

FTA

FEDERAL TRANSIT ADMINISTRATION

New York Metropolitan Transportation Authority, Metro-North Railroad

EEO Compliance Review

Final Report
April 2016



U.S. Department of Transportation
Federal Transit Administration

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Executive Summary

Objective and Methodology – This report details the findings of a Compliance Review of the New York Metropolitan Transportation Authority Metro-North Railroad (MNR) Equal Employment Opportunity (EEO) program implementation. The Compliance Review examined this agency’s EEO program procedures, management structures, actions, and documentation. The Federal Transit Administration (FTA) and MNR provided documents and information. In addition, representatives of the following entities were interviewed as part as this review: Nontraditional Employment for Women (NEW); National Action Council for Minorities in Engineering, Inc.; iHispano; the New York Diversity Local JobNetwork; Chinatown Manpower Project, Inc.; the Conference of Minority Transportation Officials (COMTO) New York; and the Women’s Transportation Seminar (WTS)–Greater New York. The four-day review included interviews of staff and managers, assessments of data collection systems, and a review of program and contract documents.

MNR’s EEO Program includes the following positive program elements –

Positive Program Elements

- Dissemination - MNR documented extensive dissemination of its Policy Statement through ongoing mandatory training on diversity.
- EEO Officer - MNR hired a Director of Diversity and Equal Employment Opportunity who became the agency’s EEO Officer in 2014. The Director was independent, reported directly to the CEO, was a member of MNR’s Senior Staff, and has extensive experience as an EEO manager and professional.
- Monitoring and Reporting - MNR produced reports and held meetings regularly throughout the year to evaluate the EEO Program.

The Program has the following administrative weakness -

Administrative Weakness

- Goals - MNR did not use the short-term numerical goals in its utilization analysis to identify goals for departments or units within MNR where underutilization of minorities and women occurred.

The Program has the following substantive deficiency –

Substantive Deficiency

- Assessment of Employment Practices - MNR did not provide documentation that it regularly conducted qualitative assessments of employment practices.

I. General Information

This chapter provides basic information concerning this Compliance Review of the New York Metropolitan Transportation Authority Metro North Railroad (MNR). The table below includes information on MNR, the review team, and the dates of the review.

Grant Recipient:	MTA Metro-North Railroad (MNR)
City/State:	New York, NY
Grantee Number:	1786
Executive Official:	Joseph Giulietti, President
On-site Liaison:	Robert Rodriguez, Director, Office of Diversity and Equal Opportunity
Report Prepared by:	The DMP Group, LLC
Dates of On-site Visit:	November 10–13, 2015
Compliance Review Team Members:	Maxine Marshall, Lead Reviewer Gregory Campbell, Reviewer Khalique Davis, Reviewer

2. Jurisdiction and Authorities

The Secretary of Transportation authorized the Federal Transit Administration (FTA) Office of Civil Rights to conduct Civil Rights Compliance Reviews. Accordingly, the FTA conducts Equal Employment Opportunity (EEO) Reviews to ensure compliance of applicants, recipients, and sub-recipients with 49 U.S.C. Section 5332, "Non-Discrimination" and the program guidelines of FTA Circular 4704.1, "Equal Employment Opportunity Guidelines for Grant Recipients." Further, FTA recipients are required to comply with 49 CFR Part 27, "Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance."

The Metro North Railroad (MNR) is a recipient of FTA funding assistance and is therefore subject to the EEO compliance conditions associated with the use of these funds pursuant to 49 U.S.C. Section 5332, FTA Circular 4704.1, and 49 CFR Part 27. These regulations define the components that MNR must address and incorporate in its EEO Program and those of its subsidiaries, including MNR, and were the basis for the selection of compliance elements reviewed and included in this document.

3. Purpose and Objectives

3.1 Purpose

The FTA Office of Civil Rights periodically conducts EEO Compliance Reviews of grant recipients and subrecipients to determine whether they are honoring their commitment to complying with their responsibilities under 49 U.S.C. Section 5332, FTA Circular 4704.1, and 49 CFR Part 27, as represented by certification to FTA. In keeping with its regulations and guidelines, FTA determined that a Compliance Review of the MTA Metro North Railroad (MNR) Equal Employment Opportunity Program was necessary.

The Office of Civil Rights authorized The DMP Group, LLC to conduct this EEO Compliance Review of MNR. The primary purpose of the EEO Compliance Review was to determine the extent to which MNR has met its EEO program goals and objectives in its EEO Program Plan, as represented to FTA. This Compliance Review is a fact-finding process to (1) examine MNR's EEO Program Plan and its implementation, (2) provide technical assistance, and (3) make recommendations regarding corrective actions deemed necessary and appropriate.

This Compliance Review did not directly investigate any individual complaints of discrimination in employment activities by the grant recipient or its subrecipients, nor did it adjudicate these issues on behalf of any party.

3.2 Objectives

The objectives of FTA's EEO requirements, as specified in FTA Circular 4704.1, are:

- To ensure that FTA applicants, recipients, subrecipients, contractors and/or subcontractors will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, age, or disability.
- To ensure that FTA applicants, recipients, subrecipients, contractors and/or subcontractors will take affirmative action to ensure that applicants and employees are treated without regard to race, color, religion, national origin, sex, age, or disability. Such action shall include, but not be limited to, hiring, promotion or upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, disciplinary actions, rates of pay or other forms of compensation, and selection for training, including apprenticeship. It shall also include a written Affirmative Action Plan designed to achieve full utilization of minorities and women in all parts of the work force; and
- To ensure that FTA applicants, recipients, subrecipients, contractors, and/or subcontractors will post in conspicuous places and make available to employees and applicants for employment, notices setting forth the recipient's EEO Policy. In addition, recipients will notify applicants/employees of the recipients' procedures for filing complaints of discrimination internally, as well as externally with the Federal Equal Employment Opportunity Commission, the local human rights commission, and/or the U.S. Department of Transportation (DOT).

