**EQUAL EMPLOYMENT OPPORTUNITY**

**COMPLIANCE REVIEW**

**OF**

**VIA Metropolitan Transit Authority**

**(VIA)**

**San Antonio, Texas**

**Final Report**

**January 2012**

**Prepared For**

**U.S. DEPARTMENT OF TRANSPORATION**

**FEDERAL TRANSIT ADMINISTRATION**

**OFFICE OF CIVIL RIGHTS**

**Prepared By**

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1. General Information

Grant Recipient: VIA Metropolitan Transit Authority

(VIA)

City/State: San Antonio, TX

Grantee Number: 1937

Executive Official: Mr. Keith Parker

President/Chief Executive Officer

VIA Metropolitan Transit Authority

800 West Myrtle

San Antonio, TX 78212

On Site Liaison: Sylvia Enriquez

Equal Employment Opportunity Officer

Report Prepared by: The DMP Group, LLC

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Site Visit Dates: October 11 – 13, 2011

Compliance Review Team: Maxine Marshall, Lead Reviewer

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2. 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.”

VIA Metropolitan Transit Authority (VIA) 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 VIA’s EEO program and were the basis for the selection of compliance elements that were reviewed in this document.

## 

1. 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 VIA’s “Equal Employment Opportunity Program” was necessary.

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

2. Background information

VIA Metropolitan Transit Authority (VIA) is a metropolitan transit authority created in 1978 according to Article 1118x of the Texas civil statutes (superseded by Chapter 451 Texas Transportation Code) to provide public transportation services within the designated boundaries. VIA operates all service in-house, with the exception of one paratransit contractor that provides supplemental paratransit service. The population of its service area is approximately 1,400,000.

VIA provides transit service in the San Antonio area, serving all of the City of San Antonio and all of unincorporated Bexar County. VIA’s service area is 1,226 square miles, which is 98 percent of Bexar County. The service area is made up of the unincorporated parts of Bexar County and the following municipalities:

|  |  |
| --- | --- |
| * Alamo Heights | * Leon Valley |
| * Balcones Heights | * Olmos Park |
| * Castle Hills | * San Antonio |
| * China Grove | * Shavano Park |
| * Converse | * St. Hedwig |
| * Elmendorf | * Terrell Hills |
| * Kirby |  |

VIA is governed by an eleven-member Board of Trustees. Board members are appointed to staggered two-year terms by the following entities: San Antonio City Council (appoints five), Bexar County Commissioners Court (appoints three), and the Suburban Mayors (appoints two). The eleventh member, the Chair of the Board, is elected by the Board members and serves a two-year term.

VIA buses operate seven days a week from 4 a.m. to 1 a.m. There are 7,197 bus stops along 91 bus lines, which are divided into five service categories: frequent, metro, express, skip, and streetcar. VIA also provides paratransit service (known as VIAtrans), special event, and vanpool service.

VIA operates from a single maintenance and administration facility in downtown San Antonio. Its service is oriented around 11 transit centers in northwest, west, and southwest San Antonio. VIA also operates several Park & Ride lots throughout the city.

According to VIA’s most recent workforce statistics, dated July 31, 2011, VIA had 2,064 employees and minorities represented 86.4 percent of the total workforce, as follows:

* Blacks – 11.5 percent
* Hispanics – 73.9 percent
* American Indians – Less than one percent
* Asians – Less than one percent

Females represented 20.7 percent of the workforce. Approximately 1,500 of the 2,064 positions of VIA’s workforce was represented by the Amalgamated Transit Union.

The President/Chief Executive Officer (CEO) has the ultimate responsibility for implementation of VIA’s EEO program. The President/CEO has delegated the responsibility for implementation of the EEO program to the EEO Officer. Prior to October 1, 2011, the EEO Officer resided in the Human Capital Development Division, with a direct reporting relationship to the Vice President of Human Capital and Development, and a dotted line reporting relationship to the President/CEO for “significant matters.” The EEO Officer had an EEO Coordinator who reported to her. After October 1, 2011, the structure of VIA changed, including the EEO Office. A new position, Manager of EEO/Business Opportunity Programs, was created and reported directly to the Vice President of Fiscal Management/Chief Financial Officer. The EEO Officer was moved to report to the new Manager, and both the new Manager and the EEO Officer had a dotted line reporting relationship to the President/CEO. The EEO Coordinator position, which had been vacant, was eliminated with the creation of the new Manager position as a part of the October 2011 reorganization. At the time of the Compliance Review and according to VIA’s most recent Organization Chart, VIA was organized under the following management structure that reported directly to the President/CEO:

