



U.S. Department of  
Transportation  
**Federal Transit  
Administration**

1200 New Jersey Avenue, SE  
Washington, DC 20590

April 26, 2010

Mr. Mark Aesch  
Chief Executive Officer  
Rochester-Genesee Regional Transportation Authority  
1372 East Main Street  
Rochester, New York, 14609

Dear Mr. Aesch:

Enclosed is the final report of the Federal Transit Administration's (FTA) Equal Employment Opportunity (EEO) Compliance Review of the Rochester-Genesee Regional Transportation Authority (RGRTA) conducted from August 3-5, 2009. FTA did not receive any written response to the draft report which was issued to RGRTA in December 2009. As of the date of this letter, the final report became a public document and is subject to dissemination under the Freedom of Information Act of 1974.

This compliance review is our effort to work cooperatively with you and provide technical assistance. Please use the summary table in Section VII of the final report as the format to report progress to FTA on the corrective actions RGRTA intends to implement as a result of our findings. Please identify each response by item number. The requested documentation, along with updates on the status of implementation of proposed corrective actions, should be provided in quarterly reports to FTA. Each report should include the planned and actual completion date of the corrective action, the current status and contact person information for each corrective action and specific reporting requests cited in this letter and on the enclosed table. **The first report will be due on July 31, 2010 and should include activity during the months of April through June 2010 and any actions completed prior to that date that have not already been addressed.** Additional reports will be due on October 31, 2010; and each calendar quarter thereafter until FTA releases RGRTA from this reporting requirement. Failure to make the corrective actions and report may result in defer of any pending grant applications, suspend progress payments wlder grants previously awarded, or defer consideration of future grant applications.

Once we have reviewed your progress reports, we will either request clarification or additional corrective action or will close out the finding if your response sufficiently addresses the FTA EEO Circular requirements.

The following section summarizes the outstanding deficiencies in the EEO Compliance Review (a full description of the findings are contained in the report).

## **Remaining Compliance Deficiencies: RGRTA EEO Compliance Review**

### **1. Program Submission**

**Requirement:** A formal EEO program is required of any recipient that both employs 50 or more transit-related employees (including temporary, full-time or part-time employees either directly employed and/or through contractors) *and* received in excess of \$1 million in capital or operating assistance or in excess of \$250,000 in planning assistance in the previous federal fiscal year. Program updates are required every three years.

**Finding:** During this Compliance Review of RGRTA, deficiencies were found with FTA requirements for Program Submission. RGRTA submitted its most recent EEO Program Update, entitled *2004 EEO Program*, to FTA in November 2007.

The FTA Region II Regional Civil Rights Officer approved the RGRTA EEO Program submittal on November 6, 2007. The approval expired on August 30, 2009. An update was due to the FTA Region II Civil Rights Officer by July 30, 2009, thirty days prior to the expiration date. RGRTA had not submitted an update as of March 31, 2010.

**Corrective Action and Schedule:** No later than October 31, 2010, RGRTA must submit to the FTA Office of Civil Rights the update to its EEO program in accordance with FTA C 4704.1.11.5

### **2. Dissemination**

**Requirement:** Formal communication mechanisms should be established to publicize and disseminate the agency's EEO policy as well as appropriate elements of the program, to its employees, applicants and the general public.

**Finding:** During this Compliance Review of RGRTA, deficiencies were found with FTA requirements for Dissemination.

During the site visit, RGRTA provided documentation to show that, in accordance with its *2004 EEO Program*, the EEO policy and complaint procedures were included in the employee handbook. The *2004 EEO Notice to All Employees* that was signed by the CEO was posted throughout RGRTA's employee areas, such as on bulletin boards in break rooms. RGRTA could not provide documentation that the EEO policy and complaint procedures were included as part of the new employee orientation or that any meetings had been held in the last three years to discuss the EEO program and its implementation.

With respect to external dissemination, RGRTA did not provide documentation that it had disseminated its policy/program externally. During interviews with community

representatives, no one recalled receiving a copy of RGRTA's EEO policy statement or program. On the RGRTA employment applications, there was the statement:

*As an equal opportunity employer, RGRTA and its subsidiaries do not discriminate against any applicant because of race, creed, color, sex, age disability, national origin, or marital status.*

RGRTA did not provide any other documentation of external dissemination of its EEO program or policy statement.

**Corrective Action and Schedule:** No later than July 31, 2010, RGRTA must submit to the FTA Office of Civil Rights documentation that it has disseminated its EEO program internally to its employees and externally to recruitment sources, local minority and women's organizations, community agencies, and community leaders, in accordance with its EEO Program and FTA Circular 4704.1, III.2.b.

### **3. Designation of Personnel Responsibility**

**Requirement:** The importance of an EEO program is indicated by the individual the agency has named to manage the program and the authority this individual possesses. An executive should be appointed as Manager/Director of EEO who reports and is directly responsible to the agency's CEO.