The objectives of this EEO Compliance Review were:

- To determine whether MNR is honoring its commitment represented by the certification to FTA that it is complying with its responsibilities under 49 U.S.C. Section 5332, "Non-Discrimination."
- To examine the required components of MNR's EEO Program Plan against the compliance standards set forth in the regulations and document the compliance status of each component.
- To gather information and data regarding all aspects of MNR employment practices, including recruitment, hiring, training, promotion, compensation, retention, and discipline from a variety of sources, including Human Resources Department staff and other MNR management and staff.

4. Background Information

Metro-North Railroad (MNR) is a subsidiary of the New York Metropolitan Transportation Authority (MTA). MTA is a designated recipient of FTA funding for public bus, rail, and ferry transit service operations in New York City and the surrounding area. A 17-member Board of Directors oversees the operation of MTA. The Governor nominates members, with four members recommended by New York City's mayor and one each by the county executives of Nassau, Suffolk, Westchester, Dutchess, Orange, Rockland, and Putnam Counties (members representing the last four counties cast one collective vote.) The New York State Senate confirms all Board members. The MTA Chairman and Board of Directors serve as the governing body for all of agencies in the MTA organization. MNR's agency president serves as its chief operating officer and oversees day-to-day operations.

4.1 Introduction to Services and Organizational Structure

MNR is the second largest commuter railroad in the country, created by the New York State Legislature as a public benefit corporation in 1983. Today, it operates five lines in the New York City metropolitan area over 384 route miles and 775 miles of track. MNR's three main lines, the Hudson, Harlem, and New Haven Lines, operate east of the Hudson River out of its flagship Grand Central Terminal. MNR provides service on the Connecticut portion of the New Haven Line under a service contract with the State of Connecticut. Two other lines, the Port Jervis and Pascack Valley Lines, operate west of the Hudson River out of New Jersey Transit's Hoboken Rail Terminal. New Jersey Transit operates these two lines for MNR under a service contract. The service area comprises 2,701 square miles.

MNR operates in accordance with Federal Railroad Administration regulations. The MNR fleet includes 1,147 rail cars. Trains serve 124 stations. Service operates out of 14 yards and seven shops. MNR carries over 281,000 passengers each weekday. Service frequency varies according to branch. The heavily traveled lines have peak period service every 20 to 30 minutes. Off-peak frequency varies by line, with half-hour service on the heavily traveled lines. Trains on less-traveled branches run at intervals ranging from one to two hours. Hours of operation are approximately 4:00 am to 3:40 am. Service intervals vary according to destination and time of day.

MNR also manages the Hudson Rail Link feeder bus service in the Bronx and the Haverstraw-Ossining and Newburgh-Beacon ferries, all of which connect with the Hudson Line.

MNR's Office of Diversity and Equal Employment Opportunity (EEO) is responsible for administration of the EEO Program, including the resolution of any complaints of discrimination. The Director of the Office reports directly to the President of MNR. A team of professionals to include an Assistant Director, two Managers, and a Diversity/EEO Specialist supports the Director. At the time of the site visit, the Director of EEO had been with MNR for less than two years. He recently hired new staff and implemented several programs to increase diversity awareness.

As of December 31, 2014, MNR had 6,244 employees. Women represented 13 percent of the workforce, and overall minority representation was 35.4 percent. Of the minority groups, African Americans had the largest representation of 20.8 percent, followed by Hispanics at 9 percent. As shown below, according to the 2010 demographic profile of the U. S Bureau of Census, women represented 52.1% and minorities comprised 44.1% of the population of the recruiting area.

Demographics of Metropolitan New York and New Haven Areas Racial/ Ethnic and Gender Breakdown 2010

Racial/ Ethnic Group	2010 Total	
	Number	Percent
White	7,391,195.00	55.9%
African American	2,636,159.00	19.9%
American Indian/Alaska Native	73,611.00	0.6%
Asian	1,294,780.00	9.8%
Hawaiian/ Pacific Islander	6,864.00	0.1%
Other Race	1,371,986.00	10.7%
Two or More	456,407	3.4%
Hispanic Origin ¹	3,174,889.00	24.9%
Total	13,231,002,	100%

Male	6,339,609.00	47.9%
Female	6,891,393.00	52.1%

Source: 2010 U.S. Census, Demographic Profile Data1 New York Metropolitan Area and New Haven-Milford, CT Metropolitan Area

5. Scope and Methodology

5.1 Scope

This report documents the following EEO program components required and reviewed by FTA:

1. Program Submission – A formal EEO program is required of any recipient that employs 50 or more transit-related employees (including temporary, full-time, or part-

¹ Per the 2010 Census, people of Hispanic origin can be, and in most cases are, counted in two or more race categories.

- time employees either directly employed and/or through contractors) and that 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.
2. **Statement of Policy** – An EEO Program must include a statement issued by the CEO regarding EEO Policy affecting all employment practices, including recruitment, selection, promotions, terminations, transfers, layoffs, compensation, training, benefits, and other terms and conditions of employment.
 3. **Dissemination** – Formal communication mechanisms should be established to publicize and disseminate the recipient's EEO Policy, as well as appropriate elements of the program, to its employees, applicants, and the general public.
 4. **Designation of Personnel Responsibility** – 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. The recipient should appoint an executive as Manager/Director of EEO who reports and is directly responsible to the agency's CEO.
 5. **Utilization Analysis** – 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.
 6. **Goals and Timetables** – Specific and detailed percentage and numerical goals with timetables must be set to correct any underutilization of specific affected classes of persons identified in the utilization analysis.
 7. **Assessment of Employment Practices** – 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.
 8. **Monitoring and Reporting System** – An internal monitoring and reporting system should enable the agency to assess EEO accomplishments, evaluate the EEO program during the year, identify those units that have failed to achieve a goal, and provide a precise and factual database for future projections.