* Vice President (VP) of Operations
* VP of Maintenance
* VP of Bus and Rail Strategic Planning and Project Development
* VP of Public Affairs
* VP of Fiscal Management/Chief Financial Officer
* VP of Human Capital and Development
* VP of Information Technology
* General Counsel

VIA also has a Director of Audit that reports directly to the Board of Trustees.

The following table represents a demographic profile of the VIA service area using data from the 2000 and the 2010 Census. The table shows the 2000 and 2010 population by racial/ethnic group, the increase (or decrease) in population from 2000 to 2010 and the percentage of the racial/ethnic group population to the total population in both 2000 and 2010.

From 2000 to 2010, the total population of the VIA service area increased 23.1 percent. The White population increased 30.4 percent, while the Black population increased 28.9 percent, the Hispanic population increased 33 percent, the Asian population increased 86 percent, the Hawaiian/Pacific Islander population increased 61.8 percent, and the American Indian/Alaskan Native increased 29.3 percent. In 2010, 72.9 percent of the total population was White (an increase of 4.1 percent from 2000), 7.5 percent was Black (an increase of .03 percent), 58.7 percent was Hispanic (an increase of 4.4 percent), 2.4 percent was Asian (an increase of 0.8 percent), 0.1 percent was Hawaiian/Pacific Islander (a negligible increase), and 0.8 percent was American Indian/Alaskan Native (a negligible increase).

**Table 1 – Demographics of Bexar County, Texas**

**Racial/ Ethnic Breakdown**

**Source: 2000 and 2010 U.S. Census**

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Racial/ Ethnic Group** | **Bexar County**  **2000** | | **Bexar County**  **2010** | | **Change in Bexar County** | | |
| **Number** | **Percent** | **Number** | **Percent** | **Number** | **Percent change ethnic group** | **Percent change total population** |
| White | 959,122 | 68.9% | 1,250,252 | 72.9% | 291,130 | 30.4% | 4.1% |
| Black | 100,025 | 7.2% | 128,892 | 7.5% | 28,867 | 28.9% | 0.3% |
| American Indian and Alaska Native | 11,193 | 0.8% | 14,475 | 0.8% | 3,282 | 29.3% | 0.0% |
| Asian | 22,437 | 1.6% | 41,739 | 2.4% | 19,302 | 86.0% | 0.8% |
| Hawaiian/Pacific Islander | 1,452 | 0.1% | 2,350 | 0.1% | 898 | 61.8% | 0.0% |
| Other Race | 247,979 | 17.8% | 217,389 | 12.7% | (30,590) | (12.3%) | (5.1%) |
| Two or More | 50,723 | 3.6% | 59,676 | 3.5% | 8,953 | 17.7% | (0.2%) |
| Hispanic Origin[[1]](#footnote-1) | 757,033 | 54.3% | 1,006,958 | 58.7% | 249,925 | 33.0% | 4.4% |
| **Total** | **1,392,931** | **100%** | **1,714,773** | **100%** | 321,842 | N/A | 23.1% |

1. 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 Chief Executive Officer (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 FTA Civil Rights Headquarters staff regarding the decision to conduct a Compliance Review of VIA. Relevant documents from FTA’s files were reviewed as background. Next, an agenda letter was prepared and sent to VIA by FTA’s Office of Civil Rights. The agenda letter notified VIA of the planned Compliance Review, requested preliminary documents, and informed VIA of additional documents needed and areas that would be covered during the on-site portion of the Review. It also informed VIA 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 VIA’s Services and Organization |
| 1. Summary Listing of EEO Complaints and Lawsuits against VIA during the last three years (September 1, 2008 – August 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 VIA’s Submittal Letter |
| Copy of VIA’s Response to the FTA Letter of June 7, 2011 regarding the Request for Additional Information of EEO Program |
| 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. A copy of any analysis of employment practices performed by VIA in the past three years. |
| 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 VIA’s EEO Monitoring and Reporting System. |
| 1. A report on the results of VIA’s goals for the 2010 and 2011 affirmative action plan (AAP) years. 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 VIA 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. |

VIA 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.

