



## **INSTRUCTOR'S SECTION**

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**‘INSTRUCTOR’S SECTION**

**Tab 1**

**Instructor’s Guide**

**FHWA CIVIL RIGHTS PROGRAM MANAGEMENT  
TRAINING COURSE  
INSTRUCTOR'S GUIDE**

**MONDAY**

**1-3 P.M. INTRODUCTION (Approximately 2 Hours)**

**Course Overview**

- **Cover Course Agenda**
- **Describe Course**
  - ✓ **Intensive**
  - ✓ **Comprehensive**
  - ✓ **Most learning to occur after participants return to office and use resource materials provided during training.**
- **Learning to occur in learning teams.**
- **Instructional techniques;**
  - ✓ **Lecture**
  - ✓ **Team exercises on case studies**
  - ✓ **Audience participation and interaction**
  - ✓ **“Retention Assessment Instruments” (Written Examinations)**
- **Emphasize the following;**
  - ✓ **Most learning to occur after the training.**
  - ✓ **Under the reorganized FHWA, effective program administration can occur only through team effort between FHWA Division Offices, Resource Centers and the States.**
  - ✓ **Excellent opportunity exists to reach beyond compliance.**
  - ✓ **State Civil Rights Program Documents/Plans must meet the law and must be followed once approved.**
  - ✓ **Division Office review of State program documents prior to approval, must be thorough and is a critical responsibility.**

## **MONDAY, Continued**

- ✓ **Affirmative action will continue, however the conditions under which it occurs and methods used will come under closer scrutiny.**
- ✓ **FHWA, and in particular, Division Offices must expand their customer base beyond the State and include all customers including community based organizations.**

### **Administrative Details**

#### **✓Cover Rules**

- **Be on time!**
- **Participate!**
- **Leave office behind!**
- **No pagers or telephones allowed in training room!**
- **Refrain from sidebar conversations while instructor or other participant has floor!**
- **Dress is casual!**
- **Breaks during lectures will be scheduled every hour or on your own during team exercises.**

**✓Announce Location of Rest Rooms, Break Rooms, and as appropriate, Restaurants.**

**✓Ask Participants to introduce themselves and briefly discuss their current position and civil rights program(s) to which they are assigned.**

**✓Introduce Instructors (Provide brief background for each.)**

**✓Ask participants to sign Attendance Roster and write their name on Tent Cards.**

**✓Announce that participants are to turn in evaluation sheets at the end of course. Evaluation sheets include space for written comments on each module.**

**✓Announce that self-addressed boxes will be made available for each participant to mail all course materials back to their offices.**

## **MONDAY, Continued**

- **Present Introductory Video (Approximately 20-45 minutes depending on video used.)**

✓ Briefly introduce video and purpose for showing it.

- **To stimulate candid and open discussion about present day discrimination and its effects.**

✓ Following video, lead discussion on participant reaction to video.

Some questions to ask to stimulate discussion if necessary;

- **Anyone care to give their reaction?**
- **Anyone witness or experience similar situations?**
- **Were judgements involved? If so, on what bases?**
- **Does anyone group have a monopoly on discrimination?**

- **Discuss Handout, “Basic Civil Rights Program Administration Course, Introduction to Training”**

✓ Principal messages to be conveyed by handout are:

- ⇒ **Civil Rights Programs are unique because they are directed to how people treat other people.**
- ⇒ **Civil Rights programs are not based on personal opinions but in law, Executive Orders, regulations, signed assurances, approved program documents, project agreements, contract provisions and court decisions.**
- ⇒ **FHWA’s major civil rights programs and civil rights functions are listed.**

**2:15 P.M. - 2:30 P.M. BREAK**

**2:30 P.M.- 5:00 P.M. MODULE 1-STATE INTERNAL EEO/AFFIRMATIVE ACTION PROGRAMS (Approximately 3 hours.)**

- **Discuss Training Objectives for Module**
- **Some Points to Cover:**

## **MONDAY, Continued**

- ✓ **Program document is required annually from State.**
- ✓ **FHWA Division Office is to review and approve State's program document.**
- ✓ **State to be held accountable for accomplishing and reporting progress.**
- **Go over Training Materials and Handouts with Participants.**
- ✓ **Use Table of Contents of Reference Manual provided.**
  - **Highlight Appropriate Contents by Briefly Describing Items in Table of Contents.**
- **Cover Power Points Including Discussion on Affirmative Action in General.**
- **Call for Questions/Comments**

## **TUESDAY**

**8 A.M.-12 N WRAP UP MODULE 1 (if necessary).  
MODULE 2-CONTRACTOR EEO COMPLIANCE PROGRAM  
(Approximately 3½ Hours)**

- **Discuss Training Objectives for Module (Use Power Points).**
- **Some Points to Emphasize:**
  - ✓ **Program document is required annually from State.**
  - ✓ **FHWA Division Office is to review and approve document.**
  - ✓ **State to be held accountable for accomplishing and reporting progress.**
  - ✓ **Two programs co-exist, Executive Order 11246 Program and Title 23 Program.**
  - ✓ **Executive Order 11246 enforced by OFCCP.**
  - ✓ **Title 23 Program enforced by FHWA through State DOT's.**
  - ✓ **Briefly discuss Superior Paving Company Case v. State of Washington & FHWA & its effect on Title 23 program.**
  - ✓ **Although similar, there are major differences in two programs;**
    - **Make Whole remedies available under Executive Order 11246.**
    - **OFCCP measures work hour utilization; FHWA measures number of employees (Some State DOTs use either or both measures in their contract compliance programs.)**
    - **Contractor's total workforce (on private and public projects) in contract area is covered under Executive Order 11246; FHWA covers only workforce on the contract.**
    - **STA's enforcement procedures generally more expedient than OFCCP's.**



## **TUESDAY, Continued**

- **Go over Training Materials and Handouts with Participants**
  - ✓ **Use Table of Contents of Reference Manual provided.**
  - ✓ **Highlight appropriate contents by Briefly Describing them.**
- **Cover Power Points**
- **Administer Examination Using Handout “Participant Retention Assessment Instrument”**
  - ✓ **Examination is to be taken by each team as a whole working together.**
  - ✓ **Instructor assigns a block of questions to each Team, for example;**
    - **Team 1/Questions 1-9**
    - **Team 2/Questions 10-18**
    - **Team 3/Questions 19-27**
    - **Team 4/Questions 28-36**
    - **Team 5/Questions 37-45**
  - ✓ **Ask Teams to cite a reference for each answer provided.**
  - ✓ **Each Team decides how to proceed with the examination;**
    - Options:**
      - **Assign specific questions to each member.**
      - **Answer each question as a team.**
  - ✓ **Assign 30 minutes for completion of exam.**
  - ✓ **During this time, individuals may take a break on their own or as a team as determined by the team.**
  - ✓ **Assign 20 minutes for discussion of responses.**
  - ✓ **Each Team member records Team answer to each question on exam.**

## **TUESDAY, Continued**

✓Instructor leads all teams through each question with the participants asked to verbally announce their answer in unison.

✓Discuss incorrect answers.

- What was the basis for your answer?
- The correct answer is \_\_\_\_\_ and may be found at \_\_\_\_\_ (Use Answer Sheet provided to Instructors).

- Call for Questions/Comments

**1 P.M.-5 P.M.      MODULE 3-INVESTIGATION OF COMPLAINTS OF DISCRIMINATION (Approximately 3½ Hours. Some time may be used to wrap up Module 2 if necessary.)**

- Discuss Training Objectives for Module 3.

- Some Points to Emphasize:

✓Systematic approach to complaints gets to the core issues.  
✓Investigators should remain impartial at all times.  
✓Refrain from becoming an advocate for one side or the other.

- Go over Training Materials and Handouts with Participants.

✓Use Table of Contents of “Reference Material” binder provided.

✓Highlight appropriate contents by Briefly Describing them.

✓Cover Power Points

✓Present Case Studies as time permits.

- Call for Questions/Comments

## **WEDNESDAY**

**8 A.M.-5 P.M.      MODULE 4-PREVENTING DISCRIMINATION IN THE  
FEDERAL-AID PROGRAM: A SYSTEMATIC,  
INTERDISCIPLINARY APPROACH (Approximately 8 Hours)**

- **Discuss Training Objectives Listed on Power Points for Module 4.**
- **Some Points to Emphasize:**
  - ✓ **Program document is required annually from State.**
  - ✓ **FHWA Division Office is to review and approve document.**
  - ✓ **State to be held accountable for accomplishing and reporting on progress.**
  - ✓ **Systematic, interdisciplinary team approach is proactive vs. traditional compliance (“gotcha”) approach.**
  - ✓ **Interdisciplinary approach rightfully places responsibility on decision makers in various program areas instead of on civil rights personnel.**
  - ✓ **Interdisciplinary approach integrates the consideration of Title VI/EJ issues within the transportation process as it develops not after it is completed.**
  - ✓ **Interdisciplinary approach will require intensive marketing by the Division Office (YOU!).**
- **Go over Training Materials and Handouts with Participants.**
  - ✓ **Use Table of Contents of Reference Manual provided.**
  - ✓ **Highlight appropriate contents by Briefly Describing them.**
- **Cover Power Points**
- **After covering Slides Number 13 thru 16, return to Slide 13 and instruct each Learning Team to discuss and clarify the language of Title VI (and the related statutes) and develop an objective statement for their organization which is for training purposes, a State DOT. Participants are to rely on their experience working in their respective program areas to develop the Objective Statement. The Objective Statement has to be agreed upon by the Team.**

## **WEDNESDAY, Continued**

✓ Purpose of this exercise is to:

- Get each group working as a team.
- Have participants grasp focus of Title VI.

✓ Request each Team to record objective statement on flip chart paper and elect a spokesperson to present it to entire group.

✓ Allow 20 minutes for developing the objective statement and 20 minutes for reporting the Statement out.

- **At End of Planning Section**

✓ Discuss Handout, “DATA COLLECTION/ANALYSIS FOR ADDRESSING TITLE VI/ENVIRONMENTAL JUSTICE IN THE LONG RANGE PLANNING PROCESS”.

