**EQUAL EMPLOYMENT OPPORTUNITY**

**COMPLIANCE REVIEW**

**OF**

**New Jersey Transit Corporation**

**(NJ TRANSIT)**

**Newark, New Jersey**

**Final Report**

**September 2011**

**Prepared For**

**U.S. DEPARTMENT OF TRANSPORATION**

**FEDERAL TRANSIT ADMINISTRATION**

**OFFICE OF CIVIL RIGHTS**

**Prepared By**

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i. General Information

Grant Recipient: New Jersey Transit Corporation

(NJ TRANSIT)

City/State: Newark, NJ

Grantee Number: 1414

Executive Official: James Weinstein

Executive Director

New Jersey Transit Corporation

(NJ TRANSIT)

One Penn Plaza East

Newark, NJ 07105

On Site Liaison: Leotis Sanders

Vice President of Civil Rights and Diversity

Report Prepared by: The DMP Group, LLC

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Site Visit Dates: March 22 - 24, 2011

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II. Jurisdiction and authorities

The Federal Transit Administration (FTA) Office of Civil Rights is authorized by the Secretary of Transportation to conduct Civil Rights Compliance Reviews. The Equal Employment Opportunity (EEO) Reviews are undertaken to ensure compliance of applicants, recipients, and subrecipients 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”.

New Jersey Transit Corporation and its public transit system, New Jersey Transit (NJ TRANSIT), 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 must be addressed and incorporated in NJ TRANSIT’s EEO program and were the basis for the selection of compliance elements that were reviewed in this document.

## III. PURPOSE AND OBJECTIVES

**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, as represented by certification to FTA, that they are complying with their responsibilities under 49 U.S.C. Section 5332, FTA Circular 4704.1, and 49 CFR Part 27. In keeping with its regulations and guidelines, FTA determined that a Compliance Review of NJ TRANSIT’s “Equal Employment Opportunity Program” was necessary.

The Office of Civil Rights authorized The DMP Group to conduct this EEO Compliance Review of NJ TRANSIT. The primary purpose of the EEO Compliance Review was to determine the extent to which NJ TRANSIT has met its EEO program goals and objectives, as represented to FTA, in its EEO Program Plan. This Compliance Review was intended to be a fact-finding process to: (1) examine NJ TRANSIT’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.

**OBJECTIVES**

The objectives of FTA’s EEO regulations, 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, creed, 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 are employed, and that employees are treated during employment without regard to race, color, creed, 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, applicants/employees will be notified of the recipient’s 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 NJ TRANSIT 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 NJ TRANSIT’s EEO Program Plan against the compliance standards set forth in the regulations and to document the compliance status of each component.
* To gather information and data regarding all aspects of NJ TRANSIT’s employment practices, including recruitment, hiring, training, promotion, compensation, retention and discipline from a variety of sources: Human Resources Department staff and other NJ TRANSIT management and staff.

iv. Background information

NJ TRANSIT is New Jersey’s statewide public transportation corporation, serving eight million residents and providing nearly 223 million passenger trips each year. NJ TRANSIT is the nation’s third largest transit provider.

The New Jersey Public Transportation Act of 1979 established NJ TRANSIT in the executive branch of the state government. The Act constituted NJ TRANSIT as an instrumentality of the state exercising public and essential governmental functions and deemed the powers exercised by NJ TRANSIT as an essential state governmental function. The Act placed NJ TRANSIT within the New Jersey Department of Transportation but stated that the corporation should operate independently from the Department. The governor designated NJ TRANSIT as the recipient for FTA funds, established to "acquire, operate and contract for transportation service in the public interest."

NJ TRANSIT is governed by a seven-member Board of Directors, comprising the Commissioner of the Department of Transportation, a representative from the Treasurer’s Office, a representative from the Governor’s Office, and four members from the public. The Governor appoints all seven board members. The Commissioner of the Department of Transportation serves as the Board Chair.

NJ TRANSIT’s bylaws give the Executive Director, who answers to the Board, the requisite authority to act on behalf of the Board of Directors. Annually, the Board of Directors authorizes the Executive Director to apply to FTA for funds.

Several transit advisory committees provide the agency with additional input from the public. These include the Delaware Valley Regional Planning Commission, the Special Services Advisory Committee, the ADA Task Force, the North Jersey Transit Advisory Committee and the South Jersey Transit Advisory Committee.

NJ TRANSIT provides commuter rail, light rail, fixed route bus, and ADA complementary paratransit service and administers community mobility programs.

Commuter Rail - NJ TRANSIT operates a fleet of 711 trains on a commuter rail network of 11 lines that serve 164 stations in 137 communities. Seven of the 11 lines provide service to New York. One line, the Atlantic City Line, serves Philadelphia’s 30th Street Station. NJ TRANSIT maintains its fleet of over 170 diesel and electric locomotives and over 1,000 rail cars at the Meadows Maintenance Complex located near Newark. Light maintenance is also performed at the end of the lines. In addition to operating its own service, NJ TRANSIT is contracted by the New York Metropolitan Transit Authority (MTA) to operate service from Hoboken Terminal to Port Jervis in New York State on the Main/Bergen County Line.

