means of discovering discriminatory practices.
SUBCHAPTER C—CIVIL RIGHTS

PART 200—TITLE VI PROGRAM AND RELATED STATUTES—IMPLEMENTATION AND REVIEW PROCEDURES

Sec. 200.1 Purpose.
200.3 Application of this part.
200.5 Definitions.
200.7 FHWA Title VI policy.
200.9 State highway agency responsibilities.
200.11 Procedures for processing Title VI reviews.


SOURCE: 41 FR 53862, Dec. 10, 1976, unless otherwise noted.

§ 200.1 Purpose.

To provide guidelines for: (a) Implementing the Federal Highway Administration (FHWA) Title VI compliance program under Title VI of the Civil Rights Act of 1964 and related civil rights laws and regulations, and (b) Conducting Title VI program compliance reviews relative to the Federal-aid highway program.

§ 200.3 Application of this part.

The provisions of this part are applicable to all elements of FHWA and provide requirements and guidelines for State highway agencies to implement the Title VI Program requirements. The related civil rights laws and regulations are listed under §200.5(p) of this part. Title VI requirements for 23 U.S.C. 402 will be covered under a joint FHWA/NHTSA agreement.

§ 200.5 Definitions.

The following definitions shall apply for the purpose of this part:

(a) Affirmative action. A good faith effort to eliminate past and present discrimination in all federally assisted programs, and to ensure future nondiscriminatory practices.

(b) Beneficiary. Any person or group of persons (other than States) entitled to receive benefits, directly or indirectly, from any federally assisted program, i.e., relocates, impacted citizens, communities, etc.

(c) Citizen participation. An open process in which the rights of the community to be informed, to provide comments to the Government and to receive a response from the Government are met through a full opportunity to be involved and to express needs and goals.

(d) Compliance. That satisfactory condition existing when a recipient has effectively implemented all of the Title VI requirements or can demonstrate that every good faith effort toward achieving this end has been made.

(e) Deficiency status. The interim period during which the recipient State has been notified of deficiencies, has not voluntarily complied with Title VI Program guidelines, but has not been declared in noncompliance by the Secretary of Transportation.

(f) Discrimination. That act (or action) whether intentional or unintentional, through which a person in the United States, solely because of race, color, religion, sex, or national origin, has been otherwise subjected to unequal treatment under any program or activity receiving financial assistance from the Federal Highway Administration under title 23 U.S.C.

(g) Facility. Includes all, or any part of, structures, equipment or other real or personal property, or interests therein, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration or acquisition of facilities.

(h) Federal assistance. Includes:

(1) Grants and loans of Federal funds,
(2) The grant or donation of Federal property and interests in property,
(3) The detail of Federal personnel,
(4) 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 which 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, and
§ 200.7

(5) Any Federal agreement, arrangement, or other contract which has, as one of its purposes, the provision of assistance.

(i) **Noncompliance.** A recipient has failed to meet prescribed requirements and has shown an apparent lack of good faith effort in implementing all of the Title VI requirements.

(j) **Persons.** Where designation of persons by race, color, or national origin is required, the following designations ordinarily may be used: "White not of Hispanic origin", "Black not of Hispanic origin", "Hispanic", "Asian or Pacific Islander", "American Indian or Alaskan Native." Additional subcategories based on national origin or primary language spoken may be used, where appropriate, on either a national or a regional basis.

(k) **Program.** Includes any highway, project, or activity for the provision of services, financial aid, or other benefits to individuals. This includes education or training, work opportunities, health, welfare, rehabilitation, housing, or other services, whether provided directly by the recipient of Federal financial assistance or provided by others through contracts or other arrangements with the recipient.

(l) **State highway agency.** That department, commission, board, or official of any State charged by its laws with the responsibility for highway construction. The term State would be considered equivalent to State highway agency if the context so implies.

(m) **Program area officials.** The officials in FHWA who are responsible for carrying out technical program responsibilities.

(n) **Recipient.** Any State, territory, possession, the District of Columbia, Puerto Rico, or any political subdivision, or instrumentality thereof, or any public or private agency, institution, or organization, or other entity, or any individual, in any State, territory, possession, the District of Columbia, or Puerto Rico, to whom Federal assistance is extended, either directly or through another recipient, for any program. Recipient includes any successor, assignee, or transferee thereof. The term recipient does not include any ultimate beneficiary under any such program.

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(o) **Secretary.** The Secretary of Transportation as set forth in 49 CFR 21.17(g)(3) or the Federal Highway Administrator to whom the Secretary has delegated his authority in specific cases.

(p) **Title VI Program.** The system of requirements developed to implement Title VI of the Civil Rights Act of 1964. References in this part to Title VI requirements and regulations shall not be limited to only Title VI of the Civil Rights Act of 1964. Where appropriate, this term also refers to the civil rights provisions of other Federal statutes to the extent that they prohibit discrimination on the grounds of race, color, sex, or national origin in programs receiving Federal financial assistance of the type subject to Title VI itself. These Federal statutes are:

(1) Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d–d4 (49 CFR part 21; the standard DOT Title VI assurances signed by each State pursuant to DOT Order 1059.2; Executive Order 11764; 28 CFR 50.3);


(3) Title VIII of the Civil Rights Act of 1968, amended 1974 (42 U.S.C. 3601–3619);

(4) 23 U.S.C. 109(h);

(5) 23 U.S.C. 324;

(6) Subsequent Federal-Aid Highway Acts and related statutes.

§ 200.7 FHWA Title VI policy.

It is the policy of the FHWA to ensure compliance with Title VI of the Civil Rights Act of 1964 (49 CFR part 21; and related statutes and regulations.

§ 200.9 State highway agency responsibilities.

(a) State assurances in accordance with Title VI of the Civil Rights Act of 1964.

(1) Title 49, CFR part 21 (Department of Transportation Regulations for the implementation of Title VI of the Civil Rights Act of 1964) requires assurances from States that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied
the benefits of, or be otherwise subjected to discrimination under any program or activity for which the recipient receives Federal assistance from the Department of Transportation, including the Federal Highway Administration.

(2) Section 162a of the Federal-Aid Highway Act of 1973 (section 334, title 23 U.S.C.) requires that there be no discrimination on the ground of sex. The FHWA considers all assurances herefore received to have been amended to include a prohibition against discrimination on the ground of sex. These assurances were signed by the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, and American Samoa. The State highway agency shall submit a certification to the FHWA indicating that the requirements of section 162a of the Federal-Aid Highway Act of 1973 have been added to its assurances.

(3) The State highway agency shall take affirmative action to correct any deficiencies found by the FHWA within a reasonable time period, not to exceed 90 days, in order to implement Title VI compliance in accordance with Statesigned assurances and required guidelines. The head of the State highway agency shall be held responsible for implementing Title VI requirements.

(4) The State program area officials and Title VI Specialist shall conduct annual reviews of all pertinent program areas to determine the effectiveness of program area activities at all levels.

(b) State actions. (1) Establish a civil rights unit and designate a coordinator who has a responsible position in the organization and easy access to the head of the State highway agency. This unit shall contain a Title VI Equal Employment Opportunity Coordinator or a Title VI Specialist, who shall be responsible for initiating and monitoring Title VI activities and preparing required reports.

(2) Adequately staff the civil rights unit to effectively implement the State civil rights requirements.

(3) Develop procedures for prompt processing and disposition of Title VI and Title VIII complaints received directly by the State and not by FHWA. Complaints shall be investigated by State civil rights personnel trained in compliance investigations. Identify each complainant by race, color, sex, or national origin; the recipient; the nature of the complaint; the dates the complaint was filed and the investigation completed; the disposition; the date of the disposition; and other pertinent information. Each recipient (State) processing Title VI complaints shall be required to maintain a similar log. A copy of the complaint, together with a copy of the State's report of investigation, shall be forwarded to the FHWA division office within 90 days of the date the complaint was received by the State.

(4) Develop procedures for the collection of statistical data (race, color, religion, sex, and national origin) of participants in, and beneficiaries of State highway programs, i.e., relocatees, impacted citizens and affected communities.

(5) Develop a program to conduct Title VI reviews of program areas.

(6) Conduct annual reviews of special emphasis program areas to determine the effectiveness or program area activities at all levels.

(7) Conduct Title VI reviews of cities, counties, consultant contractors, suppliers, universities, colleges, planning agencies, and other recipients of Federal-aid highway funds.

(8) Review State program directives in coordination with State program officials and, where applicable, include Title VI and related requirements.

(9) The State highway agency Title VI designee shall be responsible for conducting training programs on Title VI and related statutes for State program and civil rights officials.

(10) Prepare a yearly report of Title VI accomplishments for the past year and goals for the next year.

(11) Beginning October 1, 1978, each State highway agency shall annually submit an updated Title VI implementing plan to the Regional Federal Highway Administrator for approval or disapproval.

(12) Develop Title VI information for dissemination to the general public and, where appropriate, in languages other than English.
§ 200.11

(13) Establishing procedures for pregrant and postgrant approval reviews of State programs and applicants for compliance with Title VI requirements; i.e., highway location, design and relocation, and persons seeking contracts with the State.

(14) Establish procedures to identify and eliminate discrimination when found to exist.

(15) Establishing procedures for promptly resolving deficiency status and reducing to writing the remedial action agreed to be necessary, all within a period not to exceed 90 days.

§ 200.11 Procedures for processing Title VI reviews.

(a) If the regional Title VI review report contains deficiencies and recommended actions, the report shall be forwarded by the Regional Federal Highway Administrator to the Division Administrator, who will forward it with a cover letter to the State highway agency for corrective action.

(b) The division office, in coordination with the Regional Civil Rights Officer, shall schedule a meeting with the recipient, to be held not later than 30 days from receipt of the deficiency report.

(c) Recipients placed in a deficiency status shall be given a reasonable time, not to exceed 90 days after receipt of the deficiency letter, to voluntarily correct deficiencies.

(d) The Division Administrator shall seek the cooperation of the recipient in correcting deficiencies found during the review. The FHWA officials shall also provide the technical assistance and guidance needed to aid the recipient to comply voluntarily.

(e) When a recipient fails or refuses to voluntarily comply with requirements within the time frame allotted, the Division Administrator shall submit to the Regional Administrator two copies of the case file and a recommendation that the State be found in noncompliance.

(f) The Office of Civil Rights shall review the case file for a determination of concurrence or nonconcurrence with a recommendation to the Federal Highway Administrator. Should the Federal Highway Administrator concur with the recommendation, the file is referred to the Department of Transportation, Office of the Secretary, for appropriate action in accordance with 49 CFR.
1. What division are you answering for? ____________________________________________

2. Division contact:
    Name: ____________________________________________
    Email Address: ____________________________________

### State Transportation Agency (STA) Responsibilities

**A. General Requirements (Subpart A and B):**

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<td>3.</td>
<td>Does the STA have an ADA/504 coordinator? (28 CFR 35.107(a) &amp; 49 CFR 27.13(a))</td>
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<td>• Does the STA make the name, office, address and phone number of the coordinator available to all interested parties?</td>
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<td>• What are the coordinator’s responsibilities and to whom does he/she report?</td>
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<td>• Is the coordinator an integral member of the civil rights “team?” such that any potential and actual ADA/504-related issues identified are communicated clearly and expeditiously to the ADA/504 coordinator?</td>
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<td>• Is there clear and regular communication between the ADA/504 coordinator and other members of the civil rights team?</td>
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| 4. | Does the STA have an internal grievance procedure that allows for prompt and equitable solutions for any complaints based on alleged noncompliance with 504/ADA? (Note: “Grievance procedure” refers to a process for external complaints) (28 CFR 35.107(b) & 49 CFR 27.13(b)) |
|   | • How do you define “prompt” and “equitable?” |
|   | • Does the STA keep a log of ADA/504 complaints? If so, can you easily locate it? Does it indicate the date at which the complaint was made/received by the agency and the current status of the complaint, including the date at which the complaint was resolved? |

<p>| 5. | Does the STA keep on file for at least one year all complaints of noncompliance with ADA and 504 received? (49 CFR 27.121(b)) |
|   | • Where is this file located, and can you easily retrieve it? |
|   | • Does this file indicate the date on which the complaint was filed and the date on which the complaints were removed from the file? |</p>
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<td><strong>A. General Requirements (Subpart A and B):</strong></td>
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<td>6. Has the STA drafted and disseminated to participants, applicants, employees, unions, and contractors/consultants a non-discrimination policy statement that states that the STA does not discriminate on the basis of disability in admission or access to, or treatment or employment in its programs or activities? (28 CFR 35.106 &amp; 49 CFR 27.15)</td>
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<td>7. Does the non-discrimination policy statement also identify the name, title, office address and office telephone number of the 504/ADA Coordinator? (28 CFR 35.107(a) &amp; 49 CFR 27.15(a) and (b))</td>
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<td>8. Has the STA conducted a self-evaluation of its current services, policies, and practices, and the effects thereof, to determine necessary modifications to achieve program accessibility? (28 CFR 35.105 &amp; 49 CFR 27.11(c)(2)(i-v))</td>
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<td>9. If so, did the STA provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the self-evaluation process by submitting comments? (28 CFR 35.105(b) &amp; 49 CFR 27.11(c)(2))</td>
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<td>10. Has the recipient established a system for periodically reviewing and updating the evaluation? (49 CFR 27.11(e)(2)(v))</td>
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<td>11. Does the STA maintain in operable working condition those features of facilities and equipment that are required to be readily accessible to and usable by persons with disabilities? (Note: includes STA buildings and public rights-of-way facilities such as sidewalks, curb ramps and accessible pedestrians signal) (28 CFR 35.133)</td>
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### A. General Requirements (Subpart A and B):

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<td>12. Does the STA monitor sub-recipients who receive STA assistance (local governments, contractors, consultants) to ensure compliance with Title II ADA and 504 with respect to STA funded (both Federal and State $$) projects and programs that the sub-recipients implement? (28 CFR 35.130 (b)(1)(v) &amp; 49 CFR 27.7 (V))</td>
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|   |   |   |   |   | • Can you identify those subrecipients the Agency monitors with respect to ADA/504 requirements?  
   |   |   |   |   | • Are there any subrecipients the Agency does not monitor in this regard, and if so, why? |
| 13. Does the STA provide a written assurance to the FHWA that it will not discriminate on the basis of disability in the provision of its programs, services, activities, and facilities, and that it will be in compliance with Section 504 and all of its requirements? (Note: this can be included in the Title VI assurance to FHWA) (49 CFR 27.9) |   |   |   |   |
|   |   |   |   |   | • Can you easily locate this assurance?  
   |   |   |   |   | • What, specifically, does this assurance say?  
   |   |   |   |   | • Is this assurance current? When was the last time it was signed and sent to FHWA, and to whom was it sent? |

### B. Program and Facility Accessibility (Subpart D)

<table>
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<tr>
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<th>R</th>
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<th>G</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Has the STA developed and implemented a transition plan that outlines which structural modifications must be made to those programs and services that are not accessible? (28 CFR 35.150(d) &amp; 49 CFR 27.11); 28 CFR 35.150(d)(3).</td>
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</table>
|   |   |   |   |   | • Does the plan indicate the official responsible for implementing the plan?  
   |   |   |   |   | • When was the transition plan implemented? When was it last updated?  
   |   |   |   |   | • Does the transition plan describe the methods to be used to make the facilities accessible? Does it specify how barriers will be removed?  
   |   |   |   |   | • If the STA has not implemented a transition plan, when does the STA expect to implement one? |
| 2. Has the STA also developed a curb ramp installation schedule as part of the transition plan for pedestrian facilities it owns, operates and/or maintains? (28 CFR 35.150(d)(2)) |   |   |   |   |
|   |   |   |   |   | • Does this schedule include other sloped areas where pedestrian walks cross curbs?  
   |   |   |   |   | • Does this schedule give priority to walkways serving entities covered by Title II of the ADA, including State and local government offices and facilities, transportation, places of public accommodation, and employers, followed by walkways serving other areas such as residential neighborhoods? |
### Title II ADA Transition Plan Requirements

<table>
<thead>
<tr>
<th>3.</th>
<th>If so, did the STA provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the transition plan process by submitting comments? (28 CFR 35.150(d)(1) &amp; 49 CFR 27.11(c)(2))</th>
</tr>
</thead>
</table>
|    | - What groups/individuals were contacted by the STA about developing a transition plan?  
- What means did the STA use to communicate with these groups/individuals about the STA’s plan to develop a transition plan? Were these means of communication effective? |

<table>
<thead>
<tr>
<th>4.</th>
<th>Is the transition plan available for public inspection? (28 CFR 35.150(d)(1) &amp; 49 CFR 27.11)</th>
</tr>
</thead>
</table>
|    | - Where is it?  
- Is the transition plan available in a public area of the STA's main building and satellite offices? Is it available on the STA's website for viewing and download? |

<table>
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<tr>
<th>5.</th>
<th>Has the STA taken appropriate remedial steps to eliminate the effects of any discrimination that resulted from previous policies and practices? (49 CFR 27.11 (c)(2)(iv))</th>
</tr>
</thead>
</table>
|    | - Do these steps include the creation of program access opportunities where none existed before (e.g., providing documents in Braille text)?  
- Do these steps include eliminating structural barriers? |

<table>
<thead>
<tr>
<th>6.</th>
<th>Does the STA have a process to analyze an existing program, service or benefit for determinations of “undue” financial or administrative burdens, or fundamental alteration to the program, service or benefit that comports with the criteria for making such determinations in 28 CFR 35.150 (a)(3) (for program accessibility) and 28 CFR 35.164 (for communications)? (Note: A process to conduct undue burden determinations is not required but is a best practice. However, the documentation of an undue burden determination by an STA is required by these regulations)</th>
</tr>
</thead>
</table>
|    | - If such a determination has been made, was it based on all resources available for use in the program?  
- If an “unduly burdensome” determination has been made, was it based on the proportion of the cost for accessibility improvements compared to the STA’s overall budget, not simply the project cost? |

<table>
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<tr>
<th>7.</th>
<th>Does the STA build new facilities and alter existing ones (both pedestrian right-of-way and STA buildings) in accordance with the Americans with Disabilities Act Accessibility Guidelines (ADAAG) and Appendix A of 49 CFR 37? (28 CFR 35.151 (c) and 49 CFR 27.3 (b)) (Note: While public agencies currently have the choice to use the Uniform Federal Accessibility Standards (UFAS) or ADAAG, FHWA encourages STAs to use ADAAG. UFAS will sunset once USDOT and USDOJ adopt the Public Rights-of-Way Accessibility Guidelines (PROWAG) which will become the new minimum design standards under the ADA for both new construction and alterations of pedestrian facilities in the public right-of-way. The 2005 draft PROWAG has been identified by USDOT as the current best practice in accessible pedestrian design under the FHWA’s Federal-aid (504) regulation.</th>
</tr>
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</table>
### B. Program and Facility Accessibility (Subpart D)

#### Title II ADA Transition Plan Requirements

- Are all facilities designed, constructed, or altered by, on behalf of, or for the use of a public entity readily accessible and usable by persons with disabilities?
- Are all facilities constructed or altered after January 26, 1992 accessible to persons with disabilities?

8. Does the STA have a reasonable and consistent policy with respect to accessibility issues for which there is no legal standard (e.g., the installation of accessible pedestrian signals)? (Note: FHWA advises STAs to follow the standard at 28 CFR 35.151(c) with respect to accessibility standards. However, if terms are undefined within those standards (i.e., if the STA does not have a standard to refer to in Title II or Section 504), the STA should have a reasonable and consistent policy to address those undefined terms. The only impermissible policy is for a STA to use such terms as a means to avoid meeting the standards.)

- Is this process reasonable and consistent in providing accessible pedestrian facilities? (For example, installation of curb ramps is specifically required by both ADA and Section 504, but the installation of accessible pedestrian signals (APS) is not; developing a reasonable and consistent policy for APS installation may enable compliance.)

9. Does the STA provide accessible highway rest areas and pedestrian underpasses, overpasses and ramps that are newly constructed or altered with Federal aid? (49 CFR 27.75) (Note: STAs are to be held accountable for any discrimination on the basis of disability by their subrecipients or any entity who operates the STA’s programs and are provided such assistance.)

- Does the STA maintain an updated list of such subrecipients and other entities, along with documentation that they have ensured that the programs they operate for the STA are accessible to persons with disabilities?

10. Does the STA have a process for making technical infeasibility determinations for new construction and alterations that comports with the criteria in ADAAG 4.1.1 (5) and 4.1.6(J)? (Note: Although STAs are not required to have such a process under Title II/ADA, they must make the determination of “technical infeasibility” for alterations or “structural impracticability” for new construction when it determines that ADAAG cannot be followed. Also Note: With respect to any element of an alteration that is within the scope of the project and is not technically infeasible, USDOJ guidance provides that under ADAAG standards “cost is not a factor.” Also see 28 CFR 36.401(c) and 402.

- In those instances where full compliance on new construction was considered structurally impracticable, is this because the unique characteristics of the terrain prevent the incorporation of accessibility features?
- In those instances where making an alteration that meets accessibility requirements was considered technically infeasible, did the STA ensure that the alteration provided accessibility to the “maximum extent feasible?”
- In those instances where the STA believes full ADAAG compliance is technically infeasible, has it documented that the proposed solution to the problem meets the “maximum extent feasible” test?
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<td>11.</td>
<td>Does the STA install curb ramps or other sloped areas at any intersection having curbs or other barriers to entry from a street level pedestrian walkway, when streets, roads, highways or crosswalks are newly constructed or altered, or when the crosswalk is constructed with Federal aid? (28 CFR 35.151 (e)(1)(2) and 49 CFR 27.75 (a)(2))</td>
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<td></td>
<td>To promote efficiency and accessibility has the STA chosen to construct curb ramps at every point where a pedestrian walkway intersects a curb? (Note: STAs are not necessarily required to construct a curb ramp at every such intersection.)</td>
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<td>If an intersection without curb ramps is not being altered, has the STA placed that location on the curb ramp installation schedule of its transition plan for future retrofit?</td>
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<td>12.</td>
<td>Is the STA installing detectable warnings in the form of truncated domes in curb ramps when roadways with pedestrian facilities are altered? (ADAAG 4.29 and FHWA policy guidance (May 2002)) (Note: Detectable warnings are an ADA requirement in ADAAG for the use of detecting the boundary between the sidewalk and the street. Truncated domes are the only detectable warnings allowed by ADAAG.)</td>
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<td>Has the STA ensured that designs other than truncated domes (e.g., grooves or exposed aggregate) are not used as detectable warnings?</td>
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<td>Has the STA made the material used to provide contrast an integral part of the walking surface?</td>
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<tr>
<td>1.</td>
<td>Does the STA provide auxiliary aids (e.g., sign language interpreters, readers, Braille, large print text) upon request, to STA program participants with disabilities? (28 CFR 35.160 (b)(1) and 49 CFR 27.7(c))</td>
<td>R</td>
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<td>• In determining what type of auxiliary aid and service is necessary, does the STA give primary consideration to the requests of the individual with disabilities?</td>
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<td>• Do the auxiliary aids provided by the STA ensure effective communication for individuals with disabilities?</td>
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<td>• Does the STA ensure that the person engaged to sign is also able to interpret, i.e., process spoken communication into the proper signs, and, that he or she possesses the proper skills to observe someone signing and change their signed or finger-spelled communication into spoken words. (The interpreter must be able to interpret both receptively and expressively.)</td>
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<td>2.</td>
<td>Does the STA notify the public and other interested parties that auxiliary aids will be provided, upon request (e.g., via public meeting announcement)? (28 CFR 35.160 (a), 28 CFR 35.163 (a), and 49 CFR 27.7(c))</td>
<td>R</td>
<td>Y</td>
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<td>• How does the STA ensure that interested persons (including persons with impaired vision or hearing), can obtain information about the availability and location of accessible services, activities, and facilities.</td>
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<td>• How does the STA ensure that interested persons are aware of the availability of auxiliary aids, and how the STA will provide those aids?</td>
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<td>3.</td>
<td>Is the STA website and all of its contents accessible to individuals with hearing or visual impairments? (28 CFR 35.160 (a), 28 CFR 35.163 (a), and 49 CFR 27.7(c))</td>
<td>R</td>
<td>Y</td>
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<tr>
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<td>• Has the STA’s website and all of its contents been tested for accessibility by persons with hearing or visual impairments?</td>
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<td>4.</td>
<td>Can hearing impaired individuals contact the STA via TTD/TTY phone line or an equally effective telecommunications system such as a relay service? (28 CFR 35.161 and 49 CFR 27.7(c))</td>
<td>R</td>
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<td>• Does the STA provide TTD/TTY phone services for its public services that use telephones such as the main phone number, traffic and construction information and report-a-pothole, so that hearing impaired individuals can communicate by phone with the STA?</td>
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<td>• Is the STA staff proficient in operating the TTD/TTY equipment and providing the services?</td>
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<td>• Does the STA ensure that public telephones in its facilities (e.g., office lobbies, rest areas and tourist information centers) are accessible to individuals with hearing and visual impairments, including the use of outbound TTD/TTY phone lines and teletype panels at public phones?</td>
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<td>• Does the STA provide the TTD/TTY phone numbers on its public documents (e.g., pamphlets, information brochures, newsletters)?</td>
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STATE TRANSPORTATION AGENCY (STA)
RESPONSIBILITIES

QUESTIONS AND ANSWERS

The following questions and answers correspond to the numbered questions, per specific section, on the ADA/504 Technical Assistance Tool document.

A. General Requirements (Subpart A and B):

1. **Question 1:** What Division are you answering for?
2. **Question 2:** Division Contact Information:
   - (a) Division Staff name:
   - (b) Email Address:
3. **Question 3:** Does the STA have an ADA/504 coordinator? (28 CFR 35.107(a) & 49 CFR 27.13(a))

   **Answer:** According to Title II ADA at 28 CFR 35.107(a), if a public entity has 50 or more employees, it is required to designate at least one responsible employee to coordinate ADA compliance. Under Section 504 at 49 CFR 27.13(a) a recipient that has 15 or more employees must designate an employee to coordinate Section 504 compliance. The STA can designate one individual as the “ADA/504 Coordinator” and there can be more than one coordinator. For example, there can be a primary coordinator for the STA and sub-coordinators for STA units and divisions and for district offices. The position can be a full-time position or a collateral duty position.

4. **Question 4:** Does the STA have an internal grievance procedure that allows for prompt and equitable solutions for any complaints based on alleged noncompliance with 504/ADA? (Note: “Grievance procedure” refers to a process for external complaints) (28 CFR 35.107(b) & 49 CFR 27.13(b))

   **Answer:** According to Title II of the ADA at (28 CFR 35.107(b), local governments with 50 or more employees are required to adopt and publish procedures for resolving grievances alleging discrimination under the ADA that includes a system for resolving complaints of disability discrimination in a prompt and fair manner. This section of ADA also requires that a recipient that employs 50 or more persons adopt and publish grievance procedures that provide for the prompt and equitable resolution of complaints alleging any action prohibited by this section; under section 504, a recipient that employees 15 or more persons must incorporate appropriate due process standards as well as provide for the prompt and equitable resolution of complaints. These regulations
cover those complaints received by the STA and not FHWA. ADA/504 complaints received by FHWA against STA subrecipients can be referred to the STA and processed under FHWA’s External Discrimination Complaint Procedures.

**Question 5:** Does the STA keep on file for at least one year all complaints of noncompliance with ADA and 504 received? (49 CFR 27.121(b))

**Answer:** According to Section 504 at 49 CFR 27.121(b), recipients shall keep on file for one year all complaints of noncompliance received. While the ADA does not have a similar regulation, FHWA recommends that complaints filed with the STA under the ADA adhere to this requirement. These complaints must be given to FHWA upon request, whether to prepare reports or in conjunction with a compliance, program or process review.

**Question 6:** Has the STA drafted and disseminated to participants, applicants, employees, unions, and contractors/consultants a non-discrimination policy statement that states that the STA does not discriminate on the basis of disability in admission or access to, or treatment or employment in its programs or activities? (28 CFR 35.106 & 49 CFR 27.15)

**Answer:** According to the ADA at 28 CFR 35.106, public entities shall make available to applicants, participants, beneficiaries, and other interested persons information regarding the provisions of this part and its applicability to the services, programs, or activities of the public entity. Further, the STA shall make such information available in such manner as the head of the entity finds necessary to apprise persons as to how they are assured protection against discrimination.

According to the Section 504 regulation at 49 CFR 27.15, a recipient shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, unions or professional organizations holding collective bargaining or professional agreements with the recipient, that it does not discriminate on the basis of disability. The notification shall state, where appropriate, that the recipient does not discriminate in admission or access to, or treatment or employment in its programs or activities. Section 504 also requires that the methods of initial and continuing notification may include the posting of notices, publication in newspapers and magazines, placement of notices in recipients' publications and distribution of memoranda or other written communications. This requirement applies to ALL public entities covered by Title II, as well as all FHWA recipients and subrecipients, regardless of the number of employees at the recipient or public entity.

**Question 7:** Does the non-discrimination policy statement also identify the name, title, office address and office telephone number of the 504/ADA Coordinator? (28 CFR 35.107(a) & 49 CFR 27.15(a) and (b))
**Answer:** According to the ADA at 28 CFR 35.107(a) the public entity shall make available to all interested individuals the name, office address, and telephone number of the employee or employees designated pursuant to this paragraph, but does not specify how that is to be done. However, the Section 504 regulation at 49 CFR 27.15(a) requires that the non-discrimination policy statement or notice shall also include an identification of the 504 Coordinator. Because most STAs are both Title II ADA public entities and FHWA Section 504 recipients, STAs must include the identification of the ADA Coordinator in the nondiscrimination policy statement or notice as per Section 504 requirements.

**Question 8:** Has the STA conducted a self-evaluation of its current services, policies, and practices, and the effects thereof, to determine necessary modifications to achieve program accessibility? (28 CFR 35.105 & 49 CFR 27.11(c)(2)(i-v))

**Answer:** According to the ADA at 28 CFR 35.107(a) and Section 504 at 49 CFR 27.11(c)(2)(i-v), Title II ADA public entities and FHWA recipients must complete a self-evaluation. Title II ADA public entities were to have completed it by January 26, 1993 (one year from the effective date of the Department's regulation). If that has not been accomplished, the self evaluation must be completed as soon as possible. Also, if the STA has already completed a self-evaluation under Section 504, then it is only required to perform a self-evaluation of those policies and practices that previously had not been included in the self-evaluation required by section 504. A self-evaluation is a public entity's assessment of its current policies and practices. The self-evaluation identifies and corrects those policies and practices that are inconsistent with Title II's requirements. As part of the self-evaluation, a public entity should: 1) identify all of the public entity's programs, activities, and services; and 2) review all the policies and practices that govern the administration of the public entity's programs, activities, and services.

**Question 9:** If so, did the STA provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the self-evaluation process by submitting comments? (28 CFR 35.105(b) & 49 CFR 27.11(c)(2))

**Answer:** According to Title II ADA regulation at 28 CFR 35.105(b) and the Section 504 regulation at 49 CFR 27.11(c)(2) require public entities and recipients to provide an opportunity to all interested persons to submit comments, including individuals with disabilities and organizations that represent them, to assist in the self-evaluation process. While public hearings are not required, an STA may find this method of public participation as well as others (e.g., focus groups, surveys, receiving comments on the STA website) to be a highly effective means of complying with these regulations and
developing an effective self-evaluation.

**Question 10:** Has the recipient established a system for periodically reviewing and updating the evaluation? *(49 CFR 27.11 (c)(2)(v))*

**Answer:** Although Title II ADA does not have such a requirement, the Section 504 regulation at (49 CFR 27.11(c)(2) (v) does require FHWA recipients, which includes STAs, to periodically review and update the self-evaluation. Because most Section 504 self-evaluations were done many years ago, and self-evaluations under ADA may have been done in the early 1990’s, STAs need to reexamine all their policies and practices on a regular basis. Programs and functions may have changed significantly since the self-evaluation was completed. Actions that were taken to comply with Section 504 and Title II ADA may not have been implemented fully or may no longer be effective. In addition, Section 504’s coverage has been changed by statutory amendment, particularly the Civil Rights Restoration Act of 1987, which expanded the definition of a covered "program or activity." Therefore, public entities should ensure that all programs, activities, and services are examined fully, except where there is evidence that all policies were previously scrutinized under Section 504. Public entities that employ 50 or more individuals, as well as FHWA recipients under Section 504 (regardless of the number of individuals employed), must retain their self-evaluations for three years. Other public entities are not required to retain their self-evaluations but are encouraged to do so because these documents provide evidence of the public entity's good faith efforts to comply with Title II requirements.

**Question 11:** Does the STA maintain in operable working condition those features of facilities and equipment that are required to be readily accessible to and usable by persons with disabilities? *(Note: includes STA buildings and public rights-of-way facilities such as sidewalks, curb ramps and accessible pedestrians signal) *(28 CFR 35.133)*

**Answer:** The Title II ADA regulation at 28 CFR 35.133 requires public entities to maintain working order equipment and features of facilities that are needed to provide accessibility to persons with disabilities. Isolated or temporary interruptions in accessibility due to maintenance and repair of accessible features are not prohibited. This includes the entire spectrum of facilities that an STA owns, operates and/or maintains. These facilities that must be accessible to persons with disabilities include, but are not limited to STA administrative buildings and grounds (central and district offices), public use buildings and grounds (rest areas) and public rights-of-way facilities (sidewalks and curb ramps at intersections, mid-block crossings). When a public agency provides a pedestrian facility, it must be accessible to persons with disabilities to the extent technically feasible *(49 CFR §§ 27.7, 27.75; 28 CFR § 35.151).*
Question 12: Does the STA monitor sub-recipients who receive STA assistance (local governments, contractors, consultants) to ensure compliance with Title II ADA and 504 with respect to STA funded (both Federal and State $$) projects and programs that the sub-recipients implement? (28 CFR 35.130 (b)(1)(v) & 49 CFR 27.7 (V))

Answer: Under the Title II ADA regulation at 28 CFR 35.130 (b)(1)(v) public entities cannot aid or perpetuate discrimination against persons with disabilities by providing significant assistance to any agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the public entity's program; Similarly, the Section 504 regulation at 49 CFR 27.7(b)(1)(v) provides that an FHWA recipient cannot provide “financial or other “assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the recipient’s program. STAs are to be held accountable for any discrimination on the basis of disability by their subrecipients or any entity to whom they provide significant or other assistance.

Question 13: Does the STA provide a written assurance to the FHWA that it will not discriminate on the basis of disability in the provision of its programs, services, activities, and facilities, and that it will be in compliance with Section 504 and all of its requirements? (Note: this can be included in the Title VI assurance to FHWA) (49 CFR 27.9)

Answer: Although Title II ADA does not have this requirement, the Section 504 regulation at 49 CFR 27.9 requires that as a condition to approval or extension of any Federal financial assistance by FHWA, the recipient must provide with its application a written assurance that the program will be conducted or the facility operated in compliance with all the requirements imposed by or pursuant to this part. FHWA will accept a written assurance from the head of the STA that will be part of FHWA’s records or as part of a Title VI, ADA/504, self-evaluation, or transition plan. There are essentially two important purposes of assurances: 1) they remind prospective recipients of their nondiscrimination obligations, and 2) they provide a basis for the Federal Government to sue to enforce compliance with these statutes.

B. Program and Facility Accessibility (Subpart D):

TRANSITION PLAN REQUIREMENTS:
Question 1: Has the STA developed and implemented a transition plan that outlines which structural modifications must be made to those programs and services that are not accessible? (28 CFR 35.150(d) & 49 CFR 27.11); 28 CFR 35.150(d)(3).

Answer: The Title II ADA regulation at 28 CFR 35.150(d) requires State and local governments with 50 or more employees to develop a transition plan that identifies any structural changes that are necessary for achieving program accessibility. These structural modifications were to be identified by July 26, 1992, and completed as expeditiously as possible, but, in any event, by January 26, 1995. If the STA has not developed and implemented a transition plan, it must do so as soon as possible. This plan assesses the needs of persons with disabilities, and then schedules the required pedestrian accessibility upgrades. A transition plan must include, at a minimum – (28 CFR 25.150(d)(3)(i-iv):

1. A list of the physical obstacles in the public agency's facilities that limit the accessibility of its programs or activities to persons with disabilities;
2. A detailed description of the methods that will be used to make the facilities accessible;
3. A specific schedule for taking the necessary steps for achieving compliance with Title II and, if the time period of the transition plan exceeds one year, an identification of the steps that will be taken during each year of the transition period; and
4. The name of the official responsible for implementing the plan.

The transition plan and its identified needs should be fully integrated into the public agency's Statewide Transportation Improvement Program (STIP) and Metropolitan Transportation Improvement Program (TIP). STAs should incorporate accessibility improvements into the transportation program on an ongoing basis in a variety of ways:

☐ (1) construction projects that are programmed must meet accessibility requirements when built (28 CFR § 35.151(a));
☐ (2) accessibility improvements identified in the transition plan that are not within the scope of an alteration project should be incorporated into the overall transportation planning process. This can be accomplished through the development of stand-alone accessibility projects; and
☐ (3) as a means to identify ADA compliance needs, during scheduling maintenance activities, the STAs should identify ADA accessibility needs and incorporate them into the overall transportation planning process.

Question 2: Has the STA also developed a curb ramp installation schedule as part of the transition plan for pedestrian facilities it owns, operates and/or maintains? (28 CFR 35.150(d)(2))
Answer: The Title II ADA regulation at 28 CFR 35.150(d)(2)) provides that if a public entity has responsibility or authority over streets, roads, or walkways, its transition plan shall include a schedule for providing curb ramps or other sloped areas where pedestrian walks cross curbs. The schedule should first provide for pedestrian access upgrades to State and local government offices and facilities, transportation, places of public accommodation, and employers, followed by walkways serving other areas. The transition plan should accomplish the following four tasks:

- (1) identify physical obstacles in the public agency’s facilities that limit the accessibility of its programs or activities to individuals with disabilities;
- (2) describe in detail the methods that will be used to make the facilities accessible;
- (3) specify the schedule for taking the steps necessary to upgrade pedestrian access to meet ADA and Section 504 requirements in each year following the transition plan; and
- (4) indicate the official responsible for implementation of the plan. [See 28 CFR §35.150(d)(3)].

Question 3: If so, did the STA provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the transition plan process by submitting comments? (28 CFR 35.150(d)(1) & 49 CFR 27.11(c)(2))

Answer: Similar to the requirements for the self-evaluation, the Title II ADA regulation at 28 CFR 35.150 (d)(1) and the Section 504 regulation at 49 CFR 27.11(c)(2), require public entities and recipients to provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the development of the transition plan by submitting comments to the STA. While public hearings are not required, an STA may find this method of public participation, as well as, others (e.g., focus groups, surveys, receiving comments on the STA website) to be a highly effective means of complying with these regulations and developing an effective self-evaluation.

Question 4: Is the transition plan available for public inspection? (28 CFR 35.150(d)(1) & 49 CFR 27.11)

Answer: The Title II ADA regulation at 28 CFR 35.150 (d)(1) requires public entities and recipients to make the transition plan available for public inspection. Methods of public inspection may include its placement in a public area of the STA main building and satellite offices, at other cooperating government facilities (public library) or by posting it on the STA’s website for viewing or download. Notifications of the transition plan’s availability must include the identification of the responsible employee designated pursuant to 49 CFR 27.15(a).
Question 5: Has the STA taken appropriate remedial steps to eliminate the effects of any discrimination that resulted from previous policies and practices? (49 CFR 27.11) (c)(2)(iv)

Answer: The Section 504 regulation at 49 CFR 27.11(c)(2)(iv)) provides that any effects of discrimination that the FHWA recipient had identified as a result of the self-evaluation be eliminated through remedial steps. These steps may include creating program access opportunities where none existed before (e.g., providing documents in Braille text), and eliminating structural barriers such as curb ramps or other means. A recipient may comply with this regulation by resolving any complaints of discrimination on the basis of disability and where violations of Title II ADA or Section 504 were found by the STA or by FHWA.

Question 6: Does the STA have a process to analyze an existing program, service or benefit for determinations of “undue” financial or administrative burdens, or fundamental alteration to the program, service or benefit that comports with the criteria for making such determinations in 28 CFR 35.150 (a)(3) (for program accessibility) and 28 CFR 35.164 (for communications)? (Note: A process to conduct undue burden determinations is not required but is a best practice. However, the documentation of an undue burden determination by an STA is required by these regulations)

Answer: For existing facilities requiring accessibility improvements as scheduled in the transition plans, the public agency must provide accessibility improvements unless the cost of the upgrades is unduly burdensome (28 CFR 35.150 (a)(d)). The test for being unduly burdensome is the proportion of the cost for accessibility improvements compared to the agency’s overall budget, not simply the project cost. The decision that pedestrian access would be unduly burdensome must be made by the head of a public agency or that official’s designee, accompanied by a written statement of the reasons for the decision. A determination is made that undue burdens would result, the public agency must take any other action that would not result in a fundamental alteration or such burdens, but would ensure that persons with disabilities receive the benefits and services of the program or activity. Although not required by the regulations, STAs should develop a reasonable and consistent policy to provide a mechanism to make and document appropriate determinations of undue financial or administrative burdens on a case-by-case basis. With respect to pedestrian rights-of-way facilities, all projects for new construction that provide pedestrian or other facilities must incorporate accessible pedestrian features to the extent technically feasible, without regard to cost. The development process should ensure accessibility requirements are incorporated in the project. However, cost may be a factor in determining whether to undertake a stand-alone accessibility improvement identified in a transition plan. For example, if an existing highway, not scheduled for an alteration, is listed in the public agency’s
transition plan as needing curb cuts, the public agency may consider costs that are “unduly burdensome.” Again, the test for being unduly burdensome is the proportion of the cost for accessibility improvements compared to the agency’s overall budget, not simply the project cost.