5.2 Methodology

The initial step of this EEO Compliance Review consisted of consultation with the FTA Region II Civil Rights Officer and Civil Rights Headquarters staff regarding the decision to conduct a Compliance Review of MNR. The review team reviewed relevant documents from FTA's files as background. Next, the FTA Office of Civil Rights prepared and sent an agenda letter to MNR. The agenda letter notified MNR of the planned Compliance Review, requested preliminary documents, and informed MNR of additional documents needed and areas the review team would cover during the on-site portion of the review. It also informed MNR of the staff and other organizations and individuals that the review team would interview. The FTA requested the following documents:

1. MNR's most recent EEO Plan.

2. Summary Listing of EEO complaints and lawsuits against MTA MNR during the period from September 4, 2012, to September 3, 2015, alleging discrimination toward an employee or job applicant. The summary shall indicate the date of the complaint, if the complainant filed the complaint internally or externally, the basis for the complaint, and comments describing the resolution or active status of the complaint.
3. Collective Bargaining Agreements for each bargaining unit.
4. MTA MNR employment application.
5. Documentation of Internal Dissemination of EEO Policy, such as annual memo to all employees, new employee acknowledgement form, and EEO training materials.
6. Documentation of External Dissemination of EEO Policy, such as EEO policies and procedures included in all contract bid documents, sample employment ads, and sample outreach efforts to minority media and/or organizations.
7. Position descriptions for EEO Counselors.
8. Description of EEO training, if any, provided to the EEO Officer and EEO Counselors.
9. Workforce Availability/Utilization Analysis from the current EEO Plan.
10. A copy of personnel Policy guides, handbooks, regulations, or other material that govern employment practices.
11. A list of all recruitment sources used during the last year, including the name and telephone numbers of contact persons.
12. A listing of all job titles for which MNR conducted written examinations.
13. Statistics on separations, disciplinary actions, promotions, and new hires for the period from September 4, 2012, to September 3, 2015.
14. Data on average salaries or wages paid to all employees, as of September 3, 2015, by EEO job category, as well as the average salaries or wages paid to minority and female employees.
15. Summary report of Exit Interview findings for the past three years.
16. Documentation of EEO monitoring and reporting system as described in the most recent MTA MNR EEO Plan submitted to FTA.
17. A list of all subrecipients who meet the EEO threshold.

MNR assembled the documents prior to the site visit and provided them to the Compliance review team for advance review. The review team reviewed additional documents during the site visit.

5.3 Stakeholder Interview

Prior to and during the site visit, the review team interviewed representatives of the following independently selected organizations representing women and minorities to understand their awareness and perceptions of MNR's EEO Program and its employment practices:

- Nontraditional Employment for women (NEW)
- National Action Council for Minorities in Engineering Inc.(NACME)
- iHispano
- The New York Diversity Local JobNetwork
- Chinatown Manpower Project, Inc. (CMP)
- Conference of Minority Transportation Officials (COMTO) New York
- Women's Transportation Seminar (WTS) Greater New York

The review team asked representatives the following questions:

1. In what manner do you interact with MTA Metro-North Railroad (MNR)?
2. Have you ever received or seen a copy of MNR's EEO/Affirmative Action Policy?
3. Do you know who is responsible for EEO at MNR (i.e., name of EEO/AA Officer)?
4. Has MNR participated in job fairs or recruitment events in your area in the past three years?
5. Have you received job vacancy notices from MNR in the past three years?
6. Do you believe that MNR hires, promotes, and disciplines persons without regard to race, color, age, sex, disability, or national origin?
7. Are you aware of any employment-related discrimination complaints against MNR?
8. Do you have any other comments or suggestions regarding ways that MNR can better serve or communicate with minority communities?

The most frequent interaction between MNR and the organizations interviewed was that MNR shared job vacancy notices with three of the organizations. MNR also had a partnership with Nontraditional Employment for Women (NEW), and it appeared to be developing relationships with the Conference of Minority Transportation Officials (COMTO) New York and the Women's Transportation Seminar (WTS) – Greater New York. During the site visit, MNR also identified several other organizations it works with on a regular basis to recruit women and minorities.

The site visit occurred November 10–13, 2015. The review team conducted the Entrance Conference at the beginning of the Compliance Review with MNR senior management staff, FTA's Regional Civil Rights Officer, FTA Headquarters' Civil Rights EEO Program Coordinator, and the contractor review team. During the Entrance Conference, the review team explained the goals of the review and the needed cooperation of staff members. The review team also discussed the detailed schedule for conducting the on-site visit.

Following the Entrance Conference, the review team conducted a detailed examination of documents submitted by MNR's EEO Officer on behalf of the agency. The review team also held discussions with the EEO Officer regarding the implementation of the EEO Policy and Program.

On the second day, a group interview was conducted with members of MNR's Human Resources and Talent Acquisition staff, Training and Development staff, and Labor Relations staff to learn about MNR employment practices, including recruitment, testing, hiring, promotions, transfers, disciplinary actions, and terminations. The review team reviewed selected files and records of employment actions, such as new hires, promotions, disciplinary actions, demotions, and terminations. The review team also examined the qualifications of candidates interviewed and selected by race/ethnicity and gender. The hiring decisions did not noticeably reveal any disparate treatment of women and minority candidates or employees. Similarly, based on a review of several files of disciplinary actions such as suspensions and terminations, it appeared that MNR administered the actions fairly for women and minorities.

Throughout the four-day site visit, the review team also interviewed 17 independently selected employees and managers in MNR. The review team made the selections by visiting "report" or "breakrooms" for operating personnel and by using a MNR telephone directory for administrative personnel.

The staff members selected were an ethnically and gender-diverse group that included hourly and salaried employees. The tenure of these staff members ranged from two years to 40 years. The review team told the employees that their individual responses would be confidential and were asked the following questions:

1. What is your position at MNR? How long have you been employed by MNR?
2. Are you aware of any job classifications at MNR that have not had adequate minority or female representation?
3. What barriers do you think exist at MNR with respect to hiring and promotion?
4. How would you characterize the EEO program efforts at MNR?
5. What things do you think MNR can do to enhance/improve its EEO program?
6. What types of complaints regarding EEO matters have you been aware of, and do you know of MNR's efforts to resolve the complaints?
7. What types of training classes have you taken since you have been with MNR?
8. Is there anything else you would like to add?