✓ Assign Case Study, “Nondiscrimination Case Study” (Mr. Dame Mas Dinero) to participants to address as a team. (20 Minutes to develop responses to each of the questions posed.) Ask each Team to record their responses to questions on Flip Chart Paper and appoint a person to report their response to the entire group.

- During this time, individuals may take a break on their own or as team as determined by the team.
- Report out from Teams (20 Minutes).

To save time, ask for one Team to volunteer to present their outcome to the case and have all other teams add to and/or comment on the presentation.

✓ After discussion, pass out and briefly discuss “Preliminary Analysis of Complaint, Mr. Dame Mas Dinero vs. A State DOT”.

- **At End of Project Development Section**

✓ Assign or discuss (as time permits) “Project Development Case Study” by:

- Asking all participants to take 15 minutes to read case.

## **WEDNESDAY, Continued**

- **Asking participants in teams, to verbally provide responses to questions posed at end of case study. (15 minutes)**

**✓Following Discussion, hand out and briefly discuss “Analysis of Project Development Case Study”.**

- **At End of Right of Way Section**

**✓Assign or discuss (as time permits), “Right-of-Way Case Study” by:**

- **Asking all participants to take 15 minutes to read case.**
- **Asking participants in teams to verbally provide responses to questions posed at end of case study. (15 minutes)**

**✓Following discussion, hand out and briefly discuss, “Analysis of Right-of-Way Case Study”.**

- **At End of Construction Section**

**✓Assign or discuss (as time permits) one of the two Construction Case Study by:**

- **Asking all participants to take 10 minutes to read case.**
- **Asking participants in teams to verbally provide responses to questions posed at end of case study.**

**✓Handout and briefly discuss Analysis of Case Study after discussion.**

- **At End of Research Section**

**✓Assign or discuss (as time permits) Research Case Study using handout provided to participants (Approximately 20 minutes for reading and discussion).**

**✓Handout and briefly discuss, “Analysis of Research Case Study” after discussion.**

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## **WEDNESDAY, Continued**

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### **OMC PROGRAMS**

- **Present Office of Motor Carrier Programs including Title VI and Other Civil Rights Requirements in each program (Approximately 1½ hours).**

✓ **OMC Representative presents brief overview of each of their Federally Aid programs covering major objectives, activities and decisions made in each program.**

✓ **Civil Rights Representative/Practitioner presents Title VI and other Civil Rights requirements applicable to each program.**

**(As a possible option, assign this to the Learning Teams and have them identify and present civil rights requirements.)**

- **Call for Questions/Comments**

## THURSDAY

### 8 A.M.-5 P.M.      **MODULE 5-DISADVANTAGED BUSINESS PROGRAM ADMINISTRATION**

- **Discuss Training Objectives for Module 5.**
  - ✓ **To understand and apply DOT's DBE rule at 49 CFR 26.**
- **Some Points to Emphasize:**
  - ✓ **Program document is required from State.**
  - ✓ **Division Office review and approval of program document is critical to an effective program consistent with the law.**
  - ✓ **Once approved, program document need not be re-approved unless changes are made to it.**
  - ✓ **Program document is to be assessed by FHWA and the State annually.**
  - ✓ **Successful administration of this program calls for an interdisciplinary approach (civil rights, legal, contract administration, construction, project level personnel, etc.)**
- **Go over Training Materials and Handouts with Participants**
  - ✓ **Use Table of Contents of Reference Manual provided.**
  - ✓ **Highlight appropriate contents by briefly describing them.**
- **Cover Power Points**
- **At end of Slide #50, Ask Participants in their learning teams to list what they perceive as barriers to DBE's and all small businesses. (Program, Policy, Procedure, Rules, Administration, Supportive Services, Project Monitoring).**
  - ✓ **Ask participants to list the barriers and for each barrier develop a strategy to overcome it.**
  - ✓ **Ask Participants to list barriers and strategies on a flip chart and report back to the entire class. Each strategy must have an assigned responsible agency/organization e.g., State DOT, Prime Contractors, FHWA, etc.,**

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## **THURSDAY, Continued**

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✓ Allow 30 minutes for development of barriers & strategies and 30 minutes for presentations from the groups.

- Upon completion of Power Points, Administer DBE Examination Using Handout, “Disadvantaged Business Enterprise (DBE) Program Administration”.

✓ Instructor assigns a block of questions to each Team, for example:

- Team 1/Questions 1-10
- Team 2/Questions 11-20
- Team 3/Questions 21-30
- Team 4/Questions 31-40
- Team 5/Questions 41-50

✓ Ask Teams to cite a reference for each answer provided.

✓ Each Team decides how to proceed with the examination;

- Assign specific questions to each member.
- Answer each question as a Team.

✓ Allow 30 minutes for completion of the exam.

✓ During this time, Participants may take a break on their own or as a Team as determined by the Team.

✓ Assign 20 minutes for presentation and discussion of responses.

✓ Instructor leads all Teams through each question with the participants asked to verbally announce their answer in unison.

✓ Discuss incorrect answers.

- What was your basis for your answer?



## THURSDAY, Continued

- The correct answer is \_\_\_\_\_ and may be found at \_\_\_\_\_ (Use Answer Sheet provided to Instructors).
- Call for Questions/Comments

## **FRIDAY**

### **8 A.M.-10 A.M.      MODULE 6-AMERICANS WITH DISABILITIES ACT (Approximately 2 Hours)**

- **Go over Training Materials with Participants**
- **Present video regarding persons with disabilities. (Usually a 10 minute video.)**
- **Present Lecture using Training Materials provided.**
- **Call for Question/Comments**

### **10:15 A.M.-12 N      WRAP UP**

#### **Strategic Planning Exercise**

- **Beyond the daily activities required by law, executive order or regulation, ask each learning team to identify at least one strategic activity that the Division Office could undertake with the State DOT or other partner to lead positive change in the civil rights programs/areas covered during the week.**

**✓Assign one module to each learning group as follows;**

- Group 1, State Internal EEO/Affirmative Action Plan**
- Group 2, Contractor EEO Compliance**
- Group 3, Complaints**
- Group 4, Title VI/Environmental Justice**
- Group 5, Disadvantaged Business Enterprise**
- Group 6, Americans With Disabilities Act**

**✓Ask each group to report out to the entire class the following;**

- The strategic activity identified.**
- A leadership role or roles that the Division Administrator could undertake in carrying out the activity.**

**✓This should take 30-40 minutes.**

## Course Review

- **Program Administration Up to Participants now.**
- **Continue learning by reading Training Materials provided.**
- **Ask Resource Center Civil Rights and other personnel for assistance.**
- **“What happens now in Civil Rights depends on you, because it will happen on your watch!”**
- **Present Training Certificates**

**THE END!**

**INSTRUCTOR'S SECTION**

**Tab 2**

**Room Arrangement**

ROOM ARRANGEMENT

Front of Room

\*TV/VCR

\*TV/VCR

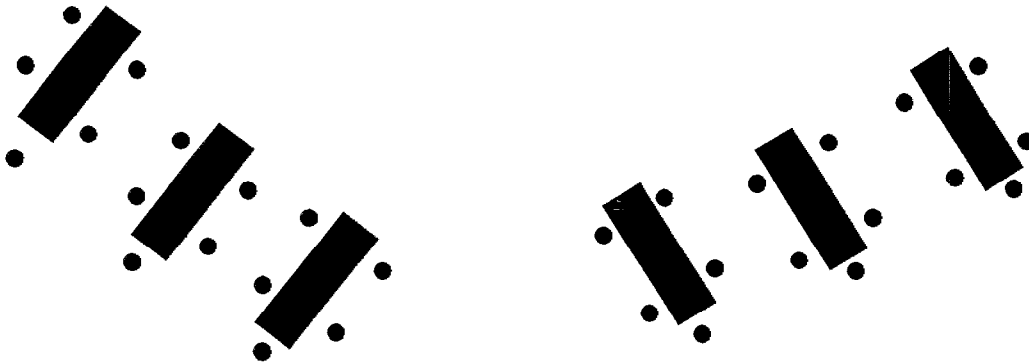
Overhead Projector Screen

Flip Chart

Flip Chart

Table Top Lecturn      Projector

Materials Table



Instructors Table

\*When Requested

**INSTRUCTOR'S SECTION**

**Tab 3**

**MODULE 2 Contractor EEO Test & Master**

**BASIC CIVIL RIGHTS PROGRAMS ADMINISTRATION COURSE**  
**CONTRACTOR EEO COMPLIANCE MODULE**  
**Participant Retention Assessment Instrument**

1. List three (3) or more roles and responsibilities that a Division Office would have in the Contractor EEO Compliance Program.
  
2. What is the objective of the program?
  
3. What are the two main authorities for the program?
  
4. Executive Order 11246 is the first Executive Order to require affirmative action. True or False?
  
5. Which of the following bases for discrimination are prohibited by Executive Order 11246?
  - A.  Political affiliation
  - B.  Religion
  - C.  Low income
  - D.  Color
  - E.  Marital status
  - F.  Sex
  - G.  National Origin
  - H.  Race
  - I.  Sexual preference
  
6. Under the Executive Order a prior finding of discrimination is required before affirmative action may be required. True or False?
  
7. Explain answer to question 6.

8. A contractor relies upon word of mouth recruiting through his/her employees. All qualified applicants referred by employees are hired for available vacancies. Is this contractor practicing equal opportunity? Could this contractor be discriminating in violation of the Executive Order? Yes or No? Explain.
9. FHWA or the States have independent authority to enforce Executive Order 11246. True or False?
10. The agency responsible for administering and enforcing the Executive Order is?
11. Executive Order 12086 issued by President Carter in 1978 eliminated FHWA's responsibilities in the Contract Compliance program. True or False?
12. State DOTs do not have any responsibility under Executive Order 11246. True or False?
13. Executive Order 11246 requirements do not apply to transactions under \$15,000. True or False?
14. It is not a violation of the Executive Order to extend preference on the basis of tribal affiliation to Native Americans on projects on or near an Indian reservation. True or False?
15. The purpose of a compliance review is to ensure that a contractor treats everyone fairly. True or False?
16. A contractor that is found to have not met its hiring goals is in non-compliance with the Executive Order. True or False?
17. The OFCCP may assume jurisdiction over any Federally assisted highway construction contractor. True or False?
18. Complaints under the Executive Order must be filed within **180** days of the alleged violation. True or False?
19. If a State DOT refuses to take enforcement action ordered by OFCCP, the OFCCP may take the action directly against the contractor. True or False?
20. Under the Executive Order, the OFCCP may require victims of discrimination to be made whole. True or False?