**Question 7:** Does the STA build new facilities and alter existing ones (both pedestrian right-of-way and STA buildings) in accordance with the Americans with Disabilities Act Accessibility Guidelines (ADAAG) and Appendix A of 49 CFR 37? (28 CFR 35.151 (c) and 49 CFR 27.3 (b)) (Note: While public agencies currently have the choice to use the Uniform Federal Accessibility Standards (UFAS) or ADAAG, FHWA encourages STAs to use ADAAG. UFAS will sunset once USDOT and USDOJ adopt the Public Rights-of-Way Accessibility Guidelines (PROWAG) which will become the new minimum design standards under the ADA for both new construction and alterations of pedestrian facilities in the public right-of-way. The 2005 draft PROWAG has been identified by USDOT as the current best practice in accessible pedestrian design under the FHWA’s Federal-aid (504) regulation.)

**Answer:** The Title II ADA regulation at 28 CFR 35.151(c) and the Section 504 regulation at 49 CFR 27.3 (b)) require that all facilities designed, constructed, or altered by, on behalf of, or for the use of a public entity must be readily accessible and usable by individuals with disabilities. The law presently requires that FHWA enforce ADAAG for new and altered pedestrian facilities. With respect to Title II ADA, the construction or alteration must be made accessible if it began after January 26, 1992. For example, where sidewalks are provided, STAs shall provide pedestrian access features such as continuous, unobstructed sidewalks, and curb cuts with detectable warnings at highway and street crossings.

Currently STAs have the choice of using the Americans with Disabilities Act Accessibility Guidelines (ADAAG) or the Uniform Federal Accessibility Standards (UFAS) to make new or altered facilities accessible. UFAS will sunset once USDOT and USDOJ adopt the Public Rights-of-Way Accessibility Guidelines (PROWAG) which will become the new minimum design standards under the ADA for both new construction and alterations of pedestrian facilities in the public right-of-way. The 2005 draft PROWAG has been identified by USDOT as the current best practice in accessible pedestrian design under the FHWA’s Federal-aid (504) regulation, and could be followed for areas not fully addressed by the present ADAAG standards. (See FHWA Memorandum, January 2006 at: http://www.fhwa.dot.gov/environment/bikeped/prwaa.htm.)
**Question 8:** Does the STA have a reasonable and consistent policy with respect to accessibility issues for which there is no legal standard (e.g., the installation of accessible pedestrian signals)? (Note: FHWA advises STAs to follow the standard at 28 CFR 35.151(c) with respect to accessibility standards. However, if terms are undefined within those standards (i.e., if the STA does not have a standard to refer to in Title II or Section 504), the STA should have a reasonable and consistent policy to address those undefined terms. The only impermissible policy is for a STA to use such terms as a means to avoid meeting the standards.)

**Answer:** Although currently, there may be no legal standard with respect to specific accessibility issues, it is critical that the STA have reasonable and consistent policies and procedures to eliminate discrimination. For example, installation of curb ramps is specifically required by both ADA and Section 504, but the installation of accessible pedestrian signals (APS) is not. In the case of APS, developing and implementing a reasonable and consistent policy for APS installs may enable compliance. However, failure to do so could be a violation of the Title II ADA and Section 504 general prohibitions against discrimination (28 CFR 35.130 and 49 CFR 27.7), respectively. Therefore establishing policies to construct these features becomes even more critical to ADA/504 compliance.

**Question 9:** Does the STA provide accessible highway rest areas and pedestrian underpasses, overpasses and ramps that are newly constructed or altered with Federal aid? (49 CFR 27.75) (Note: STAs are to be held accountable for any discrimination on the basis of disability by their subrecipients or any entity who operates the STA’s programs and are provided such assistance.)

**Answer:** According to the Title II ADA regulation at 28 CFR 35.130 (b)(1)(v) states that a public entity cannot “Aid or perpetuate discrimination against a qualified individual with a disability by providing significant assistance to (an entity) or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the public entity’s program. Similarly, the Section 504 regulation at 49 CFR 27.7 (V), provides that an FHWA recipient cannot provide financial or other assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the recipient’s program. STAs are to be held accountable for any discrimination on the basis of disability by their sub-recipients or any entity to who operates their programs and are provided such assistance.
**Question 10:** Does the STA have a process for making technical infeasibility determinations for new construction and alterations that comports with the criteria in ADAAG 4.1.1 (5) and 4.1.6(J)? (Note: Although STAs are not required to have such a process under Title II/ADA, they must make the determination of “technical infeasibility” for alterations or “structural impracticability” for new construction when it determines that ADAAG cannot be followed. Also Note: With respect to any element of an alteration that is within the scope of the project and is not technically infeasible, USDOJ guidance provides that under ADAAG standards “cost is not a factor.” Also see 28 CFR 36.401(c) and 402.)

**Answer:** STAs must make the determination of “technical infeasibility” for alterations or “structural impracticability” for new construction when it determines that ADAAG cannot be followed. While such a process is not required under Title II ADA, FHWA recommends that STAs develop a reasonable and consistent policy and implement that policy to make quality technical infeasibility determinations. Furthermore, such determinations are done on individual projects on a case-by-case basis. The meaning of “technically infeasible” is that “existing structural conditions would require removing or altering a load-bearing member which is an essential part of the structural frame [e.g., in the case of a highway project, a bridge support]; or because other existing physical or site constraints prohibit modification of addition of elements, spaces, or features which are in full and strict compliance with the minimum requirements for new construction and which are necessary to provide accessibility.” [ADAAG 4.1.6(j).] In new construction, ADAAG requirements do not need to be fully met if it can be demonstrated that it is structurally impracticable to do so. Full compliance will be considered structurally impracticable only in those rare circumstances when the unique characteristics of terrain prevent the incorporation of accessibility features. If full compliance with the requirements of these guidelines is structurally impracticable, a person or entity shall comply with the requirements to the extent it is not structurally impracticable.

Where making an alteration that meets accessibility requirements is technically infeasible, the public agency must ensure that the alteration provides accessibility to the “maximum extent feasible.” If a public agency believes that full ADAAG compliance is technically infeasible, the public agency should document that the proposed solution to the problem meets the “maximum extent feasible” test. With respect to any element of an alteration that is within the scope of the project and is not technically infeasible, DOJ guidance provides that under ADAAG standards “cost is not a factor.” Consequently, if the accessibility improvement is technically feasible, the public agency must bear the cost of fully meeting ADAAG standards. (See 28 CFR 35.151(b); DOJ Technical Assistance Manual for Title II of the ADA, II-6.3100(4).
Question 11: Does the STA install curb ramps or other sloped areas at any intersection having curbs or other barriers to entry from a street level pedestrian walkway, when streets, roads, highways or crosswalks are newly constructed or altered, or when the crosswalk is constructed with Federal aid? (28 CFR 35.151 (e)(1)(2) and 49 CFR 27.75 (a)(2))

Answer: The Title II ADA regulation at 28 CFR 35.151 (e)(1)(2) requires that newly constructed or altered streets, roads, and highways must contain curb ramps or other sloped areas at any intersection having curbs or other barriers to entry from a street level pedestrian walkway. The regulation also requires that newly constructed or altered street level pedestrian walkways must contain curb ramps or other sloped areas at intersections to streets, roads, or highways. The Section 504 regulation at 49 CFR 27.75 (a)(2) requires that all pedestrian crosswalks constructed with Federal financial assistance shall have curb cuts or ramps to accommodate persons in wheelchairs, pursuant to section 228 of the Federal-Aid Highway Act of 1973 (23 U.S.C. 402(b)(1)(F)).

To promote both efficiency and accessibility, public entities may choose to construct curb ramps at every point where a pedestrian walkway intersects a curb. However, public entities are not necessarily required to construct a curb ramp at every such intersection. If an intersection without curb ramps is not being altered the STA can place that location on the curb ramp installation schedule of its transition plan for future retrofit.

Question 12: Is the STA installing detectable warnings in the form of truncated domes in curb ramps when roadways with pedestrian facilities are altered? (ADAAG 4.29 and FHWA policy guidance (May 2002)) (Note: Detectable warnings are an ADA requirement in ADAAG for the use of detecting the boundary between the sidewalk and the street. Truncated domes are the only detectable warnings allowed by ADAAG.)

Answer: Detectable warnings are an Americans with Disabilities Act (ADA) requirement in the current Americans with Disabilities Act Accessibility Guidelines (ADAAG) for the use of detecting the boundary between the sidewalk and the street. The original requirement in ADAAG was suspended for a time to conduct further research. Research was conducted, and the suspension of the requirement was lifted on July 26, 2001, and are now required when constructing and altering curb ramps. Truncated domes are the only detectable warnings allowed by ADAAG. Grooves, exposed aggregate, and other designs intended for use as detectable warning are too similar to pavement textures, cracks and joints and are not considered to offer equivalent or greater accessibility (equivalent facilitation) than truncated domes. Truncated domes are a unique design and have proven to be the most detectable surface. This standard is now included in the draft Public Rights-Of-Way Guidelines.
second draft of these guidelines was released in November 2005. Both FHWA and the Access Board encourage use of the draft's scoping and technical provisions for detectable warnings as an equivalent facilitation to the current requirements in the 1991 (current) ADAAG. One primary difference between the two standards is that the ADAAG standard calls for the detectable warning to cover the entire face of the curb ramp while the Draft PROW Guidelines standard calls for only a 24” depth with placement near the curb line. Both FHWA and the Access Board are now encouraging the use of the new design over the original.

C. Communications (Subpart E)

**Question 1:** Does the STA provide auxiliary aids (e.g., sign language interpreters, readers, Braille, large print text) upon request, to STA program participants with disabilities? (28 CFR 35.160 (b)(1) and 49 CFR 27.7(c))

**Answer:** The Title II ADA regulation at 28 CFR 35.160(a) and the Section 504 regulation at 49 CFR 27.7(c) provide that a recipient and public entity shall take appropriate steps to ensure that communications with applicants, participants, and members of the public with disabilities are as effective as communications with others, including those with hearing and visual impairments. The Title II ADA regulation at 28 CFR 35.160 (b)(1) requires a public entity to furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity conducted by a public entity. In determining what type of auxiliary aid and service is necessary, a public entity shall give primary consideration to the requests of the individual with disabilities. Cost is not a factor in what auxiliary aids are provided, but the public entity can provide those aids that are determined to be the most appropriate and effective in making the program, service, activity or benefit accessible to the individual with a disability.

**Question 2:** Does the STA notify the public and other interested parties that auxiliary aids will be provided, upon request (e.g., via public meeting announcement)? (28 CFR 35.160 (a), 28 CFR 35.163 (a), and 49 CFR 27.7(c))

**Answer:** The Title II ADA regulation at, 28 CFR 35.163 (a) requires a public entity to ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

**Question 3:** Is the STA website and all of its contents accessible to individuals with hearing or visual impairments? (28 CFR 35.160 (a), 28 CFR 35.163 (a), and 49 CFR 27.7(c))
Answer: Although neither Title II ADA nor Section 504 specifically requires accessible websites, the STA’s website is considered to be a means of communication that must be made accessible to those with disabilities under the ADA regulations at 28 CFR 35.160 (a), 28 CFR 35.163 (a), and the Section 504 regulation at 49 CFR 27.7(c). The USDOJ has issued guidance with respect to the provision of accessible websites called Accessibility of State and Local Government Websites to People with Disabilities, which is available at www.ada.gov.

Question 4: Can hearing impaired individuals contact the STA via TTD/TTY phone line or an equally effective telecommunications system such as a relay service? (28 CFR 35.161 and 49 CFR 27.7(c))

Answer: The Title II ADA regulation at 28 CFR 35.161 requires that when a public entity communicates by telephone with its program participants and applicants, TDD’s (telephone devices for the deaf) or equally effective telecommunication systems such as a relay service, shall be used to communicate with individuals with impaired hearing or speech. A STA can comply with this regulation by providing TTD/TTY phone services for its public services that use telephones such as the main phone number, traffic and construction information and report-a-pothole, so hearing impaired individuals can communicate by phone with the STA. The STA must also insure that the public telephones in its facilities, such as office lobbies, rest areas and tourist information centers are accessible to individuals with hearing and visual impairments, including the use of outbound TTD/TTY phone lines and teletype panels at public phones.
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PART 35—NONDISCRIMINATION ON THE BASIS OF DISABILITY IN STATE AND LOCAL GOVERNMENT SERVICES

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APPENDIX A TO PART 35—PREAMBLE TO REGULATION ON NONDISCRIMINATION ON THE BASIS OF DISABILITY IN STATE AND LOCAL GOVERNMENT SERVICES (PUBLISHED JULY 26, 1991)


SOURCE: Order No. 1512-91, 56 FR 35716, July 26, 1991, unless otherwise noted.

Subpart A—General

§35.101 Purpose.

The purpose of this part is to effectuate subtitle A of title II of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131), which prohibits discrimination on the basis of disability by public entities.

§35.102 Application.

(a) Except as provided in paragraph (b) of this section, this part applies to all services, programs, and activities provided or made available by public entities.

(b) To the extent that public transportation services, programs, and activities of public entities are covered by subtitle B of title II of the ADA (42 U.S.C. 12141), they are not subject to the requirements of this part.

§35.103 Relationship to other laws.

(a) Rule of interpretation. Except as otherwise provided in this part, this part shall not be construed to apply a lesser standard than the standards applied under title V of the Rehabilitation Act of 1973 (29 U.S.C. 791) or the regulations issued by Federal agencies pursuant to that title.

(b) Other laws. This part does not invalidate or limit the remedies, rights, and procedures of any other Federal laws, or State or local laws (including State common law) that provide greater or equal protection for the rights of individuals with disabilities or individuals associated with them.
§ 35.104 Definitions.

For purposes of this part, the term—


Assistant Attorney General means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

Auxiliary aids and services includes—

(1) Qualified interpreters, notetakers, transcription services, written materials, telephone hand-set amplifiers, assistive listening devices, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, telecommunications devices for deaf persons (TDD’s), videotext displays, or other effective methods of making orally delivered materials available to individuals with hearing impairments;

(2) Qualified readers, taped texts, audio recordings, Braille materials, large print materials, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(3) Acquisition or modification of equipment or devices; and

(4) Other similar services and actions.

Complete complaint means a written statement that contains the complainant’s name and address and describes the public entity’s alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of this part. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

Current illegal use of drugs means illegal use of drugs that occurred recently enough to justify a reasonable belief that a person’s drug use is current or that continuing use is a real and ongoing problem.

Designated agency means the Federal agency designated under subpart G of this part to oversee compliance activities under this part for particular components of State and local governments.

Disability means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment.

(1)(i) The phrase physical or mental impairment means—

(A) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine;

(B) Any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(ii) The phrase physical or mental impairment includes, but is not limited to, such contagious and noncontagious diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, HIV disease (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism.

(iii) The phrase physical or mental impairment does not include homosexuality or bisexuality.

(2) The phrase major life activities means functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) The phrase has a record of such an impairment means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) The phrase is regarded as having an impairment means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but that is treated by a public entity as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major
life activities only as a result of the attitudes of others toward such impairment; or
(ii) Has none of the impairments defined in paragraph (1) of this definition but is treated by a public entity as having such an impairment.
(5) The term disability does not include—
(i) Transvestism, transsexualism, pedophilic, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;
(ii) Compulsive gambling, kleptomania, or pyromania; or
(iii) Psychoactive substance use disorders resulting from current illegal use of drugs.
Drug means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812).
Facility means all or any portion of buildings, structures, sites, complexes, equipment, rolling stock or other conveyances, roads, walks, passageways, parking lots, or other real or personal property, including the site where the building, property, structure, or equipment is located.
Historic preservation programs means programs conducted by a public entity that have preservation of historic properties as a primary purpose.
Historic Properties means those properties that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic under State or local law.
Illegal use of drugs means the use of one or more drugs, the possession or distribution of which is unlawful under the Controlled Substances Act (21 U.S.C. 812). The term illegal use of drugs does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.
Individual with a disability means a person who has a disability. The term individual with a disability does not include an individual who is currently engaging in the illegal use of drugs, when the public entity acts on the basis of such use.
Public entity means—
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(1) Any State or local government;
(2) Any department, agency, special purpose district, or other instrumentality of a State or States or local government; and
(3) The National Railroad Passenger Corporation, and any commuter authority (as defined in section 103(6) of the Rail Passenger Service Act).
Qualified individual with a disability means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aides and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.
Qualified interpreter means an interpreter who is able to interpret effectively, accurately, and impartially both receptively and expressively, using any necessary specialized vocabulary.
State means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.
§ 35.105 Self-evaluation.
(a) A public entity shall, within one year of the effective date of this part, evaluate its current services, policies, and practices, and the effects thereof, that do not or may not meet the requirements of this part and, to the extent modification of any such services, policies, and practices is required, the public entity shall proceed to make the necessary modifications.
(b) A public entity shall provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the self-evaluation process by submitting comments.
(c) A public entity that employs 50 or more persons shall, for at least three
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years following completion of the self-evaluation, maintain on file and make available for public inspection:

(1) A list of the interested persons consulted;
(2) A description of areas examined and any problems identified; and
(3) A description of any modifications made.

(d) If a public entity has already complied with the self-evaluation requirement of a regulation implementing section 504 of the Rehabilitation Act of 1973, then the requirements of this section shall apply only to those policies and practices that were not included in the previous self-evaluation.

(Approved by the Office of Management and Budget under control number 186-0006)

[56 FR 26716, July 26, 1991, as amended by Order No. 1694-83, 58 FR 17521, Apr. 5, 1993]

§ 35.106 Notice.

A public entity shall make available to applicants, participants, beneficiaries, and other interested persons information regarding the provisions of this part and its applicability to the services, programs, or activities of the public entity, and make such information available to them in such manner as the head of the entity finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part.

§ 35.107 Designation of responsible employee and adoption of grievance procedures.

(a) Designation of responsible employee. A public entity that employs 50 or more persons shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part, including any investigation of any complaint communicated to it alleging its noncompliance with this part or alleging any actions that would be prohibited by this part. The public entity shall make available to all interested individuals the name, office address, and telephone number of the employee or employees designated pursuant to this paragraph.

(b) Complaint procedure. A public entity that employs 50 or more persons shall adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by this part.

§§ 35.108-35.129 [Reserved]

Subpart B—General Requirements

§ 35.130 General prohibitions against discrimination.

(a) No qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.

(b)(1) A public entity, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability—

(i) Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aids, benefits, or services to individuals with disabilities or to any class of individuals with disabilities than is provided to others unless such action is necessary to provide qualified individuals with disabilities with aids, benefits, or services that are as effective as those provided to others;

(v) Aid or perpetuate discrimination against a qualified individual with a disability by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the public entity’s program;

(vi) Deny a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards;

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(vii) Otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) A public entity may not deny a qualified individual with a disability the opportunity to participate in services, programs, or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) A public entity may not, directly or through contractual or other arrangements, utilize criteria or methods of administration:
   (i) That have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability;
   (ii) That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the public entity's program with respect to individuals with disabilities; or
   (iii) That perpetuate the discrimination of another public entity if both public entities are subject to common administrative control or are agencies of the same State.

(4) A public entity may not, in determining the site or location of a facility, make selections—
   (i) That have the effect of excluding individuals with disabilities from, denying them the benefits of, or otherwise subjecting them to discrimination; or
   (ii) That have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the service, program, or activity with respect to individuals with disabilities.

(5) A public entity, in the selection of procurement contractors, may not use criteria that subject qualified individuals with disabilities to discrimination on the basis of disability.

(6) A public entity may not administer a licensing or certification program in a manner that subjects qualified individuals with disabilities to discrimination on the basis of disability, nor may a public entity establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with disabilities to discrimination on the basis of disability. The programs or activities of entities that are licensed or certified by a public entity are not, themselves, covered by this part.

(7) A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.

(8) A public entity shall not impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any service, program, or activity, unless such criteria can be shown to be necessary for the provision of the service, program, or activity being offered.

(c) Nothing in this part prohibits a public entity from providing benefits, services, or advantages to individuals with disabilities, or to a particular class of individuals with disabilities beyond those required by this part.

(d) A public entity shall administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

(e)(1) Nothing in this part shall be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity, or benefit provided under the ADA or this part which such individual chooses not to accept.

(2) Nothing in the Act or this part authorizes the representative or guardian of an individual with a disability to decline food, water, medical treatment, or medical services for that individual.

(1) A public entity may not place a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the costs of measures, such as the provision of auxiliary aids or program accessibility, that are required to provide that individual or group with the nondiscriminatory treatment required by the Act or this part.
§ 35.131 Illegal use of drugs.

(a) General. (1) Except as provided in paragraph (b) of this section, this part does not prohibit discrimination against an individual based on that individual's current illegal use of drugs.

(2) A public entity shall not discriminate on the basis of illegal use of drugs against an individual who is not engaging in current illegal use of drugs and who—

(i) Has successfully completed a supervised drug rehabilitation program or has otherwise been rehabilitated successfully;

(ii) Is participating in a supervised rehabilitation program; or

(iii) Is erroneously regarded as engaging in such use.

(b) Health and drug rehabilitation services. (1) A public entity shall not deny health services, or services provided in connection with drug rehabilitation, to an individual on the basis of that individual's current illegal use of drugs, if the individual is otherwise entitled to such services.

(2) A drug rehabilitation or treatment program may deny participation to individuals who engage in illegal use of drugs while they are in the program.

(c) Drug testing. (1) This part does not prohibit a public entity from adopting or administering reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual who formerly engaged in the illegal use of drugs is not now engaging in current illegal use of drugs.

Nothing in paragraph (c) of this section shall be construed to encourage, prohibit, restrict, or authorize the conduct of testing for the illegal use of drugs.

§ 35.132 Smoking.

This part does not preclude the prohibition of, or the imposition of restrictions on, smoking in transportation covered by this part.

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§ 35.133 Maintenance of accessible features.

(a) A public entity shall maintain in operable working condition those features of facilities and equipment that are required to be readily accessible to and usable by persons with disabilities by the Act or this part.

(b) This section does not prohibit isolated or temporary interruptions in service or access due to maintenance or repairs.

[56 FR 35715, July 26, 1991, as amended by Order No. 1694-93, 58 FR 17321, Apr. 5, 1993]

§ 35.134 Retaliation or coercion.

(a) No private or public entity shall discriminate against any individual because that individual has opposed any act or practice made unlawful by this part, or because that individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the Act or this part.

(b) No private or public entity shall coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by the Act or this part.

§ 35.135 Personal devices and services.

This part does not require a public entity to provide to individuals with disabilities personal devices, such as wheelchairs; individually prescribed devices, such as prescription eyeglasses or hearing aids; readers for personal use or study; or services of a personal nature including assistance in eating, toileting, or dressing.

§§ 35.136–35.139 [Reserved]

Subpart C—Employment

§ 35.140 Employment discrimination prohibited.

(a) No qualified individual with a disability shall, on the basis of disability, be subjected to discrimination in employment under any service, program,
or activity conducted by a public entity.

(b)(1) For purposes of this part, the requirements of title I of the Act, as established by the regulations of the Equal Employment Opportunity Commission in 29 CFR part 1630, apply to employment in any service, program, or activity conducted by a public entity if that public entity is also subject to the jurisdiction of title I.

(2) For the purposes of this part, the requirements of section 504 of the Rehabilitation Act of 1973, as established by the regulations of the Department of Justice in 28 CFR part 41, as those requirements pertain to employment, apply to employment in any service, program, or activity conducted by a public entity if that public entity is not also subject to the jurisdiction of title I.

§§ 35.141-35.148 [Reserved]

Subpart D—Program Accessibility

§ 35.149 Discrimination prohibited.

Except as otherwise provided in §35.150, no qualified individual with a disability shall, because a public entity's facilities are inaccessible to or unusable by individuals with disabilities, be excluded from participation in, or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.

§ 35.150 Existing facilities.

(a) General. A public entity shall operate each service, program, or activity so that the service, program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. This paragraph does not—

(1) Necessarily require a public entity to make each of its existing facilities accessible to and usable by individuals with disabilities;

(2) Require a public entity to take any action that would threaten or destroy the historic significance of an historic property; or

(3) Require a public entity to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens. In those circumstances where personnel of the public entity believe that the proposed action would fundamentally alter the service, program, or activity or would result in undue financial and administrative burdens, a public entity has the burden of proving that compliance with §35.150(a) of this part would result in such alteration or burdens. The decision that compliance would result in such an alteration or burdens must be made by the head of a public entity or his or her designee after considering all resources available for use in the funding and operation of the service, program, or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, a public entity shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits or services provided by the public entity.

(b) Methods—(1) General. A public entity may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock or other conveyances, or any other methods that result in making its services, programs, or activities readily accessible to and usable by individuals with disabilities. A public entity is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. A public entity, in making alterations to existing buildings, shall comply with the accessibility requirements of §35.151. In choosing among available methods for meeting the requirements of this section, a public entity shall give priority to those methods that offer services, programs, and activities to qualified individuals with disabilities in the most integrated setting appropriate.
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(2) Historic preservation programs. In meeting the requirements of §35.150(a) in historic preservation programs, a public entity shall give priority to methods that provide physical access to individuals with disabilities. In cases where a physical alteration to an historic property is not required because of paragraph (a)(2) or (a)(3) of this section, alternative methods of achieving program accessibility include—

(i) Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible;

(ii) Assigning persons to guide individuals with handicaps into or through portions of historic properties that cannot otherwise be made accessible; or

(iii) Adopting other innovative methods.

(c) Time period for compliance. Where structural changes in facilities are undertaken to comply with the obligations established under this section, such changes shall be made within three years of January 26, 1992, but in any event as expeditiously as possible.

(1) Transition plan. (i) In the event that structural changes to facilities will be undertaken to achieve program accessibility, a public entity that employs 50 or more persons shall develop, within six months of January 26, 1992, a transition plan setting forth the steps necessary to complete such changes. A public entity shall provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the development of the transition plan by submitting comments. A copy of the transition plan shall be made available for public inspection.

(ii) If a public entity has responsibility or authority over streets, roads, or walkways, its transition plan shall include a schedule for providing curb ramps or other sloped areas where pedestrian walks cross curbs, giving priority to walkways serving entities covered by the Act, including State and local government offices and facilities, transportation, places of public accommodation, and employers, followed by walkways serving other areas.

(3) The plan shall, at a minimum—

(i) Identify physical obstacles in the public entity’s facilities that limit the accessibility of its programs or activities to individuals with disabilities;

(ii) Describe in detail the methods that will be used to make the facilities accessible;

(iii) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(iv) Indicate the official responsible for implementation of the plan.

(4) If a public entity has already complied with the transition plan requirement of a Federal agency regulation implementing section 504 of the Rehabilitation Act of 1973, then the requirements of this paragraph (d) shall apply only to those policies and practices that were not included in the previous transition plan.

(Approved by the Office of Management and Budget under control number 1190-0001)


§ 35.151 New construction and alterations.

(a) Design and construction. Each facility or part of a facility constructed by, on behalf of, or for the use of a public entity shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by individuals with disabilities, if the construction was commenced after January 26, 1992.

(b) Alteration. Each facility or part of a facility altered by, on behalf of, or for the use of a public entity in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by individuals with disabilities, if the alteration was commenced after January 26, 1992.

(c) Accessibility standards. Design, construction, or alteration of facilities in conformance with the Uniform Federal Accessibility Standards (UFAS) (appendix A to 41 CFR part 101-19.6) or
with the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG) (appendix A to 38 CFR part 36) shall be deemed to comply with the requirements of this section with respect to those facilities, except that the elevator exemption contained at section 4.1.3(5) and section 4.1.6.3(I)(k) of ADAAG shall not apply. Departures from particular requirements of either standard by the use of other methods shall be permitted when it is clearly evident that equivalent access to the facility or part of the facility is thereby provided.

(d) Alterations: Historic properties. (1) Alterations to historic properties shall comply, to the maximum extent feasible, with section 4.1.7 of UFAS or section 4.1.7 of ADAAG.

(2) If it is not feasible to provide physical access to an historic property in a manner that will not threaten or destroy the historic significance of the building or facility, alternative methods of access shall be provided pursuant to the requirements of §35.150.

(e) Curb ramps. (1) Newly constructed or altered streets, roads, and highways must contain curb ramps or other sloped areas at any intersection having curbs or other barriers to entry from a street level pedestrian walkway.

(2) Newly constructed or altered street level pedestrian walkways must contain curb ramps or other sloped areas at intersections to streets, roads, or highways.

§35.152–35.159 [Reserved]

Subpart E—Communications

§35.160 General.

(a) A public entity shall take appropriate steps to ensure that communications with applicants, participants, and members of the public with disabilities are as effective as communications with others.

(b)(1) A public entity shall furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity conducted by a public entity.

(2) In determining what type of auxiliary aid and service is necessary, a public entity shall give primary consideration to the requests of the individual with disabilities.

§35.161 Telecommunication devices for the deaf (TDD's).

Where a public entity communicates by telephone with applicants and beneficiaries, TDD's or equally effective telecommunication systems shall be used to communicate with individuals with impaired hearing or speech.

§35.162 Telephone emergency services.

Telephone emergency services, including 911 services, shall provide direct access to individuals who use TDD's and computer modems.

§35.163 Information and signage.

(a) A public entity shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(b) A public entity shall provide signage at all inaccessible entrances to each of its facilities, directing users to an accessible entrance or to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each accessible entrance of a facility.

§35.164 Duties.

This subpart does not require a public entity to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens. In those circumstances where personnel of the public entity believe that the proposed action would fundamentally alter the service, program, or activity or would result in undue financial and administrative burdens, a public entity has the burden of proving that compliance with this subpart would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the head of the public entity or his or her designee.
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after considering all resources available for use in the funding and operation of the service, program, or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this subpart would result in such an alteration or such burdens, a public entity shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the benefits or services provided by the public entity.

§§ 35.165–35.169 [Reserved]

Subpart F—Compliance Procedures

§ 35.170 Complaints.

(a) Who may file. An individual who believes that he or she or a specific class of individuals has been subjected to discrimination on the basis of disability by a public entity may, by himself or herself or by an authorized representative, file a complaint under this part.

(b) Time for filing. A complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the designated agency for good cause shown. A complaint is deemed to be filed under this section on the date it is first filed with any Federal agency.

(c) Where to file. An individual may file a complaint with any agency that he or she believes to be the appropriate agency designated under subpart G of this part, or with any agency that provides funding to the public entity that is the subject of the complaint, or with the Department of Justice for referral as provided in §35.171(a)(2).

§ 35.171 Acceptance of complaints.

(a) Receipt of complaints. (1)(i) Any Federal agency that receives a complaint of discrimination on the basis of disability by a public entity shall promptly review the complaint to determine whether it has jurisdiction over the complaint under section 504.

(ii) If the agency does not have section 504 jurisdiction, it shall promptly determine whether it is the designated agency under subpart G of this part responsible for complaints filed against that public entity.

(2)(i) If an agency other than the Department of Justice determines that it does not have section 504 jurisdiction and is not the designated agency, it shall promptly refer the complaint, and notify the complainant that it is referring the complaint to the Department of Justice.

(ii) When the Department of Justice receives a complaint for which it does not have jurisdiction under section 504 and is not the designated agency, it shall refer the complaint to an agency that does have jurisdiction under section 504 or to the appropriate agency designated in subpart G of this part or, in the case of an employment complaint that is also subject to title I of the Act, to the Equal Employment Opportunity Commission.

(3)(i) If the agency that receives a complaint has section 504 jurisdiction, it shall process the complaint according to its procedures for enforcing section 504.

(ii) If the agency that receives a complaint does not have section 504 jurisdiction, but is the designated agency, it shall process the complaint according to the procedures established by this subpart.

(b) Employment complaints. (1) If a complaint alleges employment discrimination subject to title I of the Act, and the agency has section 504 jurisdiction, the agency shall follow the procedures issued by the Department of Justice and the Equal Employment Opportunity Commission under section 107(b) of the Act.

(2) If a complaint alleges employment discrimination subject to title I of the Act, and the designated agency does not have section 504 jurisdiction, the agency shall refer the complaint to the Equal Employment Opportunity Commission for processing under title I of the Act.

(3) Complaints alleging employment discrimination subject to this part, but not to title I of the Act shall be processed in accordance with the procedures established by this subpart.
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(c) Complete complaints. (1) A designated agency shall accept all complete complaints under this section and shall promptly notify the complainant and the public entity of the receipt and acceptance of the complaint.

(2) If the designated agency receives a complaint that is not complete, it shall notify the complainant and specify the additional information that is needed to make the complaint a complete complaint. If the complainant fails to complete the complaint, the designated agency shall close the complaint without prejudice.

§ 35.172 Resolution of complaints.

(a) The designated agency shall investigate each complete complaint, attempt informal resolution, and, if resolution is not achieved, issue to the complainant and the public entity a Letter of Findings that shall include—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) Notice of the rights available under paragraph (b) of this section.

(b) If the designated agency finds noncompliance, the procedures in §§35.173 and 35.174 shall be followed. At any time, the complainant may file a private suit pursuant to section 203 of the Act, whether or not the designated agency finds a violation.

§ 35.173 Voluntary compliance agreements.

(a) When the designated agency issues a noncompliance Letter of Findings, the designated agency shall—

(1) Notify the Assistant Attorney General by forwarding a copy of the Letter of Findings to the Assistant Attorney General; and

(2) Initiate negotiations with the public entity to secure compliance by voluntary means.

(b) Where the designated agency is able to secure voluntary compliance, the voluntary compliance agreement shall—

(1) Be in writing and signed by the parties;

(2) Address each cited violation;

(3) Specify the corrective or remedial action to be taken, within a stated period of time, to come into compliance;

(4) Provide assurance that discrimination will not recur; and

(5) Provide for enforcement by the Attorney General.

§ 35.174 Referral.

If the public entity declines to enter into voluntary compliance negotiations or if negotiations are unsuccessful, the designated agency shall refer the matter to the Attorney General with a recommendation for appropriate action.

§ 35.175 Attorney’s fees.

In any action or administrative proceeding commenced pursuant to the Act or this part, the court or agency, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney’s fee, including litigation expenses, and costs, and the United States shall be liable for the foregoing the same as a private individual.

§ 35.176 Alternative means of dispute resolution.

Where appropriate and to the extent authorized by law, the use of alternative means of dispute resolution, including settlement negotiations, conciliation, facilitation, mediation, fact-finding, minitrials, and arbitration, is encouraged to resolve disputes arising under the Act and this part.

§ 35.177 Effect of unavailability of technical assistance.

A public entity shall not be excused from compliance with the requirements of this part because of any failure to receive technical assistance, including any failure in the development or dissemination of any technical assistance manual authorized by the Act.

§ 35.178 State immunity.

A State shall not be immune under the eleventh amendment to the Constitution of the United States from an action in Federal or State court of competent jurisdiction for a violation of this Act. In any action against a State for a violation of the requirements of this Act, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are
available for such a violation in an action against any public or private entity other than a State.

§§ 35.179–35.189 [Reserved]

Subpart G—Designated Agencies

§ 35.190 Designated agencies.

(a) The Assistant Attorney General shall coordinate the compliance activities of Federal agencies with respect to State and local government components, and shall provide policy guidance and interpretations to designated agencies to ensure the consistent and effective implementation of the requirements of this part.

(b) The Federal agencies listed in paragraph (b)(1) through (8) of this section shall have responsibility for the implementation of subpart F of this part for components of State and local governments that exercise responsibilities, regulate, or administer services, programs, or activities in the following functional areas.

(1) Department of Agriculture: All programs, services, and regulatory activities relating to farming and the raising of livestock, including extension services.

(2) Department of Education: All programs, services, and regulatory activities relating to the operations of elementary and secondary education systems and institutions, institutions of higher education and vocational education (other than schools of medicine, dentistry, nursing, and other health-related schools), and libraries.

(3) Department of Health and Human Services: All programs, services, and regulatory activities relating to the provision of health care and social services, including schools of medicine, dentistry, nursing, and other health-related schools, the operation of health care and social service providers and institutions, including “grass-roots” and community services organizations and programs, and preschool and daycare programs.

(4) Department of Housing and Urban Development: All programs, services, and regulatory activities relating to state and local public housing, and housing assistance and referral.

(5) Department of Interior: All programs, services, and regulatory activities relating to lands and natural resources, including parks and recreation, water and waste management, environmental protection, energy, historic and cultural preservation, and museums.

(6) Department of Justice: All programs, services, and regulatory activities relating to law enforcement, public safety, and the administration of justice, including courts and correctional institutions; commerce and industry, including general economic development, banking and finance, consumer protection, insurance, and small business; planning, development, and regulation (unless assigned to other designated agencies); state and local government support services (e.g., audit, personnel, comptroller, administrative services); all other government functions not assigned to other designated agencies.

(7) Department of Labor: All programs, services, and regulatory activities relating to labor and the workforce.

(8) Department of Transportation: All programs, services, and regulatory activities relating to transportation, including highways, public transportation, traffic management (non-law enforcement), automobile licensing and inspection, and driver licensing.

(c) Responsibility for the implementation of subpart F of this part for components of State or local governments that exercise responsibilities, regulate, or administer services, programs, or activities relating to functions not assigned to specific designated agencies by paragraph (b) of this section may be assigned to other specific agencies by the Department of Justice.

(d) If two or more agencies have apparent responsibility over a complaint, the Assistant Attorney General shall determine which one of the agencies shall be the designated agency for purposes of that complaint.
PART 21—NONDISCRIMINATION IN FEDERA LLY-ASSISTED PROGRAMS OF THE DEPARTMENT OF TRANS-PORTATION—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

§ 21.5

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SOURCE: 35 FR 10080, June 18, 1970, unless otherwise noted.

§ 21.1 Purpose.

The purpose of this part is to effectuate the provisions of title VI of the Civil Rights Act of 1964 (hereinafter referred to as the Act) to the end that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Transportation.

§ 21.3 Application of this part.

(a) This part applies to any program for which Federal financial assistance is authorized under a law administered by the Department, including the types of Federal financial assistance listed in appendix A to this part. It also applies to money paid, property transferred, or other Federal financial assistance extended after the effective date of this part pursuant to an application ap-
PART 27—NONDISCRIMINATION ON THE BASIS OF DISABILITY IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Subpart A—General

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AUTHORITY: Sec. 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794); sec. 18 (a) and (d) of the Federal Transit Act of 1964, as amended (49 U.S.C. 5310 (a) and (d); sec. 150(b) of the Federal-Aid Highway Act of 1973, as amended (23 U.S.C. 142 n.t.).

SOURCE: 44 FR 31468, May 31, 1979, unless otherwise noted.

Subpart A—General

§ 27.1 Purpose.

The purpose of this part is to carry out the intent of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) as amended, to the end that no otherwise qualified individual with a disability in the United States shall, solely by reason of his or her 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.

§ 27.3 Applicability.

(a) This part applies to each recipient of Federal financial assistance from the Department of Transportation and to each program or activity that receives such assistance.

(b) Design, construction, or alteration of buildings or other fixed facilities by public entities subject to part 37 of this title shall be in conformance with appendix A to part 37 of this title. All other entities subject to section 504 shall design, construct or alter a building, or other fixed facilities shall be in conformance with either appendix A to part 37 of this title or the Uniform Federal Accessibility Standards, 41 CFR part 101-19 subpart 101-19.6, appendix A.


§ 27.5 Definitions.

As used in this part:


*Applicant* means one who submits an application, request, or plan to be approved by a Departmental official or by a primary recipient as a condition to eligibility for Federal financial assistance, and *application* means such an application, request, or plan.

*Commercial service airport* means an airport that is defined as a commercial service airport for purposes of the Federal Aviation Administration’s Airport Improvement Program and that enplanes annually 2500 or more passengers and receives scheduled passenger service of aircraft.

*Department* means the Department of Transportation.

*Discrimination* means denying handicapped persons the opportunity to participate in or benefit from any program or activity receiving Federal financial assistance.

*Facility* means all or any portion of buildings, structures, vehicles, equipment, roads, walks, parking lots, or other real or personal property or interest in such property.
Federal financial assistance means any grant, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the Department or another agency or instrumentality of the Federal Government provides or otherwise makes available assistance in the form of:

(a) Funds;
(b) Services of Federal personnel; or
(c) Real or personal property or any interest in, or use of such property, including:
(1) Transfers or leases of such property for less than fair market value or for reduced consideration; and
(2) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government.

Handicapped person means (1) any person who (a) has a physical or mental impairment that substantially limits one or more major life activities, (b) has a record of such an impairment, or (c) is regarded as having such an impairment. (2) As used in this definition, the phrase:

(a) Physical or mental impairment means (i) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular, reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or (ii) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term physical or mental impairment includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments; cerebral palsy; epilepsy; muscular dystrophy; multiple sclerosis; cancer; heart disease; mental retardation; emotional illness; drug addiction; and alcoholism.

(b) Major life activities means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(c) Has a record of such an impairment means has a history of, or has been classified, or misclassified, as having a mental or physical impairment that substantially limits one or more major life activities.

(d) Is regarded as having an impairment means:
(1) Has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation;
(2) Has a physical or mental impairment that substantially limits major life activity only as a result of the attitudes of others toward such an impairment; or
(3) Has none of the impairments set forth in paragraph (1) of this definition, but is treated by a recipient as having such an impairment.

