

FTA EQUAL EMPLOYMENT OPPORTUNITY (EEO) CIRCULAR FREQUENTLY ASKED QUESTIONS

Threshold Requirements:

1. Who is required to submit EEO Programs to FTA?

Only transit agencies and State DOTs that are direct recipients and that meet the two-prong threshold described in Circular section 1.4 are required to submit EEO Programs to FTA. The two-prong threshold for EEO Program submission is:

- Employs 100 or more transit-related employees, and
- Requests or receives capital or operating assistance in excess of \$1 million in the previous Federal fiscal year, or requests or receives planning assistance in excess of \$250,000 in the previous Federal fiscal year.

A direct recipient is an entity that receives Federal financial assistance directly from FTA.

In addition to the requirement to submit EEO Programs to FTA, a direct recipient is responsible for monitoring its subrecipients and contractors. Part of that responsibility is collecting and reviewing EEO Programs from subrecipients and contractors that meet the Section 1.4 two-prong threshold. The EEO Programs of subrecipients and contractors must be maintained by the direct recipient, as they may be requested by FTA at its discretion.

2. Are State DOTs required to submit FTA EEO Programs?

A State DOT is required to submit an FTA EEO Program if it meets the two-prong threshold requirement in Circular Section 1.4. If the State DOT does not meet the threshold, it is not required to submit an FTA EEO Program.

3. What is a transit-related employee?

A transit-related employee is “an employee of an FTA applicant, recipient, subrecipient, or contractor who is involved in any aspect of an agency’s public transit operation funded by FTA.” (Circular Section 1.6). Agencies are required to count all part-time employees and employees with collateral duties who support the transit program, including those who contribute time to other programs. (Circular Section 1.4). Therefore, a transit-related employee is anyone “who is involved in any aspect of an agency’s public transit operation” and not just those who plan routes and drive buses. Those who provide transit oversight, civil rights oversight, accounting, and grants management, for example, would all be considered transit-related employees if their work touched the transit program.

The following are some examples of transit-related employees:

- A city planner involved in planning bus routes would be counted as part of the recipient's transit-related workforce, but a city planner involved only in land use would not be counted.
- A budget analyst who processes payments for the transit program in addition to other responsibilities.
- An employee focusing on grants management who handles grant applications for several city programs, including transit programs.
- An HR officer managing staffing at a transit agency or managing transit staff as part of a city or county program.
- An employee providing civil rights oversight at a transit agency or State DOT.
- A security guard or facilities staffer at a transit-specific building or subway station would be a transit-related employee, while a security guard or facilities staffer at a State DOT building would not.

4. Is an agency with between 50 and 99 transit-related employees only required to prepare and maintain the required EEO Program documents if it also meets the monetary threshold?

Agencies with 50–99 transit-related employees who meet the monetary threshold are required to prepare and maintain an abbreviated EEO Program as noted in Circular Section 1.4, but are not required to submit to FTA unless requested. Agencies with between 50–99 transit-related employees that do not meet the monetary threshold are not required to prepare and maintain an abbreviated EEO Program. However, FTA applicants, recipients, subrecipients, and contractors who do not meet the EEO Program threshold are still required to comply with all EEO statutes and regulations.

5. When a State DOT or transit agency is counting transit-related employees for purposes of the threshold, should it count subrecipients or contractors who work within the transit agency?

No. When a State DOT or a transit agency is counting transit-related employees, it does not count subrecipients or contractors for purposes of whether it meets the 50–99 or 100+ employees threshold. However, since subrecipients and contractors who meet the threshold are required to submit EEO Programs to the direct recipient transit agency, when a subrecipient or contractor counts transit-related employees for the threshold, it would include all transit-related employees who work for the subrecipient or contractor.

6. What does “requests or receives” mean in the EEO program monetary threshold?

For the purposes of the EEO Program, “requests or receives” means the FTA formula or competitive grants that an entity was awarded in the previous fiscal year for capital, operations, or planning expenditures. For this monetary threshold, FTA is not interested in the expenditures or grant drawdowns by an agency.

7. If a contractor has multiple contracts with different transit agencies, how would it count how many transit-related employees it had? How should it go about submitting programs?