21. The Executive Order applies only to construction contractors. True or False?
22. A contractor found to have met or exceeded the hiring goals of the contract is conclusively in compliance with the Executive Order and Title 23. True or False?
23. The Federal-aid Highway Act of 1968, as amended, {23 USC 140} superseded Executive Order 11246 for the Federally assisted highway program. True or False?
24. Federal-aid highway program requirements prohibit which of the following types of discrimination:
- Political affiliation
  - Race
  - Religion
  - Marital status
  - Low income status
  - Color
  - National Origin
  - Sex
  - Sexual preference
25. Executive Order 11246 requires State DOTs to appoint an EEO Coordinator whose primary responsibility is to administer the EEO Program. True or False?
26. State DOTs are not required to enforce EEO contract requirements on their own initiative. Instead, they must wait for FHWA to impose enforcement actions upon non-complying contractors. True or False?
27. FHWA's regulations governing the contract compliance program are found at 49 CFR, Part 21. True or False?
28. The required EEO contract provisions under 23 USC 140 apply to:
- A  All contracts, construction and non-construction.
  - B  Only to construction contracts in any amount
  - C  Only to construction contracts and subcontracts of \$10,000 or more.
  - D  Only to construction subcontracts.
29. Federally assisted highway construction contractors must develop, under 23 CFR 230, an EEO and affirmative action program for their company. True or False?

30. Under the Specific Equal Employment Opportunity Requirements of their contract, Federally assisted contractors are required to do which of the following;
- A\_\_\_ Recruit
  - B\_\_\_ Appoint an EEO Officer
  - C\_\_\_ Advertise for employees
  - D\_\_\_ Include "Equal Opportunity Employer" in all advertisements
  - E\_\_\_ Establish referral procedures with minority/women recruitment sources
  - F\_\_\_ Periodically review all personnel actions and take corrective action for all affected persons.
  - G\_\_\_ Meet with community-based organizations
  - H\_\_\_ Investigate complaints
  - I\_\_\_ Ensure subcontractor compliance
31. State DOTs are required to establish and submit for FHWA approval a Contractor Compliance Program pursuant to 49 C.F.R. 23. True or False?
32. Rules governing procedures for conducting contract compliance reviews of highway construction contractors are found at:
- A\_\_\_ 23 CFR 230, Subpart D
  - B\_\_\_ 23 CFR 230, Subpart A
  - C\_\_\_ 23 CFR 230, Subpart G
33. Failure or refusal by a State DOT to develop and/or implement an EEO Contract Compliance Program:
- A\_\_\_ Is a violation of the EEO State Assurance
  - B\_\_\_ Is a violation of the regulations at 23 CFR 230
  - C\_\_\_ Could result in cancellation of the agreement between FHWA and the State
  - D\_\_\_ Requires efforts by the FHWA to bring State into compliance through negotiation, persuasion or conciliation.
  - E\_\_\_ All of the above
34. True or False? The following are the stages, in the sequence to be followed, of a contract compliance review:
- 1. Review scheduling
  - 2. Contractor Notice
  - 3. On-site review
  - 4. Desk Audit
  - 5. Exit Conference
  - 6. Compliance Determination
  - 7. Formal Notice

35. Contractors that have not been reviewed before should be given priority over which of the following contractors: (Read carefully before answering!)
- A\_\_\_ Contractors against whom a series of discrimination complaints have been filed.
  - B\_\_\_ Contractors with several multimillion dollar projects in areas with high minority representation in the civilian labor force.
  - C\_\_\_ Contractors that have been found in compliance on every review conducted.
36. Contractors should be given at least 2 days notice prior to an on-site review. True or False?
37. State DOTs are prohibited from unannounced EEO inspections. True or False?
38. Which of the following are grounds for finding a contractor in non-compliance:
- A\_\_\_ Rude behavior toward the compliance officer
  - B\_\_\_ Failure to provide information to compliance officer necessary to ascertain compliance
  - C\_\_\_ Disorganized office and facilities
  - D\_\_\_ Insensitive attitudes and opinions about civil rights, EEO and affirmative action
  - E\_\_\_ Acts of discrimination
  - F\_\_\_ Failure to implement EEO contract provisions
  - G\_\_\_ Failure to meet minority/female utilization goals
39. A contractor found in non-compliance may forego issuance of a "Show Cause Notice" if the contractor agrees to submit a Voluntary Corrective Action Plan. True or False?
40. Once issued, a "Show Cause Notice" may not be rescinded, even if the contractor comes into compliance. True or False?
41. Division Office personnel may invoke their superior Federal authority and contravene a State compliance officer during the course of a review and in the presence of all participants. True or False?
42. Which of the following indicate a strategic use of a State's resources in carrying out its compliance review program?
- A\_\_\_ Most reviews are concentrated in one region of the State with little or no minority representation in the civilian labor force.
  - B\_\_\_ Reviews focus on critical trades; i.e., trades where minorities and women are most underrepresented.

- C\_\_\_Reviews are conducted after peak employment periods.
- D\_\_\_Follow up reviews of contractors issued show cause notices or under voluntary corrective action plans are not conducted.
- E\_\_\_Enforcement actions are taken against contractors that repeatedly are found with the same deficiencies.

43. Which of the following are the major differences between the Executive Order program and the FHWA/State program?

- A\_\_\_Executive Order program measures hours of minority/female utilization while FHWA program measures numbers of minorities/females.
- B\_\_\_Executive Order program provides for "make whole" remedies for victims of discrimination; the FHWA program does not.
- C\_\_\_Executive Order program is enforceable in law and contract; the FHWA program is not enforceable.
- D\_\_\_Executive Order program applies to all of a contractor's workforce private and public in the covered area while the FHWA/State program covers only the contractor's workforce on the covered contract.

44. Contractors are required, under the Title 23 program, to maintain EEO records for a period of at least;

- A\_\_\_Six months following completion of the contract.
- B\_\_\_Three years following the completion of the contract and submittal of originals to the State and the OFCCP.
- C\_\_\_Three years following the completion of the contract work.
- D\_\_\_None of the above.

**BASIC CIVIL RIGHTS PROGRAMS ADMINISTRATION COURSE**  
**CONTRACTOR EEO COMPLIANCE MODULE**  
**Participant Retention Assessment Instrument-Instructor's Master**

1. List three (3) or more roles and responsibilities that a Division Office would have in the Contractor EEO Compliance Program.
    - A. Review and recommend for approval the State DOT's program.
    - B. Review contract compliance review reports for adherence to prescribed standards.
    - C. Assist the State in developing its program.
    - D. Assist the State in enhancing its program through:
      - Process reviews
      - Observing and providing feedback on individual reviews
      - Identifying best practices
      - Identifying needs for training and sources for providing the training
  
  2. What is the objective of the program?
    - Ensure **nondiscrimination** and provide **affirmative action** on basis of race, color, religion, national origin, age, handicap or sex by Federal aid highway contractors.
  
  3. What are the two main authorities for the program?
    - Executive Order 11246, as amended
    - 23 USC 140
  
  4. Executive Order 11246 is the first Executive Order to require affirmative action. True or False?

True. Although one in a long series of Executive Orders, all previous orders only required nondiscrimination.
  
  5. Which of the following bases for discrimination are prohibited by Executive Order 11246?
    - A  Political affiliation
    - B  Religion
    - C  Low income
    - D  Color
    - E  Marital status
- (Question continued on next page.)

F  Sex  
G  National Origin  
H  Race  
I  Sexual preference

6. Under the Executive Order a prior finding of discrimination is required before affirmative action may be required. True or False?

False

7. Explain answer to question 6.

Under E.O. 11246, obligation incurred by contractor is contractual in nature and is imposed by government based on constitutional imperative that government not subsidize discrimination in employment.

8. A contractor relies upon word of mouth recruiting through his/her employees. All qualified applicants referred by employees are hired for available vacancies. Is this contractor practicing equal opportunity? Could this contractor be discriminating in violation of the Executive Order? Yes or No? Explain.

It depends. If the contractor's workforce is representative of the relevant labor force in all classifications, reliance on a diverse workforce may result in the referral of a diversity of candidates. If contractor has an all or predominantly non-minority or male workforce, referrals for vacancies and consequently hires will be all non-minority or male.

9. FHWA or the States have independent authority to enforce Executive Order 11246. True or False?

False. Only OFCCP has authority to enforce Executive Order 11246. FHWA & States do not have such authority but may refer perceived violations to the OFCCP. See FHWA Order 4710.8 issued 2/1/99.

10. The agency responsible for administering and enforcing the Executive Order is?

The Office of Federal Contract Compliance Programs

11. Executive Order 12086 issued by President Carter in 1978 eliminated FHWA's responsibilities in the Contract Compliance program. True or False?

False. E.O. 12086 merely consolidated Executive Order 11246 authority under the OFCCP. FHWA's responsibility and authority to ensure compliance on the part of its contractors continued by law under 23 U.S.C. 140.

12. State DOTs do not have any responsibility under Executive Order 11246. True or False?

False. Under the Executive Order and its implementing rules and regulations State DOTs as contracting agencies are required to:

- Cooperate with and assist the FHWA and OFCCP in achieving compliance.
- Furnish information as requested.
- Not enter into contracts w/debarred firms.
- Carry out sanctions and penalties for violations of the Order as required by the OFCCP and FHWA.

13. Executive Order 11246 requirements do not apply to transactions under \$15,000. True or False?

False. The Executive Order does not apply to transactions under \$10,000.

14. It is not a violation of the Executive Order to extend preference on the basis of tribal affiliation to Native Americans on projects on or near an Indian reservation. True or False?

