

DEPARTMENT OF TRANSPORTATION

FEDERAL TRANSIT ADMINISTRATION

**NONDISCRIMINATION AS IT APPLIES TO FEDERAL
TRANSIT ADMINISTRATION PROGRAMS**

(OMB Control No. 2132-0542)

This supporting statement is associated with a request for an extension without change of a previously approved information collection.

A. JUSTIFICATION

1. CIRCUMSTANCES THAT MAKE THE COLLECTION OF INFORMATION
NECESSARY.

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

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

The above policies are supported by 42 U.S.C. 2000d–Title VI of the Civil Rights Act of 1964; 28 CFR Part 42.406–Coordination of Enforcement of Nondiscrimination in Federally-Assisted Programs; Federal Transit Law at 49 U.S.C. 5332(b); and 49 CFR Part 21–Nondiscrimination in Federally Assisted Programs of the Department of Transportation.

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

- a. Statement of Policy - An EEO program must include an EEO policy statement issued by the chief executive officer covering all employment practices, including recruitment, selection, promotions, terminations, transfers, layoffs, compensation, training, benefits, and other terms and conditions of employment. The policy must be

placed conspicuously so that employees, applicants, and general public are cognizant of the agency's EEO commitment.

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

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

When recipients submit a request for federal financial assistance they must provide specific plans and analysis to ensure that the Civil Rights program requirements are met. No special form is used to collect this information. Each plan may differ in size and format, but each grantee's plan must adhere to specific program requirements prior to receipt of funding assistance. The data derived from the written EEO and affirmative action plans is utilized by

the Office of Civil Rights in monitoring grantees' compliance with applicable EEO laws and regulations. This monitoring and enforcement activity ensures that minorities and women have equitable access to employment opportunities and that recipients of federal funds do not discriminate against any employee or applicant because of race, color, religion, sex, national origin, age, or disability. All recipients of FTA funds are required to comply with the terms of a Master Agreement, which becomes part of the grant agreement. "Section 13. Civil Rights" of the Master Agreement states that recipients agree to comply with all applicable civil rights laws and regulations, except as otherwise determined in writing by the federal government. A portion of the Master Agreement is included as an information collection instrument in ROCIS.

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

All recipients of FTA funds are required to use FTA's Transportation Electronic Award Management (TEAM) system at <http://ftateamweb.fta.dot.gov/fta-flash2b.html> from the initial application stage through post award management. Additionally, the Office of Civil Rights uses information technology with all reporting data applicable to this program. This has improved communications and resulted in a slightly reduced workload for grantees and FTA.

4. DESCRIBE EFFORTS TO IDENTIFY DUPLICATION. SHOW SPECIFICALLY WHY ANY SIMILAR INFORMATION ALREADY AVAILABLE CANNOT BE USED OR MODIFIED FOR USE FOR THE PURPOSES DESCRIBED IN Item 2.

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

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

The EEO program includes grant recipients that are public entities and their contractors. Some of these entities are small. FTA's change to less frequent reporting requirements has reduced the burden on small businesses. Currently, one-third of grantees are required to submit an EEO program each year. Prior to this administrative change, all grant recipients were required to report annually.

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

Information collection for the EEO program was originally an annual requirement for grant recipients. Administrative requirements were changed so grantees would not have to report as frequently. Currently, only one-third of grantees are required to submit an EEO program each year. The EEO program is necessary due to the rapid turnover in the grantees' work force, particularly at entry level positions, and the constant change in other employment

areas, such as recruitment, promotions, and terminations. Information must be collected on a frequent basis because grantees are required to monitor their recruitment and employment. A less frequent reporting period would make it difficult to determine the progress made by the grantee. Recipient respondents are required to maintain records for a minimum of three years.

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

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

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

FTA's Office of Civil Rights discusses EEO program requirements with the American Public Transportation Association's Minority Affairs Committee and EEO Officers of the grant recipients on an ongoing basis. As a result of this outreach effort with stakeholders, FTA has learned that although grantees have made gains in the employment of minorities and women, EEO programs are still needed to correct deficiencies in certain job categories, such as senior level officials/managers, and that FTA's EEO requirements are not costly or burdensome to grant recipients.

A 60-day Federal Register notice was published on January 6, 2014 (pages 7276 and 7277), soliciting comments prior to submission to the Office of Management and Budget (OMB). There was one comment submitted by Corbett L. Anderson of U.S. Equal Employment Opportunity Commission (EEOC). The comment was a recommendation for FTA to replace "creed" with "religion" in Nondiscrimination Program materials and activities. FTA agrees with the EEOC's recommendation. The Moving Ahead for Progress in the 21st Century Act (MAP-21; Pub. L. 112-141) amended the Nondiscrimination Program in Federal Transit Law at 49 U.S.C. 5332(b) by replacing "creed" with "religion." Therefore, FTA should replace "creed" with "religion" in all Nondiscrimination Program materials and activities. This justification statement has been updated to reflect the change as well.

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

No payment or gift is made to respondents.

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

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

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

One of the components of an EEO program is that the grantee report on employees in job categories and the range of salaries for each of these categories. Some grantees have raised concerns regarding the inclusion of salaries as part of the work force analysis. Information relating to salaries is needed to ensure that minorities and women are paid salaries comparable to other employees in the same job categories.

In its reviews and investigations, FTA reviews the grantees' employment application form for questions which may be potentially discriminatory and which might be used by the grantee to reject an otherwise qualified applicant. Such questions may relate to age, religion, height, weight, color of eyes or hair, number of children, whether the applicant rents or owns their home and number of automobiles in the family. Where such questions are found, the Office of Civil Rights has recommended their elimination from the application form.

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

Approximately 290 grant recipients are required to prepare EEO submissions during each 3-year period. (Submissions are "staggered" so that one-third of the recipients submits a program the first year, another one-third the next year, and another one-third, the final year.) Based on a survey of grantees, it is estimated that the average time now spent in the preparation of an EEO program is 25 hours. Grant recipients spend 7,250 hours (290 grantees x 25 hours per submission per grantee) in the 3-year period. Annualized, the burden is 2,425 hours (97 grantees per year (290/3) x 25 hours = 2,425 hours).

While the range of labor costs vary between small and large grantees, our estimate is that the average hourly labor rate is approximately \$40.00. Total labor costs to all grantees during the 3-year period is \$290,000 (25 hours x \$40.00 per hour x 290 grantees). The annualized cost is \$96,666 (\$290,000/3).

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

The estimate of the printing and equipment cost in the 3-year period for each grantee is approximately \$134 for a total overhead amount of \$38,860 (\$134 x 290 grantees). The annualized cost is \$12,953 (\$38,860/3).

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

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

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

There are no program changes or adjustments. This information collection is an extension without change.

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

FTA does not anticipate the publication of its EEO data.

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

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

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

No exceptions are stated.