A contractor must satisfy the EEO requirements for each transit agency with which it has a contract. For example, if Contractor A has contracts with five different transit agencies, it must meet the EEO requirements for each agency. When counting transit-related employees for purposes of the threshold, it would count how many transit-related employees it has with each transit agency. For example, if Contractor A has contracts with Transit Agency Y and Transit Agency Z, and has 60 transit-related employees at Y and 110 transit-related employees at Z, and met the monetary threshold for each, it would be required to submit an EEO Program to Transit Agency Z, as it met the thresholds, but would only be required to prepare and maintain an EEO Program as outlined in Circular Section 1.4 for Transit Agency Y.

While the contractor can have much of the same EEO Program for each of its direct recipients, the Assessment of Employment Practices, Goals and Timetables, and Utilization Analysis tables, when required based on the threshold, must be unique to the number of contractor employees working for the specific direct recipient.

8. How should contractors and subrecipients count the monetary threshold?

Contractors determine the monetary threshold by counting the amount of federal funding received or requested through applicable contracts (including, but not limited to, for capital projects, operations, and planning, but excluding construction contracts) from the direct recipient in the previous fiscal year.

Subrecipients determine the monetary threshold by counting the amount of federal funding received or requested from the direct recipient in the previous fiscal year.

9. If a transit agency or State DOT crosses the EEO Program submission thresholds noted in Circular Section 1.4, how should it proceed with notifying FTA and submitting a program?

When a transit agency or State DOT crosses either the 100 transit-related employee two-prong threshold or the 50 transit-related employee two-prong threshold, both noted in Circular Section 1.4, the agency must self-report to FTA that it has crossed the threshold.

If the entity crosses the 50 transit-related employee threshold and meets the monetary threshold, the entity will be required to prepare and maintain, but not submit to FTA except upon request, a new abbreviated EEO Program within 90 days. Within 180 days, the entity will be required to implement its new EEO Program. FTA will follow up with the entity during its next oversight opportunity.

If the entity crosses the 100 transit-related employee threshold and meets the monetary threshold, the entity will be required to maintain its abbreviated EEO Program until FTA assigns an EEO Program Submission date to the entity and places the entity on a schedule to submit full EEO

programs every four years. At the next EEO Program Submission date, the entity will be required to submit a full EEO Program as required under the updated Circular.

Utilization Analysis and Employment Practices Tables:

10. If an agency does not submit EEO-4 data to the EEOC, can it use EEO-1 data for the categories in the Utilization analysis?

The EEOC requires EEO-4 information from state and local government entities, and therefore, it is likely that all State DOTs, transit agencies, and subrecipients who submit or compile information for the EEOC use EEO-4 forms. All transit agencies and State DOTs that meet the two-prong threshold in Circular Section 1.4 are required to submit Utilization analyses with EEO-4 data to FTA. However, if a subrecipient or contractor uses EEO-1 forms, it must ask its direct recipient whether it prefers the information to be submitted with EEO-1 or EEO-4 categories. If the direct recipient prefers EEO-4 categories, the contractor must transfer the EEO-1 data to EEO-4 categories.

11. When compiling the Employment Practices tables for an EEO Program, what is the proper time period to use?

For the next EEO Program submission, because the submission schedule has been reset to accommodate the new four-year submission cycle, recipients will be submitting EEO Programs at differing amounts of time from the last EEO Program submission. To accommodate the various lengths of time since the previous EEO Program submissions, the Employment Practices tables should be for either the time since the last program submission, or the previous four years, whichever is shorter. For example, if a recipient submitted its last program in 2015, and FTA assigns its next submission date in 2018, it would submit for the period from 2015–2018. If the recipient submitted its last program in 2015 and FTA assigns its next submission date in 2020, it would submit for 2016–2020. After the 2018 and 2020 submission dates have passed, each recipient will follow a four-year submission cycle, and the Employment Practices tables will cover the full four years of the EEO Program period.

12. For the Utilization Analysis and Employment Practices charts, should the recipient use statistics for the current workforce or the workforce at the start of the present fiscal year?

The statistics for the current workforce should be used for the employment practices and utilization analysis charts. Therefore, an entity must submit the same numbers as submitted with its EEO-4 submission to the EEOC, which is due on September 30 of odd-numbered years.

13. Are recipients required to use the Employment Practices or Utilization Analysis spreadsheets provided by FTA?

While the spreadsheets are provided to make the submission easier for recipients, recipients may provide alternative documentation containing the same information. (See Circular Sections 2.2.4 and 2.2.6).