Head of Operating Administration means the head of an operating administration within the Department (U.S. Coast Guard, Federal Highway Administration, Federal Aviation Administration, Federal Railroad Administration, National Highway Traffic Safety Administration, Federal Transit Administration, and Research and Special Programs Administration) providing Federal financial assistance to the recipient.

Primary recipient means any recipient that is authorized or required to extend Federal financial assistance from the Department to another recipient.

Program or activity means all of the operations of any entity described in paragraphs (1) through (4) of this definition, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or
(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or
(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;
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(3)(1) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3) of this definition.

Qualified handicapped person means:

(1) With respect to employment, a handicapped person who, with reasonable accommodation and within normal safety requirements, can perform the essential functions of the job in question, but the term does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents such person from performing the duties of the job in question or whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others; and

(2) With respect to other services, a handicapped person who meets the essential eligibility requirements for the receipt of such services.

Recipient means any State, territory, possession, the District of Columbia, or Puerto Rico, or any political subdivision thereof, or instrumentality thereof, or any public or private agency, institution, organization, or other entity, or any individual in any State, territory, possession, the District of Columbia, or Puerto Rico, to whom Federal financial assistance from the Department is extended directly or through another recipient, including any successor, assignee, or transferee thereof, but such term does not include any ultimate beneficiary.

Secretary means the Secretary of Transportation.

Section 504 means section 504 of the Act.

Special service system means a transportation system specifically designed to serve the needs of persons who, by reason of disability, are physically unable to use bus systems designed for use by the general public. Special service is characterized by the use of vehicles smaller than a standard transit bus which are usable by handicapped persons, demand-responsive service, point of origin to point of destination service, and flexible routing and scheduling.


§ 27.7 Discrimination prohibited.

(a) General. No qualified handicapped person 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.

(b) Discriminatory actions prohibited.

(1) A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability:

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not substantially equal to that afforded persons who are not handicapped;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as persons who are not handicapped;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits or services that
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are as effective as those provided to persons who are not handicapped;

(v) Aid or perpetuate discrimination against a qualified handicapped person by providing financial or other assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the recipient's program or activity;

(vi) Deny a qualified handicapped person the opportunity to participate in conferences, in planning or advising recipients, applicants or would-be applicants, or

(vii) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

(3) For purposes of this part, aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for handicapped and nonhandicapped persons, but must afford handicapped persons equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting that is reasonably achievable.

(3) Even if separate or different aid, benefits, or services are available to handicapped persons, a recipient may not deny a qualified handicapped person the opportunity to participate in the programs or activities that are not separate or different.

(4) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration:

(i) That have the effect of subjecting qualified handicapped persons to discrimination on the basis of disability,

(ii) That have the purpose or effect of defeating or substantially reducing the likelihood that handicapped persons can benefit by the objectives of the recipient's program or activity, or

(iii) That yield or perpetuate discrimination against another recipient if both recipients are subject to common administrative control or are agencies of the same State.

(5) In determining the site or location of a facility, an applicant or a recipient may not make selections:

(i) That have the effect of excluding handicapped persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that receives Federal financial assistance, or

(ii) That have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to handicapped persons.

(6) As used in this section, the aid benefit, or service provided under a program or activity receiving Federal financial assistance includes any aid, benefit, or service provided in or through a facility that has been constructed, expanded, altered, leased or rented, or otherwise acquired, in whole or in part, with Federal financial assistance.

(c) Communications. Recipients shall take appropriate steps to ensure that communications with their applicants, employees, and beneficiaries are available to persons with impaired vision and hearing.

(d) Aid, benefits, or services limited by Federal law. For aid, benefits, or services authorized by Federal statute or executive order that are designed especially for the handicapped, or for a particular class of handicapped persons, the exclusion of nonhandicapped or other classes of handicapped persons is not prohibited by this part.

[44 FR 31496, May 31, 1979, as amended at 68 FR 51890, Aug. 29, 2003]

§ 27.9 Assurance required.

(a) General. Each application for Federal financial assistance to which this part applies, and each application to provide a facility, shall, as a condition to approval or extension of any Federal financial assistance pursuant to the application, contain, or be accompanied by, written assurance that the program or activity will be conducted or the facility operated in compliance with all the requirements imposed by or pursuant to this part. An applicant may incorporate these assurances by reference in subsequent applications to the Department.

(b) Future effect of assurances. Recipients of Federal financial assistance, and transferees of property obtained by a recipient with the participation of
Federal financial assistance, are bound by the recipient's assurance under the following circumstances:

(1) When Federal financial assistance is provided in the form of a conveyance of real property or an interest in real property from the Department of Transportation to a recipient, the instrument of conveyance shall include a covenant running with the land binding the recipient and subsequent transferees to comply with the requirements of this part so long as the property is used for the purpose for which the Federal financial assistance was provided or for a similar purpose.

(2) When Federal financial assistance is used by a recipient to purchase or improve real property, the assurance provided by the recipient shall obligate the recipient to comply with the requirements of this part and require any subsequent transferee of the property, who is using the property for the purpose for which the Federal financial assistance was provided, to agree in writing to comply with the requirements of this part. The obligations of the recipient and transferees under this part shall continue in effect for as long as the property is used for the purpose for which Federal financial assistance was provided or for a similar purpose.

(3) When Federal financial assistance is provided to the recipient in the form of, or is used by the recipient to obtain, personal property, the assurance provided by the recipient shall obligate the recipient to comply with the requirements of this part for the period it retains ownership or possession of the property or the property is used by a transferee for purposes directly related to the operations of the recipient.

(4) When Federal financial assistance is used by a recipient for purposes other than to obtain property, the assurance provided shall obligate the recipient to comply with the requirements of this part for the period during which the Federal financial assistance is extended to the program or activity.


§ 27.11 Remedial action, voluntary action and compliance planning.

(a) Remedial action. (1) If the responsible Departmental official finds that a qualified handicapped person has been excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any program or activity in violation of this part, the recipient shall take such remedial action as the responsible Departmental official deems necessary to overcome the effects of the violation.

(2) Where a recipient is found to have violated this part, and where another recipient exercises control over the recipient that has violated this part, the responsible Departmental official, where appropriate, may require either or both recipients to take remedial action.

(3) The responsible Departmental official may, where necessary to overcome the effects of a violation of this part, require a recipient to take remedial action:

(i) With respect to handicapped persons who are no longer participants in the recipient's program or activity but who were participants in the program or activity when such discrimination occurred, and

(ii) With respect to handicapped persons who would have been participants in the program or activity had the discrimination not occurred.

(b) Voluntary action. A recipient may take steps, in addition to any action that is required by this part, to assure the full participation in the recipient's program or activity by qualified handicapped persons.

(c) Compliance planning. (1) A recipient shall, within 90 days from the effective date of this part, designate and forward to the head of any operating administration providing financial assistance, with a copy to the responsible Departmental official the names, addresses, and telephone numbers of the persons responsible for evaluating the recipient's compliance with this part.

(2) A recipient shall, within 180 days from the effective date of this part, after consultation at each step in paragraphs (c)(2) (i)-(iii) of this section with interested persons, including handicapped persons and organizations representing the handicapped:
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(i) Evaluate its current policies and practices for implementing these regulations, and notify the head of the operating administration of the completion of this evaluation;
(ii) Identify shortcomings in compliance and describe the methods used to remedy them;
(iii) Begin to modify, with official approval of recipient's management, any policies or practices that do not meet the requirements of this part according to a schedule or sequence that includes milestones or measures of achievement. These modifications shall be completed within one year from the effective date of this part;
(iv) Take appropriate remedial steps to eliminate the effects of any discrimination that resulted from previous policies and practices; and
(v) Establish a system for periodically reviewing and updating the evaluation.

(3) A recipient shall, for at least three years following completion of the evaluation required under paragraph (c)(2) of this section, maintain on file, make available for public inspection, and furnish upon request to the head of the operating administration:
(i) A list of the interested persons consulted;
(ii) A description of areas examined and any problems identified; and
(iii) A description of any modifications made and of any remedial steps taken.


§ 27.13 Designation of responsible employee and adoption of grievance procedures.

(a) Designation of responsible employee. Each recipient that employs fifteen or more persons shall, within 90 days of the effective date of this regulation, forward to the head of the operating administration that provides financial assistance to the recipient, with a copy to the responsible Departmental official, the name, address, and telephone number of at least one person designated to coordinate its efforts to comply with this part. Each such recipient shall inform the head of the operating administration of any subsequent change.

(b) Adoption of complaint procedures. A recipient that employs fifteen or more persons shall, within 180 days, adopt and file with the head of the operating administration procedures that incorporate appropriate due process standards and provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part.

§ 27.15 Notice.

(a) A recipient shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the recipient, that it does not discriminate on the basis of disability. The notification shall state, where appropriate, that the recipient does not discriminate in admission or access to, or treatment or employment in, its programs or activities. The notification shall also include an identification of the responsible employee designated pursuant to § 27.13(a). A recipient shall make the initial notification required by this section within 90 days of the effective date of this part. Methods of initial and continuing notification may include the posting of notices, publication in newspapers and magazines, placement of notices in recipients' publications and distribution of memoranda or other written communications.

(b) If a recipient publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, or employees, it shall include in those materials or publications a statement of the policy described in paragraph (a) of this section. A recipient may meet the requirement of this paragraph either by including appropriate inserts in existing materials and publications or by revising and reprinting the materials and publications. In either case, the addition or revision must be specially noted.

§ 27.17 Effect of State or local law.

The obligation to comply with this part is not obviated or affected by any State or local law.
§ 27.19 Compliance with Americans with Disabilities Act requirements and FTA policy.

(a) Recipients subject to this part (whether public or private entities as defined in 49 CFR part 37) shall comply with all applicable requirements of the Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. 12101–12213) including the Department’s ADA regulations (49 CFR parts 37 and 38), the regulations of the Department of Justice implementing titles II and III of the ADA (28 CFR parts 35 and 36), and the regulations of the Equal Employment Opportunity Commission (EEOC) implementing title I of the ADA (29 CFR part 1630). Compliance with the EEOC title I regulations is required as a condition of compliance with section 504 for DOT recipients even for organizations which, because they have fewer than 25 or 15 employees, would not be subject to the EEOC regulation in its own right. Compliance with all these regulations is a condition of receiving Federal financial assistance from the Department of Transportation. Any recipient not in compliance with this requirement shall be subject to enforcement action under subpart F of this part.

(b) Consistent with FTA policy, any recipient of Federal financial assistance from the Federal Transit Administration whose solicitation was made before August 26, 1990, and is for one or more inaccessible vehicles, shall provide written notice to the Secretary (e.g., in the case of a solicitation made in the past under which the recipient can order additional new buses after the effective date of this section). The Secretary shall review each case individually, and determine whether the Department will continue to participate in the Federal grant, consistent with the provisions in the grant agreement between the Department and the recipient.


§ 27.71 Airport facilities.

(a) This section applies to all terminal facilities and services owned, leased, or operated on any basis by a recipient of DOT financial assistance at a commercial service airport, including parking and ground transportation facilities.

(b) Airport operators shall ensure that the terminal facilities and services subject to this section shall be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. Airport operators shall be deemed to comply with this section 504 obligation if they meet requirements applying to state and local government programs or activities and facilities under Department of Justice (DOJ) regulations implementing Title II of the Americans with Disabilities Act (ADA).

(c) The airport shall ensure that there is an accessible path between the gate and the area from which aircraft are boarded.

(d) Systems of inter-terminal transportation, including, but not limited to, shuttle vehicles and people movers, shall comply with applicable requirements of the Department of Transportation’s ADA rules.

(e) The Americans with Disabilities Act Accessibility Guidelines (ADAAGs), including section 10.4 concerning airport facilities, shall be the standard for accessibility under this section.

(f) Contracts or leases between carriers and airport operators concerning the use of airport facilities shall set forth the respective responsibilities of the parties for the provision of accessible facilities and services to individuals with disabilities as required by this part and applicable ADA rules of the Department of Transportation and Department of Justice for airport operators and applicable Air Carrier Access Act rules (49 CFR part 382) for carriers.

(g) If an airport operator receives Federal financial assistance for
§ 27.72 Boarding assistance for aircraft.

(a) Paragraphs (b)–(e) of this section apply to airports with 10,000 or more annual enplanements.

(b) Airports shall, in cooperation with carriers serving the airports, provide boarding assistance to individuals with disabilities using mechanical lifts, ramps, or other devices that do not require employees to lift or carry passengers up stairs. Paragraph (c) of this section applies to aircraft with a seating capacity of 19 through 30 passengers. Paragraph (d) of this section applies to aircraft with a seating capacity of 31 or more passengers.

(c)(1) Each airport operator shall negotiate in good faith with each carrier serving the airport concerning the acquisition and use of boarding assistance devices for aircraft with a seating capacity of 19 through 30 passengers. The airport operator and the carrier(s) shall, by no later than September 2, 1997, sign a written agreement allocating responsibility for meeting the boarding assistance requirements of this section between or among the parties. The agreement shall be made available, on request, to representatives of the Department of Transportation.

(2) The agreement shall provide that all actions necessary to ensure accessible boarding for passengers with disabilities are completed as soon as practicable, but no later than December 2, 1998, at large and medium commercial service hub airports (those with 1,200,000 or more annual enplanements); December 2, 1999, for small commercial service hub airports (those with between 250,000 and 1,199,999 annual enplanements); or December 2, 2000, for non-hub commercial service primary airports (those with between 10,000 and 249,999 annual enplanements). All air carriers and airport operators involved are jointly responsible for the timely and complete implementation of the agreement.

(3) Boarding assistance under the agreement is not required in the following situations:

(i) Access to aircraft with a capacity of fewer than 19 or more than 30 seats;
(ii) Access to float planes;
(iii) Access to the following 19-seat capacity aircraft models: the Fairchild Metro, the Jetstream 31, and the Beech 1900 (C and D models);
(iv) Access to any other 19-seat aircraft model determined by the Department of Transportation to be unsuitable for boarding assistance by lift, ramp or other suitable device on the basis of a significant risk of serious damage to the aircraft or the presence of internal barriers that preclude passengers who use a boarding or aisle chair to reach a non-exit row seat.

(4) When boarding assistance is not required to be provided under paragraph (c)(3) of this section, or cannot be provided as required by paragraphs (b) and (c) of this section (e.g., because of mechanical problems with a lift), boarding assistance shall be provided by any available means to which the passenger consents, except hand-carrying as defined in 14 CFR 382.39(a)(2).

(5) The agreement shall ensure that all lifts and other accessibility equipment are maintained in proper working condition.

(d)(1) Each airport operator shall negotiate in good faith with each carrier serving the airport concerning the acquisition and use of boarding assistance devices for aircraft with a seating capacity of 31 or more passengers where level entry boarding is not otherwise available. The airport operator and the carrier(s) shall, by no later than March 4, 2002, sign a written agreement allocating responsibility for meeting the boarding assistance requirements of this section between or among the parties. The agreement shall be made available, on request, to representatives of the Department of Transportation.

(2) The agreement shall provide that all actions necessary to ensure accessible boarding for passengers with disabilities are completed as soon as practicable, but no later than December 4,
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2002. All air carriers and airport operators involved are jointly responsible for the timely and complete implementation of the agreement.

(3) Level-entry boarding assistance under the agreement is not required with respect to float planes or with respect to any widebody aircraft determined by the Department of Transportation to be unsuitable for boarding assistance by lift, ramp, or other device on the basis that no existing boarding assistance device on the market will accommodate the aircraft without a significant risk of serious damage to the aircraft or injury to passengers or employees.

(4) When level-entry boarding assistance is not required to be provided under paragraph (d)(3) of this section, or cannot be provided as required by paragraphs (b) and (d) of this section (e.g., because of mechanical problems with a lift), boarding assistance shall be provided by any available means to which the passenger consents, except hand-carrying as defined in 14 CFR 382.39(a)(2).

(5) The agreement shall ensure that all lifts and other accessibility equipment are maintained in proper working condition.

(e) In the event that airport personnel are involved in providing boarding assistance, the airport shall ensure that they are trained to proficiency in the use of the boarding assistance equipment used at the airport and appropriate boarding assistance procedures that safeguard the safety and dignity of passengers.

[66 FR 22115, May 3, 2001]

§ 27.75 Federal Highway Administration—highways.

(a) New facilities—(1) Highway rest area facilities. All such facilities that will be constructed with Federal financial assistance shall be designed and constructed in accordance with the accessibility standards referenced in §27.3(b) of this part.

(2) Curb cuts. All pedestrian crosswalks constructed with Federal financial assistance shall have curb cuts or ramps to accommodate persons in wheelchairs, pursuant to section 228 of the Federal-Aid Highway Act of 1973 (23 U.S.C. 402(b)(1)(F)).

(3) Pedestrian over-passes, under-passes and ramps. Pedestrian over-passes, under-passes and ramps, constructed with Federal financial assistance, shall be accessible to handicapped persons, including having gradients no steeper than 10 percent, unless:

(i) Alternate safe means are provided to enable mobility-limited persons to cross the roadway at that location; or

(ii) It would be infeasible for mobility-limited persons to reach the over-passes, under-passes or ramps because of unusual topographical or architectural obstacles unrelated to the federally assisted facility.

(b) Existing facilities—Rest area facilities. Rest area facilities on Interstate highways shall be made accessible to handicapped persons, including wheelchair users, within a three-year period after the effective date of this part. Other rest area facilities shall be made accessible when Federal financial assistance is used to improve the rest area, or when the roadway adjacent to or in the near vicinity of the rest area is constructed, reconstructed or otherwise altered with Federal financial assistance.


§ 27.77 Recipients of Essential Air Service subsidies.

Any air carrier receiving Federal financial assistance from the Department of Transportation under the Essential Air Service Program shall, as a condition of receiving such assistance, comply with applicable requirements of this part and applicable section 204 and ACAA rules of the Department of Transportation.


Subpart C—Enforcement

SOURCE: 44 FR 31468, May 31, 1979, unless otherwise noted. Redesignated at 56 FR 45621, Sept. 6, 1991.

§ 27.121 Compliance information.

(a) Cooperation and assistance. The responsible Departmental official, to the
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fullest extent practicable, seeks the cooperation of recipients in securing compliance with this part and provides assistance and guidance to recipients to help them comply with this part.

(b) Compliance reports. Each recipient shall keep on file for one year all complaints of noncompliance received. A record of all such complaints, which may be in summary form, shall be kept for five years. Each recipient shall keep such other records and submit to the responsible Departmental official or his/her designee timely, complete, and accurate compliance reports at such times, and in such form, and containing such information as the responsible Departmental official may prescribe. In the case in which a primary recipient extends Federal financial assistance to any other recipient, the other recipient shall also submit compliance reports to the primary recipient so as to enable the primary recipient to prepare its report.

(c) Access to sources of information. Each recipient shall permit access by the responsible Departmental official or his/her designee during normal business hours to books, records, accounts, and other sources of information, and to facilities that are pertinent to compliance with this part. Where required information is in the exclusive possession of another agency or person who fails or refuses to furnish the information, the recipient shall so certify in its report and describe the efforts made to obtain the information. Considerations of privacy or confidentiality do not bar the Department from evaluating or seeking to enforce compliance with this part. Information of a confidential nature obtained in connection with compliance evaluation or enforcement is not disclosed by the Department, except in formal enforcement proceedings, where necessary, or where otherwise required by law.

(d) Information to beneficiaries and participants. Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this regulation and its application to the program or activity for which the recipient receives Federal financial assistance, and make such information available to them in such manner, as

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§ 27.123 Conduct of investigations.

(a) Periodic compliance reviews. The responsible Departmental official or his/her designee, from time to time, reviews the practices of recipients to determine whether they are complying with this part.

(b) Complaints. Any person who believes himself/herself or any specific class of individuals to be harmed by failure to comply with this part may, personally or through a representative, file a written complaint with the responsible Departmental official. A Complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the responsible Departmental official or his/her designee.

(c) Investigations. The responsible Departmental official or his/her designee makes a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation includes, where appropriate, a review of the pertinent practices and policies of the recipient, and the circumstances under which the possible noncompliance with this part occurred.

(d) Resolution of matters. (1) If, after an investigation pursuant to paragraph (c) of this section, the responsible Departmental official finds reasonable cause to believe that there is a failure to comply with this part, the responsible Departmental official will inform the recipient. The matter is resolved by informal means whenever possible. If the responsible Departmental official determines that the matter cannot be resolved by informal means, action is taken as provided in §27.125.

(2) If an investigation does not warrant action pursuant to paragraph (d)(1) of this section, the responsible Departmental official or his/her designee so informs the recipient and the complainant, if any, in writing.
(e) Intimidating and retaliatory acts prohibited. No employee or contractor of a recipient shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 504 of the Act or this part, or because the individual has made a complaint, testified, assisted, or participated in any manner in an investigation, hearing, or proceeding under this part. The identity of complainants is kept confidential at their election during the conduct of any investigation, hearing or proceeding under this part. However, when such confidentiality is likely to hinder the investigation, the complainant will be advised for the purpose of waiving the privilege.

§ 27.125 Compliance procedure.

(a) General. If there is reasonable cause for the responsible Departmental official to believe that there is a failure to comply with any provision of this part that cannot be corrected by informal means, the responsible Departmental official may recommend suspension or termination of, or refusal to grant or to continue Federal financial assistance, or take any other steps authorized by law. Such other steps may include, but are not limited to:

(1) A referral to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking; and

(2) Any applicable proceeding under State or local law.

(b) Refusal of Federal financial assistance. (1) No order suspending, terminating, or refusing to grant or continue Federal financial assistance becomes effective until:

(i) The responsible Departmental official has advised the applicant or recipient of its failure to comply and has determined that compliance cannot be secured by voluntary means; and

(ii) There has been an express finding by the Secretary on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this part.

(2) Any action to suspend, terminate, or refuse to grant or to continue Federal financial assistance is limited to the particular recipient who has failed to comply, and is limited in its effect to the particular program or activity, or part thereof, in which noncompliance has been found.

(c) Other means authorized by law. No other action is taken until:

(1) The responsible Departmental official has determined that compliance cannot be secured by voluntary means;

(2) The recipient or other person has been notified by the responsible Departmental official of its failure to comply and of the proposed action;

(3) The expiration of at least 10 days from the mailing of such notice to the recipient or other person. During this period, additional efforts are made to persuade the recipient or other person to comply with the regulations and to take such corrective action as may be appropriate.


§ 27.127 Hearings.

(a) Opportunity for hearing. Whenever an opportunity for a hearing is required by §27.125(b), reasonable notice is given by the responsible Departmental official by registered or certified mail, return receipt requested, to the applicant or recipient. This notice advises the applicant or recipient of the action proposed to be taken, 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, and either:

(1) Fixes a date not less than 20 days after the date of such notice within which the applicant or recipient may request a hearing; or

(2) Advises the applicant or recipient that the matter in question has been set for hearing at a stated place and time.

The time and place shall be reasonable and subject to change for cause. The complainant, if any, also is advised of the time and place of the hearing. An applicant or recipient may waive a
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hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing constitutes a waiver of the right to a hearing under section 504 of the Act and §27.129(b), and consent to the making of a decision on the basis of such information as may be part of the record.

(b) If the applicant or recipient waives its opportunity for a hearing, the responsible Departmental official shall notify the applicant or recipient that it has the opportunity to submit written information and argument for the record. The responsible Departmental official may also place written information and argument into the record.

(c) Time and place of hearing. Hearings are held at the office of the Department in Washington, DC, at a time fixed by the responsible Departmental official unless he/she determines that the convenience of the applicant or recipient or of the Department requires that another place be selected. Hearings are held before an Administrative Law Judge designated in accordance with 5 U.S.C. 3105 and 3344 (section 11 of the Administrative Procedure Act).

(d) Right to counsel. In all proceedings under this section, the applicant or recipient and the responsible Departmental official have the right to be represented by counsel.

(e) Procedures, evidence and record. (1) The hearing, decision, and any administrative review thereof are conducted in conformity with sections 554 through 557 of title 5 of the United States Code, and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving notice subsequent to those provided for in paragraph (a) of this section, taking testimony, exhibits, arguments and briefs, requests for findings, and other related matters. The responsible Departmental official and the applicant or recipient are 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. Any person (other than a government employee considered to be on official business) who, having been invited or requested to appear and testify as a witness on the government’s behalf, attends at a time and place scheduled for a hearing provided for by this part may be reimbursed for his/her travel and actual expenses in an amount not to exceed the amount payable under the standardized travel regulations applicable to a government employee traveling on official business.

(2) Technical rules of evidence do not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to cross examination are applied where reasonably necessary by the Administrative Law Judge conducting the hearing. The Administrative Law Judge may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record are open to examination by the parties and opportunity is given to refute facts and arguments advanced by either side. A transcript is made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions are based on the hearing record and written findings shall be made.

(1) Consolidation or joint hearings. In cases in which the same or related facts are asserted to constitute noncompliance with this regulation with respect to two or more Federal statutes, authorities, or other means by which Federal financial assistance is extended and to which this part applies, or noncompliance with this part and the regulations of one or more other Federal departments or agencies issued under section 504 of the Act, the responsible Departmental official may, in agreement with such other departments or agencies, where applicable, provide for consolidated or joint hearings. Final decisions in such cases, insofar as this regulation is concerned, are made in accordance with §27.129.


§27.129 Decisions and notices.

(a) Decisions by Administrative Law Judge. After the hearing, the Administrative Law Judge certifies the entire
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record including his recommended findings and proposed decision to the Secretary for a final decision. A copy of the certification is mailed to the applicant or recipient and to the complainant, if any. The responsible Departmental official and the applicant or recipient may submit written arguments to the Secretary concerning the Administrative Law Judge's recommended findings and proposed decision.

(b) Final decision by the Secretary. When the record is certified to the Secretary by the Administrative Law Judge, the Secretary reviews the record and accepts, rejects, or modifies the Administrative Law Judge's recommended findings and proposed decision, stating the reasons therefor.

c) Decision if hearing is waived. Whenever a hearing pursuant to §27.125(b) is waived, the Secretary makes his/her final decision on the record, stating the reasons therefor.

(d) Rulings required. Each decision of the Administrative Law Judge or the Secretary contains a ruling on each finding or conclusion presented and specifies any failures to comply with this part.

(e) Content of orders. The final decision may provide for suspension or termination, or refusal to grant or continue Federal financial assistance, in whole or in part, to which this first regulation applies. The decision may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this part, including provisions designed to assure that no Federal financial assistance to which this regulation applies will thereafter be extended unless and until the recipient corrects its noncompliance and satisfies the Secretary that it will fully comply with this part.

(f) Subsequent proceedings. (1) An applicant or recipient adversely affected by an order issued under paragraph (e) of this section is restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order or if it brings itself into compliance with this part and provides reasonable assurance that it will fully comply with this part.

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (e) of this section may, at any time, request the responsible Departmental official to restore its eligibility, to receive Federal financial assistance. Any request must be supported by information showing that the applicant or recipient has met the requirements of paragraph (f)(1) of this section. If the responsible Departmental official determines that those requirements have been satisfied, he/she may restore such eligibility, subject to the approval of the Secretary.

(3) If the responsible Departmental official denies any such request, the applicant or recipient may submit a request, in writing, for a hearing specifying why it believes the responsible Departmental official should restore it to full eligibility. It is thereupon given a prompt hearing, with a decision on the record. The applicant or recipient is restored to eligibility if it demonstrates to the satisfaction of the Secretary at the hearing that it satisfied the requirements of paragraph (f)(1) of this section.

(4) The hearing procedures of §27.127(b) through (c) and paragraphs (a) through (d) of this section apply to hearings held under paragraph (f)(3) of this section.

(5) While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (e) of this section shall remain in effect.


PART 28—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE DEPARTMENT OF TRANSPORTATION

Sec.

28.101 Purpose.

28.102 Application.

28.103 Definitions.

28.104-28.109 (Reserved)

28.110 Self-evaluation.

28.111 Notice.

28.112-28.119 (Reserved)
1. What division are you answering for? ____________________________________________

2. Division contact:
   Name:  ___________________________________________________
   Email Address:______________________________________________

A. IMPLEMENTATION AND ADMINISTRATION

3. Does the STA have an Equal Opportunity Contractor Program Plan (Part I) in place to address the required equal employment opportunity program (EEO) requirements on Federal-aid contracts? (23 CFR 230.311 (a) (2), Appendix A to Subpart C Part 230, 230.313, Section 22 of the Federal-aid Highway Act of 1968- State EEO Assurances, and 23 USC 140(a) )
   - Does the STA have an updated program plan to include the required EEO Program components?

4. Does the STA’s EO Contractor Compliance Program Plan include policies and procedures to determine whether all participants performing on Federal-aid contracts are complying with their EO/EEO contract obligations? (23 CFR 230, Subpart A, Subpart D, Appendix A to Subpart C-Part 230, 230.405(b) (1))
   - Explain how the STA identifies the number of contractors/subcontractors to review and its compliance status?

5. Does the STA have an organizational structure, including the appointment of an EO Coordinator, staff resources and support (i.e. project personnel, division/district personnel, etc.) to implement a standardized approach for administering the Contractor Compliance Program? (23 CFR 230 Appendix A to Subpart C, Part I and Appendix A to Subpart C-Part 230, Organization and Structure, Item # l (A-C))
   - Has the STA provided an updated organizational chart identifying the reporting and responsibilities of the EEO Coordinator and Staff?

6. Does the STA’s EO Contractor Compliance Program Plan include an accomplishment report? (23 CFR 230, Appendix A to Subpart C and Appendix A to Subpart C-Part 230, Accomplishments, Item # III (A-E))

7. Does the STA’s Contractor Compliance Program include procedures for handling discrimination complaints filed against contractors? (23 CFR Part 230, Appendix A to Subpart C, Part I, Item# VI – Complaints, (A-C))
   - Describe the complaint and referral procedures if a complaint is referred to a State fair employment agency or similar agency.
   - How does the STA identify the Federal-aid highway contractors that had discrimination complaints filed against them during the past fiscal year?
## A. IMPLEMENTATION AND ADMINISTRATION

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<td>8.</td>
<td>Does the STA have a systematic approach to ensure that the FHWA-1273 and EO/EEO “Required Contract Provisions” are “physically” incorporated into each Federal-aid contract and subcontract of $10,000 or more? (23 CFR Appendix A and B to Subpart A, FHWA 1273, 23 CFR 633.102 (b-e))</td>
<td>R</td>
<td>Y</td>
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<td>• What is the process or procedure used by the STA to ensure contract provisions are incorporated?</td>
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| 9. | Does the STA have a method to notify OFCCP of contract compliance issues with EO 11246? (FHWA Order 4710.8) |   |   |   |   |

| 10. | Does the STA have collection, tracking and/or reporting systems in place to monitor and evaluate the employment and training efforts of the contractor? (23 CFR Part 230.121) | R | Y | G |
|   | • What type of reporting/tracking systems are used to evaluate the efforts of the contractor? |   |   |   |   |

## B. ON THE JOB TRAINING (OJT) / TRAINING SPECIAL PROVISIONS (TSP)

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<tr>
<td>1.</td>
<td>Does the STA’s Contractor Compliance Program describe a systematic approach to establish annual training goals on selected Federal-aid highway projects? (23 CFR 230.111(b), 230.107(b), and Appendix A to Subpart C, Part I, Title II ADA Transition Plan Requirements)</td>
<td>R</td>
<td>Y</td>
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<td>• Does the STA have an OJT Program and is the program addressed in the STA’s Contractor Compliance Program Plan?</td>
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<td>• What is the STA’s methodology for establishing annual OJT goals and monitoring its ability/inability to meet the goals?</td>
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| 2. | Has the STA developed processes and procedures to implement and meet the standards of the Training Special Provision” (TSP) on selected Federal-aid highway projects? (23 CFR Part 230, Appendix B to Subpart A and 23 CFR Part 230.111 (a)) | R | Y | G |
|   | • Describe how the STA monitor the TSP goal attainment on selected federal-aid highway projects? |   |   |   |   |

| 3. | Has the STA developed guidelines to select projects and determine how the number of trainees/apprentices will be assigned? (23 CFR Part 230.111 (c) (1-10)) | R | Y | G |
|   | • What is the STA’s methodology for determining which Federal-aid contract(s) include the TSP and minimum number of trainees assigned? |   |   |   |   |

| 4. | Does the STA submit training programs to FHWA with a recommendation for approval? (23 CFR Part 230.111 (d), (1-6) and (e) (1)) | R | Y | G |

<p>| 5. | Does the STA ensure that contractors use approved training/apprenticeship program, as well as, evaluate the programs to ensure it is designed so participants can reach full Journey level? (23 CFR Part 230.111(f) (1) (2) and Appendix B to Subpart A of Part 230) | R | Y | G |
|   | • How does the STA collect data, analyze, and track trainees/apprentices? |   |   |   |   |
|   | • How does the STA track the training hours to determine the level of completions and graduations? |   |   |   |   |</p>
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<tr>
<th>C. EO CONTRACT COMPLIANCE PROCEDURES</th>
<th>R</th>
<th>Y</th>
<th>G</th>
<th>Comments</th>
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<tbody>
<tr>
<td>1. Does the STA’s Contract Compliance Program incorporate the specific procedures outlined in federal requirements under 23 CFR 230 Subpart D? (23 CFR Part 230.405 (b) (1), 230.409, and Appendix A to Subpart C-Part I, Compliance Procedures, Item# II)</td>
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<tr>
<td>• Does the STA’s Contractor Compliance Program Plan outline specific compliance procedures used?</td>
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<td>2. Does the STA have procedures for scheduling EO Contract Compliance reviews? (23 CFR Part 230.409 (b) and 230.307)</td>
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<td>3. Does the STA have procedure(s) in place to notify contractors/subcontractors of pending compliance reviews? (23 CFR Part 230.307, 230.409 (c))</td>
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<td>• How does the STA notify the contractors/subcontractors of the compliance review that has been scheduled?</td>
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<td>4. Does the STA conduct a preliminary analysis of the contractor’s information before conducting the compliance review? (23 CFR Part 230.409 (d))</td>
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<td>5. Does the STA have procedure(s) in place to conduct onsite verification and interviews? (23 CFR Part 230.409 (e))</td>
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<td>6. Does the STA have procedure(s) in place to conduct exit conferences? (23 CFR Part 230.409 (f))</td>
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<td>7. Does the STA have procedures in place to determine whether or not a contractor/subcontractor is in compliance with its EO/EEO contractual requirements? (23 CFR Part 230.409 (g), 409(c) (3), and 409(g) (3) (x))</td>
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<td>• What method(s) does the STA use to determine the contractor/subcontractor’s good faith efforts and the reasonable steps taken to achieve his/her EO/EEO contractual requirements?</td>
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<td>8. Does the STA have procedures in place for enforcing noncompliance findings and follow-up on contractors/subcontractors found in non-compliance? (23 CFR Part 230.409 (h) and (i), 23 CFR Part 230-Appendix B to Subpart A and 23 CFR 230.409(h) (5) (vii)</td>
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<td>• Describe the procedures used by the STA to enforce non-compliance findings and conduct follow-up compliance reviews.</td>
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<td>9. Does the STA initiate its own contract administrative actions and legal proceedings, under State/Federal law, to achieve EO/EEO on federal-aid highway projects? (Section 22 of the Federal-aid Highway Act of 1968-State EEO Assurances, Item #4 and 23 CFR 230.405(b) (2))</td>
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<td>10. During a contract compliance review, does the STA evaluate the contractor/subcontractor’s contractual obligations to assure EEO and nondiscrimination? (23 CFR Part 230, Appendix A and B to Subpart A; Subpart D - 230.409(b) and (g))</td>
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<td>11. Does the STA develop comprehensive compliance review reports that support their finding of the contractors/subcontractor’s compliance determination? (23 CFR Part 230.413 (a) (1-7) and (b) (1)(i) and 230.121,230.413, Appendix A to Subpart A-Part 230, Records and Report, Item #10 (a-c))</td>
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<td>• Has the STA submitted required reports such compliance reviews, PR-1392s, etc to the FHWA Division Office?</td>
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STATE TRANSPORTATION AGENCY (STA) RESPONSIBILITIES

A. IMPLEMENTATION AND ADMINISTRATION:

Question 1: What Division are you answering for?

Question 2: Division Contact Information:
   (a) Division Staff name:
   (b) Email Address:

Question 3: Does the STA have an Equal Opportunity Contractor Program Plan (Part I) in place to address the required equal employment opportunity program (EEO) requirements on Federal-aid contracts? (23 CFR 230.311 (a) (2), Appendix A to Subpart C Part 230, 230.313, Section 22 of the Federal-aid Highway Act of 1968-State EEO Assurances, and 23 USC 140(a))

3a: Has the STA submitted an updated program plan with the required components to the Division?

3b: Has the Division approved the updated program plan, if so when?

Answer: The STA’s EO Contractor Compliance Program must provide a total approach for ensuring compliance with Federal requirements on Federal-aid highway projects. Section 22(a) of the Federal Aid Highway Act of 1968, required each State to sign Equal Opportunity Assurances as a condition for receiving federal-aid highway funds. These EO Assurances became the basis for the current contract compliance regulations under 23 CFR 230 – Subpart A, C, and D. These regulations were issued to implement the equal opportunity requirements of the Federal-aid Highway Act of 1968, codified under the existing law, 23 USC 140(a). The STAs are required to submit an EO program to FHWA for approval.

The EEO program has two parts: Part I – Contract Compliance, and Part II – State Internal EEO Program, which includes an Affirmative Action Plan. Once the EO program is approved, the STA must submit an annual update to FHWA for approval to continue receiving FHWA funds as stated in 23 USC 140(a), “Prior to approving any programs or projects, . . . the Secretary shall require assurances from any State desiring to avail itself of the benefits of this chapter (Federal-aid highways) that employment in connection with proposed projects will be provided without regard
to race, color, creed, national origin, or sex”.

Each STA’s Contractor Compliance Program shall be in the format set forth below: herein and shall address Contractor Compliance (Part I), including the organizational structure of the SHA total EEO Program (internal and external):

**Part I – Contractor Compliance**

- Organization and structure
- Compliance procedures
- Accomplishments
- Area-wide plans/Hometown and Imposed (if applicable)
- Contract sanctions
- Complaints
- External training programs, including supportive services
- Disadvantaged Business Enterprise Program
- Liaison
- Innovative programs

**Question 4:** Does the STA’s EO Contractor Compliance Program Plan include policies and procedures to determine whether all participants performing on Federal-aid contracts are complying with their EO/EEO contract obligations? (23 CFR 230, Subpart A, Subpart D, Appendix A to Subpart C-Part 230, 230.405(b) (1))

4a: Explain how the STA identify the number of contractors/subcontractors to review and its compliance status?

4b: Has the STA submitted required reports such as compliance reviews, PR-1392s, etc to the Division Office?

4c: Does the STA submit a compliance review plan or schedule to the FHWA Division Office?

**Answer:** The STA’s Equal Opportunity Contractor Compliance Program must outline the STA’s systematic process and procedures to obtain and ensure compliance by contractors, subcontractors, material suppliers and consultants with their EO/EEO contract obligations.

This program must include procedures to monitor and enforce the contractors/subcontractors contract provisions as it relates to 23 CFR Part 230 Appendix A and B, FHWA Form 1273 and Training Special Provisions (TSP) (Required Contract Provisions and 23 CFR 633 including the submission of all appropriate reports (e.g., PR-1391). The STA is also required to furnish
information and reports regarding contractor and subcontractor compliance, such as the annual PR 1391/1392 reports, contract compliance reviews, and other reports requested by FHWA.

Each STA shall **prepare and submit an updated EO program each year** from the date of approval. Each program approval is effective for a period of one year from date of approval. The EO program shall consist of the format shown under Appendix A to Subpart C of 23 CFR Part 230.

**Question 5:** Does the STA have an organizational structure including the appointment of an EO Coordinator, staff resources and support (i.e. project personnel, division/district personnel, etc.) to implement a standardized approach for administering the Contractor Compliance Program? (23 CFR 230 Appendix A to Subpart C, Part I and Appendix A to Subpart C-Part 230, Organization and Structure, Item # I (A-C))

**5a: Has the STA provided an updated organizational chart identifying the reporting and responsibilities of the EEO Coordinator and Staff?**

**Answer:** The STA must have a **standardized approach** to ensure that the **implementation and administration** of its EO Contractor Compliance Program is accomplished in full accord with applicable statutes, executive orders, regulations and policies. The STA should also indicate whether it’s EEO Coordinator, Staff Support District/Division Personnel have full-time or part-time EEO responsibilities, and describe training provided for these personnel.

**Question 6:** Does the STA’s EO Contractor Compliance Program Plan include an accomplishment report? (23 CFR 230, Appendix A to Subpart C and Appendix A to Subpart C-Part 230, Accomplishments, Item #III (A-E))

**6a: Describe how the STA addresses accomplishments in the EO Contractor Compliance Program Plan for the past fiscal year?**

**Answer:** The EO/EEO update shall **include accomplishments** in the contractor compliance program for the previous year. Accomplishments must be reported on the following, but not limited to:

- Compliance review program on number of reviews conducted, contractors found in compliance, non compliance, show cause notices issued, consolidated reviews, etc;
- Major problems encountered in review activities;
- Major breakthroughs significant to the compliance review program.
• External training programs, including supportive services.

**Question 7:** Does the STA’s Contractor Compliance Program include procedures for handling discrimination complaints filed against contractors? (23 CFR Part 230, Appendix A to Subpart C, Part I, Item# VI – Complaints, (A-C))

7a: Describe the complaint and referral procedures if complaint is referred to a State fair employment agency or similar agency.

