**EQUAL EMPLOYMENT OPPORTUNITY**

**COMPLIANCE REVIEW**

**OF**

**Suburban Mobility Authority for Regional Transportation**

**(SMART)**

**Detroit, Michigan**

**Final Report**

**September 2011**

**Prepared For**

**U.S. DEPARTMENT OF TRANSPORATION**

**FEDERAL TRANSIT ADMINISTRATION**

**OFFICE OF CIVIL RIGHTS**

**Prepared By**

**THE DMP GROUP, LLC**

**2233 Wisconsin Avenue, NW Suite 405**

**Washington, DC 20007**

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i. General Information

Grant Recipient: Suburban Mobility Authority for Regional Transportation (SMART)

City/State: Detroit, MI

Grantee Number: 1209

Executive Official: Mr. John Hertel

General Manager

Suburban Mobility Authority for Regional Transportation (SMART)

535 Griswold Street, Suite 600

Detroit, MI 48226

On Site Liaison: Mr. John Swatosh

Deputy General Manager of Administration and EEO/DBE Officer

Report Prepared by: The DMP Group, LLC

2233 Wisconsin Avenue, NW Suite 405

Washington, DC 20007

Site Visit Dates: May 17 – 19, 2011

Compliance Review Team: Maxine Marshall, Lead Reviewer

Gregory Campbell, Reviewer

Khalique Davis, Reviewer

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.”

Suburban Mobility Authority for Regional Transportation (SMART) 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 SMART’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 SMART’s “Equal Employment Opportunity Program” was necessary.

The Office of Civil Rights authorized The DMP Group, LLC to conduct this EEO Compliance Review of SMART. The primary purpose of the EEO Compliance Review was to determine the extent to which SMART 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 SMART’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 females 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 SMART 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 SMART’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 SMART’s employment practices, including recruitment, hiring, training, promotion, compensation, retention, and discipline from a variety of sources: Human Resources Department staff and other SMART management and staff.

iv. Background information

In southeast Michigan, Suburban Mobility Authority for Regional Transportation (SMART) provides transit services in Wayne, Oakland, and Macomb Counties. In Monroe County, service is provided by the Lake Erie Transportation Commission (LETC), operating under a pass-through arrangement with SMART.

SMART provides services primarily within the suburban areas of Detroit and to and from the suburban areas to Detroit. The City of Detroit Department of Transportation (D-DOT) provides services within the City. The population of SMART’s service area is approximately four million persons.

SMART directly operates a fixed-route fleet of 275 buses. Fixed-route services include cross-town routes, major-corridor routes, limited-stop routes, and express routes. SMART Connector is a curb-to-curb small bus service used to travel within communities served by SMART, providing paratransit services and serving people with disabilities and senior citizens. SMART Connector operates a fleet of 110 buses. In addition, SMART contracts with various sub-grantees in the region to operate community-based services, known as the Community Partnership Program (CPP). There are 75 CPPs using a fleet of 182 vehicles.

SMART operates from three maintenance facilities: Macomb, Oakland, and Wayne. Its administrative office is located in downtown Detroit. It also owns and operates one transit center located in Royal Oak.

The General Manager has the ultimate responsibility for implementation of SMART’s EEO program. The General Manager has delegated the responsibility for implementation of the EEO program to the Deputy General Manager of Administration and EEO/DBE Officer.

At the time of the Compliance Review and according to SMART’s most recent organization chart, SMART was organized under the following management structure that reported directly to the General Manager:

* Deputy General Manager of Administration and EEO/DBE Officer
* Deputy General Manager of Operations
* General Counsel
* Manager of Marketing and Communications

The Drug and Alcohol/EEO Compliance Coordinator assisted the Deputy General Manager of Administration and EEO/DBE Officer with the administration of the EEO program. The Coordinator collected and analyzed statistical data to report on EEO Program accomplishments. The Coordinator reported to the Director of Human Resources, with a dotted line reporting relationship on EEO matters to the Deputy General Manager of Administration and EEO/DBE Officer. The collateral duties held by the Coordinator did not include recruitment, hiring, promotion, or other employment related functions.