14. When compiling the Goals and Timetables, what is the proper time period to use?

For the upcoming EEO Program submissions, which will be in 2018 or 2020, agencies should use a future four-year time period for the Goals and Timetables.

15. What types of veterans must recipients track for hiring and promotions in the Employment Practices Assessment?

For the FTA Employment Practice Assessment for veteran hiring and promotions (Circular Section 2.2.6), use the Department of Labor definition for “eligible veteran” found at 38 U.S.C. Section 4211(4). It reads:

(4) The term “eligible veteran” means a person who—

(A) served on active duty for a period of more than 180 days and was discharged or released therefrom with other than a dishonorable discharge;

(B) was discharged or released from active duty because of a service-connected disability;

(C) as a member of a reserve component under an order to active duty pursuant to section 12301(a), (d), or (g), 12302, or 12304 of title 10, served on active duty during a period of war or in a campaign or expedition for which a campaign badge is authorized and was discharged or released from such duty with other than a dishonorable discharge; or

(D) was discharged or released from active duty by reason of a sole survivorship discharge (as that term is defined in section 1174(i) of title 10).

Program Submission:

16. If a State DOT has an EEO Program that is acceptable to FHWA, is it also acceptable to FTA? Does a completely separate program need to be developed?

An EEO Program that meets FHWA’s requirements do not necessarily meet FTA’s requirements, and therefore, it may not be acceptable. However, a State DOT may submit the same EEO Program to FHWA and FTA as long as the program includes all components and information required under FTA’s EEO Circular. Additionally, some State DOT’s may be required to submit an EEO Program to FHWA but not be required to submit to FTA. A State DOT must submit an FTA EEO Program if it meets the two-prong threshold in Circular Section 1.4. State DOT-specific EEO requirements are discussed in FTA EEO Circular Section 1.5. All of the components required in an FTA EEO Program are explained in FTA EEO Circular Chapter 2.

17. If a transit agency submits an EEO Program to another government agency, can it use the same program for the FTA EEO Program submission?

FTA's EEO Circular outlines the requirements of an FTA EEO Program submission, which includes transit-focused information that is unlikely to be provided in submissions to other agencies. However, if the EEO Program submitted to the other government agency fulfills all the requirements of Circular 4704.1A, then a transit agency can use the same program.

18. If a city or county already has an EEO Program, will that cover the EEO Program for the city or county's transit agency?

The city or county EEO Program is likely not transit-focused and therefore may not meet the EEO Program requirements in the FTA EEO Circular. For example, the reporting requirements in the FTA EEO Circular require counting transit-related employees, whereas a city or county EEO Program may count all employees of the city or county. However, if the city or county program fulfills all the requirements of FTA EEO Circular 4704.1A, then the city or county EEO Program may be sufficient for the transit agency's submission. Even if the full city or county EEO Program is not sufficient for FTA submission, some components required by the FTA EEO Circular may overlap, and may be able to be used, such as the EEO Policy Statement.

If a city or county transit agency reaches the two-prong threshold noted in Circular Section 1.4, and is a direct recipient, the transit agency must submit an EEO Program to FTA that fulfills the requirements of Circular 4704.1A. If the entity is a subrecipient that meets the two-prong threshold in Circular Section 1.4, the program must be filed with the direct recipient.

Training Program:

19. Will FTA recommend a training program that meets the requirements of Circular Section 2.2.3?

Included in Circular Section 2.2.3 are suggested topics for trainings that focus on the important aspects of a quality investigation. FTA does not require specific courses or training centers. It is up to the local agency to ensure that the trainings the EEO investigators take are sufficient to perform their required tasks as required by the Circular.

FY 2017 EEO Program Oversight:

20. Will FTA use requirements under the old Circular (4704.1) or the revised Circular (4704.1A) for FY 2017 Comprehensive (Triennial and State Management Reviews) and Specialized Reviews (EEO Program Reviews)?

Oversight contractors will use the old Circular requirements for the FY 2017 Comprehensive and Specialized Reviews. FTA will not hold an entity to the updated Circular requirements until the

FY 2018 reviews. However, if the oversight contractors find EEO deficiencies during the FY 2017 reviews (using the old Circular requirements), then FTA will tailor the requested corrective actions to align with the updated Circular requirements.