**Finding:** During this Compliance Review of RGRTA, deficiencies were found with FTA requirements for Designation of Personnel Responsibilities. The Program Guidelines of FTA Circular 4704.1 Chapter III, 2.c. states:

*An executive should be appointed as Manager/Director of EEO who reports and is directly responsible to the agency's CEO. Since managing the EEO program requires a major commitment of time and resources, the Manager/Director of EEO should be given top management support and assigned a staff commensurate with the importance of this program.*

At the time of the site visit, the CAO was designated in the 2004 EEO Program as the EEO Officer. The CAO was an Executive level position that reported to the Chief Executive Officer. In addition to EEO, the CAO's duties included Human Resources, Labor Relations, Training, and Customer Relations. During the interviews, the CAO could not document that she spent much time on EEO responsibilities. The CAO's management staff consisted of a Director of Labor Relations, Manager of Employment Support, Director of Training/Facility Safety, and a Training Supervisor. Seven other individuals worked in Employee Support, and there is one other employee in the Training department.

During the site visit, a number of employment files were reviewed. The review of the files provided revealed that the CAO/EEO Officer had not concurred on all new hires. RGRTA was not able to document that the CAO, acting as the EEO Officer, had routinely performed the other required responsibilities.

The FTA regulations permit the EEO Officer to have collateral duty assignment with the Human Resources function, but there must be procedures for addressing perceived conflict of interest. RGRTA could not document that alternative procedures for filing complaints with the Chief Operating Officer had been made available to employees and applicants.

**Corrective Action and Schedule:** No later than July 31, 2010, RGRTA must submit to the FTA Office of Civil Rights:

- A job description for the EEO Officer that conforms completely to the requirements of Circular 4704.1, 111.2.c.
- Documentation that the procedures for addressing conflicts of interest between EEO and Human Resources functions have been made available to employees or applicants.

#### **4. Utilization Analysis**

**Requirement:** The purpose of the utilization analysis is to identify those job categories where there is an underutilization and/or concentration of minorities and women in relation to their availability in the relevant labor market.

**Finding:** During this Compliance Review of RGRTA, deficiencies were found with FTA requirements for Utilization Analysis. During the site visit, RGRTA provided an undated document entitled *Utilization Analysis*. This RGRTA document contained a narrative description of each RGRTA operating subsidiary and census data on the population of each area served by the operating subsidiary. A section titled *Utilization* contained a breakdown by race and gender of positions in RGRTA's largest operating subsidiary, the Regional Transit Service (RTS). The Utilization Analysis also contained a table showing the numbers of RTS employees by EEO Categories, by gender and ethnicity for the periods of June 2006-2007, June 2007-June 2008 and June 2008-2009. A table showing the Percent Change in Number of RTS Employees, By Ethnicity and Gender: 2006 through 2009 showed:

- The number of Asian employees had increased by 100 percent (from one employee to two).
- Hispanics had increased by 8.57 percent (from 35 employees to 38).
- Black employees showed an increase of 4.83 percent.
- White female employment had declined by 1.92 percent.

Finally, the *Utilization Analysis* contained two graphs showing combined RGRTA (headquarters staff only) and RTS Employee workforce information for 2008 and 2006 by occupational category and ethnicity. These charts showed:

- Whites held over 80 percent of the positions designated as senior manager, first level manager and professionals.
- Conversely, minorities held over 80 percent of the positions designated as service workers.

RGRTA had not done a utilization analysis in accordance with the requirements of Circular 4704.1 because RGRTA had not obtained workforce availability information for the employment area. The *Utilization Analysis* was actually a workforce analysis and did not fully meet FTA requirements. RGRTA's *Utilization Analysis* document did not include a breakdown of all employees by occupational category for RGRTA by race and gender. One of the documents provided by RGRTA prior to the site visit entitled *EEO Reports*, contained employee data, by race and gender for RGRTA and each subsidiary for 2006, 2007, and 2008. According to this document, from 2006 to 2008, the RGRTA headquarters staff consisted of:

- Seven or eight white males,
- Four or five white females, and:
- One Hispanic male.

This data does not identify those job categories where there is an underutilization and/or concentration of minorities and women in relation to their availability in the relevant labor market.

**Corrective Action and Schedule:** No later than July 31, 2010, RGRTA must submit to the FTA Office of Civil Rights a utilization analysis that consists of work force analysis and an availability analysis as described in FTA C. 4704.1.111, 2.d.

## **5. Goals and Timetables**

**Requirement:** Goals and timetables are an excellent management tool to assist in the optimum utilization of human resources.

**Finding:** During this Compliance Review of RGRTA, deficiencies were found with FTA requirements for Goals and Timetables.

Prior to and during the site visit, RGRTA provided information regarding its current goals. Information on goals for 2007 and 2008 were found in the most recent EEO Program Update, entitled *2004 EEO Program*, to FTA and in the *Utilization Analysis*. The goals were not expressed numerically, as required in FTA Circular 4704.1, III.2.e, only in general terms. In its *Utilization Analysis*, RGRTA identified two goals:

- To increase the number of females in the work force.
- To increase the number of Hispanic professionals.