According to SMART’s workforce statistics, dated July 2010, SMART had 907 employees, and minorities represented approximately 77 percent of the total workforce, as follows:

* Blacks – 76 percent
* Hispanics – Less than one percent
* American Indians – Less than one percent
* Asians – Less than one percent

Females represented approximately 43 percent of the workforce.

Approximately 95 percent of SMART’s workforce was represented by four Unions. Four hundred and fifty fixed-route drivers belonged to the Amalgamated Transit Union (ATU) Local 1564. The ATU also represented 25 clerical employees under a separate contract. Teamsters Local 247 represented 125 Community Transit drivers and 15 clerical employees. SMART’s 195 bus mechanics, bus cleaners, and stockroom personnel were represented by the United Auto Workers Local 771. SMART’s 54 first line supervisors, consisting of Maintenance Foremen, Road Supervisors, Dispatch Inspectors, and Transportation Dispatchers, belonged to the AFSCME Local 1786.

The demographics of SMART’s service area are shown in Table 1. According to the 2000 Census, the service area had a population of over four million persons. Whites represented 68.9 percent of the total population of SMART’s service area. Blacks were the largest minority group at 25 percent. Hispanics followed at 2.9 percent and Asians represented 2.5 percent of the population. American Indians/Alaska Native and Native Hawaiians/Pacific Islanders each represented less than one percent of the total population**.**

**Table 1**

**Racial/ Ethnic Breakdown of the SMART Service Area**

2000 – U.S. Census

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Racial/ Ethnic Group** | Wayne County | | Oakland County | | Macomb County | | Total SMART Service Area | |
| **Number** | **Percent** | **Number** | **Percent** | **Number** | **Percent** | **Number** | **Percent** |
| White | 1,065,607 | 51.7 | 988,194 | 82.8 | 730,270 | 92.7 | 2,784,071 | 68.9 |
| Black | 868,992 | 42.2 | 120,720 | 10.1 | 21,326 | 2.7 | 1,011,038 | 25.0 |
| American Indian and Alaska Native | 7,627 | 0.4 | 3,270 | 0.3 | 2,478 | 0.3 | 13,375 | 0.3 |
| Asian | 35,141 | 1.7 | 49,402 | 4.1 | 16,843 | 2.1 | 101,386 | 2.5 |
| Hawaiian/Pacific Islander | 506 | 0.0 | 295 | 0.0 | 178 | 0.0 | 979 | 0.0 |
| Other Race | 32,020 | 1.6 | 10,064 | 0.8 | 3,106 | 0.4 | 45,190 | 1.1 |
| Two or More | 51,269 | 2.5 | 22,211 | 1.9 | 13,948 | 1.8 | 87,428 | 2.2 |
| Hispanic Origin[[1]](#footnote-1) | 77,207 | 3.7 | 28,999 | 2.4 | 12,435 | 1.6 | 118,641 | 2.9 |
| Total Population | **2,061,162** | **100%** | **1,194,156** | **100%** | **788,149** | **100%** | **4,043,467** | **100%** |
|  |  |  |  |  |  |  |  |  |

v. scope and methodology

**SCOPE**

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.

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

| Documentation to Be Provided for the EEO Compliance Review |
| --- |
| **0. Background** |
| 1. Description SMART’s Services and Organization |
| 1. Summary Listing of EEO Complaints and Lawsuits against SMART during the last three years (January 1, 2008 – March 31, 2011) 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. Collective Bargaining Agreements covering the past three years for each bargaining unit, if applicable. |
| **1. Program Submission (FTA C. 4704.1.II, 5.)** |
| 1. Copy of Affirmative Action/ EEO Program most recently submitted to FTA |
| Copy of SMART’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 SMART’s EEO Monitoring and Reporting System. |
| 1. A report on the results of SMART’s goals for the 2010 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 SMART 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. |

SMART assembled most of the documents prior to the site visit and provided them to the Compliance Review team for advance review.

SMART’s site visit occurred May 17 - 19, 2011. The Entrance Conference was conducted at the beginning of the Compliance Review with SMART’s senior management staff 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 site visit was discussed.

Following the Entrance Conference, the Review team conducted a detailed examination of documents submitted by SMART’s EEO Compliance Coordinator on behalf of the agency. The Review team also held discussions with SMART’s Deputy General Manager of Administration and EEO/DBE Officer regarding SMART’s EEO Program and its implementation.

