

channels to the Washington Headquarters, Office of Civil Rights. After approval, the Washington Headquarters, Office of Civil Rights, (OCR) shall request the appropriate region to conduct the home office review.

(d) *Employment of women.* Executive Order 11246, as amended, implementing rules and regulations regarding sex discrimination are outlined in 41 CFR part 60-20. It is the responsibility of the Compliance Specialist to ensure that contractors provide women full participation in their work forces.

(e) *Effect of exclusive referral agreements.* (1) The OFCCP has established the following criteria for determining compliance when an exclusive referral agreement is involved;

(i) It shall be no excuse that the union, with which the contractor has a collective bargaining agreement providing for exclusive referral, failed to refer minority or female employees.

(ii) Discrimination in referral for employment, even if pursuant to provisions of a collective bargaining agreement, is prohibited by the National Labor Relations Act and Title VII of the Civil Rights Act of 1964, as amended.

(iii) Contractors and subcontractors have a responsibility to provide equal opportunity if they want to participate in federally involved contracts. To the extent they have delegated the responsibility for some of their employment practices to some other organization or agency which prevents them from meeting their obligations, these contractors must be found in noncompliance.

(2) If the contractor indicates that union action or inaction is a proximate cause of the contractor's failure to provide equal opportunity, a finding of noncompliance will be made and a show cause notice issued, and:

(i) The contractor will be formally directed to comply with the equal opportunity requirements.

(ii) Reviews of other contractors with projects within the jurisdiction of the applicable union locals shall be scheduled.

(iii) If the reviews indicate a pattern and/or practice of discrimination on the part of specific union locals, each contractor in the area shall be in-

formed of the criteria outlined in §230.411(e)(1) of this section. Furthermore, the FHWA Washington Headquarters, OCR, shall be provided with full documentary evidence to support the discriminatory pattern indicated.

(iv) In the event the union referral practices prevent the contractor from meeting the equal opportunity requirements pursuant to the E.O. 11246, as amended, such contractor shall immediately notify the SHA.

§ 230.413 Review reports.

(a) *General.* (1) The Compliance Specialist shall maintain detailed notes from the beginning of the review from which a comprehensive compliance review report can be developed.

(2) The completed compliance review report shall contain documentary evidence to support the determination of a contractor's or subcontractor's compliance status.

(3) Findings, conclusions, and recommendations shall be explicitly stated and, when necessary, supported by documentary evidence.

(4) The compliance review report shall contain at least the following information.¹ (Action R-20)

(i) Complete name and address of contractor.

(ii) Project(s) identification.

(iii) Basis for the review, i.e. area work force, project work force, home office work force, and target area work force.

(iv) Identification of Federal or Federal-aid contract(s).

(v) Date of review.

(vi) Employment data by job craft, classification, or occupation by race and sex in accordance with (iii) above. This shall be the data verified during the onsite.

(vii) Identification of local unions involved with contractor, when applicable.

(viii) Determination of compliance status: compliance or noncompliance.

(ix) Copy of show cause notice or compliance notification sent to contractor.

¹The Federal Highway Administration will accept completed Form FHWA-86 for the purpose. The form is available at the offices listed in 49 CFR part 7, appendix D.

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(x) Name of the Compliance Specialist who conducted the review and whether that person is a State, division or regional Compliance Specialist.

(xi) Concurrences at appropriate levels.

(5) Each contractor (joint venture is one contractor) will be reported separately. When a project review is conducted, the reports should be attached, with the initial report being that of the prime contractor followed by the reports of each subcontractor.

(6) Each review level is responsible for ensuring that required information is contained in the report.

(7) When a project review is conducted, the project work force shall be reported. When an areawide review is conducted (all Federal-aid, Federal, and non-Federal projects in an area), then areawide work force shall be reported. When a home office review is conducted, only home office work force shall be reported. Other information required by regional offices shall be detached before forwarding the reports to the Washington Headquarters, OCR.

(8) The Washington Headquarters, OCR, shall be provided all of the following:

- (i) The compliance review report required by § 230.413(a)(4).
- (ii) Corrective action plans.
- (iii) Show cause notices or compliance notifications.
- (iv) Show cause rescissions.

While other data and information should be kept by regional offices (including progress reports, correspondence, and similar review backup material), it should not be routinely forwarded to the Washington Headquarters, OCR.

(b) *Administrative requirements*—(1) *State conducted reviews.* (i) Within 15 days from the completion of the onsite verification and exit conference, the State Compliance Specialist will:

- (A) Prepare the compliance review report, based on information obtained;
- (B) Determine the contractor's compliance status;
- (C) Notify the contractor of the compliance determination, i.e., send the contractor either notification of compliance or show cause notice; and
- (D) Forward three copies of the compliance review report, and the compli-

ance notification or show cause notice to the FHWA division EEO Specialist.