Light Rail - NJ TRANSIT has three light rail networks, Newark Light Rail, Hudson-Bergen Light Rail, and River LINE, operated by a fleet of 45 light rail vehicles. The 6.5-mile Newark Light Rail has two lines serving 17 stations. Both lines serve downtown Newark and terminate at Newark’s Penn Station. The 20-mile Hudson-Bergen Light Rail, which links the growing cities of the Hudson Waterfront, has three lines serving 23 stations. The 34-mile River LINE, which operates between Trenton and Camden, has 20 stations. NJ TRANSIT directly operates Newark Light Rail. It contracts with Design/Build/Operate/Maintain (DBOM) contractors to operate the Hudson-Bergen Light Rail and River LINE.

Fixed-Route Bus - NJ TRANSIT, through direct service, private carrier support, and contracted bus service, provides for an extensive network of intrastate and interstate bus service. Each year, the fleet of 2,027 buses travels over 80 million miles on 236 routes. The network serves the region’s commercial centers with commuter runs to and from Manhattan, Newark, Jersey City, Trenton, Camden, Atlantic City, and Philadelphia. NJ TRANSIT operates out of 15 garages and contracts with12 private contractors.

ADA Complementary Paratransit Service - NJ TRANSIT contracts for the provision of Access Link, its curb-to-curb ADA complementary paratransit service. The state is divided into six regions with a contractor assigned to each one. NJ TRANSIT determines eligibility and operates the reservation center.

Private Carriers - NJ TRANSIT administers programs to provide bus and bus related equipment to private carriers:

* Bus Allocation Program. NJ TRANSIT leases 751 buses to 30 private carriers at no cost. The carriers provide interstate service under authority provided by the Federal Surface Transportation Board and intrastate service under authority provided by the New Jersey Department of Transportation. NJ TRANSIT uses FTA (Section 5307 and 5309) and state funds to purchase the buses. The buses display the carrier’s logo and a statement that the buses are owned by NJ TRANSIT. Carriers that participate in the program file National Transit Database reports.
* Private Carrier Capital Improvement Program. NJ TRANSIT leases support equipment, such as radios, fareboxes, computers, portable lifts, support vehicles, fuel management systems, and bus washers at no cost, to private carriers. Only carriers that lease buses are eligible for the program. This program does not involve any FTA funding.
* Reduced Fare Reimbursement Programs. NJ TRANSIT reimburses carriers that provide reduced fares to elderly persons, persons with disabilities, and students.

Community Mobility - NJ TRANSIT passes Section 5307, 5309, 5310, 5311, 5316, and 5317 assistance and Congestion Mitigation Air Quality (CMAQ) funds to subrecipients to support a range of public transportation and mobility programs that include demand response and deviated fixed route public transportation, transportation for elderly persons and persons with disabilities, feeder service to commuter rail stations, and access to jobs for low-income persons.

The Executive Director has the ultimate responsibility for exercising personal leadership in providing the overall policy direction of NJ Transit’s EEO/AAP. The Executive Director has delegated the responsibility for implementation of the EEO/AAP to the Vice President of the Office of Civil Rights and Diversity Programs.

At the time of the Compliance Review and according to NJ Transit’s most recent organization chart, the Office of Civil Right and Diversity Program was organized under the following management structure:

* Vice President of Civil Rights and Diversity Programs
  + Director of Business Development
  + Director of Equal Opportunity and Affirmative Action
  + Director of Business Development (Contract Compliance)
  + Executive Secretary

The State of New Jersey is divided into 21 [counties](http://en.wikipedia.org/wiki/County_%28United_States%29), and further divided into 566 municipalities, including 52 cities, 250 boroughs, 15 towns, 246 townships, and three villages. It covers approximately 7,417 square miles and had a 2000 population of 8,414,350. A demographic profile of the State from the 2000 Census, as presented on the following table, shows that 72.6 percent of the population is White non-Hispanic, 13.3 percent is Hispanic, 13.6 percent is Black and 5.7 percent is Asian. Over 11 percent speak English “less than very well” and 8.5 percent live below the poverty level.

**Racial/ Ethnic Breakdown of the State of New Jersey**

Source: 2000 U.S. Census

|  |  |  |
| --- | --- | --- |
| **Racial/ Ethnic Group** | State of New Jersey | |
|  | **Number** | **Percent** |
| White | 6,104,705 | 72.6 |
| Black | 1,141,821 | 13.6 |
| American Indian and Alaska Native | 19,492 | 0.2 |
| Asian | 480,276 | 5.7 |
| Hawaiian/Pacific Islander | 3,329 | 0.0 |
| Other Race | 450,972 | 5.4 |
| Two or More | 213,755 | 2.5 |
| Hispanic Origin[[1]](#footnote-1) | 1,117,191 | 13.3 |
| Total Population | **8,414,350** | **100%** |
|  |  |  |
| Limited English Proficiency | 873,088 | 11.1% |
| Low-Income | 699,668 | 8.5% |

According to NJ Transit’s workforce statistics, dated March 31, 2009, NJ Transit had 12,008 employees and minorities represented approximately 57 percent of the total workforce, as follows:

* + Blacks – 40.6 percent
  + Hispanics – 13.4 percent
  + American Indians - Less than one percent
  + Asians – 2.7 percent

Females represented 20.5 percent of the workforce.