VIA’s site visit occurred October 11 – 13, 2011. The Entrance Conference was conducted at the beginning of the Compliance Review with VIA’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 on-site visit was discussed.

Following the Entrance Conference, the Review team conducted a detailed examination of documents submitted by VIA’s EEO Officer. The Review team also held discussions with VIA’s EEO Officer regarding the implementation of the EEO Policy/Program.

The next day, a group interview was conducted with members of VIA’s Human Capital and Development staff to learn about VIA’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.

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

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

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

**Staff Interviews**

Seventeen staff members employed by VIA 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 VIA ranged from between 10 months to 25 years. Many staff members said that VIA was a diverse organization that provided opportunities for promotion with no significant barriers. Several commented that VIA has a history of supporting internal promotions and some had received promotions during their time at VIA.

The general consensus was that most employees knew the EEO Officer and understood the EEO Officer’s role within the organization. Many had seen VIA’s EEO Statement of Policy and remembered that diversity was discussed as part of the orientation for new employees. Almost all staff members remember receiving the EEO Statement of Policy in the past year or so. Almost all staff members also had attended VIA sponsored training (e.g., sexual harassment training) in the past year.

Only a few staff members, including some at the supervisory level, were aware of any internal complaints filed through the EEO Officer. Several of the staff thought that a little more could be done to enhance VIA’s EEO program, including increasing the staff size of the EEO office from one to two, having biannual EEO presentations, and ensuring that management review the EEO Policy with staff not just receiving the EEO Statement of Policy and being required to sign to acknowledge receipt.

1. Findings and recommendations

The EEO Compliance Review focused on VIA’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 five areas: *Statement of Policy, Designation of Personnel Responsibility, Goals and Timetables, Assessment of Employment Practices, and Monitoring and Reporting*.

Following the site visit, on November 14, 2011, and on December 1, 2011, VIA submitted documentation of corrective action to close deficiencies in the areas of *Statement of Policy, Designation of Personnel Responsibility, Goals and Timetables,* and *Assessment of Employment Practices*, and one of the deficiencies in *Monitoring and Reporting System*. VIA also described its plan to address the outstanding deficiencies in *Monitoring and Reporting Systems* in a timely manner.

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 VIA, no deficiencies were found with FTA requirements for Program Submission. Prior to the site visit, VIA provided its most recent EEO Program Plan submission to FTA, entitled *VIA Metropolitan Transit, EEO Plan, February 22, 2011*, submitted on March 4, 2011. VIA’s EEO Plan was comprised of the following areas:

* Executive Summary
* Dissemination of EEO Policy
* Responsibility for implementation of EEO Plan
* Job Group Analysis
* Incumbency v. Availability Analysis
* Identification of Areas of Concern and Correction of Deficiencies
* Establishment of Goals for Job Groups and Objectives for Organizational Units
* Development and Execution of Action Oriented Programs
* Design and Implementation of Internal Monitoring and reporting System
* Consideration of Minorities and Women Not Currently in the Work Force
* Sex Discrimination Guidelines
* Affirmative Action Program for Individuals with Disabilities and Vietnam Era/ Disabled Veterans
* Age Discrimination in Employment Act of 1967, as Amended
* Religious Discrimination Guidelines
* Information Regarding Compilation of Exhibits

The FTA Region VI Regional Civil Rights Officer initially approved the VIA EEO Plan submittal on March 7, 2011. On June 7, 2011, FTA requested additional and/or updated information to VIA’s February 22, 2011 program submittal. In the letter, FTA detailed 15 different items in seven of the eight EEO Plan areas where additional information was required to ensure all the EEO programs requirements were being met. The updates were requested to be submitted to the FTA by August 8, 2011. Upon request, VIA was granted an extension for submitting its updated plan until August 22, 2011, and in a letter dated August 22, 2011, VIA submitted most of the additional information requested. During this Compliance Review, the additional submissions were examined and the Review team provided technical assistance on how to fully implement the EEO Program components.

