

Michigan Division



# **Michigan Department of Transportation**

## **Civil Rights Program Assessment**

**June 2011**

**REPORT**



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## **Executive Summary**

The Michigan Civil Rights Program Assessment found MDOT to be in compliance with 49 CFR and 23 CFR as it pertains to the five main Civil Rights Program areas. The areas are, Title VI/Nondiscrimination, Americans with Disabilities Act (ADA)/Section 504, State Internal Equal Employment Opportunity, Equal Opportunity Contractor Compliance/OJT and the Disadvantaged Business Enterprise (DBE) program.

During the review and at the exit conference with MDOT all observations were addressed immediately with possible solutions and agreement with FHWA on actions to be taken. Therefore, we do not believe it is necessary to capture the resolutions in an action plan document. Agreements were reached prior to writing the report. This document represents the commitment from FHWA and MDOT to work together on any issues.



## **Background**

In 2007 and 2008, FHWA Headquarters Civil Rights (HCR) Office in coordination with the Division Offices conducted a Civil Rights Program Baseline Assessment of all State DOT's. During this initial Civil Rights Program Baseline Assessment 50% of States' programs were assessed in FY 2007 and the remaining 50% in FY 2008. After the initial assessment the HCR Office requires the Divisions Civil Rights Office to conduct a Civil Rights Program Assessment every three years. Michigan Division conducted their initial Civil Rights Program Baseline Assessment in 2008.



## **Purpose and Objective**

As recipients of Federal-aid, State Transportation Agencies (STAs) are responsible for ensuring that their civil rights programs, activities, and those of their recipients, sub-recipients, and contractors, do not discriminate. Accordingly, the main purpose of these Civil Rights Program Assessments is to ensure that the STAs deliver a quality Federal-aid highway program that meet the requirements of civil rights laws, regulations, and other related statutes. As the Divisions complete these assessments across the country, an objective for the FHWA HCR Office is to look at ways to make national improvements to the existing civil rights programs. The HCR Office also intends to examine the program changes that took place as a result of the 2007 and 2008 baseline assessments in order to determine the effectiveness of those changes.

## Scope and Methodology

The Michigan Division Civil Rights Program Assessment was overseen by the Division Administrator (DA) and the Assistant Division Administrator (ADA). The team met with them before the assessment started to ensure that the assessment would cover all items that the Division was interested in. In addition, the team conducted an out briefing with the DA and ADA at the end of the assessment. The ADA attended the out briefing with MDOT leadership and staff.

During the Civil Rights Program Assessment, the team members used the Program Assessment Tools to assess the condition of the Michigan Department of Transportation overall Civil Rights Program. The Program Assessment Tool's contain a series of questions derived from the basic regulatory requirements in each program that help to assess the health of the individual programs (i.e. Title VI: Nondiscrimination , Contractor Compliance (CC), State Internal Equal Employment Opportunity (SIEEO), Americans with Disabilities Act (ADA), and the Disadvantaged Business Enterprise Program (DBE)). Each assessment tool was used to arrive at an overall Civil Rights Program indicator. This indicator is depicted as a red, yellow, or green icon. The information was obtained on-site and was entered into a data collections portal.

### Division Staff/Team Members

Name	Title
Russell L. Jorgenson	Division Administrator
Theodore G. Burch	Assistant Division Administrator
Mary K. Finch	Division Civil Rights Program Manager
Toney O. Dixon	Resource Center Civil Rights Specialist
Robert O. Fijol	Division Area Engineer

## Civil Rights Program Assessment Synopsis

A Civil Rights Program Assessment synopsis describes the condition of the overall Civil Rights Program Administration. There are three color-coded program indicators (Red, Yellow, and Green), which indicate the health of the major civil rights program areas in relation to the following four program elements:

- Civil Rights Organization and Staffing
- Program Plans and Documents
- Program Implementation – Policies and Procedures
- Data Collection and Analysis

### Program

### Overall Program Indicator

1. Title VI



2. ADA



3. Internal



4. Contractor Compliance/OJT



5. DBE




## Observations and Recommendations

### 1. Title VI Program

#### Observation


#### Indicator

 **Observation #1:** Civil Rights Organization and Staffing: MDOT's Civil Rights Unit contains the Internal, ADA and Title VI Programs. The External Programs are located in the Office of Business Development.

