

**Metro**Los Angeles County
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metro.net**PLANNING AND PROGRAMMING COMMITTEE
JANUARY 16, 2013****SUBJECT: SUBRECIPIENT CIVIL RIGHTS COMPLIANCE FOR FEDERAL GRANTS****ACTION: APPROVE REQUEST FOR ADDITIONAL POSITION TO OVERSEE
SUBRECIPIENT COMPLIANCE WITH CIVIL RIGHTS REQUIREMENTS****RECOMMENDATION**

Amend FY13 Budget to add one new Civil Rights Analyst position at the H1L pay grade for Civil Rights Programs Compliance Division to oversee federal grant subrecipient compliance with Federal Transit Administration (FTA) Civil Rights regulations and guidance.

ISSUE

Effective October 2012, the FTA published new guidance that significantly increased the responsibilities of federal grantees (e.g. Metro) to ensure the compliance with civil rights obligations by federal grant subrecipients. Metro, as a grantee, currently passes funding to more than 50 subrecipients that are covered by these new provisions. The FTA guidance states that any non-compliance with civil rights requirements by a Metro subrecipient will be viewed as non-compliance by Metro and could jeopardize our federal funding. In response to this new requirement, the Civil Rights Programs Compliance Division requests an additional position to its staff to oversee and ensure subrecipient compliance with civil rights requirements and to provide any needed assistance in meeting requirements.

DISCUSSION

The scope of work necessary to implement this guidance has increased greatly from the prior guidance. To maintain compliance with the new requirements it is necessary to create a position within Metro, in the Civil Rights Programs Compliance Division, to properly oversee and assist subrecipients. The position would be responsible for training subrecipients, providing technical support, reviewing Title VI Program submissions, and monitoring and reporting compliance.

Federal regulations require that if primary recipients (grantees) of Federal funds, such as Metro, extend financial assistance of said funds to any other recipient ("subrecipient"), "the subrecipient" shall also submit such compliance reports to the primary recipient as may be necessary" (Title 49 CFR Section 21.9(b).) Furthermore, should a subrecipient of Federal funds be non-compliant with civil rights requirements, the primary recipient will also

be found non-compliant and subject to suspension or termination of Federal financial assistance.

Since the inception of our Board approved Pass-Through Program in 2001, and our Board – adopted Designated Recipient declaration for Job Access and Reverse Commute (JARC) and New Freedom Programs in 2006, we have relied principally on the FTA-required annual self-certification process. We have used that process to determine if our subrecipients are in compliance with FTA requirements. The self-certification process satisfied the FTA requirements under the former guidance and ensured Metro compliance. The new FTA guidance that became effective in October 2012 greatly expands upon the prior annual self-certification process by requiring more technical assistance for and monitoring of subrecipients.

Metro currently oversees 53 governmental and non-governmental agencies through our Pass-Through Program and our JARC and New Freedom Programs. Eight of the agencies are Direct Recipients and are monitored by the FTA directly – Metro is not required to assist and monitor these subrecipients. The remaining 45 agencies are subrecipients who receive JARC funds and New Freedom funds or FTA grant funds through earmarks or other programs – Metro will be required to assist and monitor these agencies. We expect that the number of subrecipients will increase as we continue to assist agencies in accessing federal funds through our Pass-Through Program as well as JARC and New Freedom Programs.

Under the new guidelines, Metro is required to assist federal subrecipients, who are not otherwise Direct Recipients, in meeting the new requirements. This includes providing demographic information on the race and English proficiency of residents served by subrecipients as well any other data, such as travel patterns and surveys, which will assist subrecipients in preparing civil rights program updates, creating Language Assistance Plans, and conducting service equity analysis.

The new guidelines also expand the monitoring requirements of primary recipients, such as Metro. Primary recipients are now required to document the process for ensuring subrecipient compliance, collect Title VI programs and review the programs for compliance. In response to a complaint of discrimination, primary recipients are required to request that subrecipients verify that the level and quality of service is provided on an equitable basis should the FTA request it.

When FTA became more active in enforcing its Workplace Drug and Alcohol Testing Program, and placing more emphasis on Disadvantaged Business Enterprise (DBE) requirements Metro responded by hiring consultants. In addressing our civil rights compliance responsibilities, the breadth of the work and the risks involved if there is a failure to ensure compliance outweigh the benefits of hiring an outside consultant. A staff position will allow better and more direct oversight, access to resources in the Civil Rights Programs Compliance Division, and access to contacts at the FTA should issues arise. Housing the position in the Civil Rights Programs Compliance Division keeps the civil rights expertise in Metro and retains direct communication with the FTA. This will ensure as seamless a

transition to these new requirements as possible.

DETERMINATION OF SAFETY IMPACT

Approval of this recommendation will not impact the safety of Metro's patrons or employees.

FINANCIAL IMPACT

As an FTA grantee, Metro is responsible for providing the financial, technical and legal support needed to implement its federally funded programs and projects and those of our federal grant subrecipients, with or without additional federal assistance for that support. In this case, the anticipated expenses to be incurred by the new position requested may be offset by available funding from the Pass-Through Program and/or the JARC and New Freedom Programs. The FTA provides that up to 10% of JARC and New Freedom grants can be used by Metro to administer the grant process including monitoring of civil rights compliance. In addition, up to 5% of the remaining grants may be used for administration of the grants. Approximately \$2.4 million of the JARC and New Freedom funds are available for grant administration, however only \$300,000 is currently being spent.

ALTERNATIVES CONSIDERED

One option would be to hire a consultant to do this work. We do not recommend that option as these requirements are new, and it is unlikely that there are any consultants experienced in conducting this type of work. The benefits of creating a position (better and more direct oversight, access to the FTA, access to Metro resources, and build-on Metro experience) outweigh the risks of hiring an inexperienced consultant. The Civil Rights Programs Division has been working with the FTA regarding implementation of the new guidance at Metro, and is in a better position to oversee, guide, monitor, and report on the implementation of the civil rights requirements by the subrecipient agencies.

A second alternative would be for Metro to relinquish its roles as the Pass-Through Grantee for Los Angeles County and the Designated Recipient/Grantee for JARC and New Freedom funding for Los Angeles County. This alternative is not recommended as Metro is the Regional Transportation Planning Agency (RTPA) for Los Angeles County and has planning and programming responsibilities under state law. Metro has the responsibility of ensuring that federal funds are maximized and used to benefit the transportation needs of Los Angeles County. Relinquishing such responsibilities could result in the loss of federal funding for smaller Los Angeles County agencies (or reimbursement of federal funds on existing grant commitments) and the need to have another regional entity, such as the Southern California Association of Governments, become the Grantee for JARC, New Freedom and other programs.

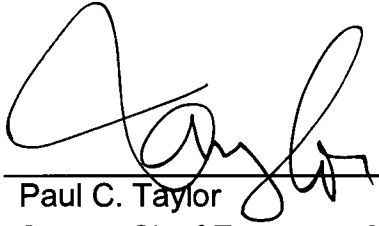
A third alternative of not hiring a staff person or retaining a consultant was considered, but is not recommended, as existing resources are insufficient to conduct this work. The

consequences to the agency of non-compliance with federal civil rights requirements by any of our federal grant subrecipients due to inadequate monitoring and assistance would be significant.

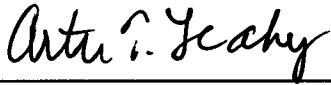
NEXT STEPS

If the Board of Directors approves the creation of a position, a budget amendment and a job description will be prepared and classified. The position will then be posted.

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