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 VIA, deficiencies were found with FTA requirements for Statement of Policy. Prior to the site visit, VIA provided the Review team with a copy of its EEO Policy issued by the President/CEO. The EEO Policy Statement was mailed to all employees in July of 2011. The EEO Policy statement was posted on VIA’s website and posted on bulletin boards throughout its facilities. The EEO Policy Statement contained only four of the required elements of a Statement of Policy as described in FTA Circular C 4704.1 as indicated in the table below.

The July 2011 EEO Policy Statement did not include a commitment to undertake affirmative action to achieve goals, it did not assign the EEO program responsibility to a VIA executive, it did not describe that management and supervisors would be evaluated on their accomplishment of EEO goals, and it did not acknowledge that achievement of EEO goals would benefit VIA as the workforce reflects the community it serves.

Prior to the issuance of the Draft Report, VIA provided a revised copy of its EEO Policy, dated November 2011, that included all of the required elements as described in FTA Circular C 4704.1 and was signed by the President/ Chief Executive Officer.

|  |  |  |
| --- | --- | --- |
| FTA C. 4704.1 Policy Statement Requirements | **July 2011**  **EEO Policy Statement** | **Nov. 2011**  **EEO Policy Statement** |
| Issued by CEO | Yes | Yes |
| Commitment to EEO | Yes | Yes |
| Undertake an Affirmative Action Program | **No** | Yes |
| EEO Program Assignment to Agency Executive | **No** | Yes |
| Management Personnel Share Responsibility | Yes | Yes |
| Applicants/Employees Right to File Complaints | Yes | Yes |
| Performance by Managers/Supervisors Evaluated | **No** | Yes |
| Successful Achievement Provides Benefits | **No** | Yes |

VIA is reminded to post the new policy on its website. The deficiency in this area is now closed.

1. 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 VIA, no deficiencies were found with FTA requirements for Dissemination. VIA used the following methods to disseminate its EEO Policy internally and externally:

*Internal Communications*

* *EEO Policy Statement is posted throughout the Agency, at each location.*
* *EEO Policy Statement is distributed to all employees. A signed commitment form is filed in each employee’s personnel file confirming the receipt of the policy statement. This process of distributing the policy statement to all employees is done every two years.*
* *EEO training is presented during VIA annual employee meetings.*
* *Internal job postings carry a standard VIA “Equal Opportunity Employer” statement.*
* *Employees and applicants are made aware of VIA’s procedures for filing complaints of discrimination*
* *EEO training is included as a part of new employee orientation. On the third day of training, there is a presentation on Sexual Harassment, how to file a complaint and who the EEO officer is.*

*External Communications*

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

Prior to the site visit, VIA provided a letter from the EEO Officer, addressed to *All VIA Employees*, dated July 15, 2011, accompanied by the EEO Policy Statement, EEO Discrimination Complaint Process, Sexual Harassment Complaint Process, VIA’s Internal Discrimination Complaint Form, and the Biennial Employee EEO Commitment form. VIA also provided documentation that a letter dated July 19, 2011 was mailed, along with the EEO Policy Statement and Sexual Harassment Policy, to a list of organizations included on its Recruitment Mailing List.

During the site visit, the Review team observed that the EEO Policy Statement was posted throughout its facilities and was available on its website. Additionally, a review of selected employee files contained the aforementioned Biennial Employee EEO Commitment form.

1. 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 VIA, 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*.

Prior to the site visit, an agency organizational chart and the job description for the EEO Officer were provided. According to the information provided, the EEO Officer position resided in the Human Capital Development Division, with a direct reporting relationship to the Vice President of Human Capital and Development, and a dotted line reporting relationship to the President/CEO for “significant matters”. The organization chart showed that the EEO Officer had an EEO Coordinator who reported to the Vice President of Human Capital and Development. During the site visit, VIA provided a copy of its current organization chart that reflected its October 2011 reorganization. A new position, Manager of EEO/Business Opportunity Programs, was created in the Fiscal Management Division. The EEO Officer was moved to report to the new Manager, and both the new Manager and the EEO Officer had a dotted line reporting relationship to the President/CEO. VIA also explained that, while the EEO Officer was a grade 11 and the new Manager position was a grade 12, the EEO Officer previously had been a grade 16, which was equivalent to the other vice presidents and upper level management in the agency. The EEO Coordinator position, which had been vacant, was eliminated with the creation of the new Manager position as a part of the October 2011 reorganization.