False. Employment preference may be extended to Native Americans on projects on or near Indian reservations. However, preference on the basis of tribal affiliation is prohibited by the Executive Order and Title VII of the Civil Rights Act of 1964, as amended.

15. The purpose of a compliance review is to ensure that a contractor treats everyone fairly. True or False?

False. Fair treatment is in the eyes of the beholder. More precisely, the purpose of a compliance review is to determine if the contractor maintains nondiscriminatory hiring and employment practices and is taking the affirmative action required under the provisions of the contract.

16. A contractor that is found to have not met its hiring goals is in non-compliance with the Executive Order. True or False?

False. Hiring is only one aspect of employment. A contractor that has not met its contract hiring goals cannot, solely on this basis be found in non-compliance. The contractor must be given an opportunity to demonstrate any good faith efforts exerted he/she exerted to meet the goals.

17. The OFCCP may assume jurisdiction over any Federally assisted highway construction contractor. True or False?

True. Under the Executive Order, the OFCCP may assume such jurisdiction, conduct investigations, issue recommendations and findings and order sanctions against any contractor covered by the Order.

18. Complaints under the Executive Order must be filed within 180 days of the alleged violation. True or False?

True. {41 CFR 60-21 thru 1.24}

19. If a State DOT refuses to take enforcement action ordered by OFCCP, the OFCCP may take the action directly against the contractor. True or False?

True. The Executive Order and its implementing rules grant OFCCP that authority.

20. Under the Executive Order, the OFCCP may require victims of discrimination to be made whole. True or False?

True. So called "affected classes/individuals" found to have been victimized by a contractor's employment practices may be made whole in the form of back pay, retroactive seniority, hiring, promotion, etc.

21. The Executive Order applies only to construction contractors. True or False?

False. The Order applies to both construction as well as non-construction contractors. Non-construction contractors with 50 or more employees and contracts of \$50,000 or more are covered.

22. A contractor found to have met or exceeded the hiring goals of the contract is conclusively in compliance with the Executive Order and Title 23. True or False?

False. Beyond hiring, both the Order and the Title 23 program require nondiscrimination in post employment conditions such as terminations, promotions, work assignments, assignments to equipment, training, pay and benefits. Further, the Executive Order and Title 23 also prohibit discrimination against any particular group. For example, a contractor could meet its utilization goals with one group while excluding persons from another group that are qualified and have applied for work with the contractor.

23. The Federal-aid Highway Act of 1968, as amended, {23 USC 140} superseded Executive Order 11246 for the Federally assisted highway program. True or False?

False. Both programs coexist. Congress recognized the existence of the Executive



Order program when it was deliberating passage of the 1968 Act. Congress concluded that both programs could coexist but since the highway construction industry represented unique circumstances, a program to ensure nondiscrimination on Federally assisted highway projects was required.

24. Federal-aid highway program requirements prohibit which of the following types of discrimination:

Political affiliation  
 Race  
 Religion  
 Marital status  
 Low income status  
 Color  
 National Origin  
 Sex  
 Sexual preference

25. Executive Order 11246 requires State DOTs to appoint an EEO Coordinator whose primary responsibility is to administer the EEO Program. True or False?

False. State DOTs are required to appoint an EEO Coordinator under Assurances executed by each State DOT as a condition to receipt of federal funds pursuant to 23 U.S.C. 140.

26. State DOTs are not required to enforce EEO contract requirements on their own initiative. Instead, they must wait for FHWA to impose enforcement actions upon non-complying contractors. True or False?

False. Under the EEO Assurances, States are required to enforce EEO contract requirements on their own initiative.

27. FHWA's regulations governing the contract compliance program are found at 49 CFR, Part 21. True or False?

False. FHWA's contract compliance regulations are found at 23 C.F.R., Part 230. DOT's regulations at 49 C.F.R. 21 apply to the Title VI program.

28. The required EEO contract provisions under 23 USC 140 apply to:

A  All contracts, construction and non-construction.  
B  Only to construction contracts in any amount

- C  Only to construction contracts and subcontracts of \$10,000 or more.  
D  Only to construction subcontracts.

29. Federally assisted highway construction contractors must develop, under 23 CFR 230, an EEO and affirmative action program for their company. True or False?

False. The Specific Equal Employment Opportunity Requirements of each covered Federal aid highway construction contract is the contractor's affirmative action program.

30. Under the Specific Equal Employment Opportunity Requirements of their contract, Federally assisted contractors are required to do which of the following;

- A  Recruit  
B  Appoint an EEO Officer  
C  Advertise for employees  
D  Include "Equal Opportunity Employer" in all advertisements  
E  Establish referral procedures with minority/women recruitment sources  
F  Periodically review all personnel actions and take corrective action for all affected persons.  
G  Meet with community-based organizations  
H  Investigate complaints  
I  Ensure subcontractor compliance

31. State DOTs are required to establish and submit for FHWA approval a Contractor Compliance Program pursuant to 49 C.F.R. 23. True or False?

False. State DOTs are required to develop and submit for FHWA approval, a Contractor Compliance Program under 23 C.F.R. 230, Subpart C.

32. Rules governing procedures for conducting contract compliance reviews of highway construction contractors are found at:

- A  23 CFR 230, Subpart D  
B  23 CFR 230, Subpart A  
C  23 CFR 230, Subpart G

33. Failure or refusal by a State DOT to develop and/or implement an EEO Contract Compliance Program:

- A  Is a violation of the EEO State Assurance  
B  Is a violation of the regulations at 23 CFR 230  
C  Could result in cancellation of the agreement between FHWA and the State

- D \_\_\_\_ Requires efforts by the FHWA to bring State into compliance through negotiation, persuasion or conciliation.  
E X All of the above

{See 23 CFR 630, Subpart C, Appendix A, Form PR-2}

34. True or False? The following are the stages, in the sequence to be followed, of a contract compliance review:

1. Review scheduling
2. Contractor Notice
3. On-site review
4. Desk Audit
5. Exit Conference
6. Compliance Determination
7. Formal Notice

False. All of the stages of a review are included above. However, the Desk Audit must be conducted prior to the On-site. The desk audit determines whether or not you need to go on-site and if you do go on-site, information from the desk audit will assist in focusing the review and reducing your time on-site.

35. Contractors that have not been reviewed before should be given priority over which of the following contractors: (Read carefully before answering!)

- A \_\_\_\_ Contractors against whom a series of discrimination complaints have been filed.  
B \_\_\_\_ Contractors with several multimillion dollar projects in areas with high minority representation in the civilian labor force.  
C X Contractors that have been found in compliance on every review conducted.

36. Contractors should be given at least 2 days notice prior to an on-site review. True or False?

False. At least 2 weeks notice should be provided to the contractor.

37. State DOTs are prohibited from unannounced EEO inspections. True or False?

False. No such prohibition exists. In fact some State DOTs use the unannounced EEO inspection to ascertain compliance or to justify a full compliance review.

38. Which of the following are grounds for finding a contractor in non-compliance:
- A  Rude behavior toward the compliance officer
  - B  Failure to provide information to compliance officer necessary to ascertain compliance
  - C  Disorganized office and facilities
  - D  Insensitive attitudes and opinions about civil rights, EEO and affirmative action
  - E  Acts of discrimination
  - F  Failure to implement EEO contract provisions
  - G  Failure to meet minority/female utilization goals
39. A contractor found in non-compliance may forego issuance of a "Show Cause Notice" if the contractor agrees to submit a Voluntary Corrective Action Plan. True or False?
- True. If contractor refuses to undergo a VCAP, a show cause notice must be issued formally notifying contractor of specific areas of non-compliance and providing contractor opportunity to show cause why sanctions should not be imposed.
40. Once issued, a "Show Cause Notice" may not be rescinded, even if the contractor comes into compliance. True or False?
- False. The whole point of a show cause is to inform the contractor of the deficiencies and provide the contractor an opportunity to offer evidence in rebuttal or to come into compliance prior to invoking sanctions.
41. Division Office personnel may invoke their superior Federal authority and contravene a State compliance officer during the course of a review and in the presence of all participants. True or False?
- False. Although the FHWA has the authority to assume jurisdiction over such matters, such a move is not advisable nor in keeping with the Federal/State relationship. Disagreements over the interpretations of Federal regulations should be discussed and resolved privately between the Federal and State representatives involved and not in front of the contractor.
42. Which of the following indicate a strategic use of a State's resources in carrying out its compliance review program?
- A  Most reviews are concentrated in one region of the State with little or no minority representation in the civilian labor force.

- B  Reviews focus on critical trades; i.e., trades where minorities and women are most underrepresented.
- C  Reviews are conducted after peak employment periods.
- D  Follow up reviews of contractors issued show cause notices or under voluntary corrective action plans are not conducted.
- E  Enforcement actions are taken against contractors that repeatedly are found with the same deficiencies.

43. Which of the following are the major differences between the Executive Order program and the FHWA/State program?

- A  Executive Order program measures hours of minority/female utilization while FHWA program measures numbers of minorities/females.
- B  Executive Order program provides for "make whole" remedies for victims of discrimination; the FHWA program does not.
- C  Executive Order program is enforceable in law and contract; the FHWA program is not enforceable.
- D  Executive Order program applies to all of a contractor's workforce private and public in the covered area while the FHWA/State program covers only the contractor's workforce on the covered contract.

44. Contractors are required, under the Title 23 program, to maintain EEO records for a period of at least;

- A  Six months following completion of the contract.
- B  Three years following the completion of the contract and submittal of originals to the State and the OFCCP.
- C  Three years following the completion of the contract work.
- D  None of the above.

**INSTRUCTOR'S SECTION**

**Tab 4**

**MODULE 4 Preventing Discrimination in the Federal-Aid  
Program Case Study Analysis**

**PREVENTING DISCRIMINATION IN THE FEDERAL-AID PROGRAM:  
A SYSTEMATIC INTERDISCIPLINARY APPROACH  
Analysis 4-1  
Mr. Dame Mas Dinero vs. A State DOT**

**Background**

Mr. **Dame Mas Dinero**, hereinafter the **Complainant**, has filed a written allegation claiming that **A State DOT**, hereinafter the **Respondent**, has allocated funding for transportation projects in a manner which tends to favor other districts in the State over his district which is predominantly Hispanic. The correspondence from the complainant does not mention discrimination or cite any law governing illegal discrimination.