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

Following the site visit, SMART provided additional data and documents to the Review team that was used to complete this Compliance Review report.

At the end of the site visit, an Exit Conference was held with SMART’s senior managementstaff, FTA Civil Rights Headquarters staff, and the contractor Review team. At the Exit Conference, initial findings and corrective actions were discussed with SMART. A complete list of attendees at the EEO Compliance Review is included at the end of this report.

Throughout the three-day site visit, interviews were also conducted with selected employees and managers.

**Staff Interviews**

Ten staff members employed by SMART were independently selected by the Review team for interviews. The staff members selected were an ethnically diverse group and included both men and women. Staff members’ tenure with SMART ranged from between ten and thirty-three years. Most employees commented that, while their company overall was a diverse organization that provided opportunities for promotion, several departments lacked any diversity or female representation. There were also similar comments about the senior leadership and Board of the organization. Also, a few mentioned that there were some barriers for promotion however, including improper testing procedures and the requirement to have a “professional appearance” as some of those barriers.

The general consensus was that there was little or no knowledge of who the EEO Officer was or EEO’s role within the organization. Several employees commented that they thought that an EEO office was in place sometime in the past, but that the organization has since decided to disband the office. There was also a general consensus that the organization had a lot of work to do to develop and improve its EEO efforts. A couple of individuals who were aware of the EEO program thought that it needed to be independent of the Human Resources department since individuals might be hesitant to go to that office to make a complaint. It should be noted that none of the staff members were aware of any official internal complaints; however, several did mention that most people with complaints would probably not make an official complaint since they felt nothing would come of it. It should also be noted that some training was done on sexual harassment, but not much more than that was provided in the recent past.

1. Findings and recommendations

The EEO Compliance Review focused on SMART’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.

Deficiencies were identified in the following three areas: Designation of Personnel Responsibility, Assessment of Employment Practices, and Monitoring and Reporting System. An Advisory Comment was made in the area of Program Submission.

Subsequent to the issuance of the Draft Report, SMART submitted documentation of the progress it was undertaking to correct the deficiencies. These documents are described in this Final Report.

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 SMART, no deficiencies were found with FTA requirements for Program Submission. SMART submitted a revised Equal Employment Opportunity Program dated February 2009 (2009 EEO/AAP) to FTA’s Office of Civil Rights on June 15, 2009. The plan was returned without approval because it did not contain all the required elements as described in FTA Circular 4704.1. SMART submitted a Draft EEO/AAP dated March of 2011 (2011 EEO/AAP) to the Regional Civil Rights Officer in March of 2011. The 2011 EEO/AAP was comprised of the following areas:

* Introduction
* Designation of Personnel
* Workforce Analysis
* Employment Process
* Job Titles By EEO Classification
* Workforce Analysis Chart
* Action-Oriented Programs
* Authority Breakdown (Race and Gender)
* Departmental Breakdown (Race and Gender)
* SMART Organization Chart
* Title VI Complaint Policy
* Internet Employment Application
* Traditional Employment Application Package
* Internal Job Bid Application
* Recruitment Resources

The 2011 EEO/AAP was in draft format and had not been reviewed by FTA, pending the outcome of this Compliance Review. During the site visit, SMART was advised to revise its 2011 EEO/AAP for the following areas:

* Dissemination – Add detailed descriptions of the current mechanisms used to disseminate the policy internally and externally and indicate the how often the policy will be disseminated.
* Goals and Timetables – Add the narrative discussions of the reasons why goals were not accomplished, as applicable.
* Assessment of Employment Practices – Include narrative description and an analysis of employment practices, such as recruitment, hiring, promotion, testing, and salary administration to identify any barriers that unjustifiably contributed to underutilization or may have had a disparate impact on women or minorities.