7b: How does the STA identify the Federal-aid highway contractors that had discrimination complaints filed against them during the past fiscal year?

**Answer:** The STA’s program must describe the procedures for handling discrimination complaints filed against contractors. If complaints are referred to a State’s fair employment agency or similar agency, describe the referral procedure. Also, in the annual update, identify the Federal-aid highway contractors that have had discrimination complaints filed against them during the past fiscal year and provide current status.

**Question 8:** Does the STA have a systematic approach to ensure that the FHWA-1273 and EO/EEO “Required Contract Provisions” are “physically” incorporated into each Federal-aid contract and subcontract of $10,000 or more? (23 CFR Appendix A and B to Subpart A, FHWA 1273, 23 CFR 633.102 (b-e))

8a: What is the process or procedure used by the STA to ensure contract provisions are incorporated?

**Answer:** The FHWA Form 1273 sets forth the contractor’s minimum EO requirements. Under 23 CFR Part 633.102(b), the FHWA Form 1273 is required to be physically incorporated into each subcontract. Pursuant to 23 USC 101 and 23 CFR 230 & 633, STAs shall incorporate standard equal opportunity contract requirements (Form 1273) into all contracts awarded by the STA.

**Question 9:** Does the STA have a method to notify OFCCP of contract compliance issues with EO 11246? (FHWA Order 4710.8)

9a. **What method(s) has been used by the STA in making contact with OFCCP?**

**Answer:** Pursuant to FHWA Order 4710.8, the FHWA and STA do not have the
authority or responsibility to ensure compliance and enforce EO 11246. It is the Office of Federal Contract Compliance Programs (OFCCP), Department of Labor (DOL) that has exclusive authority to determine compliance with the EO 11246 and its implementing regulations 41 CFR 60. Even though the OFCCP regulations 41 CFR 60-4 requires the STAs to place EEO goals in federal and federal-aid construction contracts, the STAs cannot enforce those goals. The STA has the responsibility to notify the OFCCP of instances that brings into question the contractor’s compliance with the provisions of EO 11246 and its implementing regulations. One such instance could involve the contractor’s lack of good faith efforts to meet the EEO goals for minority and women in its construction trades.

**Question 10:** Does the STA have collection, tracking and/or reporting systems in place to monitor and evaluate the employment and training efforts of the contractor? (23 CFR Part 230.121)

**11a. What types of collection, tracking and reporting systems the STA uses to evaluate and monitor the employment/training efforts of the contractor?**

**Answer:** In order for the STA to efficiently and systematically maintain an effective contract compliance program there is need for civil rights information management system that can routinely capture information of a contractor’s workforce and its contracting practices of selecting and retaining subcontractors. An example is the PR-1391’s is one component of this data collection, tracking and reporting system that enables a STA to follow the employment, training, and contracting of minorities and women on its contracts by specific contractors. This data can also be useful in scheduling the frequency of conducting EO/EEO contract compliance reviews.

**B. ON THE JOB TRAINING (OJT)/TRAINING SPECIAL PROVISIONS (TSP):**

**Question 1:** Does the STA’s Contractor Compliance Program describe a systematic approach to establish annual training goals on selected Federal-aid highway projects? (23 CFR 230.111(b), 230.107(b), and Appendix A to Subpart C, Part I, #VII External Training Programs)

**1a. Does the STA have an OJT Program and is the program addressed in the STA’s Contractor Compliance Program Plan?**

**1b. How does the STA inform the FHWA Division Office of its**
ability/inability in meeting its annual OJT goals?

1c. What is the STA’s methodology for establishing annual OJT goals?

**Answer:** The main objective of the OJT program is to provide equal opportunity for the training and upgrading of minorities and women toward journey level employment in highway construction skill crafts. Thus, FHWA expects the STA to require the highway contractor to discharge the responsibility, specific in the contract, to make good faith efforts to provide OJT training to develop full journey-level employees based on the contractor’s needs and the availability of minority, women and disadvantaged persons for training.

The STA will have achieved its goal if the total number of training slots on selected Federally-aid highway construction contracts, which have been awarded during each 12-month period, equals or exceeds the STA suggested minimum annual goal. In the event a STA does not attain its goal during a calendar year, the STA at the end of the calendar year shall inform the FHWA Administrator of the reasons for its inability to meet the suggested minimum number of training slots and the steps to be taken to achieve the goal during the next calendar year.

The STA shall have an OJT training which includes a well defined methodology in establishing its suggested minimum annual goals. While there is no set guidelines for determining annual minimum goal, some suggested criteria for calculating the annual goal are but not limited to: historical training goals and cumulative training slots set in previous years; estimated construction program dollar amount; calculate workforce level base on that dollar amount; factor in number of contracts, type of work and geographical location; and historical availability data (PR 1391) identifying less than expected minority and women participation in skill crafts. The annual goal should be submitted to FHWA.

**Note:** The Headquarters FHWA Office no longer establish and publish annual suggested training goals, and the STA no longer reports its goal attainment to Headquarters; however the STA should be setting annual goals and reporting its accomplishments and annual goals to the FHWA Division Office.

The STA **should** report, in its annual update, accomplishments in meeting its minimum annual goal along with potential reasons that it was unable to reach the goal. The information is to be submitted not later than 30 days from the end of the calendar year and should be factual, and should not only indicate the situations occurring during the year but show the project conditions at least through the coming year. The final determination will be made on what training goals are considered to be realistic based on the information submitted by a STA.
Question 2: Has the STA developed processes and procedures to implement and meet the standards of the Training Special Provision” (TSP) on selected Federal-aid highway projects? (23 CFR Part 230, Appendix B to Subpart A and 23 CFR Part 230.111 (a))

2a. Describe how the STA monitor the TSP goal attainment on selected federal-aid highway projects?

Answer: The training programs established shall be approved only if they meet the standards set forth in Appendix B with regard to: (1) The primary objectives of training and upgrading minority group workers, women and disadvantaged persons; (2) the development of full journeymen; (3) the minimum length and type of training; (4) the minimum wages of trainees; (5) trainees certifications; and (6) keeping records and furnishing reports.

The STA shall determine which Federal-aid highway construction contracts shall include the “Training Special Provisions (TSP)” (Appendix B) and the minimum number of trainees to be specified after giving appropriate consideration to the guidelines set forth in §230.111(c).

Question 3: Has the STA developed guidelines to select projects and determine how the number of trainees/apprentices will be assigned? (23 CFR Part 230.111 (c) (1-10))

3a. What is the STA’s methodology for determining which federal-aid contract(s) include the TSP and minimum number of trainees assigned?

Answer: The following guidelines shall be utilized by the STA in selecting projects and determining the number of trainees to be provided training:

- Availability of minorities, women, and disadvantaged for training.
- The potential for effective training.
- Duration of the contract.
- Dollar value of the contract.
- Total normal work force that the average bidder could be expected to use.
- Geographic location.
- Type of work.
- The need for additional journeymen in the area.
- Recognition of the suggested minimum goal for the State.
- A satisfactory ratio of trainees to journeymen expected to be on the contractor’s work force during normal operations (considered to fall between 1:10 and 1:4).
**Question 4:** Does the STA submit training programs to FHWA with a recommendation for approval? (23 CFR Part 230.111(d), (1-6) and (e)(1))

**Answer:** Training Programs which are established shall be approved only if they meet the standards set forth *(in TSP-Appendix B to Subpart A)* with regard to:

- The primary objectives of training and upgrading minority group workers, women and disadvantaged persons.
- The development of full journeymen.
- The minimum length and type of training.
- The minimum wages of trainees.
- Trainees’ certifications.
- Keeping records and furnishing reports.

Training programs considered by a STA to meet the standards under this directive shall be submitted to the FHWA Division Administrator with a recommendation for approval.

**Question 5:** Does the STA ensure that contractors use approved training/apprenticeship program, as well as, evaluate the programs to ensure it is designed so participants can reach full Journey level? (23 CFR Part 230.111(f)(1)(2) and Appendix B to Subpart A of Part 230)

5a. How does the STA collect data, analyze, and track trainees/apprentices and their training hours to determine the level of completions and graduations?

**Answer:** Apprenticeship programs approved by the U.S. Department of Labor as of the date of proposed use by a Federal-aid highway contractor or subcontractor need not be formally approved by the STA or the FHWA division Administrator. Such programs, including their minimum wage provisions, are acceptable for use, provided they are administered in a manner reasonably calculated to meet the equal employment opportunity obligations of the contractor.

Other training programs approved by the U.S. Department of Labor as of the date of proposed use by a Federal-aid highway contractor or subcontractor are also acceptable for use without the formal approval of the STA or the division Administrator provided:

(i) The U.S. Department of Labor has clearly approved the program aspects relating to equal employment opportunity
and the payment of (ii) trainee wage rates in lieu of prevailing wage rates. (ii) They are reasonably calculated to qualify the average trainees for journeyman status in the classification concerned by the end of the training period. (iii) They are administered in a manner calculated to meet the equal employment obligations of the contractors.

OJT training programs established within the highway industry, (e.g., AGC) have historically been one of the training programs that have been adopted by STAs in non-union geographically areas (e.g., states). However, in union areas, apprenticeship programs approved by the U.S. Department of Labor, Bureau of Apprenticeship have typically been the recognized skill improvement training programs. If so, as of the date of proposed use by a Federal-aid highway contractor or subcontractor, it need not be formally approved by the STA or the FHWA division Administrator.

According to the TSP (Appendix B to Subpart A of Part 230), It is normally expected that a trainee will begin his training on the project as soon as feasible after start of work utilizing the skill involved and remain on the project as long as training opportunities exist in his work classification or until he has completed his/her training program. It is not required that all trainees be on board for the entire length of the contract. A contractor will have fulfilled his responsibilities under this Training Special Provision if he/she has provided acceptable training to the number of trainees specified.

C. EO CONTRACT COMPLIANCE PROCEDURES:

**Question 1:** Does the STA’s Contract Compliance Program incorporate the specific procedures outlined in federal requirements under 23 CFR 230 Subpart D? (23 CFR Part 230.405 (b) (1), 230.409, and Appendix A to Subpart C-Part I, Compliance Procedures, Item# II)

1a. Does the STA’s Contractor Compliance Program Plan outline specific compliance procedures used?

1b. What are the elements of the STA’s compliance procedures?

**Answer:** The STA’s compliance procedures will consist of the following elements: Review Scheduling, Contractor Notification, Preliminary
**Analysis, Onsite Verification and Interviews, Exit Conference, and Compliance Determination and Formal Notification.** The compliance review procedure, as in 23 CFR 230 – Subpart D provides for continual monitoring of the employment process. Monitoring officials at all levels shall analyze submissions from field offices to ensure proper completion of procedural requirements and to ascertain the effectiveness of program implementation.

The SHA’s, as contracting agencies, have a responsibility to assure compliance by contractors with the requirements of Federal-aid construction contracts, including the equal opportunity requirements, and to assist in and cooperate with FHWA programs to assure equal opportunity.

**Question 2: Does the STA have procedures for scheduling EO Contract Compliance reviews? (23 CFR Part 230.409 (b) and 230.307)**

2a. What is the STA’s procedure (s) for scheduling EO Contract Compliance reviews?

**Answer:** The STA’s review scheduling procedures will consist of the following because construction work forces are not constant, particular attention should be paid to the proper scheduling of equal opportunity compliance reviews. Priority in scheduling equal opportunity compliance reviews shall be given to reviewing those contractor's work forces:

1) Which hold the greatest potential for employment and promotion of minorities and women (particularly in higher skilled crafts or occupations);

2) Working in areas which have significant minority and female labor forces within a reasonable recruitment area;

3) Working on projects that include special training provisions; and

4) Where compliance with equal opportunity requirements is questionable. (Based on previous PR–1391’s (23 CFR Part 230, Subpart A, Appendix C) Review Reports.

**In addition, the following considerations shall apply:**

5) Reviews specifically requested by the Washington Headquarters shall receive priority scheduling;

6) Compliance Reviews in geographical areas covered by area-wide plans would normally be reviewed under the Consolidated Compliance Review Procedures set forth in §230.415.
7) Reviews shall be conducted prior to or during peak employment periods.

8) No compliance review shall be conducted that is based on a home office work force of less than 15 employees unless requested or approved by Washington Headquarters; and

9) For compliance reviews based on an area work force (outside of area-wide plan coverage), the Compliance Specialist shall define the applicable geographical area by considering:
   a. Union geographical boundaries;
   b. The geographical area from which the contractor recruits employees, i.e., reasonable recruitment area;
   c. Standard Metropolitan Statistical Area (SMSA) or census tracts; and
   d. The county in which the Federal or Federal-aid project(s) is located and adjacent counties.

The STA should also consider conducting contract compliance reviews on its subcontractors independent of the prime contractors. Some subcontractors have several federal-aid highway contracts in excess of $10,000 and fit the criteria for compliance reviews. It is intended under 23 CFR 230.307 that the STA as the contracting agency shall ensure that all Federal-aid contractors, subcontractors and material suppliers engaged in the performance of federal-aid contracts shall provide equal opportunity for skill improvement training, employment and contracting in full accord with applicable statutes, executive orders, regulations and policies.

**Question 3:** Does the STA have procedure(s) in place to notify contractors/subcontractors of pending compliance reviews? (23 CFR Part 230.307, 230.409 (c))

3a. **How does the STA notify contractors/subcontractors of the compliance review scheduled?**

**Answer:** The Compliance Specialist should provide written notification to the contractor of the pending compliance review at least 2 weeks prior to the onsite verification and interviews. This notification shall include the scheduled date(s), an outline of the mechanics and basis of the review, requisite interviews, and documents required. In the notice the STA needs to include an itemized list of documents and information needed, such as information on recruiting, hiring, promotion, training, termination, payroll, etc. The STA should also consider conducting contract compliance reviews on its
subcontractors independent of the prime contractors. Some subcontractors have several federal-aid highway contracts in excess of $10,000 and fit the criteria for compliance reviews. It is intended under 23 CFR 230.307 that the STA as the contracting agency shall ensure that all Federal-aid contractors, subcontractors and material suppliers engaged in the performance of federal-aid contracts shall provide equal opportunity for skill improvement training, employment and contracting in full accord with applicable statutes, executive orders, regulations and policies.

For a project review, the prime contractor shall be held responsible for ensuring that all active subcontractor are present at the meeting and have supplied the documentation listed in 230.409(c)(3).

Question 4: Does the STA conduct a preliminary analysis of the contractor’s information before conducting the compliance review? (23 CFR Part 230.409 (d))

4a. Describe the methodology the STA’s uses to conduct a preliminary analysis and the type of information reviewed.

Answer: Before the onsite verification and interviews, the Compliance Specialist shall analyze the employment patterns, policies, practices, and programs of the contractor to determine whether or not problems exist by reviewing information relative to:

1) The contractor’s current work force;
2) The contractor’s relationship with referral sources, e.g., unions, employment agencies, community action agencies, minority and female organizations, etc.
3) The minority and female representation of sources;
4) The availability of minorities and females with requisite skills in a reasonable recruitment area;
5) Any pending EEOC or Department of Justice cases or local or State Fair Employment Agency cases which are relevant to the contractor and/or the referral sources; and
6) The related projects (and/or contractor) files of FHWA Division and State Coordinator’s offices to obtain current information relating to the status of the contractor’s project(s), value, scheduled duration, written corrective action plans, PR–1391 or other EEO Utilization Reports, training requirements, previous compliance reviews, and other pertinent correspondence and/or reports.
Question 5: Does the STA have procedure(s) in place to conduct onsite verification and interviews? (23 CFR Part 230.409 (e))

5a. Describe the procedures used to conduct an onsite verification and interview.

Answer: The STA’s onsite verification and interview procedures should consist of the construction or home office site visit(s). During the initial meeting with the contractor, the following topics shall be discussed:

1) Objectives of the visit;
2) The material submitted by the contractor, including the actual implementation of the employee referral source system and any discrepancies found in the material; and
3) Arrangements for the site tour(s) and employee interviews.
4) The Compliance Specialist shall make a physical tour of the employment site(s) to determine that:
   a) EEO posters are displayed in conspicuous places in a legible fashion;
   b) Facilities are provided on a nonsegregated basis (e.g. work areas, washroom, time clocks, locker rooms, storage areas, parking lots, and drinking fountains);
   c) Supervisory personnel have been oriented to the contractor’s EEO commitments;
   d) The employee referral source system is being implemented;
   e) Reported employment data is accurate;
   f) Meetings have been held with employees to discuss EEO policy, particularly new employees; and
   g) Employees are aware of their right to file complaints of discrimination. The Compliance Specialist should interview at least one minority, one non minority, and one woman in each trade, classification, or occupation. The contractor’s superintendent or home office manager should also be interviewed.

Question 6: Does the STA have procedure(s) in place to conduct exit conferences? (23 CFR Part 230.409 (f))

6a. Describe the procedures used by the STA to conduct exit conferences.
**Answer:** The STA’s procedures to conduct exit conference with the contractor shall consider the following topics to be discussed:

a) Any preliminary findings that, if not corrected immediately or not corrected by the adoption of an acceptable voluntary corrective action plan, would necessitate a determination of noncompliance;

b) The process and time in which the contractor shall be informed of the final determination (15 days following the onsite verification and interviews); and

c) Any other matters that would best be resolved before concluding the onsite portion of the review.

Voluntary corrective action plans may be negotiated at the exit conference, so that within 15 days following the exit portion of the review. The contractor shall be notified in writing of the compliance determination. This written notification shall be sent to the contractor within 15 days following the completion of the onsite verification and exit conference.

**Question 7:** Does the STA have procedures in place to determine whether or not a contractor/subcontractor is in compliance with its EO/EEO contractual requirements? (23 CFR Part 230.409 (g), 409(c) (3), and 409(g) (3) (x))

**7a. What method(s) does the STA use to determine the contractors/subcontractor’s good faith efforts and the reasonable steps taken to achieve his/her EO/EEO contractual requirements?**

**Answer:** Once the onsite verification and exit conference have been completed, the Compliance Specialist uses the information to make a compliance determination. There is sufficient information, data and evidence obtained at the compliance review to determine if the EO contract requirements have been effectively implemented with respect to all terms and conditions of employment and in the provisions of subcontracting opportunities on the project. The evidence obtained must constitute a sufficient basis for an objective determination of the contractor’s compliance or noncompliance with EO requirements in the contract.

A contractor is in compliance when the EO requirements have been effectively implemented or there is evidence that every good faith effort has been made toward achieving the end result. Efforts to achieve this goal shall be results-oriented, initiated and maintained in good faith, and emphasized as any other vital management function of 23 CFR 230.409(g)(4). This standard requires a contractor to undertake specific, targeted efforts, which are reasonably
calculated to result in the desired compliance.

A Compliance Specialist’s responsibility is to determine if there is sufficient basis to find whether the contractor took all necessary and reasonable steps to comply with their contractual requirements under FHWA 1273 – Required Contract Provisions, Section II Non-discrimination. At a minimum, the contractor should be able to document its good faith efforts to comply with those contract provisions.

Question 8: Does the STA have procedures in place for enforcing noncompliance findings and follow-up on contractors/subcontractors found in non-compliance? (23 CFR Part 230.409 (h) and (i), 23 CFR Part 230-Appendix B to Subpart A and 23 CFR 230.409(h) (5) (vii)

8a. Describe the procedures used by the STA to enforce non-compliance findings and conduct follow-up compliance reviews.

Answer: If a contractor is found in noncompliance, action efforts to bring the contractor into compliance shall be initiated through the issuance of a show cause notice. The notice shall advise the contractor to show cause within 30 days why sanctions should not be imposed.

A follow-up review is critical to all non-compliance findings where a corrective action plan (CAP) has been approved. The CAP specifies clear actions that the contractor must take to correct cited deficiencies with time limits for completion. The follow-up review is an extension of the initial review process to verify the contractor’s performance of the CAP.

While 23 CFR 230, Subpart A, Appendix B requires prime contractors to use their best efforts to ensure subcontractor compliance with EEO obligations, the regulation further states (23 CFR 230.409(h)[5][vi]): "The 30-day show cause notice shall be issued directly to the non-compliant contractor or sub-contractor with an informational copy sent to any concerned prime contractors."

While it is recognized that STAs do not have the authority to enforce the Executive Order, they do have clear responsibility to ensure contractors/subcontractors comply with EEO requirements as stated in each contract, and in accordance with the provisions of 23 USC 140, implement the Contractor Compliance program under 23 CFR 230.
Question 9: Does the STA initiate its own contract administrative actions and legal proceedings, under State/Federal law, to achieve EO/EEO on federal-aid highway projects? (Section 22 of the Federal-aid Highway Act of 1968-State EEO Assurances, Item #4 and 23 CFR 230.405(b) (2))

9a. Explain what types of contract administrative actions and legal proceedings used by the STA.

Answer: The STA will, on its own initiative, take affirmative action, including the imposition of contract sanctions and the initiation of appropriate legal proceedings under any applicable State or Federal law to achieve equal employment opportunity on federal-aid highway projects and will actively cooperate with the FHWA in all investigations and enforcement actions undertaken by the FHWA.

The corrective action procedures outlined in the regulations (23 CFR 230.405(b)(2)) do not preclude normal contract administration procedures by the States to ensure the contractor’s completion of specific contract equal opportunity requirements, as long as such procedures support, and sustain the objectives of E.O. 11246, as amended. The State shall inform FHWA of any actions taken against a contractor under normal State contract administration procedures, if that action is precipitated in whole or in part by noncompliance with equal opportunity contract requirements.

Question 10: During a contract compliance review, does the STA evaluate the contractor/subcontractor’s contractual obligations to assure EEO and nondiscrimination? (23 CFR Part 230, Appendix A and B to Subpart A; Subpart D - 230.409(b) and (g))

10a. What methodology is used to evaluate the contractors/subcontractor’s contractual obligations.

Answer: In scheduling contract compliance reviews a major consideration are those contractors who have FHWA 1273 and TSP requirements in their contract. Therefore, when a contract compliance review is conducted it presents an excellent opportunity to review the contractor’s requirements with the TSP and FHWA 1273.

The Compliance Specialist should interview the trainees that are available, to verify their progress in meeting training requirements. These interviews support the other methods that the STA uses to administer an effective On-the-Job Training (OJT) program. An effective OJT program evaluates and monitors the quantity and quality of the training provided to the trainees. Lastly, the
contractor’s participation in the OJT program is a key consideration in making a compliance determination.

**Question 11:** Does the STA develop comprehensive compliance review reports that support their finding of the contractors/subcontractor’s compliance determination? (23 CFR Part 230.413 (a) (1-7)) and (b) (1) (i)

11a. Describe how the STA’s compliance review reports support the findings of the contractors/subcontractor’s compliance determination.

11b. How often does the STA submit compliance review reports to the FHWA Division’s EEO Specialist for concurrence and approval?

**Answer:** The STA’s Compliance Specialist shall maintain detailed notes from the beginning of the review from which a comprehensive compliance review report can be developed. The completed compliance review report shall contain documentary evidence to support the determination of a contractor’s or subcontractor’s compliance status. Findings, conclusions, and recommendations shall be explicitly stated and, when necessary, supported by documentary evidence. The compliance review report shall contain at least the following information:

1) Complete name and address of contractor.
2) Project(s) identification.
3) Basis for the review, i.e., area work force, project work force, home office work force, and target area work force.
4) Identification of Federal or Federal-aid contract(s).
5) Date of review.
6) Employment data by job craft, classification, or occupation by race and sex in accordance with (iii) above. This shall be the data verified during the onsite.
7) Identification of local unions involved with contractor, when applicable.
8) Determination of compliance status: compliance or noncompliance.
9) Copy of show cause notice or compliance notification sent to contractor.
10) Name of the Compliance Specialist who conducted the review and whether that person is a State, division or regional Compliance Specialist.
11) Concurrences at appropriate levels.
Each contractor (joint venture is one contractor) will be reported separately. When a project review is conducted, the reports should be attached, with the initial report being that of the prime contractor followed by the reports of each subcontractor. Each review level is responsible for ensuring that required information is contained in the report. When a project review is conducted, the project work force shall be reported. When an area wide review is conducted all of the contractor’s Federal-aid highway projects in the area will be reported as the area wide work force.

For STA conducted reviews the Compliance Specialist shall submit a report within 15 days from the completion of the onsite verification and exit conference, the STA Compliance Specialist will:

a) Prepare the compliance review report, based on information obtained;
b) Determine the contractor’s compliance status;
c) Notify the contractor of the compliance determination, i.e., send the contractor either notification of compliance or show cause notice; and
d) Forward a copy of the compliance review report, and the compliance notification or show cause notice to the FHWA Division Civil Rights Specialist.
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(13) Establishing procedures for pregnant and postgrant approval reviews of State programs and applicants for compliance with Title VI requirements; i.e., highway location, design and relocation, and persons seeking contracts with the State.

(14) Establish procedures to identify and eliminate discrimination when found to exist.

(15) Establishing procedures for promptly resolving deficiency status and reducing to writing the remedial action agreed to be necessary, all within a period not to exceed 90 days.

§ 200.11 Procedures for processing Title VI reviews.

(a) If the regional Title VI review report contains deficiencies and recommended actions, the report shall be forwarded by the Regional Federal Highway Administrator to the Division Administrator, who will forward it with a cover letter to the State highway agency for corrective action.

(b) The division office, in coordination with the Regional Civil Rights Officer, shall schedule a meeting with the recipient, to be held not later than 30 days from receipt of the deficiency report.

(c) Recipients placed in a deficiency status shall be given a reasonable time, not to exceed 90 days after receipt of the deficiency letter, to voluntarily correct deficiencies.

(d) The Division Administrator shall seek the cooperation of the recipient in correcting deficiencies found during the review. The FHWA officials shall also provide the technical assistance and guidance needed to aid the recipient to comply voluntarily.

(e) When a recipient fails or refuses to voluntarily comply with requirements within the time frame allotted, the Division Administrator shall submit to the Regional Administrator two copies of the case file and a recommendation that the State be found in noncompliance.

(f) The Office of Civil Rights shall review the case file for a determination of concurrence or nonconcurrence with a recommendation to the Federal Highway Administrator. Should the Federal Highway Administrator concur with the recommendation, the file is referred to the Department of Transportation, Office of the Secretary, for appropriate action in accordance with 49 CFR.

PART 230—EXTERNAL PROGRAMS

Subpart A—Equal Employment Opportunity on Federal and Federal-Aid Construction Contracts (Including Supportive Services)

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APPENDIX A TO SUBPART A OF PART 230—SPECIAL PROVISIONS

APPENDIX B TO SUBPART A OF PART 230—TRAINING SPECIAL PROVISIONS

APPENDIX C TO SUBPART A OF PART 230—FEDERAL-AID HIGHWAY CONTRACTORS ANNUAL EEO REPORT (FORM PR-1251)

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APPENDIXES E-F TO SUBPART A OF PART 230 (RESERVED)

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Subpart B—Supportive Services for Minority, Disadvantaged, and Women Business Enterprises

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Subpart C—State Highway Agency Equal Employment Opportunity Programs

230.301 Purpose.
230.303 Applicability.
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§ 230.103 Definitions.

For purposes of this subpart—

Administrator means the Federal Highway Administrator.

Areswide Plan means an affirmative action plan to increase minority utilization of crafts in a specified geographical area pursuant to Executive Order 11246, and taking the form of either a “Hometown” or an “Imposed” plan.

Bid conditions means contract requirements which have been issued by OFCC for purposes of implementing a Hometown Plan.

Division Administrator means the chief Federal Highway Administration (FHWA) official assigned to conduct FHWA business in a particular State, the District of Columbia, or the Commonwealth of Puerto Rico.

Division Equal Opportunity Officer means an individual with staff level responsibilities and necessary authority by which to operate as an Equal Opportunity Officer in a Division office. Normally the Equal Opportunity Officer will be a full-time civil rights specialist serving as staff assistant to the Division Administrator.

Hometown Plan means a voluntary areswide plan which was developed by representatives of affected groups (usually labor unions, minority organizations, and contractors), and subsequently approved by the Office of Federal Contract Compliance (OFCC), for purposes of implementing the equal employment opportunity requirements pursuant to Executive Order 11246, as amended.

Imposed Plan means an affirmative action requirement for a specified geographical area made mandatory by OFCC and, in some areas, by the courts.

Journeyman means a person who is capable of performing all the duties within a given job classification or craft.

State highway agency means that department, commission, board, or official of any State charged by its laws with the responsibility for highway construction. The term State should be considered equivalent to State highway agency.

Suggested minimum annual training goals means goals which have been assigned to each State highway agency annually for the purpose of specifying training positions on selected Federal-aid highway construction projects.

Supportive services means those services provided in connection with approved on-the-job training programs for highway construction workers and
§ 230.105 Applicability.
(a) Federal-aid highway construction projects. This subpart applies to all Federal-aid highway construction projects and to Appalachian highway construction projects and other State supervised cooperative highway construction projects except:
(1) Federal-aid highway construction projects being constructed pursuant to 23 U.S.C. 117; and
(2) Those projects located in areas where the Office of Federal Contract Compliance has implemented an “Imposed” or a “Hometown” Plan, except for those requirements pertaining to specific provisions involving on-the-job training and those provisions pertaining to supportive services and reporting requirements.
(b) Direct Federal highway construction projects. This subpart applies to all direct Federal highway construction projects except:
(1) For those provisions relating to the special requirements for the provision of supportive services; and
(2) For those provisions relating to implementation of specific equal employment opportunity requirements in areas where the Office of Federal Contract Compliance has implemented an “Imposed” or “Hometown” plan.

§ 230.107 Policy.
(a) Direct Federal and Federal-aid highway construction projects. It is the policy of the FHWA to require that all direct Federal and Federal-aid highway construction contracts include the same specific equal employment opportunity requirements. It is also the policy to require that all direct Federal and Federal-aid highway construction subcontracts of $10,000 or more (not including contracts for supplying materials) include these same requirements.

(a) Federal-aid highway construction projects. The special provisions set forth in appendix A shall be included in the advertised bidding proposal and made part of the contract for each contract and each covered Federal-aid highway construction subcontract.
(b) Direct Federal highway construction projects. Advertising, award and contract administration procedures for direct Federal highway construction contracts shall be as set forth in Federal Acquisition Regulations (48 CFR, chapter 1, section 22.803(c)). In order to obtain information required by 48 CFR, chapter 1, § 22.804-2(c), the following requirement shall be included at the end of the bid schedule in the proposal and contract assembly:

I expect to employ the following firms as subcontractors on this project (Naming subcontractors at this time does not constitute a binding commitment on the bidder to retain such subcontractors, nor will failure to enter names affect the contract award):

Name ____________________________
Address __________________________

Name ____________________________
Address __________________________

[40 FR 28053, July 3, 1975, as amended at 51 FR 22900, June 23, 1986]
§ 230.111 Implementation of special requirements for the provision of on-the-job training.

(a) The State highway agency shall determine which Federal-aid highway construction contracts shall include the "Training Special Provisions" (appendix B) and the minimum number of trainees to be specified therein after giving appropriate consideration to the guidelines set forth in §230.111(c). The "Training Special Provisions" shall supersede section 7(b) of the Special Provisions (appendix A) entitled "Specific Equal Employment Opportunity Responsibilities." Minor wording revisions will be required to the "Training Special Provisions" in areas having "Hometown" or "Imposed Plan" requirements.

(b) The Washington Headquarters shall establish and publish annually suggested minimum training goals. These goals will be based on the Federal-aid apportioned amounts and the minority population. A State will have achieved its goal if the total number of training slots on selected federally aided highway construction contracts which have been awarded during each 12-month period equals or exceeds the State's suggested minimum annual goal. In the event a State highway agency does not attain its goal during a calendar year, the State highway agency at the end of the calendar year shall inform the Administrator of the reasons for its inability to meet the suggested minimum number of training slots and the steps to be taken to achieve the goal during the next calendar year. The information is to be submitted not later than 30 days from the end of the calendar year and should be factual, and should not only indicate the situations occurring during the year but show the project conditions at least through the coming year. The final determination will be made on what training goals are considered to be realistic based on the information submitted by a State.

(c) The following guidelines shall be utilized by the State highway agency in selecting projects and determining the number of trainees to be provided training therein:

1. Availability of minorities, women, and disadvantaged for training.
2. The potential for effective training.
3. Duration of the contract.
4. Dollar value of the contract.
5. Total normal work force that the average bidder could be expected to use.
6. Geographic location.
7. Type of work.
8. The need for additional journeymen in the area.
9. Recognition of the suggested minimum goal for the State.
10. A satisfactory ratio of trainees to journeymen expected to be on the contractor’s work force during normal operations (considered to fall between 1:10 and 1:4).

(d) Training programs which are established shall be approved only if they meet the standards set forth in appendix B with regard to:

1. The primary objectives of training and upgrading minority group workers, women and disadvantaged persons.
2. The development of full journeymen.
3. The minimum length and type of training.
4. The minimum wages of trainees.
5. Trainees certifications.
6. Keeping records and furnishing reports.

(e)(1) Training programs considered by a State highway agency to meet the standards under this directive shall be submitted to the FHWA division Administrator with a recommendation for approval.

(2) Employment pursuant to training programs approved by the FHWA division Administrator will be exempt from the minimum wage rate provisions of section 113 of title 23 U.S.C. Approval, however, shall not be given to training programs which provide for employment of trainees at wages less than those required by the Special Training Provisions. (Appendix B.)

(f)(1) Apprenticeship programs approved by the U.S. Department of Labor as of the date of proposed use by a Federal-aid highway contractor or subcontractor need not be formally approved by the State highway agency or the FHWA division Administrator. Such programs, including their minimum wage provisions, are acceptable for use, provided they are administered
in a manner reasonably calculated to meet the equal employment opportunity obligations of the contractor.

(2) Other training programs approved by the U.S. Department of Labor as of the date of proposed use by a Federal-aid highway contractor or subcontractor are also acceptable for use without the formal approval of the State highway agency or the division Administrator provided:

(i) The U.S. Department of Labor has clearly approved the program aspects relating to equal employment opportunity and the payment of trainee wage rates in lieu of prevailing wage rates.

(ii) They are reasonably calculated to qualify the average trainees for journeyman status in the classification concerned by the end of the training period.

(iii) They are administered in a manner calculated to meet the equal employment obligations of the contractors.

(g) The State highway agencies have the option of permitting Federal-aid highway construction contractors to bid on training to be given under this directive. The following procedures are to be utilized by those State highway agencies that elect to provide a bid item for training:

(1) The number of training positions shall continue to be specified in the Special Training Provisions. Furthermore, this number should be converted into an estimated number of hours of training which is to be used in arriving at the total bid price for the training item. Increases and decreases from the estimated amounts would be handled as overruns or underruns;

(2) A section concerning the method of payment should be included in the Special Training Provisions. Some offsite training is permissible as long as the training is an integral part of an approved training program and does not comprise a substantial part of the overall training. Furthermore, the trainee must be concurrently employed on a federally aided highway construction project subject to the Special Training Provisions attached to this directive. Reimbursement for offsite training may only be made to the contractor where he does one or more of the following: Contributes to the cost of the training, provides the instruction to the trainee, or pays the trainee's wages during the offsite training period;

(3) A State highway agency may modify the special provisions to specify the numbers to be trained in specific job classifications;

(4) A State highway agency can specify training standards provided any prospective bidder can use them, the training standards are made known in the advertised specifications, and such standards are found acceptable by FHWA.

[40 FR 29553, July 3, 1975; 40 FR 57358, Dec. 9, 1975, as amended at 41 FR 3569, Jan. 21, 1976]

§230.113 Implementation of supportive services.

(a) The State highway agency shall establish procedures, subject to the availability of funds under 23 U.S.C. 140(b), for the provision of supportive services in support of training programs approved under this directive. Funds made available to implement this paragraph shall not be used to finance the training of State highway agency employees or to provide services in support of such training. State highway agencies are not required to match funds allocated to them under this section.

(b) In determining the types of supportive services to be provided which will increase the effectiveness of approved training programs State highway agencies shall give preference to the following types of services in the order listed:

(1) Services related to recruiting, counseling, transportation, physical examinations, remedial training, with special emphasis upon increasing training opportunities for members of minority groups and women;

(2) Services in connection with the administration of on-the-job training programs being sponsored by individual or groups of contractors and/or minority groups and women's groups;

(3) Services designed to develop the capabilities of prospective trainees for undertaking on-the-job training;

(4) Services in connection with providing a continuation of training during periods of seasonal shutdown;
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(5) Followup services to ascertain outcome of training being provided.

(c) State highway agencies which desire to provide or obtain supportive services other than those listed above shall submit their proposals to the Federal Highway Administration for approval. The proposal, together with recommendations of the division and regional offices shall be submitted to the Administrator for appropriate action.

(d) When the State highway agency provides supportive services by contract, formal advertising is not required by the FHWA, however, the State highway agency shall solicit proposals from such qualified sources as will assure the competitive nature of the procurement. The evaluation of proposals by the State highway agency must include consideration of the proposer’s ability to effect a productive relationship with contractors, unions (if appropriate), minority and women groups, minority and women trainees, and other persons or organizations whose cooperation and assistance will contribute to the successful performance of the contract work.

(e) In the selection of contractors to provide supportive services, State highway agencies shall make conscientious efforts to search out and utilize the services of qualified minority or women organizations, or minority or women business enterprises.

(f) As a minimum, State highway agency contracts to obtain supportive services shall include the following provisions:

(1) A statement that a primary purpose of the supportive services is to increase the effectiveness of approved on-the-job training programs, particularly their effectiveness in providing meaningful training opportunities for minorities, women, and the disadvantaged on Federal-aid highway projects;

(2) A clear and complete statement of the services to be provided under the contract, such as services to construction contractors, subcontractors, and trainees, for recruiting, counseling, remedial educational training, assistance in the acquisition of tools, special equipment and transportation, followup procedures, etc.;

(3) The nondiscrimination provisions required by Title VI of the Civil Rights Act of 1964 as set forth in FHWA Form PR-D73, and a statement of nondiscrimination in employment because of race, color, religion, national origin or sex;

(4) The establishment of a definite period of contract performance together with, if appropriate, a schedule stating when specific supportive services are to be provided;

(5) Reporting requirements pursuant to which the State highway agency will receive monthly or quarterly reports containing sufficient statistical data and narrative content to enable evaluation of both progress and problems;

(6) A requirement that the contractor keep track of trainees receiving training on Federal-aid highway construction projects for up to 6 months during periods when their training is interrupted. Such contracts shall also require the contractor to conduct a 6 month followup review of the employment status of each graduate who completes an on-the-job training program on a Federal-aid highway construction project subsequent to the effective date of the contract for supportive services.

(7) The basis of payment;

(8) An estimated schedule for expenditures;

(9) The right of access to contractor and subcontractor records and the right to audit shall be granted to authorize State highway agency and FHWA officials;

(10) Noncollusion certification;

(11) A requirement that the contractor provide all information necessary to support progress payments if such are provided for in the contract;

(12) A termination clause.

(g) The State highway agency is to furnish copies of the reports received under paragraph (b)(5) of this section, to the division office.

[40 FR 26553, July 3, 1975, as amended at 41 FR 3000, Jan. 21, 1976]

§ 230.115 Special contract requirements for “Hometown” or “Imposed” Plan areas.

Direct Federal and Federal-aid contracts to be performed in “Hometown”
§ 230.117

or “Imposed” Plan areas will incorporate the special provision set forth in appendix G.

§ 230.117 Reimbursement procedures (Federal-aid highway construction projects only).

(a) On-the-job special training provisions. State highway agencies will be reimbursed on the same pro-rata basis as the construction costs of the Federal-aid project.

(b) Supportive services. (1) The State highway agency must keep a separate account of supportive services funds since they cannot be interchanged with regular Federal-aid funds. In addition, these funds may not be expended in a manner that would provide for duplicate payment of Federal or Federal-aid funds for the same service.

(2) Where a State highway agency does not obligate all its funds within the time specified in the particular year’s allocation directive, the funds shall revert to the FHWA Headquarters Office to be made available for use by other State highway agencies, taking into consideration each State’s need for and ability to use such funds.

§ 230.119 Monitoring of supportive services.

Supportive services procured by a State highway agency shall be monitored by both the State highway agency and the division office.

§ 230.121 Reports.

(a) Employment reports on Federal-aid highway construction contracts not subject to “Hometown” or “Imposed” plan requirements.

(1) Paragraph 10c of the special provisions (appendix A) sets forth specific reporting requirements. FHWA Form PR-1391, Federal-Aid Highway Construction Contractors Annual EEO Report, (appendix C) and FHWA Form PR-1392, Federal-Aid Highway Construction Summary of Employment Data (including minority breakdown) for all Federal-Aid Highway Projects for month ending July 31st, 19—, (appendix D) are to be used to fulfill these reporting requirements.

(2) Form PR 1391 is to be completed by each contractor and each subcontractor subject to this part for every month of July during which work is performed, and submitted to the State highway agency. A separate report is to be completed for each covered contract or subcontract. The employment data entered should reflect the work force on board during all or any part of the last payroll period preceding the end of the month. The State highway agency is to forward a single copy of each report to the FHWA division office.

(3) Form PR 1392 is to be completed by the State highway agencies, summarizing the reports on PR 1391 for the month of July received from all active contractors and subcontractors. Three copies of completed Forms PR 1392 are to be forwarded to the division office.