**Issues**

1. Whether the allegation filed by **Complainant** constitutes a complaint within the purview of Title VI of the Civil Rights Act of 1964.
2. Whether the process or criteria utilized by the **Respondent** to allocate or apportion construction and maintenance funds to the **Complainant's** district is discriminating or has resulted in discrimination on the basis of national origin (Mexican American) prohibited by Title VI of the Civil Rights Act of 1964.

**Authority**

- I. Title VI of the Civil Rights Act of 1964 {42 U.S.C. 2000d et seq.}, as amended by the Civil Rights Restoration Act of 1987 (PL. 100-259)
- II. 49 CFR, Part 21-Nondiscrimination In Federally Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964
- III. DOT Order 1000.12-Implementation of the Department of Transportation Title VI Program

**Considerations**

- A. Discrimination has been indirectly alleged in this case against Mexican Americans in **Complainant's** district (complainant's affidavit).
- B. The FHWA has jurisdiction in the matter under the above cited authorities.
- C. All funds allocated, whether federal or state, are covered (Title VI, as amended by the Civil Rights Restoration Act of 1987, PL. 100-259).

- D. Intent to discriminate is not relevant, effect is (49 CFR, Part 21.5). "Discrimination" means that act or failure to act, intentional or unintentional, the effect of which is that a person, because of race, color, or national origin, has been excluded from participation in, denied the benefits of, or has been otherwise subjected to unequal treatment under any program or activity receiving Federal financial assistance from the Department of Transportation. "Affected Community" means that person or persons served or likely to be directly or indirectly affected by a program or activity receiving Federal financial assistance from the Department {DOT Order 1000.12}.
- E. **Complainant** has standing to file the complaint under Chapter V, Section 2. of DOT Order 1000.12.

### **Information and Analysis Required**

1. What criteria is used by **Respondent** to apportion or allocate all funds for construction and maintenance? Include pre-ISTEA and post-ISTEA criteria if appropriate.
2. What is the basis in authority for the criteria utilized (law, executive order, rule, policy, procedure)?
3. Does this criteria in and of itself or as applied violate Title VI? In other words, is the process/criteria, even if applied consistently, designed in such a manner that it would result in discriminatory allocation of funding to Districts with predominantly minority populations such as the **Complainant's** district?
4. Has the criteria been followed consistently?
5. Identify what transportation needs have been submitted by the planning agency(s) in the **Complainant's** district to the respondent for the relevant period. Compare needs submitted with allocations made. In addition identify projects actually advanced to construction in the **Complainant's** district and compare number and dollar value of advanced projects with amounts allocated to the District during the relevant period.
6. Determine official(s) and agency(s) responsible for final allocation decisions.
7. Determine funding allocations to **Respondent's** districts similarly situated to the **Complainant's** district but predominantly non-minority. In establishing similarly situated districts, factors such as population, vehicle miles, lane miles and rates of growth (current and projected) should be considered.



## **Roles and Responsibilities**

### **Within FHWA (Example)**

1. The **Division Office** will be assigned the lead role in gathering the information listed above, analyzing it and formulating their findings and recommendations. It is expected that Division Office staff from the **Planning, Administration and Civil Rights** programs will be involved.
2. The **Regional Office of Civil Rights** in coordination with the **Regional Offices of Planning and Program Development, Administration** and the **Regional Counsel** will prepare the initial guidelines for conducting the inquiry, review the Division's findings and recommendations and based on the Division Office's report prepare a transmittal memorandum with recommendations to Headquarters.

### **Within Respondent (Assign roles and responsibilities)**

### **Potential Outcomes (Discuss)**

On the issue of inequity, Mr. Mas Dinero's district was found to have experienced disadvantages in the historical allocation of funding for transportation projects.

To address these inequities the following recommendations were made;

1. The review of funding equity issues should be continued to insure fair distribution by the Legislature and A State DOT.
2. Work with local communities to develop more appropriate criteria for funding allocation.
3. Take action necessary to ensure that the problems faced by the Complainant's district are given equitable consideration in the appropriation and allocation of funding.
4. Ensure that State budget agencies (Legislative Budget Boards, State Auditor's Office and Governor's Office) include review of agency allocation criteria/formulas as part of their oversight responsibilities.
5. Install processes to ensure that reasonable requests for information on funding and expenditures are met with timely and adequate information in response.

**PREVENTING DISCRIMINATION IN THE FEDERAL AID PROGRAM: A SYSTEMATIC  
INTERDISCIPLINARY APPROACH**

**Handout 4-2  
Analysis of Project Development**

**Background**

Mr. John Q. Public (Complainant) has filed a written allegation claiming that a Highway Department (Respondent) is planning to construct a new highway through the Walnut Hills community which would disrupt all of the families that reside there and divide the community. He also claims that there is an alternative route a few miles west "where no one would be disturbed." Mr. Public alleges that he and the other residents of his community are poor and black. He claims he was told by the local office that the department will not hold a public hearing on the project. The correspondence from the complainant does not mention discrimination or cite any law governing illegal discrimination.

**Issues**

1. Whether the allegation filed by complainant constitutes a complaint within the purview of Title VI of the Civil Rights Act of 1964 and/or Environmental Justice.
2. Whether the public involvement process or criteria utilized by the Respondent is discriminatory or has resulted in a discriminatory effect on the basis of race or low income.
3. Whether the Walnut Hills community was given equal opportunity to participate in the public hearings?
4. Whether the residents' input was considered in the Respondent's decision to build a highway in the Walnut Hills community.

**Authority**

1. Title VI of the Civil Rights Act of 1964 {42 U.S.C. 2000d et. seq.}. {Appendix D-1 of manual}, as amended by the Civil Rights Restoration Act of 1987 {Appendix D-2 of manual}.
2. 49 CFR, Part 21 -- Nondiscrimination in Federally Assisted Programs of the Department of Transportation -- Effectuation of Title VI of the Civil Rights Act of 1964 (esp., § 21.11(d) requiring informal resolution). {Appendix D-4 of manual}.
3. 23 CFR, Part 200 -- Title VI Program and Related Statutes -- Implementation and Review Procedures (esp., § 200.9(b)(3) requiring investigations be conducted by trained civil rights personnel). {Appendix D-5 of manual}.
4. 23 CFR §§ 771.111(h)(iii)(i).

5. 23 CFR § 450.212 and § 450.316.
6. DOT Order 1000.12 -- Implementation of the Department of Transportation Title VI Program (esp., Chapter V). {Appendix D-7 of manual}.
7. Executive Order 12898 -- Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations. {Appendix D-3 of manual}.
8. DOT Order 5610.2 -- Environmental Justice in Minority Populations and Low-Income Populations.

### **Considerations**

1. Discrimination against black and poor persons has been indirectly alleged in this case.
2. The FHWA has jurisdiction in the matter under the above cited authorities.
3. Intent to discriminate is not relevant, effect is (49 CFR, part 21.5).
4. Complainant has standing to file according to Chapter V, Section 2 of DOT Order 1000.12.

### **Information and Analysis Required**

1. What type of public involvement (PI) methods are normally employed by the respondent?
2. What type of PI methods were used in this case?
3. Are these PI methods applied consistently in other similarly situated communities where nonminorities or mid- to upper-income persons reside?
4. Determine the feasibility of the meeting time. What time(s) of the day are meetings normally scheduled and/or held?
5. Determine the feasibility of the meeting location. Is it convenient? Is it accessible by public transportation?
6. Determine how citizens are normally notified of public hearings. What are the policies/procedures? Did the respondent send out notices in a timely fashion? Were the notices legible and understandable by the target audience? Did the respondent advertise in local media or through a community newsletter or citizen advisory organization?
7. Did the highway department consider any other alignment, such as the "open land a few miles west" of the community?

**PREVENTING DISCRIMINATION IN THE FEDERAL-AID PROGRAM:  
A SYSTEMATIC INTERDISCIPLINARY APPROACH**

**Analysis 4-3  
Right of Way**

**Background**

The Complainant has filed a written allegation against the State Department of Transportation (DOT), the Respondent, stating that he has been discriminated against on the basis of his race. Although his race is unknown, the State DOT has identified him as a minority. The Complainant specifically alleges that he was not provided enough information about his rights in the relocation process. The Complainant alleges that he was not treated the same as his neighbor who is not a minority.

**Issues**

1. Whether the allegation filed by Complainant constitutes a complaint within the purview of Title VI of the Civil Rights Act of 1964.
2. Whether the process utilized by the Respondent to provide relocation assistance to the Complainant is discriminatory or has resulted in a discriminatory effect on the basis of race.
3. Whether the Respondent made a reasonable effort to negotiate.
4. Whether the Complainant received the same benefits or services as his nonminority neighbor.

**Authority**

1. Title VI of the Civil Rights Act of 1964 {42 U.S.C. 2000d et. seq.}.
2. 49 CFR, Part 21.
3. 23 CFR, Part 200.
4. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act) (esp., § 24.102 -- Basic Acquisition Policies; § 24.203 -- Relocation Notices). {P.L. 91-646}.

**Considerations**

1. Discrimination against a minority is alleged in this case.
2. The FHWA has jurisdiction in the matter under the above cited authorities.
3. Intent to discriminate is not relevant, effect is (49 CFR, Part 21.5).

4. Complainant has standing to file according to Chapter V, Section 2 of DOT Order 1000.12 and the Uniform Act.

**Information and Analysis Required**

1. What are the State DOT's policies/procedures regarding relocation assistance/acquisition function?
2. How was the Complainant contacted? Did the Complainant receive a Notice of eligibility letter?
3. What types of relocation benefits/services were offered (i.e., comparable properties, comparable sales, 90-day notice)?
4. How often was the Complainant contacted?
5. Did the Complainant receive personal visit(s) to his home? If so, how many visits? Provide the name of the negotiating officer who visited and the dates, times, etc.
6. What was the Complainant offered for his house? Was it fair market value?
7. How much time was the Complainant given to consider the offer made by the State DOT before he was forced to sell his property?