(ii) Within 10 days of receipt, the FHWA division EEO Specialist shall:

- (A) Analyze the State's report, ensure that it is complete and accurate;
- (B) Resolve nonconcurrence, if any;
- (C) Indicate concurrence, and, where appropriate, prepare comments; and
- (D) Forward two copies of the compliance review report, and the compliance notification or show cause notice to the Regional Civil Rights Director.

(iii) Within 15 days of receipt, the FHWA Regional Civil Rights Director shall:

- (A) Analyze the report, ensure that it is complete and accurate;
- (B) Resolve nonconcurrence, if any;
- (C) Indicate concurrence, and, where appropriate, prepare comments; and
- (D) Forward one copy of the compliance review report, and the compliance notification or show cause notice to the Washington Headquarters, OCR.

(2) *FHWA division conducted reviews.* (i) Within 15 days from the completion of the onsite verification and exit conference, the division EEO Specialist shall:

- (A) Prepare compliance review report, based on information obtained;
- (B) Determine the contractor's compliance status;
- (C) Notify the State to send the contractor the compliance determination, i.e. either notification of compliance or show cause notice; and
- (D) Forward two copies of the compliance review report and the compliance notification or show cause notice to the Regional Civil Rights Director.

(ii) Within 15 days of receipt, the FHWA Regional Civil Rights Director will take the steps outlined in § 230.413(b)(1)(iii).

(3) *FHWA region conducted reviews.* (i) Within 15 days from the completion of the onsite verification and exit conference the regional EEO Specialist shall:

- (A) Prepare the compliance review report, based on information obtained;
- (B) Determine the contractor's compliance status;
- (C) Inform the appropriate division to notify the State to send the contractor

the compliance determination i.e. either notification of compliance or show cause notice; and

(D) Forward one copy of the compliance review report, and the compliance notification or show cause notice to the Washington Headquarters, OCR.

(4) Upon receipt of compliance review reports, the Washington Headquarters, OCR, shall review, resolve any non-concurrences, and record them for the purpose of:

(i) Providing ongoing technical assistance to FHWA regional and division offices and SHA's;

(ii) Gathering a sufficient data base for program evaluation;

(iii) Ensuring uniform standards are being applied in the compliance review process;

(iv) Initiating appropriate changes in FHWA policy and implementing regulations; and

(v) Responding to requests from the General Accounting Office, Office of Management and Budget, Senate Subcommittee on Public Roads, and other agencies and organizations.

§ 230.415 Consolidated compliance reviews.

(a) *General.* Consolidated compliance reviews shall be implemented to determine employment opportunities on an areawide rather than an individual project basis. The consolidated compliance review approach shall be adopted and directed by either Headquarters, region, division, or SHA, however, consolidated reviews shall at all times remain a cooperative effort.

(b) OFCCP policy requires contracting agencies to ensure compliance, in hometown an imposed plan areas, on an areawide rather than a project basis. The consolidated compliance review approach facilitates implementation of this policy.

(c) *Methodology*—(1) *Selection of a target area.* In identifying the target area of a consolidated compliance review (e.g. SMSA, hometown or imposed plan area, a multicounty area, or an entire State), consideration shall at least be given to the following facts:

(i) Minority and female work force concentrations;

(ii) Suspected or alleged discrimination in union membership or referral

practices by local unions involved in highway construction;

(iii) Present or potential problem areas;

(iv) The number of highway projects in the target area; and

(v) Hometown or imposed plan reports that indicate underutilization of minorities or females.

(2) *Determine the review period.* After the target area has been selected, the dates for the actual onsite reviews shall be established.

(3) *Obtain background information.* EEO-3's Local Union Reports, should be obtained from regional offices of the EEOC. Target area civilian labor force statistics providing percent minorities and percent females in the target area shall be obtained from State employment security agencies or similar State agencies.

(4) *Identify contractors.* Every non-exempt federally assisted or direct Federal contractor and subcontractor in the target area shall be identified. In order to establish areawide employment patterns in the target area, employment data is needed for all contractors and subcontractors in the area. However, only those contractors with significant work forces (working prior to peak and not recently reviewed) may need to be actually reviewed onsite. Accordingly, once all contractors are identified, those contractors which will actually be reviewed onsite shall be determined. Compliance determinations shall only reflect the status of crafts covered by part II of plan bid conditions. Employment data of crafts covered by part I of plan bid conditions shall be gathered and identified as such in the composite report, however, OFCCP has reserved the responsibility for compliance determinations on crafts covered by part I of the plan bid conditions.

(5) *Contractor notification.* Those contractors selected for onsite review shall be sent a notification letter as outlined in §230.409(c) along with a request for current workforce data² for completion

²The Consolidated Workforce Questionnaire is convenient for the purpose and appears as attachment 4 to volume 2, chapter 2,

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