The Review team advised that in an organization of VIA’s size, with approximately 2,000 employees, the EEO function as it was currently staffed could prove to be inadequate to fulfill the requirements of an EEO Program as detailed in the Circular. The deficiencies noted in Assessment of Employment Practices and Monitoring and Reporting (see below) could be related to the lack of resources for the EEO program.

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 the EEO Officer as outlined in FTA Circular 4704.1.

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

According to the job description provided as depicted shown above, and as was evidenced in the review of employment and personnel files, the EEO Officer did not concur on any hires or promotions. Also, while the EEO Officer’s job description indicated that it would periodically report to the CEO, the EEO Officer had not been meeting with the CEO. The EEO Officer had been providing monthly reports to the Vice President of Human Capital and Development. However, according to the October 2011 reorganization, both the new Manager of EEO and the EEO Officer would have dotted line reporting relationships to the President/CEO.

Prior to the issuance of the Draft Report, VIA provided a revised copy of the EEO Officer job description, dated November 2011, that included all of the required elements as described in FTA Circular C 4704.1 and indicated that the EEO Officer concurred on all hires and promotions. The revised Job Description provided was adequate to close this aspect of the deficiency.

In its November 14, 2011 letter to FTA, VIA indicated that it would “review identified EEO responsibilities and staffing levels to determine and document how required EEO responsibilities are fulfilled.”

In its December 1, 2011 letter to FTA, VIA explained that the EEO staffing levels would be supported through shared responsibilities with the Manager of Equal Employment and Business Opportunities and the Disadvantaged Business Enterprise Specialist. A budget line item was also set aside to hire an EEO/DBE coordinator who will also support EEO function. VIA also provided a copy of a revised (11/2011) Employment Requisition Position Vacancy form, that included an area for the EEO Goal to be noted prior to posting the position. VIA also provided a sample of a Personnel Notice, that provided for concurrence by the EEO Officer for hires and promotions.

The deficiencies in this area are now closed.

1. 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 VIA, no deficiencies were found with FTA requirements for Utilization Analysis. Prior to the site visit, VIA provided workforce utilization analyses based on the Census 2000 Special EEO file for the San Antonio, TX metropolitan statistical area. The VIA Utilization Analyses showed the workforce by the following job groups:

* Senior Level
* Manager
* Supervisor
* Professional
* Technician
* Protective Service Worker
* Para Professional
* Administrative Support
* Office and Clerical
* Skilled Craft Workers
* Service-Maintenance
* Service-Maintenance-Maintenance
* Service-Maintenance-Operations
* Service-Maintenance-Temporary

For each of the job groups, VIA’s Utilization Analyses showed the following:

* Number of employees in each group
* Gender
* Ethnicity
* Available workforce percentage
* Underutilization percentage and number
* Need for goals

The Availability Analysis report showed the total weighted availability that was calculated to determine the available workforce. A hundred percent of the value weight was split between two factors: percentage of minorities and females among those having requisite skill in the reasonable recruitment area and percentage of minorities and females among those promotable, transferable, and trainable within the organization. The Utilization Analysis showed the underutilization determined when the total weighted availability exceeded the current utilization and was greater than or equal to one person.

1. **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 VIA, 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.*

*If goals and timetables are not met, there is an obligation to justify this failure following the recipient’s annual evaluation of the EEO program. The justification for failing to meet a goal(s) should address such factors as: whether the anticipated job openings materialized, the availability of persons whose employment could have resulted in the goal(s) being achieved, and the adequacy of recruitment and other affirmative actions to change existing employment practices so that the goal(s) could be achieved.*

*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 VIA’s Utilization Analysis, there were ten job groups where goals were established for females and/or minorities. Percentage goals were established for areas where the underutilization was equal to or greater than one person. VIA’s percentage goals were not broken down into short-term and long-term goals, and there were no numerical short-term goals or timetables. Also, there was no justification provided for VIA’s failure to meet prior goals and timetables established.