Ask questions 2 - 7 regarding the nonminority property owner to show comparison. If it is determined that the minority was treated differently, then the question is why?

**PREVENTING DISCRIMINATION IN THE FEDERAL-AID PROGRAM:  
A SYSTEMATIC INTERDISCIPLINARY APPROACH**

**Analysis 4-4  
Construction #1**

**Background**

Hobbs Construction Company has a \$5 million project for a major four-lane highway. The project is 25 percent complete. The contractor has subcontracted out about \$500,000 to nonminority subcontractors. For the remainder of the work, he sent letters to two DBE and six nonminority subcontractors. There are two more DBEs listed in the State's DBE directory who do this type of work. The contractor is also constructing a batch plant in a minority community adjacent to the project site. This contractor previously constructed a batch plant in a minority community.

**Issues**

1. Whether the findings of the inspection raised/identified issues which might potentially be under the purview of Title VI of the Civil Rights Act of 1964 or Environmental Justice.
2. Whether the project has a DBE goal, and if so whether the DBE commitments have been honored or good faith efforts have been exerted by the prime contractor.
3. Whether the site selection criteria utilized to establish the batch plant constitutes discrimination and/or results in a disproportionate adverse impact on the minority community affected.

**Authority**

1. Title VI of the Civil Rights Act of 1964
2. 49 CFR, Part 21
3. 23 CFR, Part 200
4. Executive Order 12898 -- Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.
5. DOT Order 5610.2 -- Environmental Justice in Minority Populations and Low-Income Populations.

**Considerations**

1. Discrimination has not been alleged, although there could be a pattern of putting batch plants in minority communities which could have a disproportionately adverse effect on minority communities.
2. The FHWA has jurisdiction in the matter under the above cited authorities.
3. Intent to discriminate is not relevant, effect is (49 CFR, Part 21.5).

**Information and Analysis Required**

1. If the project has a DBE goal, the status of the DBE commitments need to be verified. A review of the prime contractor's good faith efforts may be necessary.
2. If the project has no DBE goal, the contractor will need to provide documentation showing the specific actions taken to provide DBEs every opportunity to compete for and perform the terms of the contract (49 CFR 23.43(a)(2)).
3. Describe the criteria utilized by the prime contractor for the selection of the batch plant. Determine whether the criteria is discriminatory and/or results in a disproportionate adverse impact on the affected community.
4. Was there an alternative to building this batch plant in that community?

**PREVENTING DISCRIMINATION IN THE FEDERAL-AID PROGRAM:  
A SYSTEMATIC INTERDISCIPLINARY APPROACH**

**Analysis 4-5  
Construction #2**

**Background**

Mr. Joe Sanchez (Complainant) has filed a written allegation claiming that the State's inspectors have treated him unfairly. He specifically alleges that Smithfield Construction Company, the prime contractor on Project I-001(250) received much more lenient treatment from the inspectors. The correspondence from the Complainant does not mention discrimination or cite any law governing illegal discrimination.

**Issues**

1. Whether the allegation filed by Complainant constitutes a complaint within the purview of Title VI of the Civil Rights Act of 1964.
2. Whether the process or criteria used by the Respondent to inspect projects is discriminatory or has had a discriminatory effect on the Complainant under one of the bases covered by Title VI.

**Authority**

1. Title VI of the Civil Rights Act of 1964
2. 49 CFR, Part 21
3. 23 CFR, Part 200

**Considerations**

1. Discrimination has not been alleged; however it can be inferred by unfair treatment depending upon the basis of the complaint.
2. The Complainant's race, color, and national origin is unknown.



**Information and Analysis Required**

1. What is the basis for Mr. Sanchez's allegation of unfair treatment? Is it on the grounds of race, color, or national origin?
2. What specifications are used by the State's inspectors?
3. Are the specifications applied consistently?
4. What is the justification for plan changes being granted to Smithfield and not to J & Y Construction?
5. Is J & Y Construction Company certified in the area of work it is performing?
6. Have there been any other complaints of discrimination filed regarding these same inspectors? If so, what was the basis?

**PREVENTING DISCRIMINATION IN THE FEDERAL-AID PROGRAM:  
A SYSTEMATIC INTERDISCIPLINARY APPROACH**

**Analysis 4-6  
Research**

**Background**

A Title VI assessment of the State highway department's research program is being conducted. It appears that State University has consistently been given grants to do research projects for the State. The highway department has not solicited proposals from any other universities in the State; there are two other universities in the State. There is no information that discrimination has been alleged.

**Issues**

1. Whether the assessment raises/identifies any issues that might potentially be within the purview of Title VI of the Civil Rights Act of 1964.
2. Whether the process or criteria utilized by the State highway department to solicit research proposals is discriminatory or has resulted in a discriminatory effect under one of the bases covered under Title VI of the 1964 Civil Rights Act.

**Authority**

1. Title VI of the Civil Rights Act of 1964 {42 U.S.C. 2000d et seq.}.
2. 49 CFR, Part 21.
3. 23 CFR, Part 200.

**Considerations**

1. Discrimination has not been alleged in this case.
2. Both a minority and a nonminority university were excluded from participation in the State highway department's research program.
3. The FHWA could potentially have jurisdiction in the matter under the above cited authorities.

**Information and Analysis Required**

1. What policies/procedures are used to solicit universities for research projects?
2. Were the policies/procedures applied consistently?

3. What criteria is used to determine which university is selected for a particular research project? Does this criteria vary by the type of research?
4. Has any other university ever been given a grant for a research project with the State highway department? If so, which university and how many?
5. Have any grants been given to nonminority universities for research projects with the department? If so, which university and how many?

**INSTRUCTOR'S SECTION**

**Tab 5**

**MODULE 5 DBE Test & Master**

**DBE PROGRAM ADMINISTRATION**  
**Retention Assessment Instrument**  
**Instructor's Master**

1. The DBE Program Regulation (49 CFR 26) applies to which of the following programs:  
(Answer is a. {26.3})

- a. Federal Highway Administration & Federal Transit Administration {26.3}
- b. Federal Aviation Administration & Federal Railroad Administration
- c. Federal Highway Administration & Coast Guard.
- d. None of the above.
- e. All of the above.

2. The objective of the DBE Program is to "maximize opportunities" for DBEs.  
(Answer is False {26.1})

- True
- False

3. Firms that apply for DBE certification that are close to meeting the eligibility standards may be certified on condition that they meet the standards within a specified time frame.

(Answer is False {26.1(d), 26.61(a) & (b)})

- True
- False

4. The objective(s) of the DBE Program is to (designate an answer closest to objective of Part 26);

(Answer is d. {26.1})

- a. Ensure nondiscrimination through race-conscious measures.
- b. Ensure nondiscrimination through a combination of race-conscious and race-neutral procedures and contract goals.
- c. Ensure nondiscrimination by barrier removal, contract goals and supportive services to DBEs.
- d. Ensure nondiscrimination, accounting for the effects of past and present discrimination and remove barriers to small businesses.
- e. All of the above.
- f. None of the above.

5. The Supreme Court in its Adarand decision declared DOT's DBE Program unconstitutional because Congress did not demonstrate a "compelling interest" for the program.

(Answer is False. Court found compelling interest, but program not "narrowly tailored." {Power Points #8, 9 & 14 and preamble to 49 CFR 26 on page 5101 & 5102}).

- True
- False

6. In determining Small Business Size for certification purposes, you must;

(Answer is **b., c. & d.** {26.5, 26.65})

- a. Consider the gross average annual receipts of the applicant firm and all firms it does business with.
- b. Apply the appropriate Small Business Size Standard.
- c. Consider the applicant firm and all of its affiliates.
- d. Consider the applicant firm and any other firm that controls it.
- e. Certify the applicant as long as it meets the DOT size ceiling of \$16.6M and all other eligibility standards.
- f. All of the above.
- g. None of the above.

7. Only citizens of the United States may be considered eligible for the DBE Program.

(Answer is **False.** {26.5, Definition for S&E Individual. Lawfully admitted permanent residents also eligible})

- True
- False

8. The regulation prohibits the use of quotas in **all** situations except to address blatant discrimination.

(Answer is **False.** {26.43(a)})

- True
- False

9. DOT's 10% goal under TEA-21 is;

(Answer is **c.** {26.41})

- a. To be used by recipients as a guide in setting their own overall goals.
- b. A national goal that recipients must follow or justify why they did not.
- c. Applicable internally to U.S. DOT only.
- d. All of the above.
- e. None of the above.

10. Recipients are required to provide DBE program data and reports as directed by the DOT operating administration.

(Answer is **True.** {26.11})

- True
- False

11. A DBE Liaison Officer;

(Answer is a., c. and d. {26.25})

- a. Must be appointed by each recipient.
- b. Must report directly to the Chief Administrative Officer.
- c. Must be appointed and have direct access to Chief Administrative Officer.
- d. Must be responsible for implementing all aspects of the DBE Program and must have adequate staff to administer program.
- e. None of the above.
- f. All of the above.

12. Once approved, DOT Recipients are not required to submit annual updates of their DBE Programs.

(Answer is True. {26.21(b)(2)})

- True
- False

13. Recipients must establish a prompt payment mechanism that;

(Answer is b. {26.29} **Must apply to all subcontractors not just DBEs. Penalties at discretion of recipient.**)

- a. Requires contractors to pay their subcontractors within 15 work days for all work completed and accepted by recipients including any retainage.
- b. Includes a contract requirement specifying the number of days within which prime contractors must pay their subcontractors including retainage.
- c. Applies only to all DBE subcontractors.
- d. Requires specific penalties for noncompliance.
- e. All of the above.
- f. None of the above.

14. Contracts with contract goals may be awarded only to;

(Answer is a., b. and d. {26.53})

- a. Bidders that meet the goal.
- b. Bidders that only demonstrate good faith efforts to meet the goal.
- c. Bidders that submit with their bid, the required DBE information including name, address, description and dollar amount of work to be performed by DBEs.
- d. Bidders that submit the required DBE participation and/or good faith effort information at the time prescribed in the request for proposals and the recipient's approved DBE Program document.
- e. All of the above.
- f. None of the above.