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 SMART, no deficiencies were found with FTA requirements for Statement of Policy. Prior to the site visit, SMART provided the Review team with its EEO Policy Statement dated December 2, 2010*.* The Policy Statement contained the required elements of a Statement of Policy as described in FTA Circular C 4704.1. The required Statement of Policy elements and whether each element can be found in SMART’s *Policy Statement* are shown in the table below:

|  |  |
| --- | --- |
| SMART EEO Policy Statement | |
| FTA C. 4704.1 Policy Statement Requirements | **EEO Policy**  **Statement** |
| Issued by CEO | Yes |
| Commitment to EEO | Yes |
| Undertake an Affirmative Action Program | Yes |
| EEO Program Assignment to Agency Executive | Yes |
| Management Personnel Share Responsibility | Yes |
| Applicants/Employees Right to File Complaints | Yes |
| Performance by Managers/Supervisors Evaluated | Yes |
| Successful Achievement Provides Benefits | Yes |

The Policy Statement explained that SMART had established an EEO Compliance Officer and complaints should be made to the EEO Compliance Officer. The statement did not provide the name of the EEO Compliance Officer or any contact information. It was recommended that SMART indicate who the EEO Compliance Officer was and how he/she could be contacted.

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 SMART, no deficiencies were found with FTA requirements for Dissemination. SMART’s 2011 EEO/AAP did not detail its procedures for disseminating its Policy. The 2009 EEO/AAP described the internal and external dissemination of its EEO policy/program. However, the methods detailed were not reflective of SMART’s current practices. In response to the request for documentation, SMART provided details and documentation of its current internal and external dissemination of the EEO Policy. The following is a list of the methods used in 2011 to disseminate the EEO Policy internally and externally:

Internal Communications

* Policy Statement was posted on the website
* Policy Statement was sent to all employees with their paychecks
* Policy Statement was included as a part of new employee orientation
* Policy Statement was posted throughout the SMART facilities in break rooms and meeting areas
* A non-discrimination clause included in all four labor union agreements

External Communication

* Policy Statement was posted on the website
* Policy Statement was mailed to numerous recruitment resources, including those representing minority and persons with disabilities.

During the site visit, the Review team observed the Policy Statement posted on the website and posted throughout the SMART facilities. SMART also provided copies of the most recent letters sent to SMART’s recruitment resources with the Policy Statement attached. SMART also provided the list of it recruitment resources, which was a diverse group of organizations representing various minority groups throughout the SMART service area.

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 SMART, 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*.

At the time of the site visit, the Deputy General Manager of Administration and EEO/DBE Compliance Officer (DGM/EEO) was designated in the EEO/AAP as the EEO Compliance Officer. This position reported to the General Manager. The EEO Compliance Officer was supported by an EEO Compliance Coordinator who reported directly to the Human Resources Director with a dotted-line reporting relationship to the DGM/EEO.

The Program Guidelines of FTA Circular 4704.1 Chapter III, 2c provide for nine program responsibilities, summarized in the table below, which the EEO Compliance Officer should, at a minimum, have. SMART’s 2011 EEO/AAP detailed the role and responsibilities of the EEO Compliance Officer. The 2011 EEO/AAP contained the specific responsibilities outlined in the Circular, as summarized in the following table:

|  |  |  |
| --- | --- | --- |
| FTA Designation of Personnel Responsibility for EEO | | |
| **EEO Officer Program Responsibilities**  (FTA Circular 4704.1 III.2.c) | **EEO Compliance Officer Duties per 2011EEO/AAP** | **Actual Functions of DGM/EEO** |
| Develop EEO Policy/Program | Yes | Yes |
| Assist Management in Data Needs, Setting Goals and Timetables, etc. | Yes | Yes |
| Internal Monitoring and Reporting System | Yes | Yes |
| Reporting Periodically to CEO on EEO Progress | Yes | Yes |
| Liaison to Outside Organizations/Groups | Yes | No |
| Current Information Dissemination | Yes | Yes |
| Recruitment Assistance/Establish Outreach Sources | Yes | No |
| Concur in All Hires/Promotions | Yes | No |
| Process Employment Discrimination Complaints | Yes | No |

During the site visit, SMART indicated that the DGM/EEO had not been performing all the job responsibilities as depicted in the 2011 EEO/AAP. The DGM/EEO had not served as a liaison to outside groups, provided recruitment assistance, concurred in all hires, and had not processed employment discrimination complaints. According to the *Discrimination and Harassment Complaint Procedures* section of SMART’s 2011 EEO/AAP, complaints were to be submitted to the legal department. In addition, SMART advised the Review team during the site visit that the legal department had the primary responsibility for investigating complaints, not the EEO Compliance Officer.