**Recommendation:** Although per 23 CFR 200.9(b)(1) the ideal Civil Rights Unit would be a complete unit that includes both sides of the Programs, we recognize that MDOT's structure has been effective and we do not make any recommendations at this time. FHWA and MDOT Leadership have agreed to monitor the programs to ensure that communications, etc. do not fail between the two units.

#### Observation


#### Indicator

 **Observation #2:** Program Implementation: Per 23 CFR 200.9(b)(5) MDOT conducts an annual review of its program areas. MDOT utilizes an Interdisciplinary Title VI Team to conduct the review, report on activities, provide training and general oversight of the Title VI program. The team has just finished a nine month long process of updating the Title VI Plan. See observation 3.

**Recommendation:** N/A

#### Observation

#### Indicator

 **Observation #3:** Program Implementation: MDOT has updated their Title VI Plan to include Title VI Reviews of Sub-recipients. Previously they reviewed plans, but did not conduct on-site reviews.


**Recommendation:** N/A





## Observation

### Indicator

 **Observation #4:** Program Implementation: Although MDOT has updated their Title VI Plan to include reviews to sub-recipients the forms and procedures for conducting the reviews have not been completed.

**Recommendation:** Recommend completion of forms and procedures for conducting reviews and that initial review scheduled in the first quarter of fiscal year 2012.

**Resolution:** MDOT is already working on the forms and when complete will schedule the first review. MDOT's Title VI Plan is in the Michigan Division FHWA Office for review and approval.

## 2. ADA Program

### Observation

#### Indicator

 **Observation #5:** The requirement for public websites to be tested for compliance with ADA and Section 508 could not be verified as completed. The MDOT Website is maintained by Michigan Department of Technology Management and Budget (DTMB).


**Recommendation:** Recommend that the site be scanned and tested by MDOT.

**Resolution:** FHWA will provide an ADA testing program that MDOT will run against their public website to test for compliance with Section 508. Once the program is run and any inconsistencies are identified MDOT will contact DTMB for correction. Once corrected MDOT have the disability groups that consulted on the MDOT Transition Plan test the site and provide further input to MDOT.

## 3. Internal Program

### Observation

#### Indicator


 **Observation #6:** MDOT does not have goals to correct underutilization identified in their Internal Plan. MDOT evaluated their entire program for underutilization in 2009. No

major underutilization was determined. Therefore they do not have goals in their program. They do have outreach objectives to ensure they stay on track.

**Recommendation:** N/A

Observation

Indicator

 **Observation #7:** MDOT recently experienced a significant loss of approximately 350 employees. The loss was due to a change in the State's retirement plan that required employees who did not retire by January 1, 2011 to pay more into retirement and pay a major portion of their medical insurance when they retired. This loss may affect the amount of underutilization that they found in their 2009 study.


**Recommendation:** Recommend that MDOT reevaluate their program for underutilization.

**Resolution:** MDOT has agreed to analyze and reevaluate their underutilization numbers.

#### 4. Contract Compliance/OJT Program

Observation


Indicator

 **Observation #8:** MDOT utilizes Excel and Access databases to ensure that program participants in the OJT Program have completed all required training. They are working closely with the various Unions to ensure that all apprentices enrolled in the OJT Program complete the required classroom training required by the Union.