In its November 14, 2011 letter to FTA, VIA indicated that it would “develop a system to track short-term and long-term goals.”

In its December 1, 2011 letter to FTA, VIA provided its revised workforce analysis and goals spreadsheet as of October 31, 2011. The spreadsheet included both short-term and long-range percentage goals, short-term numerical goals, and for the prior year (2011) numerical goals, VIA provided a narrative discussion on how VIA performed on the goals, including a justification for goals that were not met.

The deficiency in this area is now closed.

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 VIA, deficiencies were found with FTA requirements for Assessment of Employment Practices. VIA 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.*

Prior to the site visit, VIA provided quantitative and summary information for the past three years for new hires, competitive promotions, terminations, and disciplinary actions. The table below summarizes the qualitative and quantitative analysis of employment practices required per FTA C. 4704.1 and whether VIA conducted these analyses.

|  |  |
| --- | --- |
| **Quantitative and Qualitative Analysis**  (FTA Circular 4704.1 III.2.f) | |
| **Narrative Description and Analysis:** | **VIA’s Assessment of Employment Practices** |
| 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. | No |
| 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. | No |
| Number of disciplinary actions and terminations (by type) in the past year. | Yes |

VIA’s summary reports on its 2008 to 2011 new hires, competitive promotions, terminations, and disciplinary actions did not contain a breakdown of the information by each year or by job groups. VIA also did not provide applicant data.

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

During the site visit, the Review team provided technical assistance on the type of analyses to be performed, and VIA prepared a quantitative analysis of supervisory testing for the past two years that showed no apparent bias in the testing for females or minorities.

In its November 14, 2011 letter to FTA, VIA indicated that it would “develop a system to assess and track practices for testing, hiring, promoting, disciplining, and compensating.”

In its December 1, 2011 letter to FTA, VIA provided documentation that it had analyzed its applicant statistics at various stages of the hiring process for both internal and external applicants. The data showed that the rate of hires, after testing and interviews was proportionate to the applicant pool, and there was no disparity among minorities or females. Similarly, VIA’s data showed that the percentage of minorities and females promoted was consistent with their availability in the current workforce. VIA also provided quantitative analyses of discipline and termination data, showing no disparities among minorities or females during the past three years. VIA also reviewed its recruitment mailing list and websites utilized for outreach purposes to ensure that there is adequate outreach to minorities and females during recruitment to increase the number of applicants.

The deficiency in this area is now closed.

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 VIA, 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.*

In response to the FTA’s request for additional information of its EEO Program, in a letter dated August 22, 2011, VIA provided information about its monitoring and reporting system. According to VIA’s monitoring system, the EEO Officer:

* *Periodically collects reports regarding EEO case recommendations,*
* *Informs senior management/supervisors of progress and problems. This could be regarding an open position where there is underutilization,*
* *Periodically meets with the vice presidents, managers, and supervisors to present updates on the EEO and Sexual Harassment policies,*
* *Has the VIA workforce signs off on receipt of a copy of the latest EEO and Sexual Harassment Policies biennially,*
* *Coordinates and holds annual training sessions for all VIA supervisors and managers,*
* *Tracks EEO complaints*

VIA was not able to document that the process developed for monitoring and reporting on its EEO program complied with the requirements detailed in FTA C. 4704.1. For example, the monthly reports generated by VIA did not measure EEO accomplishments. As noted in the Designation of Personnel section of this report, the EEO Officer had been reporting to the Vice President of Human Capital and Development, but there was no documentation of periodically reporting to the President/CEO or the senior management team.

Further, VIA did not have a system in place to monitor its paratransit contractor, Star Shuttle that had 50 or more transit related employees and received more than $1 million in funding annually. The EEO Policy statement for Star Shuttle was provided during the site visit. The policy statement did not comply with the requirements of FTA C. 4704.1, and to VIA’s knowledge, Star Shuttle did have a written EEO Program.

In its November 14, 2011 letter to FTA, VIA indicated that it would develop reporting systems to include:

1. *Tracking of goals and measurement of EEO accomplishments as of 12/31/11;*
2. *Periodic reporting to the President/CEO and the executive leadership team; and*
3. *Monitoring and oversight of Star Shuttle’s EEO program, to include goals and accomplishments.*

In its December 1, 2011 letter to FTA, VIA indicated that by January 30, 2012, it would provide its EEO report with EEO accomplishments to the FTA. VIA also provided a schedule of quarterly meetings to report on EEO accomplishments held, first between the Manager of Equal Employment and Business Opportunities and the EEO Officer, and another meeting during the same month with VIA’s Senior Leadership Team.