15. Race neutral includes which of the following;

(Answer is **b., c. & f.** {26.35 Section by Section Analysis & 26.51})

- a. Awards to DBEs where race is only one factor considered in the selection and where discrimination has been documented.
- b. Mentor-Protege Programs for all small firms.
- c. Awards to DBE contractors using recipient's normal low bid system.
- d. Cash bonuses to prime contractors that utilize DBEs in nontraditional areas of work.
- e. Bonus credit toward contract goal to primes that use DBEs in nontraditional areas of work.
- f. Business Development Programs for DBEs.

16. The four (4) general eligibility standards that firms applying for DBE certification must meet are;

(Answer is **c. and d.** {26.61(b)})

- a. Business size, category of work, ownership, and disadvantage.
- b. Contractual relationships, common ownership, management and expertise.
- c. Presumptive group membership, control, size and ownership.
- d. Individual disadvantage, control, size and ownership.
- e. All of the above.
- f. None of the above.

17. Any person believing that a recipient has failed to comply with 49 CFR Part 26 may file a complaint verbally or in writing, within 90 days of the alleged violation.

(Answer is **False.** {26.103(a)})

- True
- False

18. Firms applying for DBE certification must;

(Answer is **a., c., d.** {26.65(a) Existing small business. 26.31 and 26.71(n) Category of work. 26.71(b) Independent business})

- a. Be an existing small business.
- b. Be certified by the Small Business Administration.
- c. Be certified by category of work they perform.
- d. Be independent.
- e. All of the above.
- f. None of the above.

19. Marital assets held jointly or as community property by both spouses and used to acquire ownership interest asserted by one spouse in the applicant firm must;

(Answer is **b., c.,** {26.69(i)(1), (2)})

- a. Render the firm ineligible for certification.
- b. Be considered as acquired by spouse with his/her own individual resources if accompanied by irrevocable renouncement and transfer by other spouse of ownership interest.



- c. Not be counted towards ownership in an amount greater than recognized by State law.
- d. Be determined as acceptable for certification in community property law States.
- e. All of the above.
- f. None of the above.

20. An applicant firm that presently meets all eligibility requirements may be denied certification for failure to meet control requirements when it applied for certification 15 months before.

(Answer is False. {26.73(b)} Firms to be evaluated on basis of present circumstances.)

- True
- False

21. All DOT recipients must;

(Answer is e. {26.81})

- a. Participate in a Uniform Certification Program.
- b. Sign a UCP agreement by March 4, 2002.
- c. Submit UCP to Secretary of Transportation for approval.
- d. Make UCP operational within 18 months after Secretary's approval.
- e. All of the above.
- f. None of the above.

22. Certifications by UCPs may be made final before or after the due dates for bids or offers on contracts.

(Answer is False. {26.81(c)} Certifications must be final before bid or offer due dates.)

- True
- False

23. The term "immediate family member" includes but is not limited to;

(Answer is c. {26.5} No cousins, sister-in-law, daughter-in-law.)

- a. Brother, wife, cousin, mother, sister-in-law, grandmother.
- b. Father, mother-in-law, father-in-law, daughter-in-law.
- c. Sister, grandmother, wife, son, grandson.
- d. All blood relatives down to second cousins.
- e. All of the above.
- f. None of the above.

24. The DBE rule applies to the discriminatory actions based on race, disability, color, sex or national origin.

(Answer is False. {26.7(a)})

- True
- False

25. Once approved, each DOT's recipient's DBE Program;

(Answer is **b. and c.** {26.13(a)})

- a. Is physically incorporated into every agreement between the recipient and the DOT Operating Administration.
- b. Becomes a legal obligation.
- c. May result in sanctions for violations.
- d. All of the above.
- e. None of the above.

26. Recipients are required to submit a DBE Program document to the concerned Operating Administration conforming to Part 26 by October 1, 1999.

(Answer is **False.** {26.21(b)(1)} Correct date is 9/1/99.)

- True
- False

27. Recipients must keep a DBE Directory that includes the for each certified firm, its address, phone number and the type(s) of work the firm has been certified to perform as a DBE.

(Answer is **True.** {26.31})

- True
- False

28. Recipients are required to:

(Answer is **c.** {26.45})

- a. Set overall annual and contract specific goals.
- b. Establish contract goals consistent with their annual overall goal.
- c. Set overall annual goals based on availability of ready, willing and able DBEs relative to all businesses ready, willing and able to participate in DOT-assisted contracts.
- d. All of the above.
- e. None of the above.

29. Examples of race neutral practices could include breaking solicitations up into smaller units to facilitate participation by small business firms.

(Answer is **True.** {26.51(b)})

- True
- False

30. Recipients are required to utilize race-neutral means to achieve DBE participation before resorting to race-conscious means.

(Answer is **False.** Race neutral & race conscious means may be utilized together. {26.51})

- True
- False

31. Recipients may apply for waivers of the following part of the rule;

(Answer is **b., c. and d.** {26.15})

- a. Subparts D and E-Certification Standards and Procedures, small business size standards.
- b. Subparts B and C of the rule.
- c. Overall goals, contract goals and good faith efforts.
- d. And, if prior to requesting waiver they have obtained public participation in developing the proposal and at least one public hearing.
- e. All of the above.
- f. None of the above.

32. Recipients may receive DOT financial assistance pending approval of their DBE Program document.

(Answer is **False.** {26.21(c)})

- True
- False

33. Recipients are allowed to establish contractual provisions requiring their prime contractors to include in their subcontracts language requiring the parties to use alternative dispute resolution mechanisms to resolve payment disputes.

(Answer is **True.** {26.29(b)(1)})

- True
- False

34. Mentor-protége programs:

(Answer is **a., b. and d.** {26.35 and Appendix D to part 26} DOT not recipient approves.)

- a. Require approval of the DOT operating administration.
- b. Require written development plan approved by the recipient.
- c. Allow the protégé to be considered as an affiliate of the mentor.
- d. Require the DBE protégé to be independent business entities.
- e. All of the above.
- f. None of the above.

35. Failure or refusal of DBE firms and applicants for DBE certification to provide you with information relevant to certification constitutes grounds for denial or removal of certification.

(Answer is **True.** {26.73(c)})

- True
- False

36. In order to be certified an applicant firm must have made a profit.

(Answer is **False.** {26.73(d)})

- True

False

37. Under 49 CFR Part 26, applicants for certification must do which of the following;  
(Answer is **a., c., and d.** {26.67(a) Affidavit. 26.67(a)(2)(i) and (ii) PNW Statement})

- a. Submit signed, notarized affidavit attesting to owner(s) social and economic disadvantage.
- b. Submit a statement of personal net worth for all owners of the firm.
- c. Submit supporting documentation of personal net worth for owners upon which DBE certification is to be based.
- d. Demonstrate that any portion of equity in their personal residence is not attributable to excessive withdrawals from the applicant firm.
- e. All of the above.
- f. None of the above.

38. Independence is a part of control and must be reviewed in the context of;  
(Answer is **e.** {26.71})

- a. Relationships with other firms.
- b. Recent employer/employee relationships.
- c. Contracting patterns with non-DBEs.
- d. Whether informal or formal restrictions which limit control by disadvantaged owners.
- e. All of the above.
- f. None of the above.

39. A recipient is subject to enforcement actions by the concerned DOT Operating Administration for;  
(Answer is **b., c., and d.** {26.43 Set asides. 26.45 Set overall goal. 26.47 Failure to meet goal.})

- a. Failing to meet its overall goal.
- b. Failure to submit an overall goal.
- c. Using set-asides without DOT's approval.
- d. Not recognizing good faith efforts in contract goal situations.
- e. All of the above.
- f. None of the above.

40. Only the value of the work performed by a DBE or subcontracted by a DBE to another DBE is counted toward the contract and overall goals.

(Answer is **True.** {26.55(a)(3)})

- True
- False

41. To be a "regular dealer" in bulk items such as petroleum products, steel, cement, gravel,

stone or asphalt, a DBE firm need not own, operate or maintain a place of business as long as the DBE owns or operates the distribution equipment.

**(Answer is False. {26.55(e)(2)(B)} Must own equipment. May supplement equipment thru long term lease and not on contract by contract basis.)**

- True
- False

42. A recipient is required to address over concentration of DBEs in certain types of work when the over concentration is unduly burdening non-DBE firms in the same types of work.

**(Answer is True. {26.33})**

- True
- False

43. Recipients in their DBE Programs must include procedures and mechanisms by which they will monitor and ensure compliance on the part of their sub-recipients and contractors including;

**(Answer is e. {26.37})**

- a. Legal and contract remedies for noncompliance.
- b. Contract monitoring to ensure work committed to DBEs is actually performed.
- c. Mechanisms to track payments to DBEs as they are made.
- d. No pay, no credit provisions.
- e. All of the above.
- f. None of the above.

44. The two major steps in goal setting are; 1. Develop base line. and 2. Adjust the base line.

**(Answer is True. {26.45})**

- True
- False

45. FHWA recipients shall express their overall goal as a percentage of all funds (FHWA and State) that will be expended in FHWA-assisted contracts for the coming fiscal year.

**(Answer is False. {26.45(e)(1)} As a percentage of FHWA funds.)**

- True
- False

46. A recipient can be found in noncompliance for failing to have an approved DBE program, overall goal or failing to implement an approved program in good faith.

**(Answer is True. {26.47})**

- True
- False

47. A DOT Operating Administration may review and approve or disapprove any contract goal established by a recipient.

**(Answer is True. {26.51(e)(3)})**

True  
 False

48. Prime contractors may terminate DBEs named in their bid commitment without the recipient's written consent.

(Answer is False. {26.53(f)(1)})

True  
 False

49. A DBE performs a commercially useful function when it:

(Answer is **b. and d. and e.** {26.55(c) and (d)})

- a. Performs 51% of the work of the contract with own workforce.
- b. Is responsible for negotiating price, determining quality and quantity, ordering and installing where appropriate, supplies and materials of the contract.
- c. Serves as an extra participant in a process and through which funds are passed to meet contract goals.
- d. Effectively presents evidence to rebut a recipient's finding of failure to perform a commercially useful function.
- e. As a DBE trucking firm remains responsible for the entire trucking operation for which it is responsible under a particular contract.