In addition to the questions listed above, the review team asked employees with management or supervisory responsibilities the following additional questions:

1. Were you involved in the development of the EEO Plan?
2. What has been your participation in achieving MNR's EEO goals?
3. How would you resolve an EEO-related complaint in your department?
4. What activities, if any, have you been involved in with outside organizations to assist in EEO outreach?

In general, the 17 employees interviewed expressed little or no knowledge of the EEO Officer, the Office of Diversity and EEO, or the Office's role within the organization. Several staff members mentioned departments that did not have adequate female and/or minority representation (e.g., track workers, masons, and electrical engineers). No one indicated having experienced any barriers or noted any perceived barriers at MNR. Most mentioned that seniority is the basis for promotions. The majority of the employees interviewed did not recall seeing MNR's EEO Policy statement posted in the MNR facilities. Several employees expressed an interest in receiving periodic updates and additional information about EEO from the Office of Diversity and EEO. Very few individuals knew how to file an EEO-related complaint or knew of any employees who filed such complaints. Several of the interviewees attended technical training, and others attended a diversity appreciation or sexual harassment prevention class. Most of the supervisors interviewed did not have any input into the development of the EEO Program and they were not aware of EEO goals in their departments. One supervisor stated he was aware that underutilization of women and minorities occurred in his department, but he was not aware of EEO goals or efforts to overcome the underutilization.

At the end of the site visit, the review team held an Exit Conference with MNR senior management staff, FTA's EEO Program Coordinator, and the contractor review team. At the Exit Conference, the review team discussed initial findings and corrective actions with MNR. A complete list of attendees at the EEO Compliance Review is included in Section 8 of this report.

6. Findings and Recommendations

6.1 Program Submission

Requirement

A formal EEO Program is required of any recipient that employs 50 or more transit-related employees (including temporary, full-time, or part-time employees either directly employed and/or through contractors) and that 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.

Discussion

The Program Guidelines of FTA Circular 4704.1, III.1 describe the components that a recipient must address and incorporate in its EEO Program.

MNR developed an EEO Program Plan each year. Prior to the site visit, MNR provided the review team with a copy of its most recent EEO Program Plan submission, titled *MTA Metro-North Railroad, 2014–2015, Equal Employment Opportunity Program*, which was submitted to MTA in May 2014 and uploaded to FTA's Electronic Grant Award Management system. MNR's EEO Program comprised the following areas:

- Executive summary
- Policy statements
- Dissemination of policies
- Designation of responsibility for implementation
- Utilization analysis
- Establishment of goals and timetables and narrative
- Assessment of employment practices
- Monitoring and reporting system
- Organizational charts
- Appendix: definitions of terms for the EEO Program

The EEO Program addressed all the requirements of FTA Circular 4704.1, II.5. FTA approved the EEO Program on October 29, 2015.

Finding

There are no deficiencies with FTA requirements for Program Submission.

6.2 Statement of Policy

Requirement

An EEO Program must include a statement issued by the CEO regarding EEO policy affecting all employment practices, including recruitment, selection, promotions, terminations, transfers, layoffs, compensation, training, benefits, and other terms and conditions of employment.

Discussion

The Program Guidelines of FTA Circular 4704.1, III.2.a describe the required elements of the EEO Policy Statement.

The MNR EEO Program included the Policy Statement, dated March 2015, that was signed by MNR's President. MNR posted its Policy Statement on its website and on bulletin boards throughout its facilities. The Policy Statement substantially met the required elements of a Statement of Policy as described in FTA Circular 4704.1, III.2.a, as indicated in the table below.

FTA Circular 4704.1, III.2.a Policy Statement Requirements	MNR Policy Statement
Is issued by CEO	Yes
States commitment to EEO	Yes
States commitment to undertake an Affirmative Action Program	Yes
Assigns EEO Program implementation to agency executive	Yes
Affirms shared responsibility by management personnel	Yes
States applicants' and employees' right to file complaints	Yes
States performance by managers/supervisors will be evaluated	Yes
Affirms successful achievement of EEO goals will provide benefits to the recipient	Yes

Although MNR's Policy Statement contained the elements required by FTA, two of the required elements included in MNR's Policy Statement did not include all of the specifics included in FTA Circular 4704.1, III.2.a.

MNR's Policy did not affirm that performance by managers and supervisors would be evaluated based on the results of the EEO Program. However, the Policy did include the following statement:

Supervisors and managers are responsible for compliance with the policy.

The review team noted that MNR's performance appraisal form for non-agreement supervisors included a rating for their commitment to and success in attaining EEO goals.

MNR's Policy did not specifically state that the successful achievement of goals will provide benefits to the grantee; however, the Policy did include a general statement of its commitment to the diversity of the workforce and the customers served, and the statement that

Together, we can accomplish our mandate to provide safe, efficient, and reliable transportation for our customers.

Finding

During this Compliance Review of MNR, FTA found no deficiencies with the requirements for Statement of Policy.

Advisory Comment

FTA advised MNR to re-word its next EEO Policy Statement to ensure all the required elements described in FTA Circular 4704.1, III.2.a, are specific and clear. Following the Exit Conference, MNR issued a new EEO Policy Statement, dated March 2016, that was revised to specifically address the two issues identified by the review team.

6.3 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.