(b) Employment reports on direct Federal highway construction contracts not subject to “Hometown” or “Imposed” plan requirements. Forms PR 1391 (appendix C) and PR 1392 (appendix D) shall be used for reporting purposes as prescribed in §230.121(a).

(c) Employment reports on direct Federal and Federal-aid highway construction contracts subject to “Hometown” or “Imposed” plan requirements.

(1) Reporting requirements for direct Federal and Federal-aid highway construction projects located in areas where “Hometown” or “Imposed” plans are in effect shall be in accordance with those issued by the U.S. Department of Labor, Office of Federal Contract Compliance.

(2) In order that we may comply with the U.S. Senate Committee on Public Works’ request that the Federal Highway Administration submit a report annually on the status of the equal employment opportunity program, Form PR 1391 is to be completed annually by each contractor and each subcontractor holding contracts or subcontracts exceeding $10,000 except as otherwise provided for under 23 U.S.C. 117. The employment data entered should reflect the work force on board during all or any part of the last payroll period preceding the end of the month of July.

(d) [Reserved]

(e) Reports on supportive services contracts. The State highway agency is
to furnish copies of the reports received from supportive service contractors to the FHWA division office which will furnish a copy to the regional office.

APPENDIX A TO SUBPART A OF PART 230—SPECIAL PROVISIONS

SPECIFIC EQUAL EMPLOYMENT OPPORTUNITY RESPONSIBILITIES

1. General. a. Equal employment opportunity requirements not to discriminate and to take affirmative action to assure equal employment opportunity as required by Executive Order 11246 and Executive Order 11375 are set forth in Required Contract Provisions (Form PR-1275 or 1316, as appropriate) and these Special Provisions which are imposed pursuant to section 146 of title 23 U.S.C., as established by section 22 of the Federal-Aid Highway Act of 1968. The requirements set forth in these Special Provisions shall constitute the specific affirmative action requirements for project activities under this contract and supplement the equal employment opportunity requirements set forth in the Required Contract Provisions.

b. The contractor will work with the State highway agencies and the Federal Government in carrying out equal employment opportunity obligations and in their review of his/her activities under the contract.

c. The contractor and all his/her subcontractors holding subcontracts not including material suppliers, of $10,000 or more, will comply with the following minimum specific requirement activities of equal employment opportunity:

(1) Equal Employment Opportunity Policy. The contractor will accept as his operating policy the following statement which is designed to further the provision of equal employment opportunity to all persons without regard to their race, color, religion, sex, or national origin, and to promote the full realization of equal employment opportunity through a positive continuing program.

It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, or national origin. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection of training, including apprenticeship, preapprenticeship, and/or on-the-job training.

(2) Equal Employment Opportunity Officer. The contractor will designate and make known to the State highway agency contracting officers and equal employment opportunity officer (hereinafter referred to as the EEO Officer) who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of equal employment opportunity and who must be assigned adequate authority and responsibility to do so.

(d) Dissemination of Policy. All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's equal employment opportunity policy and contractual responsibilities to provide equal employment opportunity in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

(1) Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's equal employment opportunity policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.

(2) All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer or other knowledgeable company official, covering all major aspects of the contractor's equal employment opportunity obligations, within thirty days following their reporting for duty with the contractor.

(3) All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer or appropriate company official in the contractor's procedures for locating and hiring minority group employees.

b. In order to make the contractor's equal employment opportunity policy known to all employees, prospective employees and potential sources of employees, i.e. schools, employment agencies, labor unions (where appropriate), college placement officers, etc., the contractor will take the following actions:

(1) Notices and posters setting forth the contractor's equal employment opportunity
policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

(2) The contractor's equal employment opportunity policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

5. Recruitment. a. When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be published in newspapers or other publications having a large circulation among minority groups in the area from which the project work force would normally be derived.

b. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants, including, but not limited to, State employment agencies, schools, colleges and minority group organizations. To meet this requirement, the contractor will, through its EEO Officer, identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the contractor for employment consideration.

In the event the contractor has a valid bargaining agreement, providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with equal employment opportunity contract provisions. (The U.S. Department of Labor has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended.)

c. The contractor will encourage his present employees to refer minority group applicants for employment by posting appropriate notices or bulletins in areas accessible to all such employees. In addition, information and procedures with regard to referring minority group applicants will be discussed with employees.

6. Personnel Actions. Wages, working conditions, and employee benefits shall be established with equal regard to employees of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, or national origin. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with his obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of his avenues of appeal.

7. Training and Promotion. a. The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event the training special provision is provided under this contract, this subparagraph will be superseded as indicated in Attachment 2.

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.

8. Unions. If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the contractor either directly or through a contractor's association acting as agent will include the procedures set forth below:

a. The contractor will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.

b. The contractor will use best efforts to incorporate an equal employment opportunity clause and union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, or national origin.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the State highway department and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, or national origin; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The U.S. Department of Labor has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and the special provisions, such contractor shall immediately notify the State highway agency.

e. The contractor will use his best efforts to solicit bids from and to utilize minority group subcontractors or contractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of minority-owned construction firms from State highway agency personnel.

f. The contractor will use his best efforts to ensure subcontractor compliance with their equal employment opportunity obligations.

10. Records and Reports. a. The contractor will keep records as are necessary to determine compliance with the contractor's equal employment opportunity obligations. The records kept by the contractor will be designed to indicate:

(1) The number of minority and non-minority group members and women employed in each work classification on the project,

(2) The progress and efforts being made in cooperation with unions to increase employment opportunities for minorities and women (applicable only to contractors who rely in whole or in part on unions as a source of their work force),

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees, and

4) The progress and efforts being made in securing the services of minority group subcontractors or subcontractors with meaningful minority and female representation among their employees.

b. All such records must be retained for a period of three years following completion of the contract work and subject to such reasonable times and places for inspection by authorized representatives of the State highway agency and the Federal Highway Administration.

c. The contractors will submit an annual report to the State highway agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA 1391. If on-the-job training is being required by "Training Special Provision", the contractor will be required to furnish Form FHWA 1409.


APPENDIX B TO SUBPART A OF PART 230—TRAINING SPECIAL PROVISIONS

This Training Special Provision supersedes subparagraph 7b of the Special Provision entitled "Specific Equal Employment Opportunity Responsibilities," (Attachment 1), and is in implementation of 23 U.S.C. 149(a).

As part of the contractor's equal employment opportunity affirmative action program training shall be provided as follows:

The contractor shall provide on-the-job training aimed at developing full journeyman in the type of trade or job classification involved.

The number of trainees to be trained under the special provisions will be (amount to be filled in by State highway department).

In the event that a contractor subcontracts a portion of the contract work, he shall determine how many, if any, of the trainees are to be trained by the subcontractor, provided, however, that the contractor shall retain the primary responsibility for meeting the training requirements imposed by this special provision. The contractor shall also insure that this training
special provision is made applicable to such subcontract. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training.

The number of trainees shall be distributed among the work classifications on the basis of the contractor's needs and the availability of journeymen in the various classifications within a reasonable area of recruitment. Prior to commencing construction, the contractor shall submit to the State highway agency for approval the number of trainees to be trained in each selected classification and training program to be used. Furthermore, the contractor shall specify the starting time for training in each of the classifications. The contractor will be credited for each trainee employed by him on the contract work who is currently enrolled or becomes enrolled in an approved program and will be reimbursed for such trainees as provided hereinafter.

Training and upgrading of minorities and women toward journeymen status is a primary objective of this Training Special Provision. Accordingly, the contractor shall make every effort to enroll minority trainees and women (e.g., by conducting systematic and direct recruitment through public and private sources likely to yield minority and women trainees) to the extent that such persons are available within a reasonable area of recruitment. The contractor will be responsible for demonstrating the steps that he has taken in pursuance thereof, prior to a determination as to whether the contractor is in compliance with this Training Special Provision. This training commitment is not intended, and shall not be used, to discriminate against any applicant for training, whether a member of a minority group or not.

No employee shall be employed as a trainee in any classification in which he has successfully completed a training course leading to journeymen status or in which he has been employed as a journeymen. The contractor should satisfy this requirement by including appropriate questions in the employee application or by other suitable means. Regardless of the method used the contractor's records should document the findings in each case.

The minimum length and type of training for each classification will be as established in the training program selected by the contractor and approved by the State highway agency and the Federal Highway Administration. The State highway agency and the Federal Highway Administration shall approve a program if it is reasonably calculated to meet the equal employment opportunity obligations of the contractor and to qualify the average trainee for journeymen status in the classification concerned by the end of the training period. Furthermore, apprenticeship programs registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau and training programs approved but not necessarily sponsored by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training shall also be considered acceptable provided it is being administered in a manner consistent with the equal employment obligations of Federal-aid highway construction contracts. Approval or acceptance of a training program shall be obtained from the State prior to commencing work on the classification covered by the program. It is the intention of these provisions that training is to be provided in the construction crafts rather than clerk-typists or secretarial-type positions. Training is permissible in lower level management positions such as office engineers, estimators, timekeepers, etc., where the training is oriented toward construction applications. Training in the laborer classification may be permitted provided that significant and meaningful training is provided and approved by the division office. Some offsite training is permissible as long as the training is an integral part of an approved training program and does not comprise a significant part of the overall training.

Except as otherwise noted below, the contractor will be reimbursed 80 cents per hour of training given an employee on this contract in accordance with an approved training program. As approved by the engineer, reimbursement will be made for training persons in excess of the number specified herein. This reimbursement will be made even though the contractor receives additional training program funds from other sources, provided such other does not specifically prohibit the contractor from receiving other reimbursement. Reimbursement for offsite training indicated above may only be made to the contractor where he does one or more of the following and the trainees are concurrently employed on a Federal-aid project: contributes to the cost of the training; provides the instruction to the trainee or pays the trainee's wages during the offsite training period.

No payment shall be made to the contractor if either the failure to provide the required training, or the failure to hire the trainee as a journeymen, is caused by the contractor and evidences a lack of good faith on the part of the contractor in meeting the requirements of this Training Special Provision. It is normally expected that a trainee will begin his training on the project as soon as feasible after start of work utilizing the skill involved and remain on the project as long as training opportunities exist in his work classification or until he has completed his training program. It is no: required that all trainees be on board for the entire length
Federal Highway Administration, DOT


or Transportation in connection with the existing program shall apply to all trainees being trained for the same classification who are covered by this Training Special Provision.

The contractor shall furnish the trainee a copy of the program he will follow in providing the training. The contractor shall provide each trainee with a certification showing the type and length of training satisfactorily completed.

The contractor will provide for the maintenance of records and furnish periodic reports documenting his performance under this Training Special Provision.

[40 FR 28653, July 3, 1975. Correctly redesignated at 45 FR 21156, Apr. 9, 1981]
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Table A

Table B

Table C

10. PREPARED BY: (Signature and Title of Contract Administrator) DATE

11. REVIEWED BY: (Signature and Title of State Highway Official) DATE

This report is required by law and regulation (23 U.S.C. 148(k) and 29 CFR Part 230). Failure to report will result in noncompliance with this regulation.
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Table B

PREPARED BY (Signature & Title) | DATE | REVIEWED BY (Signature & Title of State Hwy Official) | DATE

This report is required by law and regulation (23 U.S.C. 414 and 23 CFR Part 230). Failure to report will result in noncompliance with this regulation.
or any part of the last payroll period preceding the end of July. The staffing figures to be reported in Table A should include journey-level men and women, apprentices, and on-the-job trainees. Staffing figures to be reported in Table B should include only apprentices and on-the-job trainees as indicated.

Entries made for “Job Categories” are to be confined to the listing shown. Miscellaneous job classifications are to be incorporated in the most appropriate category listed on the form. All employees on projects should thus be accounted for.

This information will be useful in complying with the U.S. Senate Committee on

Alabama .......................... 01-04  Montana .................................................. 30-08
Alaska .................................. 02-10  Nebraska .................................................. 31-07
Arizona ................................ 04-09  Nevada ..................................................... 32-09
Arkansas ................................ 05-06  New Hampshire ......................................... 33-01
California .................................. 06-09  New Jersey .............................................. 34-01
Colorado ................................ 06-08  New Mexico .............................................. 35-06
Delaware ..................................... 10-03  North Carolina ....................................... 37-04
District of Columbia .................. 11-03  North Dakota ........................................... 38-08
Florida .................................... 12-04  Ohio ......................................................... 39-05
Georgia .................................... 13-04  Oklahoma ................................................ 40-06
Hawaii ...................................... 15-09  Oregon ....................................................... 41-10
Idaho ....................................... 16-10  Pennsylvania ........................................... 42-03
Illinois ..................................... 17-05  Puerto Rico ............................................. 43-01
Iowa ........................................ 19-07  South Carolina ....................................... 45-04
Kansas ..................................... 20-07  South Dakota .......................................... 46-08
Kentucky .................................. 21-04  Tennessee ............................................... 47-04
Louisiana .................................. 22-06  Texas ...................................................... 48-06
Maine ...................................... 23-01  Utah ......................................................... 49-06
Maryland .................................. 24-03  Vermont ................................................ 50-01
Massachusetts ............................. 25-01  Virginia ............................................... 51-03
Michigan .................................. 26-05  Washington .......................................... 53-10
Minnesota .................................. 27-05  West Virginia ........................................ 54-03
Mississippi ................................ 28-04  Wisconsin ............................................ 55-05
Missouri ................................... 29-07  Wyoming ............................................... 56-08

(23 U.S.C. sec. 140(a), 315, 49 FR 148(b))


APPENDIX G TO SUBPART A OF PART 230 [RESERVED]

APPENDIX G TO SUBPART A OF PART 230—SPECIAL REPORTING REQUIREMENTS FOR “HOMETOWN” OR “IMPOSED” PLAN AREAS

In addition to the reporting requirements set forth elsewhere in this contract the contractor and the subcontractors holding subcontracts, not including material suppliers, of $10,000 or more, shall submit for every month of July during which work is performed, employment data as contained under Form FR–1391 (appendix E to 28 CFR part 230) and in accordance with the instructions included thereon.

[40 FR 28053, July 3, 1975. Correctly redesignated at 46 FR 21156, Apr. 9, 1981]

Public Works request that the Federal Highway Administration submit a report annually on the status of the Equal Employment Opportunity Program, its effectiveness, and progress made by the States and the Administration in carrying out section 29B of the Federal-Aid Highway Act of 1968. In addition, the form should be used as a valuable tool for States to evaluate their own programs for ensuring equal opportunity.

It is requested that States submit this information annually to the FHWA Divisions no later than September 25.

Line 01—State & Region Code. Enter the 4-digit code from the list below.

APPENDIXES E–F TO SUBPART A OF PART 230 [RESERVED]

Subpart B—Supportive Services for Minority, Disadvantaged, and Women Business Enterprises

SOURCE: 50 FR 51243, Dec. 16, 1985, unless otherwise noted.

§ 230.201 Purpose.

To prescribe the policies, procedures, and guidance to develop, conduct, and administer supportive services assistance programs for minority, disadvantaged, and women business enterprises.

§ 230.202 Definitions.

(a) Minority Business Enterprise, as used in this subpart, refers to all small businesses which participate in the
Federal Highway Administration, DOT

Federal-aid highway program as a minority business enterprise (MBE), women business enterprise (WBE), or disadvantaged business enterprise (DBE), all defined under 49 CFR part 23. This expanded definition is used only in this subpart as a simplified way of defining the firms eligible to benefit from this supportive services program.

(b) **Supportive Services** means those services and activities provided in connection with minority business enterprise programs which are designed to increase the total number of minority businesses active in the highway program and contribute to the growth and eventual self-sufficiency of individual minority businesses so that such businesses may achieve proficiency to compete, on an equal basis, for contracts and subcontracts.

(c) **State highway agency** means that department, commission, board, or official of any State charged by its laws with the responsibility for highway construction. The term **State** is considered equivalent to **State highway agency** if the context so implies.

§ 230.203 Policy.

Based on the provisions of Pub. L. 97–424, dated January 6, 1983, it is the policy of the Federal Highway Administration (FHWA) to promote increased participation of minority business enterprises in Federal-aid highway contracts in part through the development and implementation of cost effective supportive services programs through the State highway agencies.

§ 230.204 Implementation of supportive services.

(a) Subject to the availability of funds under 23 U.S.C. 140(c), the State highway agency shall establish procedures to develop, conduct, and administer minority business enterprise training and assistance programs specifically for the benefit of women and minority businesses. Supportive services funds allocated to the States shall not be used to finance the training of State highway agency employees or to provide services in support of such training. State highway agencies are not required to match funds allocated to them under this section. Individual States are encouraged to be actively involved in the provision of supportive services. Such involvement can take the form of staff, funding, and/or direct assistance to augment the supportive services efforts financed by Federal-aid funds.

(b) State highway agencies shall give preference to the following types of services:

(1) Services relating to identification, prequalification, and certification assistance, with emphasis on increasing the total number of legitimate minority business enterprises participating in the Federal-aid highway program;

(2) Services in connection with estimating, bidding, and technical assistance designed to develop and improve the capabilities of minority businesses and assist them in achieving proficiency in the technical skills involved in highway construction;

(3) Services designed to develop and improve the immediate and long-term business management, recordkeeping, and financial accounting capabilities;

(4) Services to assist minority business enterprises to become eligible for and to obtain bonding and financial assistance;

(5) Services relating to verification procedures to ensure that only bona fide minority business enterprises are certified as eligible for participation in the Federal-aid highway program;

(6) Follow-up services to ascertain the outcome of training and assistance being provided; and

(7) Other services which contribute to long-term development, increased opportunities, and eventual self-sufficiency of minority business enterprises.

(c) A detailed work statement of the supportive services which the State highway agency considers to meet the requirements of paragraph (b) of this section and accomplishing other objectives shall be submitted to the FHWA for approval.

(d) State highway agencies which desire to provide or obtain services other than those listed in paragraph (b) of this section shall submit their proposals to the FHWA for approval.
§ 230.205

(e) When the State highway agency provides supportive services by contract, formal advertising is not required by FHWA; however, the State highway agency shall solicit proposals from such qualified sources as will assure the competitive nature of the procurement. The evaluation of proposals by the State highway agency must include consideration of the proposer's ability to effect a productive relationship with majority and minority contractors, contractors' associations, minority groups, and other persons or organizations whose cooperation and assistance will increase the opportunities for minority business enterprises to compete for and perform contracts and subcontracts.

(f) In the selection of contractors to perform supportive services, State highway agencies shall make conscientious efforts to search out, and utilize the services of qualified minority or women organizations, or minority or women enterprises.

(g) As a minimum, State highway agency contracts to obtain supportive services shall include the following provisions:

(1) A statement that a primary purpose of the supportive services is to increase the total number of minority firms participating in the Federal-aid highway program and to contribute to the growth and eventual self-sufficiency of minority firms;

(2) A statement that supportive services shall be provided only to those minority business enterprises determined to be eligible for participation in the Federal-aid highway program in accordance with 49 CFR part 23 and have a work specialty related to the highway construction industry;

(3) A clear and complete statement of the services to be provided under the contract, such as technical assistance, managerial assistance, counseling, certification assistance, and follow-up procedures as set forth in §230.204(b) of this part;

(4) The nondiscrimination provisions required by Title VI of the Civil Rights Act of 1964 as set forth in Form FHWA-1273, Required Contract Provisions, Federal-Aid Construction Contracts,\(^1\) and a statement of nondiscrimination in employment because of race, color, religion, sex, or national origin;

(5) The establishment of a definite period of contract performance together with, if appropriate, a schedule stating when specific supportive services are to be provided;

(6) Monthly or quarterly reports to the State highway agency containing sufficient data and narrative content to enable evaluation of both progress and problems;

(7) The basis of payment;

(8) An estimated schedule for expenditures;

(9) The right of access to records and the right to audit shall be granted to authorize State highway agency and FHWA officials;

(10) Noncollusion certification;

(11) A requirement that the contractor provide all information necessary to support progress payments if such are provided for in the contract; and

(12) A termination clause.

(h) The State highway agency is to furnish copies of the reports received under paragraph(g)(6) of this section to the FHWA division office.


§ 230.205 Supportive services funds obligation.

Supportive services funds shall be obligated in accordance with the procedures set forth in §230.117(b) of this part. The point of obligation is defined as that time when the FHWA has approved a detailed work statement for the supportive services.

§ 230.206 Monitoring supportive services.

Supportive services programs shall be continually monitored and evaluated by the State highway agency so that needed improvements can be identified and instituted. This requires the documentation of valid effectiveness

\(^1\)Form FHWA-1273 is available for inspection and copying at the locations given in 49 CFR part 7, appendix D, under Document Inspection Facilities, and at all State highway agencies.
Federal Highway Administration, DOT

measures by which the results of pro-
gram efforts may be accurately as-
seessed.

§ 230.207 Sources of assistance.

It is the policy of the FHWA that all
potential sources of assistance to mi-
nority business enterprises be utilized.
The State highway agency shall take
actions to ensure that supportive ser-
dices contracts reflect the availability
of all sources of assistance in order to
maximize resource utilization and
avoid unnecessary duplication.

Subpart C—State Highway Agen-
cy Equal Employment Oppor-
tunity Programs

SOURCE: 41 FR 22870, July 9, 1976, unless
otherwise noted.

§ 230.301 Purpose.

The purpose of the regulations in this
subpart is to set forth Federal Highway
Administration (FHWA) Federal-aid
policy and FHWA and State respon-
sibilities relative to a State highway
agency's internal equal employment
opportunity program and for assuring
compliance with the equal employment
opportunity requirements of federally-
asisted highway construction con-
tracts.

§ 230.303 Applicability.

The provisions of this subpart are ap-
licable to all States that receive Fed-
eral financial assistance in connection
with the Federal-aid highway program.

§ 230.305 Definitions.

As used in this subpart, the following
definitions apply:

(a) Affirmative Action Plan means:

(1) With regard to State highway
agency work forces, a written docu-
ment detailing the positive action
steps the State highway agency will
take to assure internal equal employ-
ment opportunity (internal plan).

(2) With regard to Federal-aid con-
struction contract work forces, the
Federal equal employment opportunity
bid conditions, to be enforced by a
State highway agency in the plan areas
established by the Secretary of Labor
and FHWA special provisions in
nonplan areas (external plan).

(b) Equal employment opportunity pro-
gram means the total State highway
agency program, including the affirma-
tive action plans, for ensuring compli-
cance with Federal requirements both in
State highway agency internal employ-
ment and in employment on Federal-
aid construction projects.

(c) Minority group. An employee may
be included in the minority group to
which he or she appears to belong, or is
regarded in the community as belong-
ing. As defined by U.S. Federal agen-
cies for employment purposes, minor-
itv group persons in the U.S. are iden-
tified as Blacks (not of Hispanic ori-
gin), Hispanics, Asian or Pacific Island-
ers, and American Indians or Alaskan
Natives.

(d) Racial/ethnic identification. For the
purpose of this regulation and any ac-
companying report requirements, an
employee may be included in the group
to which he or she appears to belong,
identifies with, or is regarded in the
community as belonging. However, no
person should be counted in more than
one racial/ethnic category. The fol-
lowing group categories will be used:

(1) The category White (not of His-
panic origin): All persons having origins
in any of the original peoples of Eu-
rope, North Africa, the Middle East, or
the Indian Subcontinent.

(2) The category Black (not of His-
panic origin): All persons having origins
in any of the Black racial groups.

(3) The category Hispanic: All persons
of Mexican, Puerto Rican, Cuban, Cen-
tral or South American, or other Span-
ish culture or origin, regardless of race.

(4) The category Asian or Pacific Is-
landers: All persons having origins in
any of the original peoples of the Far
East, Southeast Asia, or the Pacific Is-
lands. This area includes, for example,
China, Japan, Korea, the Philippine Is-
lands, and Samoa.

(5) The category American Indian or
Alaskan Native: All persons having ori-
gins in any of the original peoples of
North America.

(e) State means any of the 50 States of
the United States, the District of Co-
lumbia, the Commonwealth of Puerto
Rico, Guam, American Samoa, and the
Virgin Islands.

§ 230.305
§ 230.307

(f) State highway agency means that department, commission, board, or official of any State charged by its laws with the responsibility for highway construction. The term State should be considered equivalent to State highway agency if the context so implies.

[41 FR 23270, July 9, 1976, as amended at 41 FR 46293, Oct. 20, 1976]

§ 230.307 Policy.

Every employee and representative of State highway agencies shall perform all official equal employment opportunity actions in an affirmative manner, and in full accord with applicable statutes, executive orders, regulations, and policies enunciated thereunder, to assure the equality of employment opportunity, without regard to race, color, religion, sex, or national origin both in its own work force and in the work forces of contractors, subcontractors, and material suppliers engaged in the performance of Federal-aid highway construction contracts.

§ 230.309 Program format.

It is essential that a standardized Federal approach be taken in assisting the States in development and implementation of EEO programs. The format set forth in appendix A provides that standardized approach. State equal employment opportunity program that meet or exceed the prescribed standards will comply with basic FHWA requirements.

§ 230.311 State responsibilities.

(a) Each State highway agency shall prepare and submit an updated equal employment opportunity program, one year from the date of approval of the preceding program by the Federal Highway Administrator, over the signature of the head of the State highway agency, to the Federal Highway Administrator through the FHWA Division Administrator. The program shall consist of the following elements:

1. The collection and analysis of internal employment data for its entire work force in the manner prescribed in paragraph III of appendix A; and
2. The equal employment opportunity program, including the internal affirmative action plan, in the format and manner set forth in appendix A.

(b) In preparation of the program required by §230.311(a), the State highway agency shall consider and respond to written comments from FHWA regarding the preceding program.

§ 230.313 Approval procedure.

After reviewing the State highway agency equal employment opportunity program and the summary analysis and recommendations from the FHWA regional office, the Washington Headquarters Office of Civil Rights staff will recommend approval or disapproval of the program to the Federal Highway Administrator. The State highway agency will be advised of the Administrator's decision. Each program approval is effective for a period of one year from date of approval.

APPENDIX A TO SUBPART C OF PART 230—STATE HIGHWAY AGENCY EQUAL EMPLOYMENT OPPORTUNITY PROGRAMS

Each State highway agency's (SHA) equal employment opportunity (EEO) program shall be in the format set forth herein and shall address Contractor Compliance (part I) and SHA Internal Employment (part II), including the organizational structure of the SHA total EEO Program (internal and external).

PART I—CONTRACTOR COMPLIANCE

1. Organization and structure. A State highway agency EEO Coordinator (External) and staff support. 1. Describe the organizational location and responsibilities of the State highway agency EEO Coordinator. (Provided organization charts of the State highway agency and of the EEO staff.)
2. Indicate whether full or part-time; if part-time, indicate percentage of time devoted to EEO.
3. Indicate length of time in position, civil rights experience and training, and supervision.
4. Indicate whether compliance program is centralized or decentralized.
5. Identify EEO Coordinator's staff support (full- and part-time) by job title and indicate areas of their responsibilities.
6. Identify any other individuals in the central office having a responsibility for the implementation of this program and describe their respective roles and training received in program area.

B. District or division personnel. 1. Describe the responsibilities and duties of any district
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EEO personnel. Identify to whom they report.
2. Explain whether district EEO personnel are full-time or have other responsibilities such as labor compliance or engineering.
3. Describe training provided for personnel having EEO compliance responsibility.
C. Project personnel. Describe the EEO role of project personnel.
II. Compliance procedures. A. Applicable directives. 1. FHWA Contract Compliance Procedures.
4. FHWA Federal-Aid Highway Program Manual, vol. 6, chap. 4, sec. 1, subsec. 6 (Contract Procedures), and subsec. 8 (Minority Business Enterprise).
B. Implementation. 1. Describe process (methods) of incorporating the above FHWA directives into the SHA compliance program.
2. Describe the methods used by the State to familiarize State compliance personnel with all FHWA contract compliance directives. Indicate frequency of work shops, training sessions, etc.
3. Describe the procedure for advising the contractor of the EEO contract requirements at any preconstruction conference held in connection with a Federal-aid contract.
III. Accomplishments. Describe accomplishments in the construction EEO compliance program during the past fiscal year.
A. Regular project compliance review program. This number should include at least all of the following items:
1. Number of compliance reviews conducted.
2. Number of contractors reviewed.
3. Number of contractors found in compliance.
4. Number of contractors found in non-compliance.
5. Number of show cause notices issued.
6. Number of show cause notices rescinded.
7. Number of show cause actions still under conciliation and unresolved.
8. Number of follow-up reviews conducted. (Note: In addition to information requested in items 4-8 above, include a brief summary of total show cause and followup activities—findings and achievements.)
B. Consolidated compliance reviews. 1. Identify the target areas that have been reviewed since the inception of the consolidated com-

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pliance program. Briefly summarize total findings.
2. Identify any significant impact or effect of this program on contractor compliance.
C. Home office reviews. If the State conducts home office reviews, describe briefly the procedures followed by State.
D. Major problems encountered. Describe major problems encountered in connection with any review activities during the past fiscal year.
E. Major breakthroughs. Comment briefly on any major breakthrough or other accomplishment significant to the compliance review program.
IV. Area-wide plans/Hometown and Imposed (if applicable). A. Provide overall analysis of the effectiveness of each area-wide plan in the State.
B. Indicate by job titles the number of State personnel involved in the collection, consolidation, preparation, copying, reviewing, analyzing, and transmittal of area plan reports (Contracting Activity and Post Contract Implementation). Estimate the amount of time (number of hours) spent collectively on this activity each month. How does the State use the plan report data?
C. Identify Office of Federal Contract Compliance Programs (OFCCP) area plan audits or compliance checks in which State personnel participated during the last fiscal year. On the average, how many hours have been spent on these audits and/or checks during the past fiscal year?
D. Describe the working relationship of State EEO compliance personnel with representatives of plan administrative committee(s).
E. Provide recommendations for improving the area-wide plan program and the reporting system.
V. Contract sanctions. A. Describe the procedures used by the State to impose contract sanctions or institute legal proceedings.
B. Indicate the State or Federal laws which are applicable.
C. Does the State withhold a contractor’s progress payments for failure to comply with EEO requirements? If so, identify contractors involved in such actions during the past fiscal year. If not, identify other actions taken.
VI. Complaints. A. Describe the State’s procedures for handling discrimination complaints against contractors.
B. If complaints are referred to a State fair employment agency or similar agency, describe the referral procedure.
C. Identify the Federal-aid highway contractors that have had discrimination complaints filed against them during the past fiscal year and provide current status.
VII. External training programs, including supportive services. A. Describe the State’s process for reviewing the work classifications of trainees to determine that there is a
proper and reasonable distribution among appropriate craft.
B. Describe the State's procedures for identifying the number of minorities and women who have completed training programs.
C. Describe the extent of participation by women in construction training programs.
D. Describe the efforts made by the State to locate and use the services of qualified minority and female supportive service consultants. Indicate if the State's supportive service contractor is a minority or female owned enterprise.
E. Describe the extent to which reports from the supportive service contractors provide contract data to evaluate the status of training programs, with particular reference to minorities and women.
VIII. Minority business enterprise program. Provide 8-1-68 and the FHWA policy regarding the minority business enterprise program. The implementation of this program should be explained by responding to the following:
A. Describe the method used for listing of minority contractors capable of, or interested in, highway construction contracting or subcontracting. Describe the process used to circulate names of appropriate minority firms and associations to contractors obtaining contract proposals.
B. Describe the State's procedure for insuring that contractors take action to affirmatively solicit the interest, capability, and prices of potential minority subcontractors.
C. Describe the State's procedure for insuring that contractors have designated liaison officers to administer the minority business enterprise program in an effective manner. Specify resource material, including contracts, which the State provides to liaison officers.
D. Describe the action the State has taken to meet its goals for prequalification or licensing of minority business. Include dollar goals established for the year, and describe what criteria or formula the State has adopted for setting such goals. If it is different from the previous year, describe in detail.
E. Outline the State's procedure for evaluating its prequalification/licensing requirements.
F. Identify instances where the State has waived prequalification for subcontractors on Federal-aid construction work or for prime contractors on Federal-aid contracts with an estimated dollar value lower than $100,000.
G. Describe the State's methods of monitoring the progress and results of its minority business enterprise efforts.
IX. Liaison. Describe the liaison established by the State between public (State, county, and municipal) agencies and private organizations involved in EEO programs.
How is the liaison maintained on a continuing basis?
X. Innovative programs. Identify any innovative EEO programs or management procedures initiated by the State and not previously covered.
PART II—STATE HIGHWAY AGENCY EMPLOYMENT
I. General. The State highway agency's (SHA) internal program is an integral part of the agency's total activities. It should include the involvement, commitment and support of executives, managers, supervisors and all other employees. For effective administration and implementation of the EEO Program, an affirmative action plan (AAP) is required. The scope of an AAP and an AAP must be comprehensive, covering all elements of the agency's personnel management policies and practices. The major part of an AAP must be recognition and remedial action of any barriers to equal employment opportunity, identification of problem areas and of persons unfairly excluded or held back and action enabling them to compete for jobs on an equal basis. An effective AAP not only benefits those who have been denied equal employment opportunity but will also greatly benefit the organization which often has overlooked, screened out or underutilized the great reservoir of untapped human resources and skills, especially among women and minority groups.
Set forth are general guidelines designed to assist the State highway agencies in implementing internal programs, including the development and implementation of AAP's to ensure fair and equal treatment for all persons, regardless of race, color, religion, sex or national origin in all employment practices.
II. Administration and implementation. The head of each State highway agency is responsible for the overall administration of the internal EEO program, including the total integration of equal opportunity into all facets of personnel management. However, specific program responsibilities should be assigned for carrying out the program at all management levels.
To ensure effectiveness in the implementation of the internal EEO program, a specific and realistic AAP should be developed. It should include both short and long-range objectives, with priorities and target dates for achieving goals and measuring progress, according to the agency's individual need to overcome existing problems.
A. State Highway Agency Affirmative Action Officer (internal). 1. Appointment of Affirmative Action Officer. The head of the SHA should appoint a qualified Affirmative Action (AA) Officer (Internal EEO Officer) with responsibility and authority to implement the internal EEO program. In making the selection, the following factors should be considered:
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a. The person appointed should have proven ability to accomplish major program goals.
b. Managing the internal EEO program requires a major time commitment, it cannot be added on to an existing full-time job.
c. Appointing qualified minority and/or female employees to head or staff the program may offer good role models for present and potential employees and add credibility to the programs involved. However, the most essential requirements for such position(s) are sensitivity to varied ways in which discrimination limits job opportunities, commitment to program goals and sufficient status and ability to work with others in the agency to achieve them.
d. Responsibilities of the Affirmative Action Officer. The responsibilities of the AA Officer should include, but not necessarily be limited to:
a. Developing the written AAP.
b. Publicizing its content internally and externally.
c. Assisting managers and supervisors in collecting and analyzing employment data, identifying problem areas, setting goals and timetables and developing programs to achieve goals. Programs should include specific remedies to eliminate any discriminatory practices discovered in the employment system.
d. Handling and processing formal discrimination complaints.
e. 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.
f. Reporting, at least quarterly, to the head of the SHA on progress and deficiencies of each unit in relation to agency goals.
g. In addition, consider the creation of:
   (1) An EEO Advisory Committee, whose membership would include top management officials.
   (2) An EEO Employee Committee, whose membership would include rank and file employees, with minority and female representatives from various job levels and departments to meet regularly with the AA officer.
   (3) An EEO Counseling Program to attempt informal resolution of discrimination complaints.

B. Contents of an affirmative action plan. The Affirmative Action Plan (AAP) is an integral part of the SHA's EEO program. Although the style and format of AAP's may vary from one SHA to another, the basic substance will generally be the same. The essence of the AAP should include, but not necessarily be limited to:
1. Inclusion of a strong agency policy statement of commitment to EEO.
2. Assignment of responsibility and authority for program to a qualified individual.

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3. A survey of the labor market area in terms of population makeup, skills, and availability for employment.
4. Analyzing the present work force to identify jobs, departments and units where minorities and females are underutilized.
5. Setting specific, measurable, attainable hiring and promotion goals, with target dates, in each area of underutilization.
6. Making every manager and supervisor responsible and accountable for meeting these goals.
7. Reevaluating job descriptions and hiring criteria to assure that they reflect actual job needs.
8. Finding minorities and females who are qualified or qualifiable to fill jobs.
9. Getting minorities and females into upward mobility and relevant training programs where they have not had previous access.
10. Developing systems to monitor and measure progress regularly. If results are not satisfactory to meet goals, determine the reasons and make necessary changes.
11. Developing a procedure whereby employees and applicants may process allegations of discrimination to an impartial body without fear of reprisal.

C. Implementation of an affirmative action plan. The written AAP is the framework and management tool to be used at all organizational levels to actively implement, measure and evaluate program progress on the specific action items which represent EEO program problems or deficiencies. The presence of a written plan alone does not constitute an EEO program, nor is it, in itself, evidence of an ongoing program. As a minimum, the following specific actions should be taken.
1. Issue written equal employment opportunity policy statement and affirmative action commitment. To be effective, EEO policy provisions must be enforced by top management, and all employees must be made aware that EEO is basic agency policy. The head of the SHA should issue a firm statement of personal commitment, legal obligation and the importance of EEO as an agency goal, and (2) assign specific responsibility and accountability to each executive, manager and supervisor.
   The statement should include, but not necessarily be limited to, the following elements:
   a. EEO for all persons, regardless of race, color, religion, sex or national origin as a fundamental agency policy.
   b. Personal commitment to and support of EEO by the head of the SHA.
   c. The requirement that special affirmative action be taken throughout the agency to overcome the effects of past discrimination.
   d. The requirement that the EEO program be a goal setting program with measurement
and evaluation factors similar to other major agency programs.

(5) Active recruitment efforts to support and supplement those of the central personnel agency or department, reaching all appropriate sources to obtain qualified employees on a nondiscriminatory basis.

(2) Maintaining contracts with organizations representing minority groups, women, professional societies, and other sources of candidates for technical, professional and management level positions.

(3) Ensuring that recruitment literature is relevant to all employees, including minority groups and women.

(4) Reviewing and monitoring recruitment and placement procedures so as to assure that no discriminatory practices exist.

(5) Co-operating with management and the central personnel agency on the review and validation of written tests and other selection devices.

(6) Analyzing the flow of applicants through the selection and appointment process, including an analytical review of reasons for rejections.

(7) Monitoring the placement of employees to ensure the assignment of work and work-place on a nondiscriminatory basis.

b. Promotions. The AAP should include specific provisions for, but not necessarily limited to:

1. Establishing an agency-wide merit promotion program, including a merit promotion plan, to provide equal opportunity for all persons based on merit and without regard to race, color, religion, sex or national origin.

2. Monitoring the operation of the merit promotion program, including a review of promotion actions, to assure that requirements and practices support EEO program objectives and do not have a discriminatory impact in actual operation.

3. Establishing skills banks to match employee skills with available job advancement opportunities.

4. Evaluating promotion criteria (supervisory evaluations, oral interviews, written tests, qualification standards, etc.) and their use by selecting officials to identify and eliminate factors which may lead to improper "selection out" of employees or applicants, particularly minorities and women, who traditionally have not had access to better jobs. It may be appropriate to require selecting officials to submit a written justification when well qualified persons are passed over for upgrading or promotion.

5. Assuring that all job vacancies are posted conspicuously and that all employees are encouraged to bid on all jobs for which they feel they are qualified.

6. Publicizing the agency merit promotion program by highlighting breakthrough promotions, i.e., advancement of minorities and women to key jobs, new career heights, etc.
d. Training. The AAP should include specific provisions for, but not necessarily limited to:

(1) Requiring managers and supervisors to participate in EEO seminars covering the AAP, the overall EEO program and the administration of the policies and procedures incorporated therein, and on Federal, State and local laws relating to EEO.

(2) Training in proper interviewing techniques of employees who conduct employment selection interviews.

(3) Training and education programs designed to provide opportunities for employees to advance in relation to the present and projected manpower needs of the agency and the employees’ career goals.

(4) The review of profiles of training course participants to ensure that training opportunities are being offered to all eligible employees on an equal basis and to correct any inequities discovered.

e. Layoffs, recalls, discharges, demotions, and disciplinary actions. The standards for deciding when a person shall be terminated, demoted, disciplined, laid off or recalled should be the same for all employees, including minorities and females. Seemingly neutral practices should be reexamined to see if they have a disparate effect on such groups. For example, if more minorities and females are being laid off because they were the last hired, then, adjustments should be made to assure that the minority and female ratios do not decrease because of these actions.

(1) When employees, particularly minorities and females, are disciplined, laid off, discharged or downgraded, it is advisable that the actions be reviewed by the AA Officer before they become final.

(2) Any punitive action (i.e., harassment, terminations, demotions), taken as a result of employees filing discrimination complaints, is illegal.

(3) The following records should be kept to monitor this area of the internal EEO program:

On all terminations, including layoffs and discharges: indicate total number, name, (home address and phone number), employment date, termination date, recall rights, sex, racial/ethnic identification (by job category), type of termination and reason for termination.

On all demotions: indicate total number, name, (home address and phone number), demotion date, sex, racial/ethnic identification (by job category), and reason for demotion.

On all recalls: indicate total number, name, (home address and phone number) recall date, sex, and racial/ethnic identification (by job category).

Exit interviews should be conducted with employees who leave the employment of the SHA.

f. Other personnel actions. The AAP should include specific provisions for, but not necessarily limited to:

(1) Assuring that information on EEO counseling and grievance procedures is easily available to all employees.

(2) A system for processing complaints alleging discrimination because of race, color, religion, sex or national origin to an impartial body.