Approximately 85 percent of NJ Transit’s workforce was represented by Unions.

**v. scope and methodology**

The following required EEO program components specified by the FTA are reviewed in this report:

1. Program Submission – 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.

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. An executive should be appointed 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 – Goals and timetables are an excellent management tool to assist in the optimum utilization of human resources.

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

**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 NJ TRANSIT. Relevant documents from FTA’s files were reviewed as background. Next, an agenda letter was prepared and sent to NJ TRANSIT by FTA’s Office of Civil Rights. The agenda letter notified NJ TRANSIT of the planned Compliance Review, requested preliminary documents, and informed NJ TRANSIT of additional documents needed and areas that would be covered during the on-site portion of the Review. It also informed NJ TRANSIT of the staff and other organizations and individuals that would be interviewed. The following documents were requested:

| FTA Circular 4704.1 Requirement/Documentation to Be Provided in Advance of Site Visit |
| --- |
| **0. Background** |
| 1. Description of NJ TRANSIT Services and Organization |
| 1. Summary Listing of EEO Complaints and Lawsuits against NJ TRANSIT during the last three years (January 1, 2008 – December 31, 2010) alleging discrimination towards an employee or job applicant. The summary shall indicate the date of the complaint, if the complaint was filed internally or externally, the basis for discrimination, the date the complaint was resolved or if the complaint is still open. |
| **1. Program Submission (FTA C. 4704.1.II, 5.)** |
| 1. Copy of Affirmative Action/ EEO Program most recently submitted to FTA |
| Copy of NJ TRANSIT’s Submittal Letter |
| Copy of FTA Approval Letter, if available |
| **2. Statement of Policy (FTA C. 4704.1.III, 2.a.)** |
| Copy of EEO Policy issued by CEO |
| 3. Dissemination (FTA C. 4704.1.III, 2.b.) |
| Documentation of Internal Dissemination of EEO Policy |
| Documentation of External Dissemination of EEO Policy |
| **4. Designation of Personnel Responsibility for EEO (FTA C. 4704.1.III, 2.c.)** |
| 1. Copy of Position/Job Description for EEO Officer and EEO Staff |
| 1. Organization Chart showing EEO Officer Reporting Relationship |
| **5. Utilization Analysis (FTA C. 4704.1.III, 2.d.)** |
| 1. Utilization Analysis for the past two years prepared in accordance with FTA Circular 4704.1 Chapter III 2. d. |
| **6. Goals and Timetables (FTA C. 4704.1.III, 2.e.)** |
| 1. Goals and Timetables for the past two years prepared in accordance with FTA Circular 4704.1 Chapter III 2 e. |
| **7. Assessment of Employment Practices (FTA C. 4704.1.III, 2.f.)** |
| 1. A copy of personnel policy guides, handbooks, regulations, or other material that govern employment practices. |
| 1. A list of all recruitment sources used during the last year, including the name and telephone numbers of contact persons. |
| 1. A listing of all job titles for which written examinations are conducted. |
| 1. A listing of all job titles for which medical or physical examinations are conducted. |
| 1. Data on new hires for the past three years for each job title or job group. Provide the total number of applicants and the total number of hires, by job title, as well as the number of minority group and female applicants and hires, for the past three years. |
| 1. Data on competitive promotions for the past three years for each job title or job group. Provide the total number of promotions, as well as the number of minority group and female employee promotions. Indicate the departments from which and to which the employees were promoted. |
| 1. Data on average salaries or wages paid, during the past three years, by job title or job group, to all employees, as well as the average salaries or wages paid to minority and female employees. |
| 1. Data on employer sponsored training offered during the past three years. Provide the total number of employees participating in each training course, as well as the number of minority group and female participants. Indicate if training was mandatory, or if supervisors authorized employee participation on a case-by-case basis. |
| 1. Data on terminations for the past three years for each job title or job group. Provide the total number of employee terminations, as well as the number of minority group and female employee terminations. Indicate if the terminations were voluntary or involuntary. |
| 1. Data on all demotions, suspensions, and disciplinary actions above the level of oral warning for the past three years for each job title or job group. Provide the total number of demotions, suspensions, and disciplinary actions, as well as the number of minority group and female employee demotions, suspensions, and disciplinary actions. Indicate the departments in which these employees worked when they were demoted, suspended or disciplined. |
| **8. Monitoring and Reporting (FTA C. 4704.1.III, 2.g.)** |
| 1. Procedures describing NJ TRANSIT’s EEO Monitoring and Reporting System. |
| 1. A report on the results of NJ TRANSIT’s goals for the 2009 affirmative action plan (AAP) year. For goals not attained, a description of the specific good faith efforts made to achieve them. |
| 1. A description of the procedures and criteria used by NJ TRANSIT to monitor its subrecipients and contractors to determine compliance with FTA EEO requirements. |
| 1. Copies of EEO Programs from subrecipients and contractors that employ 50 or more transit-related employees. |

NJ TRANSIT assembled most of the documents prior to the site visit and provided them to the Compliance Review team for advance review. Other documents were provided during the site visit.