Discussion

The Program Guidelines of FTA Circular 4704.1, III.2.b describe requirements to disseminate the EEO Policy both internally and externally. The suggested dissemination methods are as follows:

- 1) *Internally – Managers and supervisors should be fully informed of the agency's policy by actions such as:*
 - a) *Written communication from the chief executive officer;*
 - b) *Inclusion of the EEO program and policy in the agency's personnel and operations manual; and*
 - c) *Meetings held (e.g., at a minimum semiannually) to discuss the EEO program and its implementation.*
 - d) *Non-supervisory staff should be informed of the agency's EEO policy and program by actions such as:*
 1. *Posting official EEO posters and the policy statement on bulletin boards, near time clocks, employees' cafeteria and snack bars, and in the employment/personnel office;*
 2. *Including the EEO policy in employee handbooks, reports, manuals, and union contracts;*

3. *Meeting with minority and female employee to get their suggestions in implementing and refining the EEO program; and*
 4. *Presentation and discussion of the EEO program as part of employee orientation and in all training programs.*
-
- 2) Externally – *The agency should disseminate its EEO policy and programs to regular recruitment sources, such as:*
-
- a) *Employment agencies; hiring halls; unions; educational institutions; minority, handicapped, and women’s organizations; civil rights organizations; community action groups; training organizations (e.g., Opportunities Industrialization Centers of America, Inc.); and others who refer applicants.*
 - b) *Public media sources, especially radio and television stations, newspapers, magazines, and other journals (especially those oriented to the handicapped and minority populations). All advertisements for personnel should include a statement that the recipient is an “EEO employer.”*

MNR’s EEO Program described the following methods MNR used to disseminate its Policy Statement internally and externally:

Internal Communications

- *MNR distributes copies of its Equal Opportunity/Diversity, Sexual Harassment Prevention and Workplace Violence Prevention policies to all employees.*
- *Policy Statements are emailed to all supervisors and managers.*
- *The Policy Statement will be posted on employee bulletin boards and the intranet website.*
- *MNR will conduct mandatory EEO and Sexual Harassment Prevention training and distribute information pamphlets that include the EEO/Diversity Policy.*
- *MNR’s Policy and Procedures Manual and all collective bargaining agreements contain non-discrimination clauses.*

External Communications

- *Posting on the Agency’s and MTA’s website.*
- *All external job announcements state that “Metro-North is an Equal Opportunity/Affirmative Action Employer. All qualified applicants will receive consideration without regard to race, color, religion, sex (including gender identity and sexual orientation), national origin, disability or protected veteran status.”*
- *Includes the equal opportunity policies in all purchase orders, leases, and contracts.*

Prior to the site visit, MNR provided copies of its collective bargaining agreements, for which 20 of the 27 agreements (approximately 75%) included nondiscriminatory clauses. MNR provided documentation of the distribution of the Policy Statement to managers and supervisors in the agency. MNR also provided training presentations on diversity along with the communication for the trainings, which showed that nine sessions were scheduled in 2013 and 11 sessions were scheduled during the first quarter of 2014. During the site visit, MNR provided documentation that it incorporated the EEO Program as part of its employee orientation. MNR also provided the job descriptions for the Diversity and EEO office staff. The responsibilities for the EEO Officer included presenting at new employee orientations.

MNR provided copies of MNR's newspaper job advertisements that included "Equal Opportunity Employer" in the notices.

During the site visit, the review team observed that MNR posted the Policy Statement throughout MNR's facilities.

Finding

During this Compliance Review of MNR, FTA found no deficiencies with the requirements for Dissemination.

Advisory Comment

FTA advised MNR to ensure all collective bargaining agreements contain the nondiscrimination clause, as described in its EEO Program.

6.4 Designation of Personnel Responsibility

Requirement

The individual the agency has named to manage the programs and the authority this individual possesses indicates the importance of an EEO Program. Recipients should appoint an executive as Manager/Director of EEO who reports and is directly responsible to the agency's CEO.

Discussion

The Program Guidelines of FTA Circular 4704.1, III.2.c state in part:

An executive should be appointed as Manager/Director of EEO who reports and is directly responsible to the agency's chief executive officer. 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.

The Program Guidelines of FTA Circular 4704.1, III.2.c also provide for nine program responsibilities, summarized in the table below, which FTA expects EEO Officers to carry out as part of their job.

MNR's EEO Program contained a section titled *Designation of Responsibility for Implementation* that detailed who MNR designated as its EEO Officer, the EEO Officer's responsibilities, and management's responsibility to MNR's EEO Program.

The review team noted that in 2014, MNR hired a Director of Diversity and Equal Employment Opportunity who is the agency's EEO Officer. The Director was independent, reported directly to the CEO, was a member of MNR's Senior Staff, and had extensive experience as an EEO manager and professional. Since the Director joined MNR, staff reported an increased awareness of EEO and diversity issues.

The following table identifies the responsibilities of an EEO Officer included in the job descriptions for the Diversity and EEO Office staff as outlined in FTA Circular 4704.1, III.2.c.

EEO Officer Program Responsibilities (FTA Circular 4704.1, III.2.c)	Responsibility Included in Job Description?					
	Director	Assistant Director	Inclusion & Diversity Manager	Statistical Analysis & Compliance Manager	EEO Senior Specialist	Admin. Assistant
Develop EEO Policy/Program	Yes	Yes	No	No	No	No
Assist management in data needs, setting goals and timetables, etc.	Yes	Yes	Yes	Yes	No	No
Maintain internal monitoring and reporting system	Yes	Yes	No	Yes	No	No
Report periodically to CEO on EEO progress	Yes	No	No	No	No	No
Liaise with outside organizations/groups	No	No	No	Yes	No	No
Disseminate current information	Yes	Yes	No	No	No	No
Provide recruitment assistance and establish outreach sources	No	No	Yes	No	No	No
Concur in all hires/promotions ²	No	No	No	No	No	No
Process employment discrimination complaints	Yes	Yes	Yes	Yes	No	No

During the site visit, MNR was able to demonstrate that the staff of the Office of Diversity and EEO fully carried out all but one of the functions, concurring in all hires/promotions, of the EEO Officer as detailed in the EEO Program and required by FTA Circular 4704.1, III.2.c.

Following the site visit, MNR noted that,

In practice the EEO does approve all managerial hires and some internal promotions of agreement positions.

A review of recruitment files showed that, in the past, there was a process in place that partially met this requirement. However, MNR did not always implement that process. As an example, a 2013 recruitment file for MNR Financial Control Analyst (Requisition # 76704) contained several forms addressing EEO goals:

- Management Workflow/Hire Checklist – This form was “checked” in the first box to indicate EEO goals were set.