(3) A system for processing grievances and appeals (i.e., disciplinary actions, adverse actions, adverse action appeals, etc.).

(4) Including in the performance appraisal system a factor to rate manager’s and supervisors’ performance in discharging the EEO program responsibilities assigned to them.

(5) Reviewing and monitoring the performance appraisal program periodically to determine its objectivity and effectiveness.

(6) Ensuring the equal availability of employee benefits to all employees.

4. Program Evaluation. An internal reporting system to continually audit, monitor and evaluate programs is essential for a successful AAP. Therefore, a system providing for EEO goals, timetables, and periodic evaluations needs to be established and implemented. Consideration should be given to the following actions:

a. Defining the major objectives of EEO program evaluation.

b. The evaluation should be directed toward results accomplished, not only at efforts made.

c. The evaluation should focus attention on assessing the adequacy of problem identification in the AAP and the extent to which the specific action steps in the plan provide solutions.

d. The AAP should be reviewed and evaluated at least annually. The review and evaluation procedures should include, but not be limited to, the following:

(1) Each bureau, division or other major component of the agency should make annual and such other periodic reports as are needed to provide an accurate review of the operations of the AAP in that component.

(2) The AA Officer should make an annual report to the head of the SHA, containing the overall status of the program, results achieved toward established objectives, identity of any particular problems encountered and recommendations for corrective actions needed.

e. Specific, numerical goals and objectives should be established for the ensuing year. Goals should be developed for the SHA as a whole, as well as for each unit and each job category.

III. Employment Statistical Data. A. As a minimum, furnish the most recent data on the following:

1. The total population in the State,
2. The total labor market in State, with a breakdown by racial/ethnic identification and sex, and
3. An analysis of (1) and (2) above, in connection with the availability of personnel and jobs within SHA's.

B. State highway agencies shall use the EEO-4 Form in providing current work force data. This data shall reflect only State department of transportation/State highway department employment.
<table>
<thead>
<tr>
<th>JOB CATEGORY</th>
<th>OFFICE/CLERICAL</th>
<th>PARAPROFESSIONALS</th>
<th>PROFESSIONALS</th>
<th>TECHNICIANS</th>
<th>PROFESSIONALS</th>
<th>OFFICIALS</th>
<th>ADMINISTRATORS</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(Do not include detailed occupational totals. Gaps will be counted as zero)

Note: Full-Time Equivalent (FTE) is the number of employees per full-time position.

Federal Highway Administration, DOT

Pl. 230, Subp. C, App. A
D. EMPLOYMENT DATA AS OF JUNE 30 (Cont.)
(Do not include elected/appointed officials. Blanks will be counted as zero)

<table>
<thead>
<tr>
<th>ANNUAL TOTAL</th>
<th>SALARY (in Thousands)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(Columns)</td>
<td>WHITE</td>
</tr>
<tr>
<td>Males</td>
<td>A</td>
</tr>
<tr>
<td>0-7.49</td>
<td>0.1</td>
</tr>
<tr>
<td>7.5-9.99</td>
<td>0.2</td>
</tr>
<tr>
<td>10-12.49</td>
<td>0.3</td>
</tr>
<tr>
<td>12.5-14.99</td>
<td>0.4</td>
</tr>
<tr>
<td>15-17.49</td>
<td>0.5</td>
</tr>
<tr>
<td>17.5-20.00</td>
<td>0.6</td>
</tr>
<tr>
<td>20.00-22.50</td>
<td>0.7</td>
</tr>
<tr>
<td>22.50-25.00</td>
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</tr>
<tr>
<td>25.00 PLUS</td>
<td>0.9</td>
</tr>
</tbody>
</table>

2. OTHER THAN FULL TIME EMPLOYEES (Include temporary employees)

3. NEW HIRES DURING FISCAL YEAR
   Permanent full time only
   JULY 1 - JUNE 30

[41 FR 22270, July 9, 1976, as amended at 41 FR 46294, Oct. 20, 1976]
Federal Highway Administration, DOT

Subpart D—Construction Contract Equal Opportunity Compliance Procedures

SOURCE: 41 FR 34299, Aug. 13, 1976, unless otherwise noted.

§ 230.401 Purpose.

The purpose of the regulations in this subpart is to prescribe policies and procedures to standardize the implementation of the equal opportunity contract compliance program, including compliance reviews, consolidated compliance reviews, and the administration of areawide plans.

§ 230.403 Applicability.

The procedures set forth hereinafter apply to all nonexempt direct Federal and Federal-aid highway construction contracts and subcontracts, unless otherwise specified.

§ 230.405 Administrative responsibilities.

(a) Federal Highway Administration (FHWA) responsibilities. (1) The FHWA has the responsibility to ensure that contractors meet contractural equal opportunity requirements under E.O. 11246, as amended, and title 23 U.S.C., and to provide guidance and direction to States in the development and implementation of a program to assure compliance with equal opportunity requirements.

(2) The Federal Highway Administrator or a designee may inquire into the status of any matter affecting the FHWA equal opportunity program and, when considered necessary, assume jurisdiction over the matter, proceeding in coordination with the State concerned. This is without derogation of the authority of the Secretary of Transportation, Department of Transportation (DOT), the Director, DOT Departmental Office of Civil Rights (OCR) or the Director, Office of Federal Contract Compliance Programs (OFCCP), Department of Labor.

(b) State responsibilities. (1) The SHA's, as contracting agencies, have a responsibility to assure compliance by contractors with the requirements of Federal-aid construction contracts, including the equal opportunity requirements, and to assist in and cooperate with FHWA programs to assure equal opportunity.

(2) The corrective action procedures outlined herein do not preclude normal contract administration procedures by the States to ensure the contractor's completion of specific contract equal opportunity requirements, as long as such procedures support, and sustain the objectives of E.O. 11246, as amended. The State shall inform FHWA of any actions taken against a contractor under normal State contract administration procedures, if that action is precipitated in whole or in part by noncompliance with equal opportunity contract requirements.

§ 230.407 Definitions.

For the purpose of this subpart, the following definitions shall apply, unless the context requires otherwise:

(a) Actions, identified by letter and number, shall refer to those items identified in the process flow chart. (Appendix D);

(b) Affirmative Action Plan means a written positive management tool of a total equal opportunity program indicating the action steps for all organizational levels of a contractor to initiate
and measure equal opportunity program progress and effectiveness. The Special Provisions (23 CFR part 330, appendix A) and area wide plans are Affirmative Action Plans.); 

(c) Affirmative Actions means the efforts exerted towards achieving equal opportunity through positive, aggressive, and continuous result-oriented measures to correct past and present discriminatory practices and their effects on the conditions and privileges of employment. These measures include, but are not limited to, recruitment, hiring, promotion, upgrading, demotion, transfer, termination, compensation, and training; 

(d) Area wide Plan means an Affirmative Action Plan approved by the Department of Labor to increase minority and female utilization in crafts of the construction industry in a specified geographical area pursuant to E.O. 11246, as amended, and taking the form of either a “Hometown” or an “Imposed” Plan. 

(1) Hometown Plan means a voluntary area wide agreement usually developed by representatives of labor unions, minority organizations, and contractors, and approved by the OPCCP for the purpose of implementing the equal employment opportunity requirements pursuant to E.O. 11246, as amended; 

(2) Imposed Plan means mandatory affirmative action requirements for a specified geographical area issued by OPCCP and, in some areas, by the courts; 

(e) Compliance Specialist means a Federal or State employee regularly employed and experienced in civil rights policies, practices, procedures, and equal opportunity compliance review and evaluation functions; 

(f) Consolidated Compliance Review means a review and evaluation of all significant construction employment in a specific geographical (target) area; 

(g) Construction shall have the meanings set forth in 41 CFR 60-1.3(e) and 23 U.S.C. 101(a). References in both definitions to expenses or functions incidental to construction shall include preliminary engineering work in project development or engineering services performed by or for a SHA; 

(h) Corrective Action Plan means a contractor’s unequivocal written and signed commitment outlining actions taken or proposed, with time limits and goals, where appropriate to correct, compensate for, and remedy each violation of the equal opportunity requirements as specified in a list of deficiencies. (Sometimes called a conciliation agreement or a letter of commitment; 

(i) Contractor means, any person, corporation, partnership, or unincorporated association that holds a FHWA direct or federally assisted construction contract or subcontract regardless of tier; 

(j) Days shall mean calendar days; 

(k) Discrimination means a distinction in treatment based on race, color, religion, sex, or national origin; 

(l) Equal Employment Opportunity means the absence of partiality or distinction in employment treatment, so that the right of all persons to work and advance on the basis of merit, ability, and potential is maintained; 

(m) Equal Opportunity Compliance Review means an evaluation and determination of a nonexempt direct Federal or Federal-aid contractor’s or subcontractor’s compliance with equal opportunity requirements based on: 

(1) Project work force—employees at the physical location of the construction activity; 

(2) Area work force—employees at all Federal-aid, Federal, and non-Federal projects in a specific geographical area as determined under §230.409 (b)(9); or 

(3) Home office work force—employees at the physical location of the corporate, company, or other ownership headquarters or regional managerial offices, including “white collar” personnel (managers, professionals, technicians, and clerical) and any maintenance or service personnel connected thereto; 

(n) Equal Opportunity Requirements is a general term used throughout this document to mean all contract provisions relative to equal employment opportunity (EEO), subcontracting, and training; 

(o) Good Faith Effort means affirmative action measures designed to implement the established objectives of an Affirmative Action Plan; 

(p) Show Cause Notice means a written notification to a contractor based
on the determination of the reviewer (or in appropriate cases by higher level authority) to be in noncompliance with the equal opportunity requirements. The notice informs the contractor of the specific basis for the determination and provides the opportunity, within 30 days from receipt, to present an explanation why sanctions should not be imposed.

(a) State highway agency (SHA) means that department, commission, board, or official of any State charged by its laws with the responsibility for highway construction. The term State should be considered equivalent to State highway agency. With regard to direct Federal-aid contracts, references herein to SHA’s shall be considered to refer to FHWA regional offices, as appropriate.

§ 230.409 Contract compliance review procedures.

(a) General. A compliance review consists of the following elements:
(1) Review Scheduling (Actions R–1 and R–2).
(2) Contractor Notification (Action R–3).
(3) Preliminary Analysis (Phase I) (Action R–4).
(4) Onsite Verification and Interviews (Phase II) (Action R–5).
(5) Exit Conference (Action R–6).

The compliance review procedure, as described herein and in appendix D provides for continual monitoring of the employment process. Monitoring officials at all levels shall analyze submissions from field offices to ensure proper completion of procedural requirements and to ascertain the effectiveness of program implementation.

(b) Review scheduling. (Actions R–1 and R–2). Because construction work forces are not constant, particular attention should be paid to the proper scheduling of equal opportunity compliance reviews. Priority in scheduling equal opportunity compliance reviews shall be given to reviewing those contractor’s work forces:
(1) Which hold the greatest potential for employment and promotion of minorities and women (particularly in higher skilled crafts or occupations); 
(2) Working in areas which have significant minority and female labor forces within a reasonable recruitment area;
(3) Working on projects that include special training provisions; and
(4) Where compliance with equal opportunity requirements is questionable. (Based on previous PR-135’s (23 CFR part 230, subpart A, appendix C) Review Reports and Hometown Plan Reports).

In addition, the following considerations shall apply:
(5) Reviews specifically requested by the Washington Headquarters shall receive priority scheduling;
(6) Compliance Reviews in geographical areas covered by areawide plans would normally be reviewed under the Consolidated Compliance Review Procedures set forth in §230.415.
(7) Reviews shall be conducted prior to or during peak employment periods.
(8) No compliance review shall be conducted that is based on a home office work force of less than 15 employees unless requested or approved by Washington Headquarters; and
(9) For compliance reviews based on an area work force (outside of areawide plan coverage), the Compliance Specialist shall define the applicable geographical area by considering:
(i) Union geographical boundaries;
(ii) The geographical area from which the contractor recruits employees, i.e., reasonable recruitment area;
(iii) Standard Metropolitan Statistical Area (SMSA) or census tracts; and
(iv) The county in which the Federal or Federal-aid project(s) is located and adjacent counties.

(c) Contractor notification (Action R–3).
(1) The Compliance Specialist should usually provide written notification to the contractor of the pending compliance review at least 2 weeks prior to the onsite verification and interviews. This notification shall include the scheduled date(s), an outline of the mechanics and basis of the review, requisite interviews, and documents required.
(2) The contractor shall be requested to provide a meeting place on the day
of the visit either at the local office of
the contractor or at the jobsite.
(3) The contractor shall be requested
to supply all of the following information
to the Compliance Specialist prior to
the onsite verification and interviews:
(i) Current Form PR-1391 developed
from the most recent payroll;
(ii) Copies of all current bargaining
agreements;
(iii) Copies of purchase orders and
subcontracts containing the EEO clause;
(iv) A list of recruitment sources
available and utilized;
(v) A statement of the status of any action pertaining to employment practices
taken by the Equal Employment
Opportunity Commission (EEOC) or
other Federal, State, or local agency
regarding the contractor or any source
of employees;
(vi) A list of promotions made during
the past 6 months, to include race, na-
tional origin, and sex of employee, pre-
vious job held, job promoted into; and
the corresponding wage rates;
(vii) An annotated payroll to show
job classification, race, national origin
and sex;
(viii) A list of minority- or female-
owned companies contacted as possible
subcontractors, vendors, material sup-
pliers, etc.; and
(ix) Any other necessary documents
or statements requested by the Compli-
ance Specialist for review prior to the
actual onsite visit.
(4) For a project review, the prime
contractor shall be held responsible for
ensuring that all active subcontractors
are present at the meeting and have
supplied the documentation listed in
§230.408(c)(3).
(d) Preliminary analysis (Phase I)
(Action R-4). Before the onsite
verification and interviews, the Com-
pliance Specialist shall analyze the
employment patterns, policies, prac-
tices, and programs of the contractor
to determine whether or not problems
exist by reviewing information relative
to:
(1) The contractor's current work
force;
(2) The contractor's relationship with
referral sources, e.g., unions, employ-
ment agencies, community action
agencies, minority and female organi-
zations, etc.;
(3) The minority and female rep-
resentation of sources;
(4) The availability of minorities and
females with requisite skills in a rea-
sonable recruitment area;
(5) Any pending EEOC or Department
of Justice cases or local or State Fair
Employment Agency cases which are
relevant to the contractor and/or the
referral sources; and
(6) The related project(s) (and/or con-
tactor) files of FHWA regional or divi-
sion and State Coordinator's offices to
obtain current information relating to
the status of the contractor's project(s), value, scheduled duration,
written corrective action plans, PR-
1391 or Manpower Utilization Reports,
training requirements, previous com-
pliance reviews, and other pertinent
correspondence and/or reports.
(e) Onsite verification and interviews
(Phase II) (Action R-5). (1) Phase II of
the review consists of the construction
or home office site visit(s). During the
initial meeting with the contractor,
the following topics shall be discussed:
(i) Objectives of the visit;
(ii) The material submitted by the
contractor, including the actual imple-
mentation of the employee referral
source system and any discrepancies
found in the material; and
(iii) Arrangements for the site tour(s)
and employee interviews.
(2) The Compliance Specialist shall
make a physical tour of the employ-
ment site(s) to determine that:
(i) EEO posters are displayed in con-
spicuous places in a legible fashion;
(ii) Facilities are provided on a non-
segregated basis (e.g. work areas, wash-
room, timeclocks, locker rooms, stor-
age areas, parking lots, and drinking
fountains);
(iii) Supervisory personnel have been
oriented to the contractor's EEO com-
mitments;
(iv) The employee referral source sys-
tem is being implemented;
(v) Reported employment data is ac-
curate;
(vi) Meetings have been held with
employees to discuss EEO policy, par-
ticularly new employees; and
(vii) Employees are aware of their right to file complaints of discrimination.

(3) The Compliance Specialist should interview at least one minority, one nonminority, and one woman in each trade, classification, or occupation. The contractor's superintendent or home office manager should also be interviewed.

(4) The Compliance Specialist shall, on a sample basis, determine the union membership status of union employees on the site (e.g., whether they have permits, membership cards, or books, and in what category they are classified [e.g., A, B, or C]).

(5) The Compliance Specialist shall also determine the method utilized to place employees on the job and whether equal opportunity requirements have been followed.

(6) The Compliance Specialist shall determine, and the report shall indicate the following:

(i) Is there reasonable representation and utilization of minorities and women in each craft, classification or occupation? If not, what has the contractor done to increase recruitment, hiring, upgrading, and training of minorities and women?

(ii) What action is the contractor taking to meet the contractual requirement to provide equal employment opportunity?

(iii) Are the actions taken by the contractor acceptable? Could they reasonably be expected to result in increased utilization of minorities and women?

(iv) Is there impartiality in treatment of minorities and women?

(v) Are affirmative action measures of an isolated nature or are they continuing?

(vi) Have the contractor's efforts produced results?

(f) Exit conference (Action R-6). (1) During the exit conference with the contractor, the following topics shall be discussed:

(i) Any preliminary findings that, if not corrected immediately or not corrected by the adoption of an acceptable voluntary corrective action plan, would necessitate a determination of noncompliance;

(ii) The process and time in which the contractor shall be informed of the final determination (15 days following the onsite verification and interviews); and

(iii) Any other matters that would best be resolved before concluding the onsite portion of the review.

(2) Voluntary corrective action plans may be negotiated at the exit conference, so that within 15 days following the exit portion of the review, the Compliance Specialist shall prepare the review report and make a determination of either:

(i) Compliance, and so notify the contractor; or

(ii) Noncompliance, and issue a 30-day show cause notice.

The acceptance of a voluntary corrective action plan at the exit conference does not preclude a determination of noncompliance, particularly if deficiencies not addressed by the plan are uncovered during the final analysis and report writing. (Action R-7) A voluntary corrective action plan should be accepted with the understanding that it only address problems uncovered prior to the exit conference.

(g) Compliance determinations (Action R-8). (1) The evidence obtained at the compliance review shall constitute a sufficient basis for an objective determination by the Compliance Specialist conducting the review of the contractor's compliance or noncompliance with contractual provisions pursuant to E.O. 11246, as amended, and FHWA EEO Special Provisions implementing the Federal-Aid Highway Act of 1968, where applicable.

(2) Compliance determinations on contractors working in a Hometown Plan Area shall reflect the status of those crafts covered by part II of the plan bid conditions. Findings regarding part I crafts shall be transmitted through channels to the Washington Headquarters, Office of Civil Rights.

(3) The compliance status of the contractor will usually be reflected by positive efforts in the following areas:

(i) The contractor's equal employment opportunity (EEO) policy;

(ii) Dissemination of the policy and education of supervisory employees concerning their responsibilities in implementing the EEO policy;
(iii) The authority and responsibilities of the EEO officer;

(iv) The contractor’s recruitment activities, especially establishing minority and female recruitment and referral procedures;

(v) The extent of participation and minority and female utilization in FHWA training programs;

(vi) The contractor’s review of personnel actions to ensure equal opportunities;

(vii) The contractor’s participation in apprenticeship or other training;

(viii) The contractor’s relationship (if any) with unions and minority and female union membership;

(ix) Effective measures to assure non-segregated facilities, as required by contract provisions;

(x) The contractor’s procedures for monitoring subcontractors and utilization of minority and female subcontractors and/or subcontractors with substantial minority and female employment; and

(xi) The adequacy of the contractor’s records and reports.

(4) A contractor shall be considered to be in compliance (Action R-9) when the equal opportunity requirements have been effectively implemented, or there is evidence that every good faith effort has been made toward achieving this end. Efforts to achieve this goal shall be result-oriented, initiated and maintained in good faith, and emphasized as any other vital management function.

(5) A contractor shall be considered to be in noncompliance (Action R-10) when:

(i) The contractor has discriminated against applicants or employees with respect to the conditions or privileges of employment; or

(ii) The contractor fails to provide evidence of every good faith effort to provide equal opportunity.

(h) *Show cause procedures*—(1) *General.* Once the onsite verification and exit conference (Action R-5) have been completed and a compliance determination made, (Action R-8), the contractor shall be notified in writing of the compliance determination. (Action R-11 or R-12) This written notification shall be sent to the contractor within 15 days following the completion of the onsite verification and exit conference. If a contractor is found in noncompliance (Action R-10), action efforts to bring the contractor into compliance shall be initiated through the issuance of a show cause notice (Action R-12). The notice shall advise the contractor to show cause within 30 days why sanctions should not be imposed.

(2) *When a show cause notice is required.* A show cause notice shall be issued when a determination of noncompliance is made based upon:

(i) The findings of a compliance review;

(ii) The results of an investigation which verifies the existence of discrimination; or

(iii) Areawide plan reports that show an underutilization of minorities (based on criteria of U.S. Department of Labor’s Optional Form 66 ("Manpower Utilization Report").

(3) *Responsibility for issuance.* (i) Show cause notices will normally be issued by SHA’s to federally assisted contractors when the State has made a determination of noncompliance, or when FHWA has made such a determination and has requested the State to issue the notice.

(ii) When circumstances warrant, the Regional Federal Highway Administrator or a designee may exercise primary compliance responsibility by issuing the notice directly to the contractor.

(iii) The Regional Federal Highway Administrators in Regions 8, 10, and the Regional Engineer in Region 15, shall issue show cause notices to direct Federal contractors found in noncompliance.

(4) *Content of show cause notice.* The show cause notice must: (See sample—appendix A of this subpart)

(i) Notify the contractor of the determination of noncompliance;

(ii) Provide the basis for the determination of noncompliance;

(iii) Notify the contractor of the obligation to show cause within 30 days why formal proceedings should not be instituted;
Federal Highway Administration, DOT

(iv) Schedule (date, time, and place) a compliance conference to be held approximately 15 days from the contractor's receipt of the notice;

(v) Advise the contractor that the conference will be held to receive and discuss the acceptability of any proposed corrective action plan and/or correction of deficiencies; and

(vi) Advise the contractor of the availability and willingness of the Compliance Specialist to conciliate within the time limits of the show cause notice.

(5) Preparing and processing the show cause notice. (i) The State or FHWA official who conducted the investigation or review shall develop complete background data for the issuance of the show cause notice and submit the recommendation to the head of the SHA or the Regional Federal Highway Administrator, as appropriate.

(ii) The recommendation, background data, and final draft notice shall be reviewed by appropriate State or FHWA legal counsel.

(iii) Show cause notices issued by the SHA shall be issued by the head of that agency or a designee.

(iv) The notice shall be personally served to the contractor or delivered by certified mail, return receipt requested, with a certificate of service or the return receipt filed with the case record.

(v) The date of the contractor's receipt of the show cause notice shall begin the 30-day show cause period. (Action R-13).

(vi) The 30-day show cause notice shall be issued directly to the non-compliant contractor or subcontractor with an informational copy sent to any concerned prime contractors.

(6) Conciliation efforts during show cause period. (i) The Compliance Specialist is required to attempt conciliation with the contractor throughout the show cause time period. Conciliation and negotiation efforts shall be directed toward correcting contractor program deficiencies and initiating corrective action which will maintain and assure equal opportunity. Records shall be maintained in the State, FHWA division, or FHWA regional office's case files, as appropriate, indicating actions and reactions of the contractor, a brief synopsis of any meetings with the contractor, notes on verbal communication and written correspondence, requests for assistance or interpretations, and other relevant matters.

(ii) In instances where a contractor is determined to be in compliance after a show cause notice has been issued, the show cause notice will be rescinded and the contractor formally notified (Action R-17). The FHWA Washington Headquarters, Office of Civil Rights, shall immediately be notified of any change in status.

(7) Corrective action plans. (i) When a contractor is required to show cause and the deficiencies cannot be corrected within the 30-day show cause period, a written corrective action plan may be accepted. The written corrective action plan shall specify clear unequivocal action by the contractor with time limits for completion. Token actions to correct cited deficiencies will not be accepted. (See Sample Corrective Action Plan—appendix B of this subpart)

(ii) When a contractor submits an acceptable written corrective action plan, the contractor shall be considered in compliance during the plan's effective implementation and submission of required progress reports. (Action R-15 and R-17).

(iii) When an acceptable corrective action plan is not agreed upon and the contractor does not otherwise show cause as required, the formal hearing process shall be recommended through appropriate channels by the compliance specialist immediately upon expiration of the 30-day show cause period. (Action R-16, R-18, R-19)

(iv) When a contractor, after having submitted an acceptable corrective action plan and being determined in compliance is subsequently determined to be in noncompliance based upon the contractor's failure to implement the corrective action plan, the formal hearing process must be recommended immediately. There are no provisions for reinstating a show cause notice.

(v) When, however, a contractor operating under an acceptable corrective action plan carries out the provisions of the corrective action plan but the actions do not result in the necessary
changes, the corrective action plan shall be immediately amended through negotiations. If, at this point, the contractor refuses to appropriately amend the corrective action plan, the formal hearing process shall be commenced immediately.

(vi) A contractor operating under an approved voluntary corrective action plan (i.e., plan entered into prior to the issuance of a show cause notice) must be issued a 30-day show cause notice in the situation referred to in paragraphs (b) (7) (iv) and (v) of this section, i.e., failure to implement an approved corrective action plan or failure of corrective actions to result in necessary changes.

(1) Followup reviews. (1) A followup review is an extension of the initial review process to verify the contractor's performance of corrective action and to validate progress report information. Therefore, followup reviews shall only be conducted of those contractors where the initial review resulted in a finding of noncompliance and a show cause notice was issued.

(2) Followup reviews shall be reported as a narrative summary referencing the initial review report.

(j) Hearing process. (1) When such procedures as show cause issuance and conciliation conferences have been unsuccessful in bringing contractors into compliance within the prescribed 30 days, the reviewer (or other appropriate level) shall immediately recommend, through channels, that the Department of Transportation obtain approval from the Office of Federal Contract Compliance Programs for a formal hearing (Action R–19). The Contractor should be notified of this action.

(2) Recommendations to the Federal Highway Administrator for hearing approval shall be accompanied by full reports of findings and case files containing any related correspondence. The following items shall be included with the recommendation:

(i) Copies of all Federal and Federal-aid contracts and/or subcontracts to which the contractor is party;
(ii) Copies of any contractor or subcontractor certifications;
(iii) Copy of show cause notice;
(iv) Copies of any corrective action plans; and
(v) Copies of all pertinent Manpower Utilization Reports, if applicable.

(3) SHA's through FHWA regional and division offices, will be advised of decisions and directions affecting contractors by the FHWA Washington Headquarters, Office of Civil Rights, for the Department of Transportation.

(k) Responsibility determinations. (1) In instances where requests for formal hearings are pending OFCCP approval, the contractor may be declared a nonresponsible contractor for inability to comply with the equal opportunity requirements.

(2) SHA's shall refrain from entering into any contract or contract modification subject to E.O. 11246, as amended, with a contractor who has not demonstrated eligibility for Government contracts and federally assisted construction contracts pursuant to E.O. 11246, as amended.
channels to the Washington Headquarters, Office of Civil Rights. After approval, the Washington Headquarters, Office of Civil Rights, (OCR) shall request the appropriate region to conduct the home office review.

(d) Employment of women. Executive Order 11246, as amended, implementing rules and regulations regarding sex discrimination are outlined in 41 CFR part 60-20. It is the responsibility of the Compliance Specialist to ensure that contractors provide women full participation in their work forces.

(e) Effect of exclusive referral agreements. (1) The OFCCP has established the following criteria for determining compliance when an exclusive referral agreement is involved:

(i) It shall be no excuse that the union, with which the contractor has a collective bargaining agreement providing for exclusive referral, failed to refer minority or female employees.

(ii) Discrimination in referral for employment, even if pursuant to provisions of a collective bargaining agreement, is prohibited by the National Labor Relations Act and Title VII of the Civil Rights Act of 1964, as amended.

(iii) Contractors and subcontractors have a responsibility to provide equal opportunity if they want to participate in federally involved contracts. To the extent they have delegated the responsibility for some of their employment practices to some other organization or agency which prevents them from meeting their obligations, these contractors must be found in noncompliance.

(2) If the contractor indicates that union action or inaction is a proximate cause of the contractor's failure to provide equal opportunity, a finding of noncompliance will be made and a show cause notice issued, and:

(i) The contractor will be formally directed to comply with the equal opportunity requirements.

(ii) Reviews of other contractors with projects within the jurisdiction of the applicable union locals shall be scheduled.

(iii) If the reviews indicate a pattern and/or practice of discrimination on the part of specific union locals, each contractor in the area shall be informed of the criteria outlined in §230.411(e)(1) of this section. Furthermore, the FHWA Washington Headquarters, OCR, shall be provided with full documentary evidence to support the discriminatory pattern indicated.

(iv) In the event the union referral practices prevent the contractor from meeting the equal opportunity requirements pursuant to the E.O. 11246, as amended, such contractor shall immediately notify the SHA.

§ 230.413 Review reports.

(a) General. (1) The Compliance Specialist shall maintain detailed notes from the beginning of the review from which a comprehensive compliance review report can be developed.

(2) The completed compliance review report shall contain documentary evidence to support the determination of a contractor's or subcontractor's compliance status.

(2) Findings, conclusions, and recommendations shall be explicitly stated and, when necessary, supported by documentary evidence.

(4) The compliance review report shall contain at least the following information.1 (Action R-20)

(i) Complete name and address of contractor.

(ii) Project(s) identification.

(iii) Basis for the review, i.e., area work force, project work force, home office work force, and target area work force.

(iv) Identification of Federal or Federal-aid contract(s).

(v) Date of review.

(vi) Employment data by job craft, classification, or occupation by race and sex in accordance with (iii) above.

This shall be the data verified during the onsite.

(vii) Identification of local unions involved with contractor, when applicable.

(viii) Determination of compliance status: compliance or noncompliance.

(ix) Copy of show cause notice or compliance notification sent to contractor.

1The Federal Highway Administration will accept completed Form FHWA-66 for the purpose. The form is available at the offices listed in 49 CFR part 7, appendix D.
40 C.F.R. § 230.413

(x) Name of the Compliance Specialist who conducted the review and whether that person is a State, division or regional Compliance Specialist.

(xi) Concurrences at appropriate levels.

(5) Each contractor (joint venture is one contractor) will be reported separately. When a project review is conducted, the reports should be attached, with the initial report being that of the prime contractor followed by the reports of each subcontractor.

(6) Each review level is responsible for ensuring that required information is contained in the report.

(7) When a project review is conducted, the project work force shall be reported. When an areawide review is conducted (all Federal-aid, Federal, and non-Federal projects in an area), then areawide work force shall be reported. When a home office review is conducted, only home office work force shall be reported. Other information required by regional offices shall be detached before forwarding the reports to the Washington Headquarters, OCR.

(8) The Washington Headquarters, OCR, shall be provided all of the following:

(i) The compliance review report required by §230.413(a)(4).

(ii) Corrective action plans.

(iii) Show cause notices or compliance notifications.

(iv) Show cause recisions.

While other data and information should be kept by regional offices (including progress reports, correspondence, and similar review backup material), it should not be routinely forwarded to the Washington Headquarters, OCR.

(b) Administrative requirements—(1) State conducted reviews. (i) Within 15 days from the completion of the onsite verification and exit conference, the State Compliance Specialist will:

(A) Prepare the compliance review report, based on information obtained;

(B) Determine the contractor’s compliance status;

(C) Notify the contractor of the compliance determination, i.e., send the contractor either notification of compliance or show cause notice; and

(D) Forward three copies of the compliance review report, and the compliance notification or show cause notice to the FHWA division EEO Specialist.

(ii) Within 10 days of receipt, the FHWA division EEO Specialist shall:

(A) Analyze the State’s report, ensure that it is complete and accurate;

(B) Resolve nonconcurrence, if any;

(C) Indicate concurrence, and, where appropriate, prepare comments; and

(D) Forward two copies of the compliance review report, and the compliance notification or show cause notice to the Regional Civil Rights Director.

(iii) Within 15 days of receipt, the FHWA Regional Civil Rights Director shall:

(A) Analyze the report, ensure that it is complete and accurate;

(B) Resolve nonconcurrence, if any;

(C) Indicate concurrence, and, where appropriate, prepare comments; and

(D) Forward one copy of the compliance review report, and the compliance notification or show cause notice to the Washington Headquarters, OCR.

(2) FHWA division conducted reviews. (i) Within 15 days from the completion of the onsite verification and exit conference, the division EEO Specialist shall:

(A) Prepare compliance review report, based on information obtained;

(B) Determine the contractor’s compliance status;

(C) Notify the State to send the contractor the compliance determination, i.e., either notification of compliance or show cause notice; and

(D) Forward two copies of the compliance review report and the compliance notification or show cause notice to the Regional Civil Rights Director.

(ii) Within 15 days of receipt, the FHWA Regional Civil Rights Director will take the steps outlined in §230.413(b)(1)(iii).

(3) FHWA region conducted reviews. (i) Within 15 days from the completion of the onsite verification and exit conference the regional EEO Specialist shall:

(A) Prepare the compliance review report, based on information obtained;

(B) Determine the contractor’s compliance status;

(C) Inform the appropriate division to notify the State to send the contractor
the compliance determination i.e., either notification of compliance or show cause notice; and

(D) Forward one copy of the compliance review report, and the compliance notification or show cause notice to the Washington Headquarters, OCR.

(4) Upon receipt of compliance review reports, the Washington Headquarters, OCR, shall review, resolve any non-concurrences, and record them for the purpose of:

(i) Providing ongoing technical assistance to FHWA regional and division offices and SHA’s;

(ii) Gathering a sufficient data base for program evaluation;

(iii) Ensuring uniform standards are being applied in the compliance review process;

(iv) Initiating appropriate changes in FHWA policy and implementing regulations; and

(v) Responding to requests from the General Accounting Office, Office of Management and Budget, Senate Subcommittee on Public Roads, and other agencies and organizations.

§ 230.415 Consolidated compliance reviews.

(a) General. Consolidated compliance reviews shall be implemented to determine employment opportunities on an areawide rather than an individual project basis. The consolidated compliance review approach shall be adopted and directed by either Headquarters, region, division, or SHA, however, consolidated reviews shall at all times remain a cooperative effort.

(b) OFCCP policy requires contracting agencies to ensure compliance, in hometown an imposed plan areas, on an area-wide rather than a project basis. The consolidated compliance review approach facilitates implementation of this policy.

(c) Methodology—(1) Selection of a target area. In identifying the target area of a consolidated compliance review (e.g., SMSA, hometown or imposed plan area, a multicounty area, or an entire State), consideration shall at least be given to the following facts:

(i) Minority and female work force concentrations;

(ii) Suspected or alleged discrimination in union membership or referral practices by local unions involved in highway construction;

(iii) Present or potential problem areas;

(iv) The number of highway projects in the target area; and

(v) Hometown or imposed plan reports that indicate underutilization of minorities or females.

(2) Determine the review period. After the target area has been selected, the dates for the actual onsite reviews shall be established.

(3) Obtain background information. EEO-C’s Local Union Reports, should be obtained from regional offices of the EEOC. Target area civilian labor force statistics providing percent minorities and percent females in the target area shall be obtained from State employment security agencies or similar State agencies.

(4) Identify contractors. Every non-exempt federally assisted or direct Federal contractor and subcontractor in the target area shall be identified. In order to establish area-wide employment patterns in the target area, employment data is needed for all contractors and subcontractors in the area. However, only those contractors with significant work forces (working prior to peak and not recently reviewed) may need to be actually reviewed onsite. Accordingly, once all contractors are identified, those contractors which will actually be reviewed onsite shall be determined. Compliance determinations shall only reflect the status of crafts covered by part II of plan bid conditions. Employment data of crafts covered by part I of plan bid conditions shall be gathered and identified as such in the composite report, however, OFCCP has reserved the responsibility for compliance determinations on crafts covered by part I of the plan bid conditions.

(5) Contractor notification. Those contractors selected for onsite review shall be sent a notification letter as outlined in §230.409(c) along with a request for current workforce data² for completion.

²The Consolidated Workforce Questionnaire is convenient for the purpose and appears as attachment 2 to volume 2, chapter 2.
§ 230.415

and submission at the onsite review. Those contractors in the target area not selected for onsite review shall also be requested to supply current workforce data as of the onsite review period, and shall return the data within 15 days following the onsite review period.

(6) Onsite reviews. Compliance reviews shall then be conducted in accordance with the requirements set forth in §330.409. Reviewers may use Form FHWA-86, Compliance Data Report, if appropriate. It is of particular importance during the onsite reviews that the review team provide for adequate coordination of activities at every stage of the review process.

(7) Compliance determinations. Upon completion of the consolidated reviews, compliance determinations shall be made on each review by the reviewer. Individual show cause notices or compliance notifications shall be sent (as appropriate) to each reviewed contractor.

The compliance determination shall be based on the contractor's target area workforce (Federal, Federal-aid and non-Federal), except when the target area is coincidental with hometown plan area, compliance determinations must not be based on that part of a contractor's work force covered by part I of the plan bid conditions, as previously set forth in this regulation. For example: ABC Contracting, Inc. employs carpenters, operating engineers, and cement masons. Carpenters and operating engineers are covered by part II of the plan bid conditions, however, cement masons are covered by part I of the plan bid conditions. The compliance determination must be based only on the contractor's utilization of carpenters and operating engineers.

(d) Reporting—(1) Composite report. A final composite report shall be submitted as a complete package to the Washington Headquarters, OCR, within 45 days after the review period and shall consist of the following:

(i) Compliance review report, for each contractor and subcontractor with accompanying show cause notice or compliance notification.

(ii) Work force data to show the aggregate employment of all contractors in the target area.

(iii) A narrative summary of findings and recommendations to include the following:

(A) A summary of highway construction employment in the target area by craft, race, and sex. This summary should explore possible patterns of discrimination or underutilization and possible causes, and should compare the utilization of minorities and females on contractor’s work forces to the civilian labor force percent for minorities and females in the target area.

(B) If the target area is a plan area, a narrative summary of the plan's effectiveness with an identification of part I and part II crafts. This summary shall discuss possible differences in minority and female utilization between part I and part II crafts, documenting any inferences drawn from such comparisons.

(C) If applicable, discuss local labor unions' membership and/or referral practices that impact on the utilization of minorities and females in the target area. Complete and current copies of all collective bargaining agreements and copies of EEO-3, Local Union Reports, for all appropriate unions shall accompany the composite report.

(D) Any other appropriate data, analyses, or information deemed necessary for a complete picture of the areawide employment.

(E) Considering the information compiled from the summaries listed above, make concrete recommendations on possible avenues for correcting problems uncovered by the analyses.

(2) Annual planning report. The proper execution of consolidated compliance reviews necessitates scheduling, along with other fiscal program planning. The Washington Headquarters, OCR, shall be notified of all planned consolidated reviews by August 10 of each year and of any changes in the target area or review periods, as they become known. The annual consolidated planning report shall indicate:

(i) Selected target areas:
Federal Highway Administration, DOT

(11) The basis for selection of each area; and

(iii) The anticipated review period (dates) for each target area.

APPENDIX A TO SUBPART D OF PART 230—SAMPLE SHOW CAUSE NOTICE

Certified Mail, Return Receipt Requested
Date
Contractor's Name
Address
City, State, and Zip Code.

DEAR CONTRACTOR: As a result of the review of your (Project Number) project located at (Project Location) conducted on (Date) by (Reviewing Agency), it is our determination that you are not in compliance with your equal opportunity requirements and that good faith efforts have not been made to meet your equal opportunity requirements in the following areas:

List of Deficiencies

1.
2.
3.

Your failure to take the contractually required affirmative action has contributed to the unacceptable level of minority and female employment in your operations, particularly in the semiskilled and skilled categories of employees.

The Department of Labor regulations (41 CFR 60) implementing Executive Order 11246, as amended, are applicable to your Federal-aid highway construction contract and are controlling in this matter (see Required Contract Provisions, Form FR-1273, Clause II). Section 60-1.23(b) of these regulations provides that when equal opportunity deficiencies exist, it is necessary that you make a commitment in writing to correct such deficiencies before you may be found in compliance. The commitment must include the specific action which you propose to take to correct such deficiency and the date of completion of such action. The time period allotted shall be no longer than the minimum period necessary to effect the necessary correction. In accordance with instructions issued by the Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, your written commitment must also provide for the submission of monthly progress reports which shall include a head count of minority and female representation at each level of each trade and a list of minority employees.

You are specifically advised that making the commitment discussed above will not preclude a further determination of noncompliance upon a finding that the commitment is not sufficient to achieve compliance.

We will hold a compliance conference at (Address) at (Time) on (Date) for you to submit and discuss your written commitment. If your written commitment is acceptable and if the commitment is sufficient to achieve compliance, you will be found in compliance during the effective implementation of that commitment. You are cautioned, however, that our determination is subject to review by the Federal Highway Administration, the Department of Transportation, and OFCCP and may be disapproved if your written commitment is not considered sufficient to achieve compliance.

If you indicate either directly or by inaction that you do not wish to participate in the scheduled conference and do not otherwise show cause within 30 days from receipt of this notice why enforcement proceedings should not be instituted, this agency will commence enforcement proceedings under Executive Order 11246, as amended.

If your written commitment is accepted and it is subsequently found that you have failed to comply with its provisions, you will be advised of this determination and formal sanction proceedings will be instituted immediately.

In the event formal sanction proceedings are instituted and the final determination is that a violation of your equal opportunity contract requirements has taken place, any Federal-aid highway construction contracts or subcontracts which you hold may be canceled, terminated, or suspended, and you may be debarred from further such contracts or subcontracts. Such other sanctions as are authorized by Executive Order 11246, as amended, may also be imposed.