NJ TRANSIT’s site visit occurred March 22 - 24, 2011. The Entrance Conference was conducted at the beginning of the Compliance Review with NJ TRANSIT’s senior management staff, the FTA Region II Civil Rights Officer, 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 detailed schedule for conducting the on-site visit was discussed.

Following the Entrance Conference, the Review team conducted a detailed examination of documents submitted by NJ TRANSIT’s Vice President of Civil Rights and Diversity on behalf of the agency. The Review team also held discussions with the Vice President of Civil Rights and Diversity, and NJ TRANSIT’s Director of EEO and their staff, regarding the implementation of the EEO Policy/Program.

The next day, a group interview was conducted with members of NJ TRANSIT’s Human Resources staff to learn about NJ TRANSIT’s employment practices, including recruitment, testing, hiring, promotions, transfers, discipline and terminations. Files and records of employment actions, such as new hires, promotions, demotions, and terminations, were requested and reviewed.

Throughout the three-day site visit, interviews were also conducted with selected employees and managers in NJ TRANSIT’s management offices at One Penn Plaza East, New York’s Penn Station, and the Maplewood bus operations and maintenance facility.

**Staff Interviews**

Eleven staff members were independently selected by the Review Team for interviews. The staff members selected were an ethnically and gender diverse group and included hourly and salaried employees. Staff members’ tenure with NJ Transit ranged from just over one year to 26 years. Those interviewed represented a wide range of positions within rail and bus transportation. All the staff said that NJ Transit was a diverse organization that provides opportunities for promotion with no significant barriers. Several individuals had received multiple promotions during their time at NJ Transit.

The general consensus was that there was little or no knowledge of the EEO Officer or EEO’s role within the organization. Many had seen NJ Transit’s EEO posters or vaguely remember their initial employment training. A few individuals had a vague recollection that diversity was discussed as part of the orientation for new employees. However, most staff members had no knowledge of receiving any EEO or diversity training.

A few staff members, including some at the supervisory level, were aware that internal complaints could be filed through the EEO Officer. None of the staff members were aware that complaints could be filed with an external agency. Most did not feel that there were any barriers to being hired or promoted within the agency. A few individuals expressed a concern that disciplinary actions were not consistent.

Most of the staff expressed an interest in receiving additional information about the EEO Officer and the role of EEO in the agency. Several individuals thought that updated and targeted diversity training would be helpful. Almost all of the staff members interviewed thought that additional information about NJ Transit’s EEO would be helpful. Other suggestions were:

* To make the program better known in the agency.
* To help employees feel more comfortable bringing up issues as they arise.
* To offer an online course including all aspects of EEO.
* To have the EEO Officer attend the bus and rail operators’ annual meetings and provides information on EEO.
* To be more consistent with EEO investigations.

1. Findings and recommendations

The EEO Compliance Review focused on NJ TRANSIT's compliance with eight specific requirements of FTA Circular 4704.1. This section describes the requirements and findings at the time of the Compliance Review site visit.

At the time of the site visit, deficiencies were identified in the following six areas: Dissemination, Designation of Personnel Responsibility, Utilization Analysis, Goals and Timetables, Assessment of Employment Practices, and Monitoring and Reporting System. Following the site visit, NJ TRANSIT submitted corrective action to close the deficiency in Dissemination. NJ TRANSIT also submitted documentation of its efforts in Monitoring and Reporting of subrecipients and contractors. However, the submission was not adequate to close the deficiency in this area.

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 NJ TRANSIT, no deficiencies were found with FTA requirements for Program Submission. Prior to the site visit, NJ TRANSIT provided its most recent EEO Program Plan submission, entitled *NJ TRANSIT, Affirmative Action Plan(AAP), July 1, 2009 – June 30, 2012*, to FTA on September 4, 2009. NJ TRANSIT’s 2009-2012 AAP was comprised of the following areas:

* Company Description
  + Overview
  + Structure and Organization
  + EEO Policy Statement
* Implementation
  + Responsibility For Implementation
  + Dissemination of EEO Policy
  + Discrimination Complaints Procedure Description
  + Community Involvement
  + Reporting and Monitoring Procedures
* Non-Discrimination
  + Non-Discrimination Based on Veteran, Disability Status
  + Non-Discrimination Based on Race/Color/Age/Religion/National Origin
  + Non-Discrimination Based on Gender
* Goal Progress Report
* Workforce, Availability and Utilization Analyses Methodology
* Availability Analysis
  + Job Groups 01 – 94
* Workforce Analysis Statistics – Detail listing by Job Titles – Within Job Groups
* Workforce Analysis by Department
  + Summary
  + Auditor General/Internal Audit
  + Board Secretary
  + Bus Operations
  + Capital Planning and Programs
  + Corporate Communications and External Affairs
  + Deputy Attorney General
  + Diversity Programs
  + Executive Director
  + Finance
  + Human Resources
  + Police
  + Policy, Technology and Customer Service
  + Procurement and Support Services
  + Rail Operations
  + Tunnel
* Identification of Problem Areas
  + Underutilization
  + Placement Goals
  + Impact Ratio Analysis –Hires
  + Impact Ratio Analysis – Promotions
  + Impact Ratio Analysis – Terminations
* Action-Oriented Programs
  + Organization and Personnel Policies/Practices
  + Minority and Female Recruitment Sources
* Appendix A - Minority and Female Recruitment Sources
* Appendix B - Employment Application Form with Policy Statement
* Appendix C - Job/Training Course Announcements
* Appendix D - Reasonable Accommodation for Disabilities
* Appendix E - Listing of Unions and Sample Copies of Bus and Rail Collective Bargaining Agreements
* Appendix F - Non-Agreement Salary Schedule
* Appendix G - State and Local Government Information Report
* Appendix H - Discrimination and sexual Harassment Policy
* Appendix I - NJ TRANSIT Organizational Charts

The FTA Region II Regional Civil Rights Officer approved the NJ TRANSIT AAP submittal on February 23, 2010. The approval expires on October 1, 2012.

1. 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.

**Finding**: During this Compliance Review of NJ TRANSIT, no deficiencies were found with FTA requirements for Statement of Policy. Prior to the site visit, NJ TRANSIT provided the Review team with its NJ Transit AAP. Included in the plan was NJ TRANSIT’s EEO Policy Statement dated, February 2009, signed by a previous Executive Director. NJ Transit also provided a revised Policy Statement dated February 2011 that was signed by NJ Transit’s current Executive Director. The revised policy statement was mailed to all employees in March of 2011. The Policy Statements contained all of the required elements of a Statement of Policy as described in FTA Circular C 4704.1 as indicated in the table below.

|  |  |  |
| --- | --- | --- |
| FTA C. 4704.1 Policy Statement Requirements | **NJ TRANSIT EEO Policy Statement**  **Dated Feb. 2009** | **NJ TRANSIT Revised EEO Policy Statement**  **Dated Jan. 2011** |
| Issued by CEO | Signed by previous Executive Director | Yes |
| Commitment to EEO | Yes | Yes |
| Undertake an Affirmative Action Program | Yes | Yes |
| EEO Program Assignment to Agency Executive | Yes | Yes |
| Management Personnel Share Responsibility | Yes | Yes |
| Applicants/Employees Right to File Complaints | Yes | Yes |
| Performance by Managers/Supervisors Evaluated | Yes | Yes |
| Successful Achievement Provides Benefits | Yes | Yes |

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.

**Finding**: During this Compliance Review of NJ TRANSIT, deficiencies were found with FTA requirements for Dissemination. These deficiencies were closed following the site visit. Included in Section 19 of NJ TRANSIT’s AAP was the following list of methods used to disseminate its EEO Policy internally and externally:

*Internal Communications*

* *EEO Policy Statement is posted throughout the Agency, at each location. Site visits are conducted to ensure that the current policy statement posters are prominently displayed.*
* *EEO Policy Statement identifies the person that employees or applicants who believe they have been discriminated against should contact.*
* *EEO Policy Statement is mailed to all employee home address annually.*
* *Agency’s annual report will carry a standard NJ TRANSIT “Equal Opportunity Employer” statement.*
* *Collective Bargaining Agreements are to include a non-discrimination clause. The following language has been approved by FTA and will be negotiated for inclusion in all future collective bargaining agreements. “Both parties agree to help insure a non-discriminatory workplace in accordance with law and procedures.*
* *Internal job postings will carry a standard NJ Transit “Equal Opportunity Employer” statement.*
* *Employees and applicants are made aware of NJ TRANSIT’s procedures for filing complaints of discrimination*

*External Communications*

* *EEO Policy Statement is distributed to all recruitment sources.*
* *EEO Policy Statement is made available to applicants for employment*
* *Employment application forms carry a standard “NJ TRANSIT is an Equal Opportunity Employer” statement.*
* *All recruitment advertisements placed in publication (e.g. newspapers, journals, magazines, newsletters and internet listings) carry a standard “NJ TRANSIT is an Equal Opportunity Employer” statement.*
* *All printed employment related materials will state “NJ TRANSIT is n Equal Opportunity Employer”.*

Prior to the site visit, NJ TRANSIT provide letters from the Executive Director, addressed to NJ TRANSIT Employees, dated March 15, 2010, and March 15, 2011, accompanied by the EEO Policy Statement, as documentation of internal dissemination.