**Recommendation:** Recommend that the tracking systems be noted in the best practice section of the report.

Observation

Indicator

 **Observation #9:** MDOT has automated their 1391 and 1392 collection and tracking. Contractors can input into a web based system their numbers for each project. This has resulted in a significant time savings from the manual input. To process the 1391/1392 data now takes days instead of weeks. In addition, MDOT has begun working on a 1391/1392 pilot process to move from a project based input to a contractor based

input. This would eliminate multiple inputs by a single contractor and decrease the chance of errors in the input.


**Recommendation:** MDOT will submit the pilot to FHWA Michigan Division for Approval.

**Resolution:** MDOT has submitted the pilot to FHWA Michigan Division and it has been approved for use during the 2011 collection period in July. The Pilot will be evaluated at the end of fiscal year 2011 to determine its viability as a permanent way to conduct the 1391/1392 collection and tracking.

## 5. DBE Program

### Observation


#### Indicator

 **Observation #10:** MDOT's DBE Program has excellent truck and asphalt supply monitoring systems in place to insure a Commercially Useful Function (CUF) is being performed in these previously high-risk areas.

**Recommendation:** Continue to use monitoring system.

### Observation

#### Indicator

 **Observation #11:** Other than trucking and asphalt reviews MDOT's CUF reviews are currently complaint driven reviews. We know that after the MDOT Prompt Pay Review MDOT's Contract Services added questions to their subcontract check-off list that would identify potential issues. However, we are unsure if more is being done in other areas of MDOT because individuals from Finance and Contract Services were not at the review.

**Recommendation:** We recommend that MDOT Office of Business Development (OBD) have regularly scheduled CUF reviews for items other than trucking and asphalt supply. We recommend that MDOT OBD have MDOT's Finance and contract Services Offices participate in future reviews.

**Resolution:** FHWA and OBD will work together to develop a CUF review program including how many independent reviews should be conducted each year.

## **Preceding Baseline Assessment Status Update**

The individual program key observations in Title VI were all addressed; The Title VI Coordinator is now appointed directly under the Director of Michigan Department of Transportation. MDOT updated their Title VI assurance to include discrimination based on sex. MDOT updated their Complaint Log to include all the necessary information as required per 23 CFR 200.9(b)(3).

The Contractor Compliance/OJT Program only had one key observation that needed action by MDOT and FHWA. This observation was to provide training to their Contractor Compliance personnel responsible for conducting investigations and reviews. This training has been ongoing with at least three specific trainings in this area in the last two years. In addition since the Review MDOT has produced a comprehensive Process Guidance Document complete with a Process Clarification and Job Aids for Field Service Team Members Book.

The State Internal EEO Program had only two observations that needed to be addressed. The first observation was the consideration of an EEO Employee Committee per 23 CFR Part 230. Since the 2008 Baseline Assessment MDOT has consider an EEO Employee Committee and decided not to utilize a committee in their program. The second observation concerns the inclusion of numerical goals in their EEO program and the inclusion of the total labor market and total population in their EEO Plan document. Although MDOT has included the statistics in their document as asked, they do not set numerical hiring goals. The 2009 MDOT underutilization study indicates that they have no severe underrepresentation. They continue to monitor the situation and do target recruiting in those areas where they have slight underrepresentation.

The American with Disabilities Program at MDOT has seen great strides and improvements since the Initial Baseline Assessment. They have completed the self evaluation and updated the ADA Transition Plan with a date of 2014 to be barrier free in Michigan. In addition, they are training local agency personnel and contractors on ADA issues.

The DBE Program was only partially reviewed in the initial Baseline Assessment. Since that review they have begun using the Design-build alternative more and MDOT has documented their procedures for setting goals on Design-build projects. There were no observations in the certification of DBE's that needed to be addressed.



## Conclusion

The MDOT Civil Rights Program Assessment has shown that the MDOT Civil Rights Program meets the goals of 49 CFR Part 26 and 23 CFR Part 200. Although minor issues were found; in all instances MDOT and FHWA immediately agreed to work together on solutions to those issues.



US Department  
of Transportation  
**Federal Highway  
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