With the December 1, 2011 submittal, VIA also provided a copy of Star Shuttle’s EEO Program, dated November 2011, and VIA’s proposed procedures for oversight of Star Shuttle’s EEO accomplishments, to include site visits.

Star Shuttle’s EEO Program was lacking several key components, as described below:

* Policy Statement - Must be dated, and it was missing item #7 of FTA C. 4704.1, page III-2.
* Designation of Personnel - Amy Garcia was the EEO Officer and appeared to be located in Human Resources. Please address the conflict of interest.
* Utilization Analysis – Must be calculated using whole person rule. Star Shuttle must establish numeric goals. Also, there was no discussion of prior goals or a justification for not meeting them, if any.
* Employment practices - There was no written narrative. With the exception of the Hire Log (1/01/11 to 11/04/11), the statistics were not in the enclosed charts.
* Monitoring and Reporting - The section titled *Auditing and Reporting* did not describe the frequency or to whom Star Shuttle would monitor or report on EEO accomplishments.

**Corrective Action and Schedule**: No later than May 1, 2012, VIA must submit to the FTA Office of Civil Rights:

* VIA’s EEO report of accomplishments as of December 31, 2011.
* A revised copy of Star Shuttle’s EEO Program.
* A description of how frequently VIA will conduct its site visits of Star Shuttle or otherwise provide oversight.

1. 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 |  |  |  |
| 1. Statement of Policy | D | Policy Statement is missing required elements | VIA must submit to the FTA Office of Civil Rights an EEO Policy Statement that contains all of the required elements as described in FTA Circular C 4704.1. Upon approval from FTA, VIA must post a new Policy Statement on its public website and on the intranet and on VIA bulletin boards throughout its facilities. | Closed 11/14/2011 |
| 1. Dissemination | ND |  |  |  |
| 1. Designation of Personnel Responsibility | D | * EEO Officer does not concur on all hires and promotions. * EEO staffing levels may not be adequate | VIA must submit to the FTA Office of Civil Rights:   * Revised Job Description and Employment Offer Approval form showing EEO concurrence on all hires and promotions. * Written description of how EEO responsibilities can be fulfilled with current staffing levels. | Closed 11/14/2011  Closed  12/1/2011 |
| 1. Utilization Analysis | ND |  |  |  |
| 1. Goals and Timetables | D | No short-term numerical goals | VIA must submit to the FTA Office of Civil Rights revised Goals and Timetables for 2012 presented in terms of long-range percentage goals and short-term numerical goals in accordance with the requirements of FTA C. 4704.1. | Closed  12/1/2011 |
| 1. Assessment of Employment Practices | D | No assessment of employment practices such as testing, discipline, compensation, etc. | VIA must submit to the FTA Office of Civil Rights qualitative and quantitative assessments of employment practices (i.e., recruitment, testing, promotions, discipline, terminations, and compensation) for the past three years in accordance with the requirements of FTA C. 4704.1. | Closed  12/1/2011 |
| 1. Monitoring and Reporting System | D | * EEO monthly reports do not measure EEO accomplishments. * No periodic reporting to senior management. * No approval or oversight of Star Shuttle’s EEO Program. | Submit the following to FTA:   * VIA’s EEO report of accomplishments as of December 31, 2011. * Schedule for periodic reporting to senior management. * A revised copy of Star Shuttle’s EEO Program. * A description of how frequently VIA will conduct site visits of Star Shuttle or otherwise provide oversight. | May 1, 2012  Closed  12/1/2011  Closed  2/1/12  Closed  2/1/12 |

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

2. ATTENDEES

| **NAME** | **TITLE/**  **ORGANIZATION** | **PHONE** | **E-MAIL** |
| --- | --- | --- | --- |
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1. Per the 2000 and the 2010 Census, people of Hispanic origin can be, and in most cases are, counted in two or more race categories. [↑](#footnote-ref-1)