² Following the site visit, MNR reported that the Director’s job description had been updated to include that EEO “concur in all hires and promotions”.

- Non-Agreement Interview Log – The log collected information on the gender and ethnicity of each candidate interviewed.
- Recruitment Strategy form – This form contained a section on *EEO Goals*, indicating underrepresentation of women, Hispanics/Latinos, and American Indian or Alaskan Natives. However, this form was incomplete. There was no signature by the EEO Officer, and there was no documentation in the space provided of a meeting with the Hiring Manager to discuss recruitment strategy.
- Hiring Approval Status Report – This report identified four levels of approval (from the Department Head to the President), but it did not include the EEO Officer.

MNR met one EEO goal for this position by hiring a white female, but there did not appear to be involvement by the Diversity and EEO Office.

A review of a 2014 recruitment file for the Director of Maintenance Planning (requisition # 78663) did not include any of the previously mentioned forms or document concurrence by the Director of Diversity and EEO. MNR filled this position with the promotion of a white male.

Additionally, FTA Circular 4704.1, III.2.c states that *Managers are expected to carry out the following responsibilities, as part of their job, in implementing the agency's EEO program:*

1. *Assisting in identifying problem areas;*
2. *Being actively involved with local minority organizations;*
3. *Participating actively in periodic audits of all aspects of employment in order to identify and remove barriers;*
4. *Holding regular discussions with other managers, supervisors, and employees regarding the implementation of the EEO Program;*
5. *Reviewing the qualifications of all employees to ensure minorities and women are given full opportunity for transfers, promotions, training, salary increases, and other forms of compensation;*
6. *Participating in the review and/or investigation of complaints alleging discrimination;*
7. *Conducting and supporting career counseling; and*
8. *Participating in periodic audits to ensure each agency unit is in compliance.*

Based on interviews with MNR managers and discussion with Diversity and EEO staff, it appeared that some, but not all of the responsibilities listed above were a part of manager's jobs. Specifically, MNR managers were not involved in the identification of problem areas and establishing agency and unit goals, nor were they actively involved in local minority organizations or women's groups designed to promote EEO.

Finding

During this Compliance Review of MNR, FTA found deficiencies with requirements for Designation of Personnel Responsibilities. FTA found MNR's managers did not carry out the

responsibilities identified in FTA C. 4704.1, III.2.c, as part of their job, in implementing the EEO Program.

Corrective Action and Schedule

Within 60 days from the issuance of the final report, MNR must submit to the FTA Office of Civil Rights documentation that it has developed and implemented procedures to ensure that its managers are aware of and carry out the required activities in support of the EEO Program.

Advisory Comment

FTA advised MNR to document that the Director of Diversity and EEO concurs in all hires and promotions.

6.5 Utilization Analysis

Requirement

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

Discussion

The Program Guidelines of FTA Circular 4704.1, III.2.d describe the following elements of a utilization analysis:

- 1. A utilization analysis consists of a work force analysis and an availability analysis. The work force analysis requires a statistical breakdown of the recipient's work force by each department, job category and job title. Each of the above should be cross-referenced by race, national origin, and sex.*
- 2. An availability analysis is a comparison of the participation rates of minorities and women at various levels in the work forces with their availability in relevant labor markets. A labor market has both geographic and occupational components. Different geographic areas and labor force data should be used for different job categories.*
- 3. Occupational data (in addition to general population and unemployment information), along with training and promotional opportunities, should be considered in determining the availability of persons for those employment opportunities from which minorities and women have traditionally been excluded.*
- 4. Applicants, recipients, subrecipients, or contractors should present this data in a table or chart form for the job categories and job titles being analyzed. Data used should be the most recent, accurate, and relevant.*
- 5. In performing the work force and availability analyses, the applicant, recipient, or subrecipient should have racial data cross-classified by sex to ascertain the extent to which minority-group women or minority-group men may be underutilized. Likewise,*

minority-group data should be broken down by specific racial groups (i.e., Black, Hispanic, Asian and Pacific Islander, and American Indian or Alaskan Native).

MNR's EEO Program contained its Utilization Analysis, which was composed of the following reports:

- *Workforce Analysis,*
- *Job Group,*
- *Movement Analysis,*
- *Available Analysis (Two-Factor Analysis),*
- *Utilization Analysis (by Job Group),*
- *Utilization Analysis Summary, and*
- *Workforce Utilization Charts.*

The Workforce Analysis included a statistical breakdown of MNR's workforce by 45 job groups summarized into seven categories. The report contained the job title and salary in each job group. MNR cross-referenced the workforce by race, national origin, and gender. MNR identified the relevant labor market to be the following counties: Bronx, Dutchess, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Ulster, and Westchester, NY; Middlesex and Monmouth, NJ; and Fairfield, Litchfield, Hartford, New Haven, and Middlesex, CT. MNR obtained population and employment figures for the labor market from the US Census Bureau's 2010 EEO Data Tool. As a result of discussions held during the site visit with the review team, MNR noted that the job titles included in each of the job categories were being reviewed to determine if they should be moved to a more relevant job category.

MNR determined the available workforce by using two factors: (1) the external availability of women and minorities with the requisite skills in the immediate and expanded recruiting areas and (2) the internal availability of promotable and transferable women and minorities. MNR's Availability Analysis (Two-Factor Analysis) showed the two factors and the resulting estimated availability for each job group cross-referenced by race, national origin, and gender. The Utilization Analysis (by Job Group) compared MNR's current workforce to the estimated available workforce to determine the job groups with underutilization. The Workforce Utilization Charts present the utilization in accordance with Appendix A of FTA Circular 4704.1.

MNR's utilization analysis did not break down utilization by department or unit. Given the size of MNR, such a breakdown could be a useful tool for identifying departments or units that could benefit from increased attention from the Office of Diversity and EEO, as well as serving as a measure for performance appraisals for managers in the accomplishment of EEO goals.