Subsequent to the site visit, SMART submitted revised copies of a brochure titled *Employment Rights Under Equal Employment Opportunities* and a procedure entitled *Title VI Relations and Equal Employment Opportunity Complaint.* Both documents indicated that the employees and applicants could register complaints with the Authority’s EEO Officer (Deputy General Manager for Administration and EEO/DBE Officer), and a name, mailing address and contact number was provided.

Following the issuance of the Draft Report, on September 28, 2011, SMART submitted revised Job Description Summaries for the DGM/EEO and the EEO, DBE and Drug & Alcohol Compliance Coordinator (Coordinator), dated August 2011. While the job description for the DGM/EEO added the responsibility to investigate EEO complaints, it did not include responsibility to serve as a liaison to outside groups, assist in recruitment, or concur in all hires and promotions. The revised job description for the Coordinator had changed to reflect a new dual reporting relationship to the DGM/EEO for EEO/DBE programs and to the Manager of Employment and Training for Drug & Alcohol testing and compliance programs. The Coordinator position now is responsible for assisting the Human Resources Department in recruiting minority, persons with disabilities, and women applicants and establishing outreach sources for use in the hiring process, as well as investigating claims of discrimination, when directed.

In its September 28, 2011 response, SMART indicated that the DGM/EEO now concurred on all hires and provided a blank *Interview Activity Record*, a document that included a log of all candidates interviewed for a position to include gender and race and the interviewer’s comments on the candidate. The second page of the form has a signature box for concurrence, but it did not indicate who would concur. Further, there were no procedures to describe who would concur and at what point during the hiring or promotion process. SMART also indicated in its response that it was working with Human Resources in outreach efforts to identify outside groups representing women and minorities; however, SMART did not provide any documentation that these efforts were underway. Finally, as the EEO Officer for SMART, the job description for the DGM/EEO did not contain all of the responsibilities outlined in FTA C 4704.1

**Corrective Action and Schedule**: Within 120 days, SMART must submit to the FTA Office of Civil Rights a revised job description and procedures to assure the EEO Officer (DGM/EEO) concurs on all hires, assists in recruiting minority, persons with disabilities, and female applicants, and establishes outreach resources for use by hiring officials as outlined in FTA C 4704.1.

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 SMART, no deficiencies were found with FTA requirements for Utilization Analysis. SMART’s 2011 EEO/AAP contained workforce utilization analyses for 2010. Prior to the site visit, SMART provided the Review team with its 2010 Utilization Analysiswhich provided information on the following job categories:

* Executive and Managers
* Professionals
* Technicians
* Administrative Support Workers
* Craft Workers
* Service Workers

The 2010 Utilization Analysis contained information on the number and percentage of employees in each job category by gender and ethnicity in each job category. Key findings of the 2010 Utilization Analysis as of July 1, 2010, showed:

* SMART’s 2010 Total workforce had 907 employees
* Total Minority representation at SMART was 77 percent
* Total Female representation at SMART was 43 percent

The 2010 Utilization Analysis also included the percentages of the available workforce for minorities and women for each job category. The available workforce was compared with the current workforce to determine the areas of underutilization. SMART based its employment availability percentages on the tri-county recruitment area (Wayne, Oakland, and Macomb counties). There were no minorities in the Executives and Managers category. Women were most significantly underrepresented in the categories of Technicians and Service Workers.

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 SMART, no deficiencies were found with FTA requirements for Goals and Timetables. The Program Guidelines of FTA Circular 4704.1 Chapter III, 2e states:

*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.*

SMART’s 2011 EEO/AAP contained its 2010 short-term goals and timetables for its long-range four-year goals. The following information was provided for the goals for each job category:

* Anticipated number of job opening
* Method for filling anticipated job opening
* Numerical goals for program year
* Percentage rate of additions for minorities and females
* The anticipated workforce as of July 2011
* Four year percentage goals

Goals were established to correct the underutilization for the following areas over a four-year period as follows:

* Executive and Managers: Minorities - 17 percent, Women - 13 percent
* Technicians: Women - eight percent
* Craft workers: Women - five percent
* Service workers: Women - 14 percent

The long-range goals were designed to eliminate underutilization in job categories where it was identified.