During the site visit, the Review team observed that the Policy Statement was posted throughout its facilities and also made available upon request in NJ TRANSIT’s Maplewood office where applications are submitted. Copies of online job postings included a statement that *NJ TRANSIT is an Equal Opportunity Employer* was also provided. Individuals were also available at the Maplewood facility to assist limited English speaking applicants needing assistance. NJ TRANSIT did not disseminate its AAP to regular recruitment sources, and the Policy Statement was not available on its website.

Following the site visit, NJ Transit provided documentation that it had disseminated its AAP internally and externally. The AAP was posted on NJ Transit’s intranet for internal dissemination and the internet for external dissemination. The policy statement was also sent to a substantial number of NJ Transit’s recruitment resources.

The deficiency in this area is now closed.

4. 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 NJ TRANSIT, deficiencies were found with FTA requirements for Designation of Personnel Responsibilities. The Program Guidelines of FTA Circular 4704.1 Chapter III, 2c 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*.

According to the organization charts provided by NJ TRANSIT prior to the site visit, the Vice President of Civil Rights and Diversity Program was the designated EEO Officer. The Vice President of Civil Rights and Diversity Program reported to the Executive Director of NJ TRANSIT who was the CEO of NJ TRANSIT. During the site visit, NJ TRANSIT provided job descriptions for the following positions that have responsibility for NJ TRANSIT’s EEO program:

* Vice President of Civil Rights and Diversity Program
* Director, Equal Opportunity and Affirmative Action
* Principal Equal Opportunity and Affirmative Action Officer
* Equal Opportunity and Affirmative Action Officer

The Program Guidelines of FTA Circular 4704.1 Chapter III, 2c provide for nine program responsibilities, summarized in the Table below, which the EEO Officer was expected to carry out as part of his/her job. The following table identifies the responsibilities included in the list of responsibilities for each of the job functions provided as outlined in FTA Circular 4704.1.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **EEO Officer Program Responsibilities**  (FTA Circular 4704.1 III.2.c) | **NJ TRANSIT Job Function Descriptions** | | | |
| **VP of Civil Rights** | **Director of EO/AA** | **Principal EO/AA Officer** | **EO/AA Officer** |
| Develop EEO Policy/Program | Yes | Yes | No | No |
| Assist Management in Data Needs, Setting Goals and Timetables, etc. | Yes | Yes | No | Yes |
| Internal Monitoring and Reporting System | Yes | Yes | Yes | No |
| Reporting Periodically to CEO on EEO Progress | Yes | Yes | No | No |
| Liaison to Outside Organizations/Groups | Yes | Yes | No | No |
| Current Information Dissemination | Yes | Yes | Yes | Yes |
| Recruitment Assistance/Establish Outreach Sources | No | No | No | No |
| Concur in All Hires/Promotions | No | No | No | No |
| Process Employment Discrimination Complaints | Yes | Yes | Yes | Yes |

According to the job descriptions provided as depicted above, none of the position descriptions included concurrence in all hires/promotions or recruitment assistance. Regarding concurrence in all hires/promotions, NJ Transit’s corporate-wide policy and procedure entitled, *Recruitment, Selection,* dated September 2010, contained the following procedure:

*f. The hiring manager will complete the Candidate Selection Form (Exhibit #4), documenting the selected candidate and obtain necessary signatures.*

NJ TRANSIT’s Candidate Selection Form had a signature line designated for EEO concurrence. During the site visit, the NJ TRANSIT indicated that EEO had not concurred on hires in the recent past. An EEO signature was not seen on any of the new hire or promotion files observed during the site visit.

With respect to the recruitment and outreach responsibilities, NJ TRANSIT relied on Human Resources staff to conduct recruitment and outreach for minorities and women. According to the *Assessment of Employment of Practices* in Section 10 of NJ TRANSIT AAP:

*(g) NJ TRANSIT seeks out and participates in job fairs and recruiting programs sponsored by local colleges and other community organizations, which are potential sources for females and minorities applicants.*

During the site visit, NJ TRANSIT described that Human Resources participate in approximately 18 job fairs a year. The Recruiters also reached out to specific community organizations that represent minorities and women for positions identified as underutilized within NJ TRANSIT. The EEO Officer did not assist in recruiting or outreach to minorities, handicapped and woman applicants or community organizations.

**Corrective Action and Schedule**: Within 120 days, NJ TRANSIT must submit to the FTA Office of Civil Rights documentation that it has revised position descriptions and implemented procedures to obtain EEO concurrence on all new hires and promotions and that it will document its efforts to assist in recruitment outreach efforts.

5. 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 NJ TRANSIT, deficiencies were found with FTA requirements for Utilization Analysis. Prior to the site visit, NJ TRANSIT provided the Review team with a copy of its AAP. Section 5 of the AAP stated:

*The purpose of this section of our analyses is to compare minority and female utilization with their availabilities. The availability percentages appearing in our Availability Analysis have been compared with our internal utilization percentages as shown in our Availability Analysis. We have identified under-utilization wherever there is lack of parity (using the 80% rule) between expected and actual percentages of minorities and females.*

NJ TRANSIT’s AAP also contained its Utilization Analysis dated as of March 31, 2009. The Utilization Analysis contained information on the number and percentage of employees by gender and ethnicity for 94 job groups categorized into 15 departments.