Following the site visit, MNR noted that in January 2016, it developed a "Progress Against Goals Utilization Analysis" report and provided to it to each department.

Finding

During this Compliance Review of MNR, FTA found no deficiencies with the requirements for Utilization Analysis.

Advisory Comment

FTA advised MNR to revise its workforce analysis based on the reclassification of EEO job categories to reassess its areas of underutilization.

6.6 Goals and Timetables

Requirement

Specific and detailed percentage and numerical goals with timetables must be set to correct any underutilization of specific affected classes of persons identified in the utilization analysis.

Discussion

The Program Guidelines of FTA Circular 4704.1, III.2.e, state in part:

Goals and timetables are an excellent management tool to assist in the optimum utilization of human resources. Specific and detailed percentage and numerical goals with timetables must be set to correct any underutilization of specific affected classes of persons identified in the utilization analysis.

Long-range goals are usually stated as percentages, although numerical projections are recommended where feasible.

Short-term or intermediate numerical goals should be set and pursued in order to assure accomplishment of long-range goals.

MNR's EEO Program contained a section titled *Goals for Program Year* that presented a report titled *MNR Workforce Utilization Summary 2015*. This report showed estimated availability and whether there was underutilization for each of the job categories. MNR identified job groups that were underutilized, projected anticipated vacancies for the year, and used a formula to project the *net anticipated increases in women and/or minorities within the next twelve months*.

Finding

During this Compliance Review of MNR, FTA found no deficiencies with the requirements for Goals and Timetables.

6.7 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.

Discussion

FTA Circular 4704.1, III.2.f requires grantees to undertake a qualitative and quantitative analysis of employment practices to identify those practices that operate as employment barriers and unjustifiably contribute to underutilization.

Qualitative analyses should include narrative descriptions of the following:

- *Recruitment and employment selection procedures from the agency's last EEO submission;*
- *Seniority practices and provisions, upgrading and promotion procedures, transfer procedures, and formal and informal training programs from the last EEO submission;*
- *Procedures and practices regarding wages, salary levels, and other forms of compensation and benefits;*
- *Disciplinary procedures and discharge and termination practices; and*
- *Assessment of the impact of external factors (e.g., not knowing where to apply for jobs, the availability of bilingual materials and information).*

Quantitative analyses should include the following statistical data for the past year by race, national origin, and sex:

- *Number of job applicants and the number of individuals offered employment;*
- *Number of employees in each job category who applied for a promotion or transfer, and the number of employees who were promoted or transferred; and*
- *Number of disciplinary actions and terminations (by type).*

Prior to the site visit, MNR provided some quantitative and summary information for calendar year 2014 for applicants, new hires, promotions, and involuntary terminations. MNR also provided its EEO Program, which included a section titled *Assessment of Past Employment Activities* that included the following narratives:

- Recruitment and external selection procedures;
- Seniority practices and provisions and upgrading, promotion, and transfer procedures;
- Compensation and salary levels;
- External factors that inhibit applicants from applying for positions;
- Implementation of the EEO Program; and
- *Metro-North Railroad Diversity and Recruitment Strategic Plan 2015* [Efforts to Improve Underutilization].

These narratives *described* MNR procedures and practices, but MNR did not *analyze* the practices, using the quantitative data, to determine if barriers were present. As an example, a review of data on applications received showed that MNR’s applicant pool reflected the availability in the recruitment area. During the site visit, discussions with the Human Resources staff revealed that MNR employed specific outreach strategies focusing on women and minorities that appeared to have eliminated recruitment barriers. This is an analysis that could have been included in MNR’s EEO Program.

Another example was MNR’s data that showed that as of September 3, 2015, non-minorities and men received average earnings that were higher than the average earnings of women and minorities. However, the qualitative analysis did not discuss and analyze this disparity. The narrative in the EEO Program only described “agreement and non-agreement” wages and compensation.

A third example concerned the use of testing as a method of selection. The review team requested and received copies of reports addressing the validity of the testing to determine if the tests were biased against minorities and women. MNR provided the following reports:

- *Adverse Impact for Conductor,*
- *HR Metrics for Conductor,* showing candidate fall-off at each stage of the selection process; and
- *Validation Evidence for Rail Traffic Controllers, Locomotive Engineer, and Conductor Including Job Analysis Information and Job Descriptions,* which identified job performance competencies to assist with criterion validation evidence, and related memos.

The analyses for the conductor and rail traffic controller tests showed that some adverse impacts were identified. For example, for the Conductor Trainee math test, 85% of whites passed the conductor test, while only 50% of Blacks and 64% of Hispanics passed the test. The consultant who conducted the study recommended adjusting the math test *Cut Score* to eliminate the bias, without affecting job performance. These analyses, conducted at the request of the Human Resources department, demonstrated that MNR made efforts to ensure that the tests were valid and that it mitigated any discriminatory impacts. Moving forward, MNR stated that this analysis will be part of the EEO Program.

The narratives included in the EEO Program did not determine if the employment practices created barriers that may have contributed to underutilization of minorities and women. The table below summarizes the qualitative and quantitative analyses of employment practices required per FTA Circular 4704.1 found in the documentation provided by MNR.

MNR’s Assessment of Employment Practices	
Quantitative and Qualitative Assessment (FTA Circular 4704.1, III.2.f)	
Narrative Description and Analysis of the following areas:	
Recruitment and employment selection procedures from the agency’s last EEO submission.	No
Seniority practices and provisions, upgrading and promotion procedures, transfer procedures, and formal and informal training programs from the last EEO submission.	No
Procedures and practices regarding wages, salary levels, and other forms of	No

compensation and benefits.	
Disciplinary procedures and discharge and termination practices.	No
Assessment of the impact of external factors (e.g., not knowing where to apply for jobs, the availability of bilingual materials and information).	No
Proposed program of remedial, affirmative actions to address problem areas.	No
Statistical Data:	
Number of job applicants and the number of individuals offered employment in the past year.	Yes
Number of employees in each job category who applied for a promotion or transfer and the number of employees who were promoted or transferred in the past year.	No
Number of disciplinary actions and terminations (by type) in the past year.	Yes

MNR did not provide documentation that it performed qualitative assessments or analyses of the summary data included in its reports. There was no discussion of trends or explanations for discrepancies in the information. MNR did not perform any analysis to identify those practices that operated as employment barriers and unjustifiably contributed to underutilization.