We encourage you to take whatever action is necessary to resolve this matter and are anxious to assist you in achieving compliance. Any questions concerning this notice should be addressed to (Name, Address, and Phone).

Sincerely yours,

[41 FR 34265, Aug. 13, 1976]

APPENDIX B TO SUBPART D OF PART 230—SAMPLE CORRECTIVE ACTION PLAN

Deficiency 1: Sources likely to yield minority employees have not been contacted for recruitment purposes.

Commitment: We have developed a system of written job applications at our home office which readily identifies minority applicants. In addition to this, as a minimum, we will contact the National Association for the Advancement of Colored People (NAACP), League of Latin American Citizens (LULAC), Urban League, and the Employment Security Office within 30 days to establish a referral system for minority group applicants and expand our recruitment base. We are in the process of identifying other community organizations and associations that may be able to provide minority applicants and will
submit an updated listing of recruitment sources and evidence of contact by
(Date).

Deficiency 2: There have been inadequate efforts to locate, qualify, and increase skills of minority and female employees and applicants for employment.

Commitment: We will set up an individual file for each apprentice or trainee by
(Date) in order to carefully screen the progress, ensure that they are receiving the necessary training, and being promoted promptly upon completion of training requirements. We have established a goal of at least 50 percent of our apprentices and trainees will be minorities and 15 percent will be female. In addition to the commitment made to deficiency number 1, we will conduct a similar identification of organizations able to supply female applicants. Based on our projected personnel needs, we expect to have reached our 50 percent goal for apprentices and trainees by
(Date).

Deficiency 3: Very little effort to assure subcontractors have meaningful minority group representation among their employees.

Commitment: In cooperation with the Regional Office of Minority Business Enterprise, Department of Commerce, and the local NAACP, we have identified seven minority-owned contractors that may be able to work on future contracts we may receive. These contractors (identified in the attached list) will be contacted prior to our bidding on all future contracts. In addition, we have scheduled a meeting with all subcontractors currently working on our contracts. This meeting will be held to inform the subcontractors of our intention to monitor their reports and require meaningful minority representation. This meeting will be held on
(Date) and we will summarize the discussions and current posture of each subcontractor for your review by
(Date). Additionally, as requested, we will submit a PR-1391 on
(Date). Finally, we have committed ourselves to maintaining at least 20 percent minority and female representation in each trade during the time we are carrying out the above commitments. We plan to have completely implemented all the provisions of these commitments by
(Date).

[41 FR 34245, Aug. 13, 1976]

APPENDIX C TO SUBPART D OF PART 230—SAMPLE SHOW CAUSE RESCSSION

Certified Mail, Return Receipt Requested

Date
Contractor
Address
City, State, and Zip Code

DEAR CONTRACTOR: On
(Date) you received a 30-day show cause notice from this office for failing to implement the required contract requirements pertaining to equal employment opportunity.

Your corrective action plan, discussed and submitted at the compliance conference held on
(Date), has been reviewed and determined to be acceptable. Your implementation of your corrective action plan shows that you are now taking the required affirmative action and can be considered in compliance with Executive Order 11246, as amended. If it should later be determined that your corrective action plan is not sufficient to achieve compliance, this Rescission shall not preclude a subsequent finding of noncompliance.

In view of the above, this letter is to inform you that the 30-day show cause notice of
(Date) is hereby rescinded. You are further advised that if it is found that you have failed to comply with the provisions of your corrective action plan, formal sanction proceedings will be instituted immediately.

Sincerely,
EQUAL OPPORTUNITY COMPLIANCE REVIEW PROCESS FLOW CHART

Reports This Monitors Compliance Review Action Time Limits

R-1 Contractor or Project(s) Selected for Review
R-2 Review Scheduled
R-3 Contractor Notification
R-4 Preliminary Analysis
R-5 Onsite Verification and Interviews
R-6 Exit Conference
R-7 Information Analyzed and Report Prepared
R-8 Determination of Compliance
R-9 In Compliance
R-10 Noncompliance

R-11 Contractor notified of Determination
R-12 Show Cause Issued
R-13 Contractor Receives Show Cause Notice
R-14 Compliance Conference
R-15 Corrective Action Plan Accepted
R-16 Corrective Action Plan not Accepted
R-17 Show Cause Rescinded
R-18 No Response or Response Unacceptable
R-19 Request for Hearing

At least 2 weeks
NTE 15 Days
NTE 30 Days
NTE 5 Days

[41 FR 34245, Aug. 13, 1976]
1. What division are you answering for? ________________________________

2. Division contact:
   Name: ___________________________________________________
   Email Address: ___________________________________________

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<tr>
<th>State Internal EEO Program: Implementation and Administration</th>
<th>R</th>
<th>Y</th>
<th>G</th>
<th>Comments</th>
</tr>
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<tbody>
<tr>
<td>3. Does the State Transportation Agency's (STA) program have the involvement, commitment, and support of executives, managers, supervisors, and all other employees? (23 CFR Appendix A to Subpart C of Part 230, Part II, Section I, General)</td>
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<td>4. Has the head of the STA agency appointed a qualified Affirmative Action Officer (AAO) with the responsibility, authority, and ability to accomplish program goals and to implement the internal Equal Employment Opportunity (EEO) Program accordingly? (23 CFR Appendix A to Subpart C of Part 230, Part II, Section II, A, 1, (a-c).</td>
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<td>5. Does the AAO manage the EEO program full-time? (23 CFR Appendix A to Subpart C of Part 230, Part II, Section II, A. 1 (b)).</td>
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<td>6. Does the AAO have the essential knowledge, skills, and abilities to carry out the EEO Internal program goals and sufficient status and ability to work with others in the agency to achieve program success? (23 CFR Appendix A to Subpart C of Part 230, Part II, Section II, A. 1 (c)).</td>
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<td>7. Does the AAO report at least quarterly to the head of the SHA on progress and deficiencies of each unit in relation to agency goals? (23 CFR Appendix A to Subpart C of Part 230, Part II, Section II, A. 2 (f)).</td>
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<td>8. Does the AAO handle and process formal discrimination complaints? (23 CFR Appendix A to Subpart C of Part 230, Part II, Section II, A (2) (d)).</td>
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<td>9. Has the AAO consider the creation of committees to assist with the responsibilities of the AAP? (23 CFR Appendix A to Subpart C of Part 230, Part II, Section II, A, (g) (1-3)).</td>
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<tr>
<td>• Does the STA have an EEO Advisory Committee which includes management officials?</td>
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<tr>
<td>• Does the STA have an EEO Employee Committee who meets regularly with the AAO?</td>
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<tr>
<td>• Does the STA have EEO Counseling Program to attempt informal resolution of discrimination complaints?</td>
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</table>
### State Internal EEO Program Plan Contents
#### Implementation and Administration

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<th>Comments</th>
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<tbody>
<tr>
<td>10.</td>
<td>Does the AAO assist managers and supervisors in collecting and analyzing employment data, identifying problem areas, helping to set goals and timetables, and developing programs to achieve goals? (23 CFR Appendix A to Subpart C of Part 230, Part II Section II, A, (2), (c)).</td>
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<tr>
<td>11.</td>
<td>Has the STA submitted an updated EEO Program <em>(Internal Affirmative Action Plan)</em> to the FHWA Division Office? (23 CFR 230.311 (a) (1) &amp; (2), &amp; (23 CFR Appendix A to Subpart C of Part 230, Part II)</td>
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<td>- Does the STA consider and respond to written comments from FHWA regarding the program and the requirements?</td>
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<td>12.</td>
<td>Does the STA’s EEO Program set both short and long-range objectives, with priorities and target dates for achieving goals, and measuring progress? (23 CFR Appendix A to Subpart C of Part 230, Part II, Section II)).</td>
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<td>13.</td>
<td>Does the STA’s Affirmative Action Plan (AAP) contain all the required elements? (23 CFR Appendix A to Subpart C of Part 230, Part II, &amp; 1. General) <em>(The required elements of an AAP follow in the subsequent questions below)</em></td>
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<td>14.</td>
<td>Does the STA’s AAP include a strong policy statement of commitment to EEO? (23 CFR Appendix A to Subpart C of Part 230, Part II, Section II (B) (1)).</td>
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<td>- Does the AAP ensure fair and equal treatment for all persons, regardless of race, color, religion, sex, or national origin in all employment practices?</td>
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<td>- Does the STA issue a written equal opportunity policy statement and affirmative action commitment?</td>
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<tr>
<td>15.</td>
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<td>16.</td>
<td>Does the STA’s AAP include a survey of the labor market areas in terms of population and availability of employment? (23 CFR Appendix A to Subpart C of Part 230, Part II (B) (3)).</td>
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<td>- Does the AAP provide an Availability Analysis (Eight or Two Factors)?</td>
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<td>17.</td>
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<td>- Does the AAP provide an Organization Profile and Job Group Analysis?</td>
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<td>18.</td>
<td>Does the STA’s AAP include specific, measurable, attainable goals for hiring and promotion goals, with target dates, in each area of underutilization? (23 CFR Appendix A to Subpart C of Part 230, Part II, Section II (B) (5)).</td>
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<td>Does the STA’s AAP address how every manager and supervisor is responsible and made accountable for meeting these goals <em>(hire and promotion)</em>? (23 CFR Appendix A to Subpart C of Part 230, Part II, Section II (B) (6)).</td>
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<td>20.</td>
<td>Does the STA continually reevaluate job descriptions, job classification, and hiring criteria to assure they reflect the actual job needs? (23 CFR Appendix A to Subpart C of Part 230, Part II, Section II, B, (7)).</td>
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<td>22. Has the STA developed systems to monitor and measure progress (goals) regularly? If results are not satisfactory to meet goals, determine the reasons and make necessary changes. (23 CFR Appendix A to Subpart C of Part 230, Part II, Section II, B, (10)).</td>
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<td>24. Does the STA publicize its AAP both internally and externally? 23 CFR 230 Part II, Section II (C), (2), (a), (1-7), and (b)</td>
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<td>• Is the AAP presented and discussed as part of employee orientation and training programs?</td>
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<td>25. Has the STA developed and implemented specific programs (ex: job restructuring, recruitment, training) to eliminate discriminatory barriers to achieve goals? (23 CFR 230 Part II, Section II, C, (3), (a-f))</td>
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<td>• Does the STA analyze the flow of job applicants through the selection and appointment process, including analytical review of reasons for rejections?</td>
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<td>26. Does the STA require supervisors and managers to participate in EEO training and seminar covering the AAP and the overall EEO Program? 23 CFR 230 Part II, Section II, C, (3), (d) (1).</td>
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<td>27. Does the STA have an internal reporting system to continually audit, monitor, and evaluate programs essential to the success of the AAP-Program Evaluation? (23 CFR 230 Part II, Section II, C, (4), (a-d))</td>
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<td>• Is the AAP reviewed and evaluated at least annually?</td>
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<td>• Does the AAO make an annual report to the head of the STA regarding the overall status of the program?</td>
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<td>28. Does the STA establish annually specific, numerical goals and objectives for the overall EEO Internal Program, as well as, for the individual units and job category-Program Evaluation? (23 CFR 230 Part II, Section II, C, (4) (e))</td>
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<td>29. Does the STA furnish the most recent employment statistical data and use the EEO-4 report to provide current workforce data? (23 CFR 230 Part II, Section III, (A), (1-3) and (B))</td>
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STATE TRANSPORTATION AGENCY (STA) RESPONSIBILITIES:
Equal Employment Opportunity Program Part II
IMPLEMENTATION AND ADMINISTRATION

The following questions and answers correspond to the State Internal EEO technical assistance tool document, as well as, Title 23, Code of Federal Regulations (CFR), Part 230, Subpart C and Appendix A-Part II.

Question 1: Please provide your Division Office

Question 2: Please provide the name and e-mail of the staff person performing the assessment.

Question 3: Does the STA Transportation Agency (STA) Equal Employment Opportunity (EEO) program have the involvement, commitment, and support of executives, managers, supervisors, and all other employees? (23 CFR 230 Part II, 1. General & 23 CFR 230 Part II, I, (B) (1), & (C) (1) (b)

Answer: The STA’s EEO program is to include a strong agency policy statement of commitment to EEO. The head of the SHA needs to issue firm statement of personal commitment, legal obligation, and importance of EEO as an agency goal. It is also to include a personal commitment to and in support of EEO by the head of the agency which needs to be signed by the current head of the agency. This can be done as separate documents or as a single document. The head of the SHA needs to also assign specific responsibility and accountability to each executive, manager, and supervisor. To be effective, EEO policy provisions must be enforced by top management, and all employees must be made aware that EEO is basic agency policy.

Question 4: Has the head of the STA agency appointed a qualified Affirmative Action Officer with the responsibility, authority, and ability to accomplish program goals and to implement the internal EEO Program? (23 CFR 230 Part II, Section II A. 1 & (a-c)

Answer: The head of the agency needs to appoint a qualified Affirmative Action Officer with responsibility and authority to implement the Internal EEO Program. In doing so, there are three things that need to be considered. First, the person appointed should have proven ability to accomplish major program goals. Second, managing the internal EEO program requires a major time commitment; it cannot be added on to an existing full-time job. Third, appointing a qualified minority and/or female employee to head or staff the program may offer good role models for present and potential employees and add credibility to the program.

Question 5: Does the AAO manage the EEO program full-time? (23 CFR 230 Part II, Section II A. 1 (b))

Answer: Managing the internal EEO program requires a major time commitment; it cannot be added on to an existing full-time job.
Question 6: Does the AAO have the essential knowledge, skills, and abilities to carry out the EEO internal program goals and sufficient status and ability to work with others in the agency to achieve program success? (23 CFR 230 Part II, Section II A. 1 (c))

Answer: The head of the agency needs to appoint a qualified Affirmative Action Officer with responsibility and authority to implement the internal EEO program.

Question 7: Does the AAO report at least quarterly to the head of the SHA on progress and deficiencies of each unit in relation to agency goals? (23 CFR 230 Part II, Section II A. 2 (f))

Answer: It is the responsibly of the AAO to report, at least quarterly, to the head of the SHA, on progress and deficiencies of each unit in relation to agency goals.

Question 8: Does the AAO handle and process formal discrimination complaints? (23 CFR 230 Part II, Section II, A (2) (d) & (d) (3))

Answer: It is the responsibility of the AAO to handle and process formal discrimination complaints.

Question 9: Has the AAO considered the creation of committees to assist with the responsibilities of the AAP? (23 CFR 230 Appendix A to Subpart C of Part II, Section II, A (g) (1-3))

Answer: It is the responsibility of the AAO to establish committees to assist with the responsibilities of carrying out the AAP, assisting with resolving complaints informally, and with identifying and resolving discrimination issues and barriers.

Question 9a: Does the STA have an EEO Advisory Committee which includes management officials?

Answer: An EEO Advisory Committee, whose membership would include top management, is extremely important.

Question 9b: Does the STA have an EEO Employee Committee (which includes rank and file employees, with minority and female representatives from various job levels and departments) that meets regularly with the AA Officer?

Answer: An EEO Employee Committee, which includes rank and file employees, with minority and female representatives from various job levels and departments that meet regularly with the AA Officer, is crucial.

Question 9c: Does the STA have an EEO Counseling Program to attempt resolution of discrimination complaints? (23 CFR 230 Part II, Section II, A (2) (g) (3))

Question 10: Does the AAO assist managers and supervisors with the collection and analyzing of employment data, helping to identify problem areas, helping to set goals and timetables, and assisting with the development of programs to achieve these goals? (23 CFR Appendix A to Subpart C of Part 230, Part II, Section II, Al (2), (c))
Answer: Assisting managers and supervisors in collecting and analyzing employment data, identifying problem areas, setting goals and timetables, and developing programs to achieve goals is an important function of an AAO. Programs should include specific remedies to eliminate any discriminatory practices discovered in the employment system.

State Internal EEO Program Plan Contents: Implementation and Administration

Question 11: Has the STA submitted an EEO Program update (Internal Affirmative Action Plan) to the FHWA Division Office? (23 CFR 230.311 (a) (1) & (2), & (23 CFR 230 Part II))

Answer: Each State highway agency shall prepare and submit annually an updated Equal Employment Opportunity (EEO) program, one year from the date of approval of the preceding program by the FHWA, over the signature of the head of the STA agency, to the FHWA through the FHWA Division Administrator. The program shall consist of Part I—Contractor Compliance (External EEO) and Part II—State Highway Agency Employment (Internal EEO).

Question 11a: Does the STA consider and respond to written comments from FHWA regarding the program update and the program requirements? (23 CFR 230.311 (a))

Answer: After reviewing the State Highway Agency EEO program the FHWA Division Office of Civil Rights staff will recommend approval or not approving the program. The STA highway agency will be advised of the decision. Afterward, each program is effective for a period of one year from the date of the approval. In addition, in preparation of the program required by 230.311 (a), the State Highway Agency shall consider and respond to written comments from FHWA regarding the preceding program.

Question 12: Does the STA’s EEO Program set both short and long-range objectives, with priorities and target dates for achieving goals and measuring progress? (23 CFR 230 part II, Section II, and Section II (C) (4))

Answer: To ensure effectiveness in the implementation of the internal EEO program, a specific, and a realistic AAP needs to be developed. It also needs to include both short and long-range objectives, with priorities and target dates for achieving goals and measuring progress, according to the agency’s individual need to overcome problems. To this end, an internal reporting system needs to be developed. It must help to continually audit, monitor, and evaluate programs, such as system is essential to an effective AAP (Note* Current industry practice is a 5-year long-range plan, with annual updates provided to FHWA detailing progress on the plan).

Question 13: Does the STA’s Affirmative Action Plan (AAP) contain all the required elements? (23 CFR Appendix A to Subpart C of Part 230, Part II, & 1, General)

Answer: For administration and implementation of the EEO Program, an affirmative action plan (AAP) is required. The scope of an EEO program and an AAP must be comprehensive, covering all elements of an agency’s personnel policies and practices. The AAP is an integral part of the SHA’s EEO program. Although the style and format of AAP’s may vary from one SHA to another, the basic elements will be the same. The elements of an AAP need to include, but is not limited to the following:
Affirmative Action Plan Contents

Question 14: Does the STA’s AAP include a strong agency policy statement of commitment to EEO? (23 CFR Appendix A to Subpart C of Part 230, Part II, Section II (B) (1))

Answer: The head of the SHA agency must issue written equal employment opportunity policy statement and affirmative action commitment. To be effective, EEO policy provisions must be enforced by top management, and all employees must be made aware that EEO is basic agency policy. The head of the SHA (1) should issue a firm statement of personal commitment, legal obligation and the importance of EEO as an agency goal, and (2) assign specific responsibility and accountability to each executive, manager and supervisor.

Question 14a: Does the AAP ensure fair and equal treatment for all persons, regardless of race, color, religion, sex, or national origin in all employment practices? (23 CFR 230 Part II, 1. General)

Answer: Set forth are general guidelines designed to assist the State Highway Agencies in implementing internal programs, including the development and implementation of AAP’s to ensure fair and equal treatment for all persons, regardless of race, color, religion, sex or national origin in all employment practices.

Question 14b: Does the STA have an EEO policy statement and an Affirmative Action Commitment statement? (23 CFR Appendix A to Subpart C of Part 230, Part II, Section II (C) (1) ((1)) & ((2))

Answer: To be effective, EEO policy provisions must be enforced by top management, and all employees must be made aware that EEO is basic agency policy. The head of the SHA (1) should issue a firm statement of personal commitment, legal obligation, and the importance of EEO as an agency goal, and (2) assign specific responsibility and accountability to each executive, manager, and supervisor.

The statement should include, but not necessarily be limited to, the following elements:

1. EEO for all persons, regardless of race, color, religion, sex or national origin as a fundamental agency policy.
2. Personal commitment to and support of EEO by the head of the SHA.
3. The requirement that special affirmative action be taken throughout the agency to overcome the effects of past discrimination.
4. The requirement that the EEO program be a goal setting program with measurement and evaluation factors similar to other major agency programs.
5. Equal opportunity in all employment practices, including (but not limited to) recruiting, hiring, transfers, promotions, training, compensation, benefits, recognition (awards), layoffs, and other terminations.
6. Responsibility for positive affirmative action in the discharge of EEO programs, including performance evaluations of managers and supervisors in such functions, will be expected of and shared by all management personnel.
7. Accountability for action or inaction in the area of EEO by management personnel.
Question 15: Does the STA’s AAP describe the assignment of responsibility and authority for the program to a qualified individual (s)? (23 CFR Appendix A to Subpart C of Part 230, Part II, Section II (B) (2))

Answer: Assignment of specific responsibilities and accountability to each executive, manager, and supervisor is a requisite.

Question 16: Does the STA’s AAP include a survey of the labor market areas (CLF-civilian labor force) in terms of population makeup, skills, and availability of employment? (23 CFR Appendix A to Subpart C of Part 230, Part II, Section II (B) (3))

Answer: A survey of the labor market area in terms of population makeup, skills, and availability for employment is a basis of the AAP.

Question 16a: Does the AAP provide a 2 or 8 Factor Availability Analysis, for each of the EEOC job group category? (23 CFR Appendix A to Subpart C of Part 230, Part II, Section II (B) & 41 CFR 60 (2.12-2.15))

Answer: The law also requires the State to consider two factors, internal and external availability, when determining the theoretical availability of women and minorities for established job groups. The availability analysis analyzes the percentage of women and minorities in its workforce with regard to two factors:

1. Workers who have the necessary skills in the reasonable recruitment area for each job group (external availability)
2. Workers who are transferable, trainable, and promotable within the organization (internal availability)

Answer: FHWA guidelines require the use of an Eight Factor Analysis for each of the EEOC job category (See Equal Opportunity Desk Reference 3-63 or follow this link: http://www.hr-software.net/cgi/EightFactorAnalysis.cgi), unless it is a trainee position.

Question 17: Does the STA’s AAP analyze the present work force to identify jobs, departments, and units where minority and females are underutilized? (23 CFR Appendix A to Subpart C of Part 230, Part II, Section II (B) (4))

Answer: Analyzing the present work force to identify jobs, departments, and units where minority and females are underutilized is an integral part of the AAP.

Question 17a: Does the AAP provide an Organizational Profile and/or a Workforce Analysis, and a job group analysis? (23 CFR Appendix A to Subpart C of Part 230, Part II, Section II (B) & 41 CFR 60-2.11 & 2.12)

Answer: Under Affirmative Action law, the State has a choice of preparing either and organizational display or a workforce analysis.

1. An organizational display illustrates the organizational units and their interrelationships. An organizational display should provide detail on the following items:
   a. The name of the unit
b. The total number of male (M) and female (F) employees
c. The total number of male (M) and female (F) in particular groups
d. The job title, gender, race, and ethnicity of the supervisor, or

2. A _workforce analysis_ that provides data on the proportion of current employees in protected classes by job title, from highest to lowest paid,

3. Within a work group or department. A workforce analysis is a vertical slice of an organization’s data.

**Answer:** Regulations require a job group analysis. A job group analysis lists all job _titles_ in each job group. A job group analysis, jobs with similar content, wage rates, and advancement opportunities combine to form these groups. By breaking down the groups by job title, this allows the STA to compare the representation of minorities and women in its workforce with the estimated availability of minorities and women that qualify for employment. Next the STA needs to articulate separately, the percentage of women and the percentage of minorities it employs in each job group. A job group analysis is a horizontal slice of the organizational structure.

**Question 18:** _Does the STA’s AAP include specific, measurable, attainable, hiring, and promotion goals, with target dates, in each area of underutilization? (23 CFR Appendix A to Subpart C of Part 230, Part II, Section II, (B) (4))_

**Answer:** Analyzing the present work force to identify jobs, departments, and units where minority and females are underutilized is an integral part of the AAP.

**Question 18a:** _Does the AAP provide a Utilization Analysis? (23 CFR Appendix A to Subpart C of Part 230, Part II, Section II (B))_

**Answer:** A utilization analysis gives an organization a way to determine a standard percentage of qualified, available candidates for each job group against which it can measure its own job group makeup. The percentages of women and minorities in each job group are compared with each group's rate of availability. The difference between an organization's job group makeup and the availability is referred to in affirmative action terms, as _utilization_.

“Underutilization” recognizes a deficiency in the employment of women and minorities at a rate that is less than would reasonably be expected, based on availability. A deficiency, or underutilization, exists when the number of women and minorities expected is one or more persons greater than the number of women and minorities employed. For example, in a job group where there are 100 employees, and there is a 10% (10 people) availability proportion for Native American Indians; if there were only seven people (7%) in the job group, there is a deficiency/underutilization of three Native American Indians (Note that for all underutilization figures, minority women are double-counted). The disclosure of a deficiency/underutilization does not amount to an admission of impermissible conduct. It is neither a finding of discrimination, nor a finding of a lack of good-faith affirmative action efforts. Rather a deficiency is a technical term used by Affirmative Action Planners who seek to apply good-faith efforts to increase the utilization of women and minorities in the workforce. This analysis should look at new hires, appointments, promotion, reassignment, separation/terminations, reprimands, awards, training, and reinstatements. Here is an example for new hires utilizing the 4/5s rule:
<table>
<thead>
<tr>
<th>New Hires</th>
<th>White</th>
<th>Black</th>
<th>Hispanic</th>
</tr>
</thead>
<tbody>
<tr>
<td>Applicant</td>
<td>452</td>
<td>351</td>
<td>250</td>
</tr>
<tr>
<td>Selection</td>
<td>220</td>
<td>100</td>
<td>39</td>
</tr>
<tr>
<td>Selection Rate</td>
<td>49%</td>
<td>28%</td>
<td>16%</td>
</tr>
<tr>
<td>Highest Ratio</td>
<td>1.0</td>
<td>57.5%</td>
<td>32.9%</td>
</tr>
<tr>
<td>Adverse Impact Less Than 80%</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
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**Question 19:** Does the STA’s AAP address how every manager and supervisor is responsible and made accountable for meeting these hiring and promotion goals? *(23 CFR 230 Part II, Section II, B, (6)).*

**Answer:** Making every manager and supervisor responsible and accountable for meeting goals is a critical component of an AAP.

**Question 20:** Does the STA continually reevaluate job descriptions, job classification, and hiring criteria to assure they reflect the actual job need and that positions are allocated to the appropriate classification? *(23 CFR 230 Part II, Section II, B, (7)).*

**Answer:** The elements of the AAP should include, but not necessarily be limited to reevaluating job descriptions and hiring criteria to assure that they reflect actual job needs.

**Question 20a:** Does the AAP include periodic classification reviews to correct inaccurate position descriptions and ensure positions are allocated to the appropriate classification? *(23 CFR 230 Part II, Section II, B, (7)).*

**Answer:** The AAP should include periodic classification reviews.

**Question 20b:** Does the STA have a process to ensure that all qualifications are job related? *(23 CFR 230 Part II, Section II, B, (7)).*

**Answer:** The AAP should include a process to ensure positions are allocated to the appropriate classification.

**Question 21:** Does the AAP identify how the STA will seek out minority and female employees who are qualifiable or qualified to fill jobs? *(23 CFR 230 Part II, Section II, B, (8)).*

**Answer:** The AAP should include methods to find minorities and females who are qualified or qualifiable to fill jobs.

**Question 22:** Has the STA developed systems to monitor and measures progress on goals regularly? If results are not satisfactory to meet goals, determine the reasons and make necessary changes? *(23 CFR Appendix A to Subpart C of Part 230, Part II, Section II, B, (10)).*

**Answer:** Developing systems to monitor and measure progress regularly needs to be established. If results are not satisfactory to meet goals, determine the reasons, and make the necessary changes.
Question 23: Has the STA established procedures where employees and applicants may process allegation of discrimination without fear of reprisal? (23 CFR 230 Part II, Section II, C, (11))

Answer: Developing a procedure whereby employees and applicants may process allegations of discrimination to an impartial body without fear of reprisal is an essential of the AAP.

Question 23a: Is there a system for processing grievances and appeals (i.e. disciplinary actions, adverse actions, etc...)?

Answer: Developing a procedure whereby employees and applicants may process allegations of discrimination to an impartial body without fear of reprisal is an essential of the AAP.

Question 24: Does the STA publicize its AAP internally and externally? (23 CFR 230 Part II, Section II (C), (2), (a), (1-7), and (b), & (23 CFR 230 Part II, Section II (c) (2) (b))

Answer: The state needs to publicize the affirmative action plan internally, as follows:

1. Distribute written communications from the head of the SHA.
2. Include the AAP and the EEO policy statement in agency operations manual.
3. Hold individual meetings with managers and supervisors to discuss the program, their individual responsibilities and to review progress.
4. Place Federal and State EEO posters on bulletin boards, near time clocks and in personnel offices.
5. Publicize the AAP in the agency newsletters and other publications.
6. Present and discuss the AAP as a part of employee orientation and all training programs.
7. Invite employee organization representatives to cooperate and assist in developing and implementing the AAP.

Answer: The STA should to distribute the AAP externally to minority groups and women's organizations, community action groups, appropriate State agencies, professional organizations, etc.

Question 24a: Is the AAP presented and discussed as part of employee orientation and training programs?

Answer: Present and discuss the AAP as a part of employee orientation and all training programs.

Question 24b: Is the AAP distributed to minority groups and women organizations, or other persons?

Answer: Distribute the AAP to minority groups and women’s organizations, community action groups, appropriate State agencies, and professional organizations, etc...
Question 25: Has the STA developed and implemented specific programs to eliminate discrimination barriers to achieve goals (job restricting, upward mobility programs, recruitment and placement programs, training programs, etc…)? (23 CFR 230 Part II, Section II, C, (3) (1-6) & (a-f))

Answer: The scope of an EEO program and an AAP must be comprehensive, covering all elements of the agency’s personnel management policies and practices. The major part of an AAP must be recognition and removal of any barriers to equal employment opportunity, identification of problem areas and of persons unfairly excluded or held back and action enabling them to compete for jobs on an equal basis. An effective AAP not only benefits those who have been denied equal employment opportunity but will also greatly benefit the organization which often has overlooked, screened out or underutilized the great reservoir of untapped human resources and skills, especially among women and minority groups. The STA needs to develop and implement specific programs to eliminate discriminatory barriers and achieve goal. The AAP should include specific provisions for periodic efforts to restructure jobs and establish entry level and trainee positions to facilitate progression within occupational areas. The AAP needs to include specific provisions for:

(1) Periodic classification plan reviews to correct inaccurate position descriptions and to ensure that positions are allocated to the appropriate classification
(2) Plans to ensure that all qualification requirements are closely job related.
(3) Efforts to restructure jobs and establish entry level and trainee positions to facilitate progression within occupational areas.
(4) Career counseling and guidance to employees
(5) Creating career development plans for lower grade employees who are underutilized or who demonstrate potential for advancement
(6) Widely publicizing upward mobility programs and opportunities within each work unit and within the total organizational structure.

Question 25a: Does the STA’s AAP provide and Adverse Impact Analysis of personnel actions?

Answer: The standards for deciding when a person shall be terminated, demoted, disciplined, laid off, or recalled should be the same for all employees, including minorities and females. Seemingly neutral practices should be reexamined to see if they have a disparate effect on such groups. For example, if more minorities and females are being laid off because they were the last hired, then, adjustments should be made to assure that the minority and female ratios do not decrease because of these actions.

1. When employees, particularly minorities and females, are disciplined, laid off, discharged or downgraded, it is advisable that the actions be reviewed by the AA Officer before they become final.
2. Any punitive action (i.e., harassment, terminations, demotions), taken as a result of employees filing discrimination complaints, is illegal.
3. Any punitive action (i.e., harassment, terminations, demotions), taken as a result of employees filing discrimination complaints, is illegal.
4. The following records should be kept to monitor this area of the internal EEO program:
On all terminations, including layoffs and discharges: indicate total number, name, (home address and phone number), employment date, termination date, recall rights, sex, racial/ethnic identification (by job category), type of termination and reason for termination.

On all demotions: indicate total number, name, (home address and phone number), demotion date, sex, racial/ethnic identification (by job category), and reason for demotion.

On all recalls: indicate total number, name, (home address and phone number) recall date, sex, and racial/ethnic identification (by job category).

Exit interviews should be conducted with employees who leave the employment of the SHA.

**Question 25b: Does the STA’s analysis the job flow of applicants through the selection and appointment process, including analytical review of reasons for rejections?**

**Answer:** The AAP needs to have systems to monitor job flow of applicants through the selection and appointment process.

**Question 26: Does the STA require supervisors and managers to participate in EEO training and seminars covering the AAP and the overall EEO Program? (23 CFR 230 Part II, Section II, C, (3) (d) (1)).**

**Answer:** The STA must require managers and supervisors to participate in EEO seminars covering the AAP, the overall EEO program, and the administration of the policies and procedures incorporated therein, and on Federal, State, and local laws relating to EEO.

**Question 27: Has the STA developed an internal reporting system to continually audit, monitor, and evaluate programs essential to the success of the AAP (Program Evaluation)? (23 CFR 230 Part II, Section II, C, (10))**

**Answer:** An internal reporting system to continually audit, monitor and evaluate programs is essential for a successful AAP. Therefore, a system providing for EEO goals, timetables, and periodic evaluations needs to be established and implemented. Consideration should be given to the following actions:

1. Defining the major objectives of EEO program evaluation.
2. The evaluation should be directed toward results accomplished, not only at efforts made.
3. The evaluation should focus attention on assessing the adequacy of problem identification in the AAP and the extent to which the specific action steps in the plan provide solutions.
4. The AAP should be reviewed and evaluated at least annually. The review and evaluation procedures should include, but not be limited to, the following:
   - Each bureau, division or other major component of the agency should make annual and such other periodic reports as are needed to provide an accurate review of the operations of the AAP in that component.
   - The AA Officer should make an annual report to the head of the SHA, containing the overall status of the program, results achieved toward established objectives, identity of
any particular problems encountered and recommendations for corrective actions needed.
Specific, numerical goals and objectives should be established for the ensuing year. Goals should be developed for the SHA as a whole, as well as for each unit and each job category.

**Question 28:** Does the STA establish annually specific, numerical goals and objectives for the overall EEO Internal Program, as well as, for the individual units and job category (Program Evaluation)? (23 CFR 230 Part II, Sec. II, C, (4) (e))

**Answer:** Specific, numerical goals and objectives should be established for the ensuing year. Goals should be developed for the SHA as a whole, as well as for each unit and each job category.

**Question 29:** Does the STA furnish the most recent employment statistical data and use the EEO-4 form to provide current work force data? (23 CFR 230 Part II, Section III, B)

**Answer:** State Highway Agencies shall use the EEO–4 Form in providing current work force data. This data shall reflect only State department of transportation/State highway department employment. It must be filed annually with FHWA by August 15th.
### Competency: Civil Rights Program Laws, Regulations, and Statutory Requirements

**Definition:** Knowledge of official requirements to ensure appropriate civil rights and nondiscrimination laws and regulations are implemented properly and enforced on all State Transportation Agencies (STAs) and its sub-recipient programs. The FHWA civil rights program laws, regulations, and statutory requirements include, but are not limited to: Title VI of the Civil rights Act of 1964, 49 Code of Federal Regulations (CFR) Parts 21, 26 and 27, 23 CFR Parts 200, 230, 630 and 635 and Americans with Disabilities Act (ADA)/ Section 504 of the Rehabilitation Act of 1973, 23 USC 140 and Section 324, Executive Orders 13166 and 12898, and others.

### Key Behaviors

- Ensures the proper implementation of, and enforces civil rights requirements and procedures applicable to the development and implementation of the STA and its sub-recipients' programs and services by utilizing effective tools such as directives, orders, guidance statistical data analyses, and reports.
- Interprets and administers the FHWA civil rights program's regulations, laws, and statutes through research and application.
- Applies legal and regulatory civil rights requirements (23 CFR, 23 USC 140, etc) on each program or service to make determinations on program-wide or project-specific policies and procedures.
- Analyzes information from a variety of sources (e.g., reports, reviews, investigations) to make determinations and/or recommendations regarding STA and sub-recipient’s project and program compliance.
- Advises internal and external customers on civil rights laws/regulations and how it applies to the delivery of the many federal-aid programs (e.g., planning, environment, right of way).
<table>
<thead>
<tr>
<th>Recommended Learning Opportunities</th>
</tr>
</thead>
<tbody>
<tr>
<td>• FHWA Basic Civil Rights Program Training (FHWA Resource Center Civil Rights Team) <a href="http://www.fhwa.dot.gov/resourcecenter/teams/civilrights/courses.cfm">http://www.fhwa.dot.gov/resourcecenter/teams/civilrights/courses.cfm</a></td>
</tr>
<tr>
<td>• Americans with Disabilities Act (ADA)/504 (FHWA Resource Center Civil Rights Team) <a href="http://www.fhwa.dot.gov/resourcecenter/teams/civilrights/courses.cfm">http://www.fhwa.dot.gov/resourcecenter/teams/civilrights/courses.cfm</a></td>
</tr>
<tr>
<td>• DBE Program Administration (FHWA Resource Center Civil Rights Team) <a href="http://www.fhwa.dot.gov/resourcecenter/teams/civilrights/courses.cfm">http://www.fhwa.dot.gov/resourcecenter/teams/civilrights/courses.cfm</a></td>
</tr>
<tr>
<td>• Equal Opportunity Contractor Compliance Program (FHWA Resource Center Civil Rights Team) <a href="http://www.fhwa.dot.gov/resourcecenter/teams/civilrights/courses.cfm">http://www.fhwa.dot.gov/resourcecenter/teams/civilrights/courses.cfm</a></td>
</tr>
<tr>
<td>• Preventing Discrimination in the Federal-Aid Highway Program (FHWA Resource Center Civil Rights Team) <a href="http://www.fhwa.dot.gov/resourcecenter/teams/civilrights/courses.cfm">http://www.fhwa.dot.gov/resourcecenter/teams/civilrights/courses.cfm</a></td>
</tr>
<tr>
<td>• State Internal Equal Opportunity Program (FHWA Resource Center Civil Rights Team) <a href="http://www.fhwa.dot.gov/resourcecenter/teams/civilrights/courses.cfm">http://www.fhwa.dot.gov/resourcecenter/teams/civilrights/courses.cfm</a></td>
</tr>
<tr>
<td>• Designing Pedestrian Facilities for Accessibility (Section 504/Americans with Disabilities Act) Training <a href="http://www.fhwa.dot.gov/resourcecenter/teams/civilrights/courses.cfm">http://www.fhwa.dot.gov/resourcecenter/teams/civilrights/courses.cfm</a></td>
</tr>
<tr>
<td>• Contract Administration Core Curriculum, (FHWA NHI #134077)</td>
</tr>
<tr>
<td>• Introduction to NEPA &amp; Transportation Decision-Making Web Based (NHI Course No. FHWA-NHI-142052)</td>
</tr>
<tr>
<td>• NEPA and Transportation Decision-Making, (FHWA NHI #142005)</td>
</tr>
<tr>
<td>• Fundamentals of Title VI/EJ, (FHWA NHI #142042)</td>
</tr>
<tr>
<td>• Pedestrian Facility Design, (FHWA NHI #142045)</td>
</tr>
<tr>
<td>• Introducing Highway Federal-Aid, (FHWA NHI #310115/310115W)</td>
</tr>
<tr>
<td>• Federal-Aid 101, (FHWA NHI #310109)</td>
</tr>
<tr>
<td>• Transportation Research Board (TRB) Conference Calendar, <a href="http://www.trb.org/Calendar/Calendar.aspx">http://www.trb.org/Calendar/Calendar.aspx</a></td>
</tr>
<tr>
<td>• American Contractor Compliance Association <a href="http://www.accaweb.org">http://www.accaweb.org</a></td>
</tr>
<tr>
<td>• FHWA Civil Rights SharePoint Site <a href="http://our.dot.gov/office/fhwa.dss/cr/default.aspx">http://our.dot.gov/office/fhwa.dss/cr/default.aspx</a></td>
</tr>
</tbody>
</table>
Competency | Definition
---|---
Civil Rights Program Policies and Guidance | Knowledge of principles, methods, or tools for monitoring and evaluating the effectiveness of equal opportunity/civil rights programs throughout the federal-aid program. The FHWA civil rights programs include, but are not limited to, Disadvantaged Business Enterprises (DBE), Title VI Nondiscrimination, State Internal Equal Employment Opportunity, Americans with Disabilities Act/ Section 504 of the Rehabilitation Act of 1973, and Equal Opportunity (EO) Contractor Compliance/ On-the-Job Training (OJT).

Key Behaviors

- Reviews and approves project and program documents and plans.
- Communicates civil rights program policies/guidance to internal (including executive management and supervisors) and/or external customers (oral and written).
- Implements FHWA’s civil rights policy, procedural guidance, and processes to ensure accuracy and quality of programs, projects, and services.
- Conducts civil rights program, process reviews, or project inspections to identify areas of improvement and recommends corrective actions, if necessary.
- Modifies existing programs and/or develops new approaches to solve emerging problems or enhance evolving civil rights program activities.
- Evaluates effectiveness of internal and external equal opportunity/civil rights programs using program plans, performance measure, data analysis, and reports to identify and set key program priorities.
- Demonstrates an understanding of FHWA policy and directive development process.
- Utilizes enforcement strategies such as conciliation, mediation, negotiation, or written citations to achieve compliance.