Key findings of the workforce analysis as of March 31, 2009 showed:

* NJ TRANSIT’s 2009 Total workforce was 12,008 employees
* Total Hispanic representation at NJ TRANSIT was 13.4 percent
* Total Black representation at NJ TRANSIT was 40.6 percent
* Total Female representation at NJ TRANSIT was 20.5 percent

During the site visit, NJ TRANSIT provided its most recent Utilization Analysis entitled *Workforce Utilization Analysis,* dated December 2010. The report provided information for its 94 job groups by the following job categories:

* Officials and Managers
* Professionals
* Technicians
* Protective Service Workers
* Paraprofessionals
* Administrative Support
* Skilled Craft Workers
* Service Maintenance

The Utilization Analysis contained information on the number and percentage of employees in each job category by gender and ethnicity. The *Availability Analysis* report in NJ TRANSIT’s AAP showed the Total Weighted Availability that was calculated to determine the Available Workforce. It showed the underutilization determined when the Total Weighted Availability exceeded the Current Utilization, was greater than or equal to one person, and exceeded the 80 percent rule.

The Four Fifth Rule (80 percent) is a 'rule of thumb' adopted by the Office of Federal Contract Compliance Program (OFCCP) for federal contractors under which they generally consider a selection rate for any race, sex, or ethnic group which is less than four-fifths or eighty percent of the selection rate for the group with the highest selection rate as a substantially different rate of selection. This use of an “80 Percent” factor does not meet FTA requirements for its subrecipients for developing a utilization analysis.

According to the requirements of FTA C. 4704.1, Chapter III 2.d:

*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.*

*An availability analysis is a comparison of the participation rates of minorities and women at various levels in the work force with their availability in the relevant market.*

The FTA Circular requires that underutilization be determined by examining actual participation rates.

**Corrective Action and Schedule**: Within 120 days, NJ TRANSIT must submit to the FTA Office of Civil Rights 2011 Utilization Analysis calculated based on the correct available workforce that does not apply the “80 Percent” factor.

**6. 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 NJ TRANSIT, deficiencies were found with FTA requirements for Goals and Timetables. The Program Guidelines of FTA Circular 4704.1 Chapter III, 2e state:

*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.*

According to NJ Transit’s Utilization Analysis, there were 34 job categories where goals where established for women and or minorities. Goals were established for categories where the underutilization exceeded the 80 percent rule and the difference was also equal to or greater than one person. As a result, of the 94 job groups, 46 had underutilization of minorities or women that was equal to or greater than one person, yet goals were only established for 34 job categories that also exceeded the 80 percent rule. NJ Transit’s percentage goals were not broken down into long-term and short-term, and there were no numerical goals or timetables.

**Corrective Action and Schedule**: Within 120 days, NJ TRANSIT must submit to the FTA Office of Civil Rights:

* Revised Goals and Timetables for 2011 based on the revised utilization analysis.
* Goals must be presented in term of long-range goals and short-term numerical goals.

1. 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 NJ TRANSIT, deficiencies were found with FTA requirements for Assessment of Employment Practices. NJ TRANSIT did not provide documentation that it had regularly conducted qualitative or quantitative assessments of employment practices.

FTA Circular 4704.1 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.*
* *Assessment of the impact of external factors (not knowing where to apply for jobs, the availability of bilingual materials and information)*

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

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

NJ TRANSIT’s AAP provided prior to the site visit included some statistical information for NJ TRANSIT’s employment practices. NJ TRANSIT also provided data for 2008, 2009 and 2010 for promotions, terminations, new hires and applicants. The table below summarizes the qualitative and quantitative analysis of employment practices required per FTA C. 4704.1 and what was found in the AAP and various documents provided by NJ TRANSIT.

| **NJ TRANSIT’s Assessment of Employment Practices**  **Quantitative and Qualitative Analysis** (FTA Circular 4704.1 III.2.f) | |
| --- | --- |
| **Narrative Description and Analysis:** | **Provided by**  **NJ TRANSIT?** |
| 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 compensation and benefits. | No |
| Disciplinary procedures and discharge and termination practices. | No |
| Assessment of the impact of external factors (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. | Yes |
| Number of employees in each job category that applied for a promotion or transfer, and the number of employees who were promoted or transferred in the past year. | Yes |
| Number of disciplinary actions and terminations (by type) in the past year. | Yes |

The statistical reports provided by NJ TRANSIT contained some inaccurate information. For example, a quarterly report entitled *Internal EEO/AA Applicant Flow* reported the number of job applicants and hires. For the Business Diversity Manager position filled in the first quarter of 2010, the report indicated that no males were recommended or applied. There was one Asian female and three black female candidates, yet, in fact, two black males were hired. Also, according to the July – September 2010 report, 16 Senior Purchasing Agents was hired, but there were not 16 purchasing agents in the agency. NJ Transit was not able to provide an explanation for the discrepancies. NJ Transit’s report on its 2008 to 2010 promotions, disciplinary actions and terminations were not organized, and according to NJ Transit, the information had not been analyzed for trends.