During the site visit, the review team provided technical assistance on the type of analyses MNR should perform. Using the data provided, the review team attempted to give examples of how MNR could complete an analysis.

Finding

During this Compliance Review of MNR, deficiencies were found with FTA requirements for Assessment of Employment Practices. MNR did not provide documentation that it had regularly conducted qualitative assessments of employment practices.

Corrective Actions and Schedules

Within 90 days of the issuance of the Final Report, MNR must submit to the FTA Office of Civil Rights qualitative assessments of employment practices (i.e., recruitment, testing, promotions, disciplinary actions, terminations, and compensation) for the past three years in accordance with FTA Circular 4704.1, III.2.f.

6.8 Monitoring and Reporting Systems

Requirement

An internal monitoring and reporting system should enable the agency to assess EEO accomplishments, evaluate the EEO Program during the year, identify those units that have failed to achieve a goal, and provide a precise and factual database for future projections.

Discussion

The Program Guidelines of FTA Circular 4704.1, III.2.g states in part:

An important part of any successful EEO program is the establishment of an effective and workable internal monitoring and reporting system. This system should serve the following basic purposes:

- *Assessing EEO accomplishments;*
- *Enabling the agency to evaluate the EEO program during the year and to take necessary corrective actions, as necessary;*
- *Identifying those units which have failed to achieve a goal or implement affirmative action; and*
- *Providing a precise and factual database for future projections.*

The Internal Monitoring and Reporting Procedures section of MNR's EEO Program described several monitoring and reporting forms to help assess the effectiveness of its EEO efforts. These forms tracked and monitored processes such as applicant data flow, interviews, and EEO Goals attainment summary. The EEO Program also described procedures for evaluating non-agreement supervisors and assessing employment practices.

Although this section of the report did not adequately describe the current practices used by the Office of Diversity and EEO to monitor EEO accomplishments and report on EEO issues, it was clear during the site visit that MNR produced reports and held meetings regularly throughout the year to evaluate the EEO Program. These efforts included the following:

- *Quarterly Progress Against Goals Report*, which tracks underutilization by job category and job group;
- Quarterly meetings with and reports submitted to the MTA Board Diversity Committee by MNR's Director of Diversity and EEO;
- *Annual EEO Report* to the full MTA Board by MNR's President; and
- Regular meetings with MNR's Executive Leadership Team to discuss EEO.

The most recent reports provided to the review team contained detail on the current utilization of minorities and women for each job category and whether the agency achieved the availability goals. The reports did not show the progress or change from the prior reporting periods. The reports also identified strategies that MNR planned to employ to meet its EEO goals. As an example, MNR identified 37 community-based job fairs that it intended to participate in during 2015.

The Office of Diversity and EEO also reported quarterly to the MTA Board Diversity Committee on MNR EEO complaints and their resolution. The report for the period ending 6/15/15, identified the number of complaints by basis of complaint (e.g., race, sex, disability, etc.), if the complaint was filed by an applicant or an employee, and how the complaint was resolved (e.g., in favor of the complainant or the agency, withdrawn or dismissed).

MNR reported that it did not have any subrecipients that operate transit service on its behalf.

Finding

During this Compliance Review of MNR, FTA found no deficiencies with the requirements for a Monitoring and Reporting System.

Advisory Comment

FTA advised MNR to be more descriptive in its monitoring and reporting activities in its 2016 EEO Program.

7. Summary of Findings

Requirements of FTA Circular 4704.1	Site Review Finding	Deficiencies/Advisory Comments	Corrective Action(s)	Response Days/Date
1. Program Submission	ND			
2. Statement of Policy	AC	FTA advised MNR to ensure all of the required elements described in FTA C. 4704.1, III.2.a, are included in its 2016 EEO Policy Statement.		
3. Dissemination	AC	FTA advised MNR to ensure all collective bargaining agreements contain the non-discrimination clause, as described in its EEO Program.		
4. Designation of Personnel Responsibility	D	MNR managers did not carry out the required activities in support of the EEO Program.	MNR must submit to the FTA Office of Civil Rights documentation that it has developed and implemented procedures to ensure that its managers are aware of and carry out the required activities in support of the EEO Program.	90 days from the issuance of the Final Report
	AC	FTA advised MNR to Document that the EEO Officer concurs in all hires and promotions.		
5. Utilization Analysis	AC	FTA advised MNR to revise its workforce analysis based on the reclassification of EEO job categories to reassess its areas of underutilization.		

Requirements of FTA Circular 4704.1	Site Review Finding	Deficiencies/Advisory Comments	Corrective Action(s)	Response Days/Date
6. Goals and Timetables	ND			
7. Assessment of Employment Practices	D	MNR did not provide documentation that it regularly conducted qualitative assessments of employment practices.	MNR must submit to the FTA Office of Civil Rights qualitative assessments of employment practices (i.e., recruitment, testing, promotions, disciplinary actions, terminations, and compensation) for the past three years in accordance with FTA C. 4704.1.	90 days from the issuance of the Final Report
8. Monitoring and Reporting Systems	AC	FTA advised MNR to include a description of its current monitoring and reporting activities in its 2016 EEO Program.		

Note: Findings at the time of the site visit: ND = no deficiencies found; D = deficiency; NA = Not Applicable; AC = advisory comment.

8. Compliance Review Attendee List

NAME	TITLE/ ORGANIZATION	E-MAIL
MTA Metro-North Railroad (MNR)		
Joseph Giulietti	President	giulietti@mnr.org
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Anita Heard	Equal Opportunity Specialist, FTA Headquarters Office of Civil Rights	anita.heard@dot.gov
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Review Team – The DMP Group, LLC (DMP)		
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