SMART’s 2011 EEO/AAP did not include a discussion of prior year goals that had not been attained. Prior to the site visit, SMART provided a detailed discussion of prior goals not attained as a part of the 2010 goals. The section discussed Executive/First Level, female representation, and minority representation. SMART was reminded to incorporate the discussion of the prior goal attainment into the 2011 EEO/AAP.

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 SMART, deficiencies were found with FTA requirements for Assessment of Employment Practices. SMART did not document that it had 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, as follows:

*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.*

SMART’s 2011 EEO/AAP provided prior to the site visit included statistical information for SMART’s employment practices. SMART also provided reports for 2008, 2009, and 2010 for promotions, terminations, new hires, and applicants. The table below summarizes the qualitative assessments and quantitative analysis of employment practices required per FTA C. 4704.1 found in 2011 EEO/AAP and various reports provided by SMART.

|  |  |
| --- | --- |
| **SMART’s Assessment of Employment Practices** | |
| **Quantitative and Qualitative Analysis**  (FTA Circular 4704.1 III.2.f) | |
| **Narrative Description and Analysis:** | **Included in SMART’s 2011 EEO/AAP?** |
| 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 |

SMART did not provide documentation that it had done any qualitative assessment of the statistical data included in its 2011 EEO/AAP or in the reports provided to the Review team. For example, there was no discussion of trends or explanations for discrepancies in any information. Also, SMART did not perform any analysis to identify those practices that operated as employment barriers and unjustifiably contributed to underutilization.

The Review team analyzed data provided by SMART, including applicants, new hires, promotions, terminations, salaries, and disciplines. The data, for the most part, did not identify employment practices that had a disparate impact on minorities. Exceptions were found related to salaries and to terminations made as a result of a recent Reduction in Force (RIF). An analysis of salaries paid to minorities and females in the Professional and Technician job categories showed the following:

* Minority female salaries were consistently lower than the salaries paid to non-minority females and all males.
* Female salaries were consistently lower than male salaries.
* Minority male salaries were lower than non-minority male salaries in the Technical job category.

Also, in 2010, SMART terminated 11 positions due to financial constraints. The Review team found that 100 percent of the incumbents in these positions were women and eight (72 percent) were minority women. SMART had not conducted an EEO impact assessment of the RIF prior to eliminating the positions.

SMART used testing extensively in its employment selection process. For example, it required applicants for a public relations internship to complete a grammar test. SMART also required all applicants for a dispatcher type of position for its Community Partnership Program to take a multiple choice test that did not appear to measure job performance. For example, the test asked if the applicant could identify the union representing the drivers, but did not test for spatial or map-reading skills. FTA C. 4704.1, Section III. 2. f. states:

*Where written, formal, or scored tests are used in the employment selection process, the agency should identify the test, describe the procedures followed in administering and scoring the test, the weight given to test scores, how a cut-off score was established or whether the test had been validated to predict or measure job performance and if so, an assessment of its nondiscriminatory impact, and a description of the validation study.*

SMART had not conducted this assessment of its applicant testing, nor did it know if the tests had an adverse impact on the employment of minorities or females.

On September 28, 2011, SMART submitted the following documents related to assessments of employment practices. Some of the documents were provided in draft versions. Comments on the documents are provided in the following table:

| **Document Submitted by SMART on**  **September 28, 2011** | **Comments** |
| --- | --- |
| Workforce Analysis Change | This document appeared to be in draft format and partially complete. It included narrative discussions of minority and female representation in the SMART workforce as of July 1, 2011 and dating back to 2007. The report noted that Black males and Black females were overrepresented in all EEO categories with the exception of Executive/Managers, and in the case of Black Females, also Craft Workers. The report also included narrative on the numbers of promotions, terminations, hiring and underutilization at SMART. This report did not identify whether employment practices had or did not have a discriminatory impact. |
| Pay Study | This excel spreadsheet contained tabs for each EEO classification (e.g., Administrators, Professionals, Service Maintenance, etc) and showed “average” years of service and salaries paid to male and female employees, by job title. The table did not include race or ethnicity. Nor did it include any analysis of the data, for example, were males paid more than females? If so, why? This study did not address the disparate impacts between minorities and non-minorities identified during the site visit. |
| RIF analyses | This table listed each position eliminated from 2008-2011 by name, race and gender and indicated if they were laid off, took a separation incentive, or were transferred to another position. There was no analysis of the numbers or percentages of minority and/or females affected by the RIF in relation to SMART’s workforce. |
| Terminations 10 years | This report provided raw data on the numbers of terminations by reason for the period 2001-2011, but did not include any information on race or gender. One tab in the report lists terminations, by individual name and race and gender for the period of July 2007 to April 2011. There was no analysis of the numbers or percentages of minority and females terminated in relation to SMART’s workforce. |
| SMART Employee Termination Report 2007-2011 | This report included a detailed listing of all terminations by Fiscal Year, including name, gender, race and reason. The report also included charts showing for example, that many more Blacks were terminated each year than any other ethnic group. Also, males outnumbered females in terminations. However, the data did not differentiate between voluntary and involuntary terminations and didn’t compare the percentage of terminations to the SMART workforce. |
| New Hire Report | This report included a detailed listing of all new hires by Fiscal Year, including name, gender, race and EEO class. Charts in one tab showed that more Blacks are hired each year than any other race or ethnicity. The report did not compare the number of hires to the applicant pool to determine if, for example, more women applied but not hired. This could indicate an employment barrier. |
| Comparison for Male and Female Pay for Similar Positions | This report did identify average salaries paid to males and females in selected positions and showed that on average, female salaries exceeded male salaries by approximately $350 on an average salary of $37,750. Most of the positions appeared to be union positions which could explain the common pay rates. Also, in the non union positions, such as Sr. Purchasing Agent and Community Ombudsman, the tenure of the female employees significantly exceeded that of the male employees. This was a good, first start at analysis, but SMART should include ethnicity in the pay studies and also consider looking at starting salaries for non-union positions, or increases over time, to ensure that there was equity in pay. |

**Corrective Action and Schedule**: Within 120 days, SMART must submit to the FTA Office of Civil Rights qualitative and quantitative assessments of employment practices, including salary disparities, the use of tests, and the impacts, if any, of changes to job descriptions, identifying any barriers that have an adverse impact on the employment or promotion of women or minorities, in accordance with the requirements of FTA Circular 4704.1. The assessments should address the comments noted in response to the documents submitted by SMART on September 28, 2011.

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 SMART, deficiencies were found with FTA requirements for a Monitoring and Reporting System. FTA Circular 4704.1,

*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.*

SMART’s 2009 EEO/AAP included detailed descriptions of monitoring and reporting on its EEO program that compiled with FTA C. 4704.1. However, the 2011 EEO/AAP did not provide any information about SMART’s monitoring and reporting system. During the site visit, SMART explained that it had not been monitoring and reporting on its EEO program as outlined in the 2009 EEO/AAP. SMART provided a report entitled “*Monthly EEO Status Report, April 2011*.” The report included data on SMART’s workforce, numbers for recent employment activities, and the number of terminations and disciplinary actions taken. The report did not indicate the period it covered, nor were there totals or percentages in the report, and it did not provide any trend analysis of the data provided. EEO goals were also presented, but the report did not indicate the status of the goals.

Following the site visit, SMART reported that it was developing a series of monthly, quarterly, and yearly reports that would be available for review by FTA. SMART provided a copy of the Powerpoint presentation made on July 26, 2011, entitled *Semi-Annual EEO Status Briefing*. SMART is reminded to report on accomplishments towards goals, identifying those units that have failed to make progress towards goals, and providing a factual database for future projections, as noted above and as set forth in FTA C. 4704.1

**Corrective Action and Schedule**: Within 120 days, SMART must submit to the FTA Office of Civil Rights a copy of its monthly EEO reports for the periods ending September 30, October 31, and November 30, 2011 to include the items described in FTA C. 4704.1.