The utilization analysis from which these goals were developed did not include availability analysis. The goals did not address apparent underutilization in the headquarters staff of RGRTA or the apparent underutilization of minorities and female professionals in RTS or the other operating subsidiaries.

**Corrective Action and Schedule:** No later than October 31, 2010, RGRTA must submit to the FTA Office of Civil Rights Goals and Timetables for 2010 in accordance with the requirements of FTA Circular 4704.1, III.2.e.

#### **6. Assessment of Employment Practices**

**Requirement:** Recipients, subrecipients, contractors and subcontractors must conduct a detailed assessment of present employment practices to identify those practices that operate as employment barriers and unjustifiably contribute to underutilization.

**Finding:** During this Compliance Review of RGRTA, deficiencies were found with FTA requirements for Assessment of Employment Practices. RGRTA did not document that it had conducted qualitative or quantitative assessments of employment practices. In the most recent EEO Program Update, entitled *2004 EEO Program*, RGRTA provided information on its employment practices in the section entitled *Assessment of Present Employment Practices*. The information was limited to a discussion of recruitment practices for bus operators. There was no discussion of qualitative and quantitative analysis of other employment practices, such as promotions, terminations, etc., to identify any practices that operated as employment barriers and unjustifiably contributed to underutilization.

At the site visit, RGRTA provided data regarding new hires within the last three years. While the Human Resources Department was able to provide recent data to the Review team on new hires, promotions, terminations and disciplinary actions by race and gender, the CAO had not reviewed or analyzed this data on a regular basis.

RGRTA's hiring practices, as presented during the site visit, were not consistent with what was documented in the *2004 EEO Program* for several of RGRTA and RTS's recent hires. There were occasions of the hiring manager revising a job description prior to it being posted without the consent of the CAO. During the site visit, the Review team requested files and documents supporting several of the recent new hires. The purpose of this review is to determine if RGTRA's employment practices were consistently followed regardless of race or ethnicity and to identify any barriers to employment or promotional opportunities. Of the files requested to be reviewed, no documentation could be provided for three accounting clerk positions in RGRTA and four road supervisors for RTS that were hired within the last three years. The Human Resources Department was not notified that the accounting clerk positions were being filled until after the candidates had been selected and, in one case, was on site working. The skill requirements for the road supervisor positions included a recent modification to require experience preparing incident/accident reports. The Director of Operations had determined that incident reporting was a major requirement for all potential candidates for the position of road supervisor. For the road supervisors recently hired, the position was not posted internally or externally. The Director of Operations interviewed candidates who were recommended by his staff, most of whom had police experience.

**Corrective Action and Schedule:** No later than July 31, 2010, RGRTA must submit to the FTA Office of Civil Rights qualitative and quantitative assessments of employment practices in accordance with the requirements of FTA Circular 4704.1, III.2.f.

## **7. Monitoring and Reporting System**

**Requirement:** An important part of any successful EEO program is the establishment of an effective and workable internal monitoring and reporting system.

**Finding:** During this Compliance Review of RGRTA, deficiencies were found with FTA requirements for a Monitoring and Reporting System.

At the site visit, RGRTA was not able to demonstrate that it had an internal monitoring and reporting system according to FTA Circular 4704.1, III.2.g. RGRTA did not provide documentation that it had conducted monitoring according to its *2004 EEO Program*.

**Corrective Action and Schedule:** No later than July 31, 2010, RGRTA must submit to the FTA Office of Civil Rights documentation of the results of RGRTA's monitoring and reporting process for 2009, consistent with FTA Circular 4704.1, III.2.g.

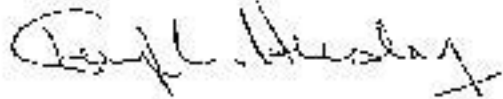
We fully expect RGRTA to take immediate actions to correct the deficiencies identified in the report. While our expectation is cooperation, failure to make the corrective actions may result in deferring any pending grant applications, suspending progress payments under grants previously awarded, or deferring consideration of future grant applications. Please respond to the findings of this Review in a progress report addressed to the following:

Mr. John Prince  
FTA Region II Civil Rights Officer  
One Bowling Green, Room 429  
New York, NY 10004-1415

Ms. Anita Heard  
Equal Opportunity Specialist  
FTA Office of Civil Rights  
1200 New Jersey Avenue, SE  
Washington, DC 20590

We appreciate the cooperation and assistance that you and your staff have provided us during this review. If you have any questions about this matter, please contact Ms. Anita Heard, Office of Civil Rights at (202) 493-0318 or at her email address, [anita.heard@dot.gov](mailto:anita.heard@dot.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Cheryl R. Hershey". The signature is fluid and cursive, with a large initial "C" and a long, sweeping underline.

Cheryl R. Hershey  
Director, Office of Civil Rights

cc: Brigid Hynes-Chenin, FTA Region II Administrator  
Sandra McCrea, FTA Office of Civil Rights  
Anita Heard, FTA Office of Civil Rights  
John Prince, FTA Region II Civil Rights Officer  
Maxine Marshall, The DMP Group, LLC