50. Where expertise is relied upon by a disadvantaged owner to acquire ownership, the person claiming the expertise as a contribution need not have a financial investment in the applicant firm.

(Answer is False. {26.69(f)(2)})

True  
 False

**DBE PROGRAM ADMINISTRATION**  
**Retention Assessment Instrument**

1. The DBE Program Regulation (49 CFR 26) applies to which of the following programs:  
 a. Federal Highway Administration & Federal Transit Administration  
 b. Federal Aviation Administration & Federal Railroad Administration  
 c. Federal Highway Administration & Coast Guard.  
 d. None of the above.  
 e. All of the above.
  
2. The objective of the DBE Program is to “maximize opportunities” for DBEs.  
 True  
 False
  
3. Firms that apply for DBE certification that are close to meeting the eligibility standards may be certified on condition that they meet the standards within a specified time frame.  
 True  
 False
  
4. The objective(s) of the DBE Program is to (designate an answer closest to objective of Part 26);  
 a. Ensure nondiscrimination through race-conscious measures.  
 b. Ensure nondiscrimination through a combination of race-conscious and race-neutral procedures and contract goals.  
 c. Ensure nondiscrimination by barrier removal, contract goals and supportive services to DBEs.  
 d. Ensure nondiscrimination, accounting for the effects of past and present discrimination and remove barriers to small businesses.  
 e. All of the above.  
 f. None of the above.
  
5. The Supreme Court in its Adarand decision declared DOT’s DBE Program unconstitutional because Congress did not demonstrate a “compelling interest” for the program.  
 True  
 False

6. In determining Small Business Size for certification purposes, you must;
- a. Consider the gross average annual receipts of the applicant firm and all firms it does business with.
  - b. Apply the appropriate Small Business Size Standard.
  - c. Consider the applicant firm and all of its affiliates.
  - d. Consider the applicant firm and any other firm that controls it.
  - e. Certify the applicant as long as it meets the DOT size ceiling of \$16.6M and all other eligibility standards.
  - f. All of the above.
  - g. None of the above.
7. Only citizens of the United States may be considered eligible for the DBE Program.
- True
  - False
8. The regulation prohibits the use of quotas in **all** situations except to address blatant discrimination.
- True
  - False
9. DOT's 10% goal under TEA-21 is;
- a. To be used by recipients as a guide in setting their own overall goals.
  - b. A national goal that recipients must follow or justify why they did not.
  - c. Applicable to U.S. DOT only.
  - d. All of the above.
  - e. None of the above.
10. Recipients are required to provide DBE program data and reports as directed by the DOT operating administration.
- True
  - False
11. A DBE Liaison Officer;
- a. Must be appointed by each recipient.
  - b. Must report directly to the Chief Administrative Officer.
  - c. Must be appointed and have direct access to Chief Administrative Officer.
  - d. Must be responsible for implementing all aspects of the DBE Program and must have adequate staff to administer program.
  - e. None of the above.
  - f. All of the above.
12. Once approved, DOT Recipients are not required to submit annual updates of their DBE



Programs.

True

False

13. Recipients must establish a prompt payment mechanism that;

- a. Requires contractors to pay their subcontractors within **15** work days for all work completed and accepted by recipients including any retainage.
- b. Includes a contract requirement specifying the number of days within which prime contractors must pay their subcontractors including retainage.
- c. Applies to all DBE subcontractors.
- d. Requires specific penalties for noncompliance.
- e. All of the above.
- f. None of the above.

14. Contracts with contract goals must be awarded only to;

- a. Bidders that meet the goal and demonstrate good faith efforts.
- b. Bidders that only demonstrate good faith efforts to meet the goal.
- c. Bidders that submit with their bid, the required DBE information including name, address, description and dollar amount of work to be performed by DBEs.
- d. Bidders that submit the required DBE participation and/or good faith effort information at the time prescribed in the request for proposals and the recipient's approved DBE Program document.
- e. All of the above.
- f. None of the above.

15. Race neutral includes which of the following;

- a. Awards to DBEs where race is only one factor considered in the selection and where discrimination has been documented.
- b. Mentor-Protege Programs for DBEs.
- c. Awards to DBE contractors using recipient's normal low bid system.
- d. Cash bonuses to prime contractors that utilize DBEs in nontraditional areas of work.
- e. Bonus credit toward contract goal to primes that use DBEs in nontraditional areas of work.
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16. The four (4) general eligibility standards that firms applying for DBE certification must

meet are;

- a. Business size, category of work, ownership, and disadvantage.
- b. Contractual relationships, common ownership, management and expertise.
- c. Presumptive group membership, control, size and ownership.
- d. Individual disadvantage, control, size and ownership.
- e. All of the above.
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17. Any person believing that a recipient has failed to comply with 49 CFR Part 26 may file a complaint verbally or in writing, within 90 days of the alleged violation.

- True
- False

18. Firms applying for DBE certification must;

- a. Be an existing small business.
- b. Be certified by the Small Business Administration.
- c. Be certified by category of work they perform.
- d. Be independent.
- e. All of the above.
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19. Marital assets held jointly or as community property by both spouses and used to acquire ownership interest asserted by one spouse in the applicant firm must;

- a. Render the firm ineligible for certification.
- b. Be considered as acquired by spouse with his/her own individual resources if accompanied by irrevocable renunciation and transfer by other spouse of ownership interest.
- c. Not be counted towards ownership in an amount greater than recognized by State law.
- d. Be determined as acceptable for certification in community property law States.
- e. All of the above.
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20. An applicant firm that presently meets all eligibility requirements may be denied certification for failure to meet control requirements when it applied for certification 15 months before.

- True
- False

21. All DOT recipients must;
- a. Participate in a Uniform Certification Program.
  - b. Sign a UCP agreement by March 4, 2002.
  - c. Submit UCP to Secretary of Transportation for approval.
  - d. Make UCP operational within 18 months after Secretary's approval.
  - e. All of the above.
  - f. None of the above.
22. Certifications by UCPs may be made final before or after the due dates for bids or offers on contracts.
- True  
 False
23. The term "immediate family member" includes;
- a. Brother, wife, cousin, mother, sister-in-law, grandmother.
  - b. Father, mother-in-law, father-in-law, daughter-in-law.
  - c. Sister, grandmother, wife, son, grandson.
  - d. All blood relatives down to second cousins.
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25. Once approved, each DOT's recipient's DBE Program;
- a. Is physically incorporated into every agreement between the recipient and the DOT Operating Administration.
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  - c. May result in sanctions for violations.
  - d. All of the above.
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26. Recipients are required to submit a DBE Program document to the concerned Operating Administration conforming to Part 26 by October 1, 1999.
- True  
 False

27. Recipients must keep a DBE Directory that includes the for each certified firm, its address, phone number and the type(s) of work the firm has been certified to perform as a DBE.

- True
- False

28. Recipients are required to:

- a. Set overall annual and contract specific goals.
- b. Establish contract goals consistent with their annual overall goal.
- c. Overall annual goals based on availability of ready, willing and able DBEs relative to all businesses ready, willing and able to participate in DOT-assisted contracts.
- d. All of the above.
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29. Examples of race neutral practices could include breaking solicitations up into smaller units to facilitate participation by small business firms.

- True
- False

30. Recipients are required to utilize race-neutral means to achieve DBE participation before resorting to race-conscious means.

- True
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31. Recipients may apply for waivers of the following part of the rule;

- a. Subparts D and E-Certification Standards and Procedures, small business size standards.
- b. Subparts B and C of the rule.
- c. Overall goals, contract goals and good faith efforts.
- d. If prior to requesting waiver they have obtained public participation in developing the proposal and at least one public hearing.
- e. All of the above.
- f. None of the above.

32. Recipients may receive DOT financial assistance pending approval of their DBE Program document.
- True  
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33. Recipients are allowed to establish contractual provisions requiring their prime contractors to include in their subcontracts language requiring the parties to use alternative dispute resolution mechanisms to resolve payment disputes.
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- a. Require approval of the recipient.
  - b. Require written development plan approved by the recipient.
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  - d. Require the DBE protégé to be independent business entities.
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  - f. None of the above.
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- True  
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36. In order to be certified an applicant firm must have made a profit.
- True  
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37. Under 49 CFR Part 26, applicants for certification must do which of the following;
- a. Submit signed, notarized affidavit attesting to owner(s) social and economic disadvantage.
  - b. Submit a statement of personal net worth for all owners of the firm.
  - c. Submit supporting documentation of personal net worth for owners upon which DBE certification is to be based.
  - d. Demonstrate that any portion of equity in their personal residence is not attributable to excessive withdrawals from the applicant firm.
  - e. All of the above.
  - f. None of the above.

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- a. Relationships with other firms.
  - b. Recent employer/employee relationships.
  - c. Contracting patterns with non-DBEs.
  - d. Whether informal or formal restrictions which limit control by disadvantaged owners.
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- True
  - False
46. A recipient can be found in noncompliance for failing to have an approved DBE program, overall goal or failing to implement an approved program in good faith.
- True
  - False
47. A DOT Operating Administration may review and approve or disapprove any contract goal established by a recipient.
- True
  - False
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- a. Performs 51% of the work of the contract with own workforce.
- b. Is responsible for negotiating price, determining quality and quantity, ordering and installing where appropriate, supplies and materials of the contract.
- c. Serves as a extra participant in a process and through which funds are passed to meet contract goals.
- d. Effectively presents evidence to rebut a recipient's finding of failure to perform a commercially useful function.
- e. As a DBE trucking firm remains responsible for the entire trucking operation for which it is responsible under a particular contract.

50. Where expertise is relied upon by a disadvantaged owner to acquire ownership, the person claiming the expertise as a contribution need not have a financial investment in the applicant firm.

- True
- False