Recommended Learning Opportunities

- FHWA Basic Civil Rights Program Training (FHWA Resource Center Civil Rights Team) [http://www.fhwa.dot.gov/resourcecenter/teams/civilrights/courses.cfm](http://www.fhwa.dot.gov/resourcecenter/teams/civilrights/courses.cfm)
- Designing Pedestrian Facilities for Accessibility (Section 504/Americans with Disabilities Act training) [http://www.fhwa.dot.gov/resourcecenter/teams/civilrights/courses.cfm](http://www.fhwa.dot.gov/resourcecenter/teams/civilrights/courses.cfm)
- Americans with Disabilities Act (ADA)/504 (FHWA Resource Center Civil Rights Team) [http://www.fhwa.dot.gov/resourcecenter/teams/civilrights/courses.cfm](http://www.fhwa.dot.gov/resourcecenter/teams/civilrights/courses.cfm)
- DBE Program Administration (FHWA Resource Center Civil Rights Team) [http://www.fhwa.dot.gov/resourcecenter/teams/civilrights/courses.cfm](http://www.fhwa.dot.gov/resourcecenter/teams/civilrights/courses.cfm)
- Equal Opportunity Contractor Compliance Program (FHWA Resource Center Civil Rights Team) [http://www.fhwa.dot.gov/resourcecenter/teams/civilrights/courses.cfm](http://www.fhwa.dot.gov/resourcecenter/teams/civilrights/courses.cfm)
- Preventing Discrimination in the Federal-Aid Highway Program (FHWA Resource Center Civil Rights Team) [http://www.fhwa.dot.gov/resourcecenter/teams/civilrights/courses.cfm](http://www.fhwa.dot.gov/resourcecenter/teams/civilrights/courses.cfm)

12/5/2014
<table>
<thead>
<tr>
<th>Course Title</th>
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<tbody>
<tr>
<td>FHWA Contract Administration Core Curriculum (NHI Course No. FHWA-NHI-134077 or FHWA-NHI-310109A)</td>
</tr>
<tr>
<td>Introduction to NEPA &amp; Transportation Decision-Making Web Based (NHI Course No. FHWA-NHI-142005)</td>
</tr>
<tr>
<td>NEPA and Transportation Decision-Making (FHWA NHI #142005)</td>
</tr>
<tr>
<td>Public Involvement in the Transportation Decision-Making Process (NHI Course No. FHWA-NHI-142036)</td>
</tr>
<tr>
<td>Fundamentals of Title VI/EJ (NHI Course No. FHWA-NHI-142042)</td>
</tr>
<tr>
<td>Introducing Federal-aid 101 (NHI Course No. FHWA-NHI-310115, FHWA-NHI-310115W, Federal Aid 101 (FHWA-NHI-310109)</td>
</tr>
<tr>
<td>Program Review Reports: Moving People to Action (FHWA-NHI-310119)</td>
</tr>
<tr>
<td>Negotiation Skills (Management Concepts)</td>
</tr>
<tr>
<td><a href="http://www.managementconcepts.com/Course/id/4365">http://www.managementconcepts.com/Course/id/4365</a></td>
</tr>
<tr>
<td>Negotiating Techniques (USDA <a href="http://www.graduateschool.edu">http://www.graduateschool.edu</a> (Course # MGMT9104D)</td>
</tr>
<tr>
<td>Competency</td>
</tr>
<tr>
<td>-----------------------------------------------------</td>
</tr>
<tr>
<td>Civil Rights Program and Project Investigation Techniques</td>
</tr>
</tbody>
</table>

**Key Behaviors**

- Demonstrates an understanding of the requirements and procedures applicable to processing of complaints, conducting investigations and inspections under various civil rights laws and regulations.
- Deploys complaint investigation and project inspection procedures, documents findings and recommendations in written reports.
- Conducts investigations involving fact finding and conciliation methods.
- Analyzes reports from investigations conducted by FHWA, STA or sub-recipient investigators.
- Prepares fact-finding reports and investigative plans based upon the information obtained from the investigation.
- Provides and/or facilitates mediation services to resolve complaints with the agreement of all parties.
- Utilizes enforcement strategies such as conciliation, mediation, negotiation, or written citations to achieve compliance.

**Recommended Learning Opportunities**

- FHWA Basic Civil Rights Program Training (FHWA Resource Center Civil Rights Team) [http://www.fhwa.dot.gov/resourcecenter/teams/civilrights/courses.cfm](http://www.fhwa.dot.gov/resourcecenter/teams/civilrights/courses.cfm)
- Negotiation Skills (Management Concepts) [http://www.managementconcepts.com/Course/id/4365](http://www.managementconcepts.com/Course/id/4365)
- Negotiating Techniques (USDA [http://www.graduateschool.edu](http://www.graduateschool.edu)) (Course # MGMT9104D)
- Negotiating Essentials: Communicating (FHWA: TMS- comm 24 a03 bs enus)
- Decision Making: Making Tough Decisions (FHWA: TMS - pd 12 a06 bs enus)
- American Contractor Compliance Association [http://www.accaweb.org](http://www.accaweb.org)
| Civil Rights Program Outreach | Knowledge of FHWA internal and external civil rights programs, initiatives and emerging issues; and ability to work with partners and customers to provide information or assistance through quality products and services. |

**Key Behaviors**

- Identifies and participates in community outreach activities (*e.g.* workgroups, workshops, symposiums) aimed at educating civil rights partners and the general public about FHWA equal opportunity and nondiscrimination programs.
- Organizes technology deployment, knowledge sharing forums, and discipline support system components (*e.g.* networking and communication, Discipline SharePoint Sites, webinars) to accelerate the implementation of and present new and innovative civil rights program initiatives.
- Presents information on key civil rights programs and issues through a variety of methods (*e.g.*, webinars, videoconferences, onsite training, workgroups, and national conferences).
- Applies a variety of strategies and resources (*e.g.* surveys, baseline assessments, self-assessments, project/program/process review recommendations) to best meet the needs of the partners and customers.
- Utilizes knowledge of FHWA’s civil rights programs in developing strategies to identify and resolve customer issues or concerns regarding program and project-specific situations.

**Recommended Learning Opportunities**

- FHWA Basic Civil Rights Program Training (FHWA Resource Center Civil Rights Team) [http://www.fhwa.dot.gov/resourcecenter/teams/civilrights/courses.cfm](http://www.fhwa.dot.gov/resourcecenter/teams/civilrights/courses.cfm)
- Transportation Research Board (TRB) Conference Calendar, [http://www.trb.org/Calendar/Calendar.aspx](http://www.trb.org/Calendar/Calendar.aspx)
- American Contractor Compliance Association [http://www.accaweb.org](http://www.accaweb.org)
- American Association of State Highway and Transportation Officials [http://www.transportation.org](http://www.transportation.org)
- Federal Lands 101 Course, (FHWA-NHI-310108)
- FHWA Role in Public Private Partnership Course (FHWA-NHI-310116)
### Civil Rights Program and Project Technical Assistance

Knowledge of FHWA internal and external programs, initiatives, emerging issues, key internal/external customers and stakeholders to foster communication, and facilitate learning and instructional methods.

### Key Behaviors

- Provides guidance and technical assistance to *internal (including executive managers)* and/or external customers to exchange project and program-wide accomplishments and innovative practices.
- Communicates program and project policies, regulations, and guidance to internal and/or external customers (*orally and in writing*).
- Assesses civil rights program training needs and identifies appropriate training methods and tools (*guidelines, toolkits*).
- Develops and maintains partnership(s) across boundaries (*federal, state, local, and private agencies/organizations*) to develop common ground, cooperation, or options toward compliance.
- Designs learning and development opportunities/materials based on adult learning principles to integrate knowledge gained with program processes and procedures.
- Conducts training on key civil rights programs and practices.

### Recommended Learning Opportunities

- FHWA Basic Civil Rights Program Training (FHWA Resource Center Civil Rights Team)  
- FHWA Resource Center E-Learning and Technical Assistance Tools  
- Federal Aid Essentials for Local Public Agencies  
- Transportation Research Board (TRB) Conference Calendar,  
  [http://www.trb.org/Calendar/Calendar.aspx](http://www.trb.org/Calendar/Calendar.aspx)
- American Contractor Compliance Association  
  [http://www.accaweb.org](http://www.accaweb.org)
- FHWA Civil Rights SharePoint Site  
- FHWA Role in Public Private Partnership Course (FHWA-NHI-310116)  
- Instructor Development Course, (FHWA NHI #420018/420018A)
- Introduction to NEPA & Transportation Decision-Making Web Based (NHI Course No. FHWA-NHI-142052)
- Public Involvement in the Transportation Decision-Making Process (NHI Course No. FHWA-NHI-142036)
- NEPA and Transportation Decision-Making, (FHWA NHI #142005)
- Interpersonal Skills – Developing Effective Relationships (Management Concepts)  
  [http://www.managementconcepts.com/Course/id/4367](http://www.managementconcepts.com/Course/id/4367)
- Communicating Strategically (Management Concepts)  
  [http://www.managementconcepts.com/Course/id/4320](http://www.managementconcepts.com/Course/id/4320)
- Negotiating Essentials: Communicating (FHWA: TMS- comm 24 a03 bs enus)
• Decision Making: Making Tough Decisions (FHWA: TMS - pd 12 a06 bs enus)
• Introduction to Program Management (FHWA: TMS ONLINE DOT_SS_proj_16_a01_bs_enus)
## Key Information Necessary to Develop DBE Technical Expertise

<table>
<thead>
<tr>
<th>Document</th>
<th>Document Location</th>
<th>Link to Document</th>
<th>Document Date</th>
<th>NRT Analysis</th>
<th>NRT Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>49 CFR Part 26</td>
<td>E-CFR</td>
<td><a href="http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl">http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl</a></td>
<td>Current Regulations</td>
<td>Yes, the regulations are essential to developing DBE technical expertise</td>
<td>Requires careful and ongoing study of the regulations to help in developing technical expertise</td>
</tr>
<tr>
<td>Official Q&amp;As to the DBE regulations</td>
<td>OST/OSDBU website</td>
<td><a href="http://www.dot.gov/osdbu/disadvantaged-business-enterprise/official-faqs-dbe-program-49-cfr-26">http://www.dot.gov/osdbu/disadvantaged-business-enterprise/official-faqs-dbe-program-49-cfr-26</a></td>
<td>Current</td>
<td>Yes, the Q&amp;As are essential to developing DBE technical expertise</td>
<td>While some of the Q&amp;As are applicable to earlier versions of the regulations, the Q&amp;As provide the USDOT’s official guidance and information for compliance with the provisions under 49 CFR part 26, pertaining to the implementation of the Department’s DBE program.</td>
</tr>
<tr>
<td>Preambles to regulation changes</td>
<td>Identified as an additional resource in Chapter 4 of the Civil Rights New Entrant’s Handbook found on the Civil Rights SharePoint Site</td>
<td><a href="http://our.dot.gov/office/fhwa.dss/cr/Reference%20Materials/New%20Entrain%20Handbook%20Final%20Aug%202014.docx.pdf">http://our.dot.gov/office/fhwa.dss/cr/Reference%20Materials/New%20Entrain%20Handbook%20Final%20Aug%202014.docx.pdf</a></td>
<td>Handbook dated July 2014. Links to each preamble can be found on page 26.</td>
<td>Yes, the Preambles are essential to developing DBE technical expertise. May also include information which can impact its accuracy for current DBE program administration and oversight.</td>
<td>Each preamble is the discussion of the final rule published in the Federal Register when the regulation was published or subsequently amended. It discusses comments submitted to the docket and why the final rule is written as it is. This often provides interpretive guidance.</td>
</tr>
</tbody>
</table>

| Tips for Goal Setting in the DBE Program | OST/OSDBU website | http://www.dot.gov/osdbu/disadvantaged-business-enterprise/tips-goal-setting-disadvantaged-business-enterprise | Public website, last updated 2014 | Yes, a good understanding of all that must be considered and accounted for in overall goal setting is necessary to developing DBE technical expertise. | Document walks through the intricacies of goal setting. May also include some information which may not be easily understood or can be misunderstood. |
| DBE Program Archives | OST/OSDBU website | http://www.dot.gov/osdbu/disadvantaged-business-enterprise/dbe-program-archives | Current listing of archival information on the DBE program | Yes, some background information is essential to developing DBE technical expertise | Includes background information necessary to understand why the DBE program is structured and administered the way it is. For example, includes an article detailing how the DBE program was structured to meet the narrow tailoring requirements of Adarand. This type of information could help an FHWA Civil Rights Specialists understand the intricacies of regulatory compliance or compliance with the DOT/OST’s Q&As for the DBE program. |
### Information on Job Expectations for Civil Rights Specialistss--Does Not Lead to Technical Expertise

<table>
<thead>
<tr>
<th>Document</th>
<th>Document Location</th>
<th>Link to Document</th>
<th>Document Date</th>
<th>NRT Analysis</th>
<th>NRT Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Civil Rights CJE s</td>
<td>Civil Rights SharePoint</td>
<td><a href="http://our.dot.gov/office/fhwa.dss/cr/Reference%20Materials/civil_rights_cjesfinal.pdf">http://our.dot.gov/office/fhwa.dss/cr/Reference%20Materials/civil_rights_cjesfinal.pdf</a></td>
<td>May 2014</td>
<td>Does not aid in developing DBE technical expertise but provides important information for Civil Rights Specialistss on job expectations</td>
<td>Generic information on the critical job elements for a Civil Rights Specialistss. Includes information on how those elements may be accomplished/demonstrated</td>
</tr>
</tbody>
</table>
## Information Which Can Improve a Civil Rights Specialists’ Technical Skills

<table>
<thead>
<tr>
<th>Document</th>
<th>Document Location</th>
<th>Link to Document</th>
<th>Document Date</th>
<th>NRT Analysis</th>
<th>NRT Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Various Memoranda and Guidance</td>
<td>DBE Site on the Civil Rights SharePoint</td>
<td><a href="http://our.dot.gov/office/fhwa.dss/cr/DBE/default.aspx">http://our.dot.gov/office/fhwa.dss/cr/DBE/default.aspx</a></td>
<td>Various</td>
<td>Useful to read and be familiar with</td>
<td>Some of the documents on this page provide guidance, information and training on recent DBE issues.</td>
</tr>
<tr>
<td>General Discussion Forums</td>
<td>Civil Rights SharePoint</td>
<td><a href="http://our.dot.gov/office/fhwa.dss/cr/default.aspx?&amp;p_Modified=20150227%2001%3a48%3a00&amp;&amp;PageFirstRow=1&amp;&amp;View=%7B70DB7112-3F44-4FA8-AB40-ED3E69E28428%7D">http://our.dot.gov/office/fhwa.dss/cr/default.aspx?&amp;p_Modified=20150227%2001%3a48%3a00&amp;&amp;PageFirstRow=1&amp;&amp;View={70DB7112-3F44-4FA8-AB40-ED3E69E28428}</a></td>
<td>Various Dates</td>
<td>Useful to read and be familiar with</td>
<td>There are 183* discussions available to read although they are not categorized by area such as DBE/Title VI/ADA, etc. It is difficult to determine if all the forum responses are still current or accurate as the discussions date back to January 2012.</td>
</tr>
<tr>
<td>Community of Practice Discussions</td>
<td>Civil Rights SharePoint</td>
<td><a href="http://our.dot.gov/office/fhwa.dss/cr/COP/Lists/Team%20Discussion/AllItems.aspx">http://our.dot.gov/office/fhwa.dss/cr/COP/Lists/Team%20Discussion/AllItems.aspx</a></td>
<td>Various Dates</td>
<td>Useful to read and be familiar with</td>
<td>It is difficult to determine how this differs from the General Discussion Forums. It is also difficult to determine if all the information contained in the 31* discussions is still current since the discussions date back to January 2012.</td>
</tr>
</tbody>
</table>

*DBE Information Available to Civil Rights Specialists as of May 28, 2015*
<table>
<thead>
<tr>
<th>DBE Team Discussions</th>
<th>Civil Rights SharePoint</th>
<th><a href="http://our.dot.gov/office/fhwa.dss/cr/DBE/Lists/Team%20Discussion/AllItems.aspx">http://our.dot.gov/office/fhwa.dss/cr/DBE/Lists/Team%20Discussion/AllItems.aspx</a></th>
<th>Various dates</th>
<th>Useful to read and be familiar with. May also include information which can impact its accuracy.</th>
<th>This includes 6* team discussions. It is difficult to determine how this varies from the General Discussion Forum and the Community of Practice Discussions. It is also difficult to determine if the team discussions contain information which is still current or accurate as some of the discussions date back to February 2010.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Various training presentations on DBE issues</td>
<td>Civil Rights SharePoint</td>
<td><a href="http://our.dot.gov/office/fhwa.dss/cr/DBE/Presentations/Forms/AllItems.aspx">http://our.dot.gov/office/fhwa.dss/cr/DBE/Presentations/Forms/AllItems.aspx</a></td>
<td>Various dates</td>
<td>Useful to read and be familiar with. May also include dated information which can impact its accuracy.</td>
<td>This webpage provides 7 short training presentations on various DBE topics. It is difficult to determine if the information in the training presentations is still current or accurate as some of the presentations date back to 2009.</td>
</tr>
</tbody>
</table>
May also include dated information which can impact its accuracy | This webpage provides a long list of resources but many are dated. Some documents contain information dating to 2005 so it is difficult to determine which of the reference materials provide current and accurate information. |
<table>
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<tbody>
<tr>
<td>DBE Shared Documents</td>
<td>Civil Rights SharePoint</td>
<td><a href="http://our.dot.gov/office/fhwa.dss/cr/DBE/Shared%20Documents/Forms/AllItems.aspx?RootFolder=%2FOffice%2Ffhwa%2FEdss%2Fcr%2FDBE%2FShared%20Documents%2FFY%202015%20DBE%20Uniform%20Reports&amp;FolderCTID=0x012000C1BFCEF7319EB1479409C0DE0808C721&amp;View=%7BA674066A-A4B7-40D7-9983-5B8E1D9AD248%7D">http://our.dot.gov/office/fhwa.dss/cr/DBE/Shared%20Documents/Forms/AllItems.aspx?RootFolder=%2FOffice%2Ffhwa%2FEdss%2Fcr%2FDBE%2FShared%20Documents%2FFY%202015%20DBE%20Uniform%20Reports&amp;FolderCTID=0x012000C1BFCEF7319EB1479409C0DE0808C721&amp;View={A674066A-A4B7-40D7-9983-5B8E1D9AD248}</a></td>
<td>Various dates</td>
<td>Useful to read and be familiar with.</td>
<td>Uniform Reports from all States, Shortfall analysis from various Divisions, DOCR Appeal Decisions, etc. May be a good source of information for data analysis.</td>
</tr>
<tr>
<td>DBE Webinars</td>
<td>Civil Rights SharePoint</td>
<td><a href="http://our.dot.gov/office/fhwa.dss/cr/Webinars/Forms/AllItems.aspx">http://our.dot.gov/office/fhwa.dss/cr/Webinars/Forms/AllItems.aspx</a></td>
<td>Dates range from 2013-2014</td>
<td>May be useful in developing basic DBE program administration understanding</td>
<td>The most recent DBE webinar (Nov. 11, 2014) discussed the new DBE regulations which went into effect on October 2, 2014. The Best Practices for Business Development Programs webinar on April 16, 2014 was for State DOT and FHWA staff concerning the BDP programs that were introduced via memo on August 12, 2013. While useful, webinars open to both DOT and FHWA staff may not allow for the in-depth discussion FHWA staff would need to develop technical expertise. Training after implementation does not allow FHWA staff the time to develop expertise or be able to assist the State in adjusting to change prior to implementation.</td>
</tr>
</tbody>
</table>
| DBE Q&As | Civil Rights SharePoint | http://our.dot.gov/office/fhwa.dss/cr/DBE/DBE%20QAs/Forms/AllItems.aspx | Feb 3, 2012 | Useful to read and be familiar with. 
May also include dated information which can impact its accuracy | This document was prepared by a Division Civil Rights Specialist. The document states “All Material Below Dated: February 3, 2012, and represents current interpretations by OST Office of General Counsel” |
| Q&As on Western States Paving decision from the 9th Circuit Court of Appeals | OST/OSDBU website | http://www.dot.gov/osdbu/disadvantaged-business-enterprise/western-states-paving-company-case-q-and-a | Public Webpage last updated December 2014 | Useful to read and be familiar with. 
May also include dated information which can impact its accuracy | Public website which provides general and dated information on the decision. Information should help FHWA Civil Rights Specialists understand how program administration decisions can be challenged. |
<table>
<thead>
<tr>
<th>Q&amp;As regarding DBE Considerations in the Procurement, Management, and Administration of Engineering and Design Related Services</th>
<th>FHWA's Design Consultant Services webpage</th>
<th><a href="http://www.fhwa.dot.gov/programadmin/172qa_07.cfm#q02">http://www.fhwa.dot.gov/programadmin/172qa_07.cfm#q02</a></th>
<th>Q&amp;As date to 2011</th>
<th>Useful to read and be familiar with.</th>
<th>Through the Q&amp;A's, detailed information is provided on how the DBE program interacts with the State DOT's procurement processes for consultants, ensuring continued compliance with the Brooks Act.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public-Private Partnership Oversight: How FHWA Reviews P3s</td>
<td>FHWA's Innovative Program Delivery webpage</td>
<td><a href="http://www.fhwa.dot.gov/ipd/p3/toolkit/publications/p3_oversight/default.aspx">http://www.fhwa.dot.gov/ipd/p3/toolkit/publications/p3_oversight/default.aspx</a></td>
<td>January 2015</td>
<td>Useful to read and be familiar with.</td>
<td>Document provides guidance on what FHWA staff should consider when reviewing P3 proposals. Includes useful information on DBE considerations</td>
</tr>
</tbody>
</table>
| FHWA’s Program Review Library | PMI Team SharePoint site for program reviews | [http://our.dot.gov/office/fhwa.dfs/programreview/default.aspx](http://our.dot.gov/office/fhwa.dfs/programreview/default.aspx) | Various dates | Useful to read and be familiar with. 
May also include information which can impact its accuracy | Reading DBE program reviews conducted by Division Staff may enable Civil Rights Specialists to relate processes and policies in their State DOTs to the issues reviewed in other States. Review reports should be read cautiously as they are not vetted for quality or accuracy so the results may rely on dated regulations or inaccurate application of the regulations. |
| TRB Reports regarding the DBE Program | TRB Website | http://pubsindex.trb.org/ | Various Documents with different dates | Useful to read and be familiar with. __________. May also include dated information which can impact its accuracy | A search of “DBE” in the TRB publications index database resulted in 18 documents. The most recent document deals with DBEs in airports; other topics also have limited applicability to the FAHP. There was one paper in each of 2014, 2013, 2012, 2011, and 2010. The remaining documents date back to 1990. Most of the information appears to be dated but still may include some useful background information. |
### NCHRP Reports

TRB website as the National Cooperative Highway Research Program (NCHRP) is part of TRB.

[http://www.trb.org/Highways1/TRBPublications.aspx](http://www.trb.org/Highways1/TRBPublications.aspx)

Various documents with different dates

Useful to read and be familiar with. ___________

May also include dated information which can impact its accuracy

Several reports are the same as found on the TRB website. Some reports may be of value although many are dated. Does indicate that NCHRP 20-95, *Identifying Successful Practices in the FHWA Disadvantaged Business Enterprise (DBE) Program*, is active and should be completed September 2015.

### Information Which May be Useful in Developing Basic DBE Program Administration Understanding

<table>
<thead>
<tr>
<th>Document</th>
<th>Document Location</th>
<th>Link to Document</th>
<th>Document Date</th>
<th>NRT Analysis</th>
<th>NRT Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>-------------------------------</td>
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<td>-------------------------------------------------</td>
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<td>--------------------------------------------------</td>
<td>---------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>DBE Business Development Programs and DBE Supportive Services Funds</td>
<td>Policy and Guidance Center which links to HCR website</td>
<td><a href="http://www.fhwa.dot.gov/civilrights/memos/dbess_memo_aug_12_2013.cfm">http://www.fhwa.dot.gov/civilrights/memos/dbess_memo_aug_12_2013.cfm</a></td>
<td>August 12, 2013</td>
<td>Useful in developing basic DBE program administration understanding</td>
<td>This memo provides information on how FHWA is responding (in part) to a DOT OIG audit of the DBE Program. It also explains Division responsibilities for approving a State DOT’s plan to implement a Business Development Program (BDP). However, the memo does not provide Division staff with specific, detailed information on what they should consider when approving a State’s BDP.</td>
</tr>
<tr>
<td>DBE Goal Submission Schedule</td>
<td>Policy and Guidance Center which links to HCR website</td>
<td><a href="http://www.fhwa.dot.gov/civilrights/memos/dbemogoalcycle.cfm">http://www.fhwa.dot.gov/civilrights/memos/dbemogoalcycle.cfm</a></td>
<td>February 5, 2013</td>
<td>Useful in developing basic DBE program administration understanding</td>
<td>This memo identifies the three year cycle as it applies to State DOTs submitting their overall goal for legal sufficiency review and FHWA approval.</td>
</tr>
<tr>
<td>Sample DBE Program Plan</td>
<td>OST/OSDBU website</td>
<td><a href="http://www.dot.gov/osdbu/disadvantaged-business-enterprise/49-cfr-part-26-sample-disadvantaged-business">http://www.dot.gov/osdbu/disadvantaged-business-enterprise/49-cfr-part-26-sample-disadvantaged-business</a></td>
<td>Appears to have been prepared in 1999 but the webpage indicates it was last updated in 2014</td>
<td>Useful in developing basic DBE program administration understanding</td>
<td>Only officially sanctioned sample of what provisions should be included in a DBE program plan. It provides sample language based off of the regulation. Does not indicate what an FHWA Civil Rights Specialists should consider when approving a State DOT’s program plan although the implication is that if the sample plan is followed exactly, the plan should be acceptable and compliant.</td>
</tr>
<tr>
<td>Civil Rights E-learning and Technical Assistance</td>
<td>Resource Center Webpages</td>
<td><a href="http://www.fhwa.dot.gov/resourcecenter/teams/civilrights/publications.cfm">http://www.fhwa.dot.gov/resourcecenter/teams/civilrights/publications.cfm</a></td>
<td>Document written and last modified in April 2008</td>
<td>Useful in developing basic DBE program administration and oversight skills</td>
<td>This technical assistance tool uses yes/no questions to assess the compliance of DBE program provisions with the regulations. While useful, the form has not been updated since 2008 so has missed the last two regulatory updates. In addition, the questions used to access compliance are basic so will not aid an FHWA Civil Rights Specialists in knowing, understanding or applying the intricacies of regulatory compliance with the DBE regulations and with DOT/OST’s DBE Q&amp;A’s.</td>
</tr>
<tr>
<td><strong>Contract Administration Core Curriculum Manual 2014</strong></td>
<td>FHWA’s Contract Administration webpage</td>
<td><a href="http://www.fhwa.dot.gov/programadmin/contracts/coretoc.cfm">http://www.fhwa.dot.gov/programadmin/contracts/coretoc.cfm</a></td>
<td>October 2, 2014</td>
<td>Useful in developing basic DBE program administration understanding</td>
<td>Document includes guidance on what an FHWA engineer should know or consider when administering Federal-aid contracts. Note, on page 113 this manual includes information on the <em>Western States Paving v. Washington State DOT</em> 9th Circuit Court decision which has been referenced in only one other document reviewed for this analysis.</td>
</tr>
<tr>
<td><strong>Area Engineer Manual</strong></td>
<td>Construction and Project Management SharePoint</td>
<td><a href="http://our.dot.gov/office/fhwa.dss/CPM/Reference%20Library1/Forms/AllItems.aspx?RootFolder=%2Foffice%2Ffhwa%2EEdss%2FCPM%2FReference%20Library1%2FArea%20Engineers%20Manual&amp;FolderCTID=0x01200063C0616DA81AB44FAA421946611D751D&amp;View=%7B0C4D641F-A5FE-49F4-807A-53AE01FCD508%7D">http://our.dot.gov/office/fhwa.dss/CPM/Reference%20Library1/Forms/AllItems.aspx?RootFolder=%2Foffice%2Ffhwa%2EEdss%2FCPM%2FReference%20Library1%2FArea%20Engineers%20Manual&amp;FolderCTID=0x01200063C0616DA81AB44FAA421946611D751D&amp;View={0C4D641F-A5FE-49F4-807A-53AE01FCD508}</a></td>
<td>2010</td>
<td>Useful in developing basic DBE program administration understanding</td>
<td>Document includes guidance on what FHWA’s Area Engineers should know about the DBE program. Use caution as not all the DBE program information is accurate.</td>
</tr>
<tr>
<td>10 Tips for DBE Contract Recipients</td>
<td>OST/OSDBU website</td>
<td><a href="http://www.dot.gov/osdbu/disadvantaged-business-enterprise/10-tips-dot-dbe-contract-recipients">http://www.dot.gov/osdbu/disadvantaged-business-enterprise/10-tips-dot-dbe-contract-recipients</a></td>
<td>Public website, last updated January 2015</td>
<td>Useful in developing basic DBE program administration understanding. May also include information which can impact its accuracy. Tips are somewhat basic and dated but the information is useful for an FHWA Civil Rights Specialists to know. Discusses the use of SIC codes which have been replaced with NAICs codes. Also indicates goal submission date is September 1 when HCR memo on February 5, 2013 indicates the goal submission date is August 1 on a three year cycle.</td>
<td></td>
</tr>
<tr>
<td>DBE portion of Federal Aid Essentials for Local Public Agencies (YouTube videos)</td>
<td>Civil Rights SharePoint</td>
<td><a href="http://www.fhwa.dot.gov/federal-aidessentials/">http://www.fhwa.dot.gov/federal-aidessentials/</a></td>
<td>Not dated. On FHWA’s public website</td>
<td>Useful in developing basic DBE program administration understanding</td>
<td>The training videos provide good, albeit basic, information. Since they were created to provide information for local public agencies, they don’t include detailed information which could help an FHWA Civil Rights Specialists understand the intricacies of regulatory compliance or compliance with the DOT/OST’s Q&amp;As for the covered topics.</td>
</tr>
<tr>
<td>Southern Transportation Civil Rights Training Symposium</td>
<td>Civil Rights SharePoint</td>
<td>Current—Hosted by Florida DOT</td>
<td>SharePoint site states: “This is the country’s largest civil rights event for practitioners and everyone is welcome – State DOTs, LPAs, MPOs, other federal/state agencies, and industry representatives.&quot; The conference agenda does include 1 ½ hour sessions specific DBE topics such as DBE goal methodology and DBE CUF and counting as well as sessions devoted to best practices. However, only 12 FHWA employees are approved to go, some of who are conference presenters.</td>
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</tbody>
</table>

The short sessions and broad audience generally would not lend to developing DBE technical expertise but would be useful in developing basic DBE program administration understanding. The small number of FHWA employees able to attend lessens the usefulness of this as an effective option for developing technical expertise in FHWA Civil Rights Specialistss.
<table>
<thead>
<tr>
<th><strong>PEAR+C Discipline Seminar</strong></th>
<th><strong>Civil Rights SharePoint</strong></th>
<th><a href="http://our.dot.gov/office/fhwa.dss/cr/COP/Lists/Announcements/Attachments/14/PEARC%20Agenda%20-%20%200210125.pdf">http://our.dot.gov/office/fhwa.dss/cr/COP/Lists/Announcements/Attachments/14/PEARC%20Agenda%20-%20%200210125.pdf</a></th>
<th><strong>May 2012—not held since then</strong></th>
<th>Useful in developing basic DBE program administration understanding</th>
<th>One day of the three full days of training available in the PEAR+C conference were devoted to a Civil Rights Basics Training Course. The agenda for PEAR+C does not indicate any other courses discussing the DBE program.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>HCR Organization Chart</strong></td>
<td><strong>HCR website</strong></td>
<td><a href="http://www.fhwa.dot.gov/civilrights/overview/">http://www.fhwa.dot.gov/civilrights/overview/</a></td>
<td><strong>Last modified in February 2015</strong></td>
<td>Useful information</td>
<td>Identifies HCR points of contact for the various CR programs administered within FHWA</td>
</tr>
<tr>
<td><strong>HCR Service Directory</strong></td>
<td><strong>HCR website</strong></td>
<td><a href="http://www.fhwa.dot.gov/civilrights/overview/staff.cfm">http://www.fhwa.dot.gov/civilrights/overview/staff.cfm</a></td>
<td><strong>Last modified in July 2014</strong></td>
<td>Useful information</td>
<td>Similar to the organization chart, identifies the Point of Contact for various CR programs</td>
</tr>
<tr>
<td><strong>Disadvantaged Business Enterprise Program Overview</strong></td>
<td><strong>Policy and Guidance Center which links to HCR website</strong></td>
<td><a href="http://www.fhwa.dot.gov/civilrights/programs/dbes.cfm">http://www.fhwa.dot.gov/civilrights/programs/dbes.cfm</a></td>
<td><strong>Not dated. On FHWA’s public website</strong></td>
<td>Useful in developing basic DBE program administration understanding</td>
<td>This HCR webpage provides only very high level information. It does include 4 bullet points on key FHWA Stewardship/Oversight Responsibilities for the DBE program.</td>
</tr>
<tr>
<td><strong>DBE Program Reauthorization Provision</strong></td>
<td><strong>OST/OSDBU website</strong></td>
<td><strong><a href="http://www.dot.gov/osdbu/disadvantaged-business-enterprise/dbe-program-reauthorization-provision">http://www.dot.gov/osdbu/disadvantaged-business-enterprise/dbe-program-reauthorization-provision</a></strong></td>
<td><strong>Current</strong></td>
<td><strong>Useful in developing basic DBE program administration understanding</strong></td>
<td><strong>Provides information on the current statutory basis of the DBE program</strong></td>
</tr>
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<td>-----------------------------------------------------------------------</td>
</tr>
<tr>
<td><strong>History of the DBE Program</strong></td>
<td><strong>OST/OSDBU website</strong></td>
<td><strong><a href="http://www.dot.gov/osdbu/disadvantaged-business-enterprise/history-dot-dbe-program">http://www.dot.gov/osdbu/disadvantaged-business-enterprise/history-dot-dbe-program</a></strong></td>
<td><strong>Current</strong></td>
<td><strong>Useful in developing basic DBE program administration understanding</strong></td>
<td><strong>Provides very high level information on the history and background of the DBE information. Appears to be geared more towards public information</strong></td>
</tr>
<tr>
<td><strong>DBE memoranda</strong></td>
<td><strong>HCR website</strong></td>
<td><strong><a href="http://www.fhwa.dot.gov/civilrights/memos/">http://www.fhwa.dot.gov/civilrights/memos/</a></strong></td>
<td><strong>Various Dates. No documents from 2015, information dates back to 2007</strong></td>
<td><strong>Useful in developing basic DBE program administration understanding</strong></td>
<td><strong>Memoranda on various issues related to Civil Rights, including the DBE program. Information made available to the Public.</strong></td>
</tr>
<tr>
<td><strong>Civil Rights Policy Statements</strong></td>
<td><strong>HCR website</strong></td>
<td><strong><a href="http://www.fhwa.dot.gov/civilrights/policystmts/">http://www.fhwa.dot.gov/civilrights/policystmts/</a></strong></td>
<td><strong>Various Dates.</strong></td>
<td><strong>May be useful in developing basic DBE program administration understanding</strong></td>
<td><strong>Not specifically related to the DBE program but the policy statements provide information on how FHWA approaches civil rights, in general</strong></td>
</tr>
<tr>
<td>HCR’s DBE Program Overview</td>
<td>HCR website</td>
<td><a href="http://www.fhwa.dot.gov/civilrights/programs/dbes.cfm">http://www.fhwa.dot.gov/civilrights/programs/dbes.cfm</a></td>
<td>Not dated. On FHWA’s public website</td>
<td>Useful in developing basic DBE program administration understanding</td>
<td>This is the same webpage that is linked to through the Policy and Guidance Center. This HCR webpage provides only very high level information. It does include 4 bullet points on key FHWA Stewardship/Oversight Responsibilities for the DBE program.</td>
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</tr>
<tr>
<td>FHWA Basic Civil Rights Training Program</td>
<td>Resource Center Webpages</td>
<td><a href="http://www.fhwa.dot.gov/resourcecenter/teams/civilrights/courses.cfm">http://www.fhwa.dot.gov/resourcecenter/teams/civilrights/courses.cfm</a></td>
<td>Date when course materials were created is unknown. Since this is instructor led training, the presumption is that the course is updated for new regulations etc.</td>
<td>Useful in developing basic DBE program administration understanding</td>
<td>This course is a 4 day introductory course to all Civil Rights programs for all FHWA and State staff with CR responsibilities. Offered to a minimum of 15 people. While providing basic information, it may be difficult for a CR Specialist to attend such a training session early in his/her tenure when introductory information may be useful.</td>
</tr>
<tr>
<td>DBE Program Overview Training Course</td>
<td>Resource Center Webpages:</td>
<td><a href="http://www.fhwa.dot.gov/resourcecenter/teams/civilrights/courses.cfm">http://www.fhwa.dot.gov/resourcecenter/teams/civilrights/courses.cfm</a></td>
<td>Date when course materials were created is unknown. Since this is instructor led training, the presumption is that the course is updated for new regulations etc.</td>
<td>Useful in developing basic DBE program administration and oversight skills</td>
<td>A one day training course offered to State and Division Staff. Course objectives relate to basic understanding of the DBE program and regulations. It does include a segment on using the DOT/OST official Q&amp;As</td>
</tr>
<tr>
<td>DBE Contract Administration Training Course</td>
<td>Resource Center Webpages</td>
<td><a href="http://www.fhwa.dot.gov/resourcecenter/teams/civilrights/courses.cfm">http://www.fhwa.dot.gov/resourcecenter/teams/civilrights/courses.cfm</a></td>
<td>Date when course materials were created is unknown. Since this is instructor led training, the presumption is that the course is updated for new regulations etc.</td>
<td>Useful in developing basic DBE program administration and oversight skills</td>
<td>Course objectives indicate it is directed to State DOT recipients. It gives an overview of the DBE program, outlines concepts and identifies the DOT’s responsibilities for project level monitoring. As a basic course it will introduce important information but will not aid an FHWA Civil Rights Specialists in knowing, understanding or applying the intricacies of regulatory compliance with the DBE regulations and with DOT/OST’s DBE Q&amp;A’s.</td>
</tr>
</tbody>
</table>
### Available Information Which Is Not Useful to Civil Rights Specialists

<table>
<thead>
<tr>
<th>Document</th>
<th>Document Location</th>
<th>Link to Document</th>
<th>Document Date</th>
<th>NRT Analysis</th>
<th>NRT Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>DBE Information Available to Civil Rights Specialists as of May 28, 2015</td>
<td></td>
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</tr>
</tbody>
</table>
| **Census Bureau**  
Data to assist Recipients with Goals | **OST/OSDBU website**  
| **Guidance on Joint Checks**  
Policy and Guidance Center | http://www.fhwa.dot.gov/pgc/results.cfm?id=2584 | 8/30/2006 | Not useful | No information provided. The webpage states: “An electronic version of this document is not available. Please contact the contact(s) listed above for more information.” The contact listed is Martha Kenley. |
| **Website for Civil Rights Programs - Good, Best, and Innovative Practices**  
Resource Center Webpages | http://www.fhwa.dot.gov/resourcecenter/teams/civilrights/gbi_practices.cfm | No documents | Not useful | None identified for the DBE program |
| **Website Civil Rights Reports and Other Information**  
Resource Center Webpages | http://www.fhwa.dot.gov/resourcecenter/teams/civilrights/reports.cfm | Various dates | Not useful | No fact sheets or resources for the DBE program. Some documents may peripherally relate to DBE program administration and oversight |
| Website for Customized Civil Rights Training Courses | Resource Center Webpages | [http://www.fhwa.dot.gov/resourcecenter/teams/civilrights/courses.cfm](http://www.fhwa.dot.gov/resourcecenter/teams/civilrights/courses.cfm) | Customized to fulfill the request | Not useful | The website indicates that courses vary based on request only for the following areas:  
  • Preventing Sexual Harassment  
  • Title VI for Sub-recipients |

*data on May 20, 2015.  
#Sources of information are either FHWA, DOT or linked to FHWA such as TRB or the Southern Transportation Civil Rights Training Symposium
NATIONAL PERFORMANCE OBJECTIVE:

PD-6 Improve fairness, diversity, and inclusion as embodied in the Civil Rights program (Lead Office: HCR; Supporting Offices: HCC).

MEASURE: DBE Participation

DESCRIPTION: The national aspirational goal for Disadvantaged Business Enterprise (DBE) participation on Federal-aid projects is 9.5 percent of contracting opportunities.

ADDITIONAL INFORMATION:

Assessment of Fiscal Year DBE Award/Commitment/Payments data reports. Reports are due twice a year from state transportation agencies to the Division Offices (6/1 and 12/1). Data shown in table as of September 30, 2014.

WEBSITE: None

DATA SOURCE: DBE Award/Commitment/Payments data reports.

CONTACT: Kimberly Sarmuksnis OFFICE: Office of Civil Rights (HCR)

RESULTS TO DATE:

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Actual</th>
<th>Target</th>
</tr>
</thead>
<tbody>
<tr>
<td>2009</td>
<td>8.9</td>
<td>10.0</td>
</tr>
<tr>
<td>2010</td>
<td>10.6</td>
<td>10.0</td>
</tr>
<tr>
<td>2011</td>
<td>10.1</td>
<td>10.0</td>
</tr>
<tr>
<td>2012</td>
<td>9.6</td>
<td>9.5</td>
</tr>
<tr>
<td>2013</td>
<td>9.8</td>
<td>9.5</td>
</tr>
<tr>
<td>2014</td>
<td>10.9</td>
<td>9.5</td>
</tr>
</tbody>
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