**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 | AC | EEO Plan does not conform to FTA requirement |  |  |
| 2. Statement of Policy | ND |  |  |  |
| 3. Dissemination | ND |  |  |  |
| 4. Designation of Personnel Responsibility | D | Inadequate designation of EEO Officer | SMART must submit to the FTA Office of Civil Rights a revised job description and procedures to assure the EEO Compliance Officer (DGM/EEO) concurs on all hires, assists in recruiting minority, persons with disabilities, and female applicants and establishes outreach resources for use by hiring officials as outlined in FTA C 4704.1. | 120 Days |
| 5. Utilization Analysis | ND |  |  |  |
| 6. Goals and Timetables | ND |  |  |  |
| 7. Assessment of Employment Practices | D | No documentation of qualitative or quantitative assessments of employment practices | SMART must submit to the FTA Office of Civil Rights qualitative and quantitative assessments of employment practices, including salary disparities, the use of tests, and the impacts, if any of changes to job descriptions, identifying any barriers that have an adverse impact on the employment or promotion of women or minorities, in accordance with the requirements of FTA Circular 4704.1. The assessments should address the comments noted in response to the documents submitted by SMART on September 28, 2011. | 120 Days |
| 8. Monitoring and Reporting System | D | Program not implemented adequately | SMART must submit to the FTA Office of Civil Rights a copy of its monthly EEO reports for the periods ending September 30, October 31, and November 30, 2011 to include the items described in FTA C. 4704.1. | 120 Days |

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

VIII. attendees

| **NAME** | **TITLE/**  **ORGANIZATION** | **PHONE** | **E-MAIL** |
| --- | --- | --- | --- |
| **GRANTEE – Suburban Mobility Authority for Regional Transportation (SMART)** | | | |
| John Hertel | General Manger | 313-223-2100 | [jhertel@smartbus.org](mailto:jhertel@smartbus.org) |
| Jim Fetzer | Deputy General Manager of Operations | 313-223-2309 | [jfetzer@smartbus.org](mailto:jfetzer@smartbus.org) |
| Colleen Astalos | Director of Human Resources | 313-223-2368 | [castalos@smartbus.org](mailto:castalos@smartbus.org) |
| Avery Gordon | General Counsel | 313-223-2153 | [agordon@smartbus.org](mailto:agordon@smartbus.org) |
| Lisa Gorman | Employment Assistant | 313-223-2366 | [lmgorman@smartbus.org](mailto:lmgorman@smartbus.org) |
| Michael Wavra | Drug & Alcohol Compliance Officer | 313-223-2188 | [mwavra@smartbus.org](mailto:mwavra@smartbus.org) |
| Shelly Wilson | Manager of Employment Training | 313-223-2378 | [swilson@smartbus.org](mailto:swilson@smartbus.org) |
| John Swatosh | Deputy General Manager of Administration and EEO/DBE Officer | 313-223-2124 | [jswatosh@smartbus.org](mailto:jswatosh@smartbus.org) |
| Anthony Chubb | Assistant General Counsel | 313-223-2196 | [achubb@smartbus.org](mailto:achubb@smartbus.org) |
| Michael Patten | ADA Coordinator | 313-223-2304 | [mpatten@smartbus.org](mailto:mpatten@smartbus.org) |
| Lauri Eisen | Marketing Coordinator | 313-223-2155 | [leisen@smartbus.org](mailto:leisen@smartbus.org) |
| **AGENCY – Federal Transit Administration (FTA)** | | | |
| Anita Heard | Equal Opportunity Specialist, Office of Civil Rights, Headquarters | 202-493-0318 | [Anita.heard@dot.gov](mailto:Anita.heard@dot.gov) |
| Donald Erick Allen | Civil Rights Officer, Region V | 312-353-3855 | [donald.allen@dot.gov](mailto:donald.allen@dot.gov) |
| **REVIEW TEAM - The DMP Group, LLC** | | | |
| Maxine Marshall | Lead Reviewer | 202-726-2630 | [Maxine.marshall@thedmpgroup.com](mailto:Maxine.marshall@thedmpgroup.com) |
| Gregory Campbell | Reviewer | 202-726-2630 | [gregory.campbell@thedmpgroup.com](mailto:gregory.campbell@thedmpgroup.com) |
| Khalique Davis | Reviewer | 412-952-9007 | [Khalique.davis@thedmpgroup.com](mailto:Khalique.davis@thedmpgroup.com) |

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)