NJ TRANSIT did not provide documentation that it had done any qualitative analysis or quantitative assessments of the statistical data included in its AAP or the reports provided. There was no discussion of apparent trends or explanations for discrepancies in the information. NJ TRANSIT did not perform analysis to identify those practices that operated as employment barriers and unjustifiably contributed to underutilization.

**Corrective Action and Schedule**: Within 120 days, NJ TRANSIT must submit to the FTA Office of Civil Rights qualitative and quantitative assessments of employment practices for 2010 in accordance with the requirements of FTA C. 4704.1.

1. 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 NJ TRANSIT, deficiencies were found with FTA requirements for a Monitoring and Reporting System. FTA Circular 4704.1, Chapter III, 2.g, states:

*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*
* *Providing precise and factual database for future projections.*

While NJ TRANSIT documented that it had a system for monitoring and reporting on EEO accomplishments for its own staff, NJ TRANSIT did not document that it had monitored any of its subrecipients or contractors. During the site visit, NJ Transit explained that it had not been monitoring and reporting on its subrecipient and contractor EEO program as described in FTA C. 4704.1.

NJ TRANSIT has over 30 private carriers that receive FTA-funded vehicles. The agency also hires private contractors to operate its paratransit service and administers the FTA Section 5311 funding program to transit operators in non-urbanized areas. NJ TRANSIT must determine which of these subrecipients and contractors meet the thresholds (50 or more transit-related employees and received over $1 million in funding) for submitting an EEO Program.

Following the site visit, NJ TRANSIT submitted copies of a number of EEO Programs it had obtained from its subrecipients. NJ TRANSIT did not indicate whether the programs had been approved, or if all of the programs had been obtained from subrecipients and contractors. NJ TRANSIT should not send the subrecipient or contractor programs to FTA.

**Corrective Action and Schedule**: Within 120 days, NJ TRANSIT must submit to the FTA Office of Civil Rights a listing of all subrecipients and contractors who meet the threshold requirements for having an EEO Program, as described in FTA C. 4704.1., and a record of when NJ TRANSIT obtained and approved each EEO Program.

VII. SUMMARY OF FINDINGS

| **Requirements of**  **FTA Circular 4704.1** | **Site Review Finding** | **Description of Deficiencies** | **Corrective Actions** | **Response Days/ Closed Date** |
| --- | --- | --- | --- | --- |
| 1. Program Submission | ND |  |  |  |
| 2. Statement of Policy | ND |  |  |  |
| 3. Dissemination | D | Lacking of documentation of external dissemination | NJ TRANSIT must submit to the FTA Office of Civil Rights documentation that it has disseminated its EEO Policy externally to recruitment sources, local minority and women’s organizations, community agencies, and community leaders. | Closed |
| 4. Designation of Personnel Responsibility | D | Inadequate designation of personnel responsibility | NJ TRANSIT must submit to the FTA Office of Civil Rights documentation that it has revised position descriptions and implemented procedures to obtain EEO concurrence on all new hires and promotions and that it will document its efforts to assist in recruitment outreach efforts. | 120 Days |
| 5. Utilization Analysis | D | Utilization not properly stated | NJ TRANSIT must submit to the FTA Office of Civil Rights 2011 Utilization Analysis calculated based on the correct Available workforce that does not apply the “80 Percent” factor. | 9/13/2011 |
| 6. Goals and Timetables | D | Goals were incorrect  No numerical Goals | NJ TRANSIT must submit to the FTA Office of Civil Rights revised Goals and Timetables for 2011 presented in term of long-range goals and short-term numerical goals in accordance with the requirements of FTA C. 4704.1. | 9/13/2011 |
| 7. Assessment of Employment Practices | D | No documentation of qualitative or quantitative assessment of employment practices | NJ TRANSIT must submit to the FTA Office of Civil Rights qualitative and quantitative assessments of employment practices for 2010 in accordance with the requirements of FTA C. 4704.1. | 120 Days |
| 8. Monitoring and Reporting System | D | Inadequate documentation of monitoring of contractors | NJ TRANSIT must submit to the FTA Office of Civil Rights a listing of all subrecipients and contractors who meet the threshold requirements for having an EEO Program, as described in FTA C. 4704.1., and a record of when NJ TRANSIT obtained and approved each EEO Program. | 120 Days |

ND = No Deficiency; D = Deficiency; NA = Not Applicable; NR = Not Reviewed; AC=Advisory Comments

VIII. attendees

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1. Per the 2000 Census, people of Hispanic origin can be, and in most cases are, counted in two or more race categories. [↑](#footnote-ref-1)