

**EMPLOYMENT STANDARDS ADMINISTRATION
U.S. DEPARTMENT OF LABOR
OFFICE OF FEDERAL CONTRACT
COMPLIANCE PROGRAMS
WASHINGTON, D.C. 20210**

OFCCP Order No. ADM 80-1/IntAg
(formerly 450a3)

POLICY ISSUANCE 80-6/EO-1

MEMORANDUM FOR: ESA ASSISTANT REGIONAL
 ADMINISTRATORS FOR OFCCP
 (now known as OFCCP
 Regional Directors)

FROM: WELDON J. ROUGEAU (signed 2-4-80)
 Director

SUBJECT: Interim DOL/DOT Memorandum
 of Understanding

The attached "Interim Memorandum of Understanding between the U.S. Department of Labor and the Department of Transportation" was developed in accordance with Policy Issuance 79-78, "Inter-agency Agreements."

This interim memorandum of understanding provides guidelines for the exchange of information between the Office of Federal Contract Compliance Programs (OFCCP) and the Federal Highway Administration (FHWA); it does not delegate authority nor provide for the utilization of the FHWA or any state or local highway entity to act as an agent of OFCCP in the execution of its compliance and enforcement responsibilities under the Executive Order. A final agreement encompassing all components of the Department of Transportation will be developed at a later date.

Please read this MOU carefully. Any questions concerning the application of this specific agreement should be referred to the Branch of Program Policy

Note: This "interim" MOU has never been superseded. Federal Highway Administration Order 4710.8, signed on 2-1-99, confirms that the MOU has never been superseded and that it remains in full force.

Attachment

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INTERIM MEMORANDUM OF UNDERSTANDING
BETWEEN THE DEPARTMENT OF LABOR AND
THE DEPARTMENT OF TRANSPORTATION

The purpose of this interim memorandum of understanding is to further the objectives of Section 140 of Title 23 of the United States Code and of Section 205 of Executive Order 11246.

Executive Order 11246 prohibits employment discrimination by federal contractors and subcontractors, and federally-assisted construction contractors and subcontractors, and authorizes the Secretary of Labor to administer and enforce the Order. Except for general rulemaking, the Secretary's responsibilities under the Order have been delegated to the Director of the Office of Federal Contract Compliance Programs (OFCCP) (now known as the Deputy Assistant Secretary for Federal Contract Compliance [DAS]).

Section 140 of Title 23 of the United States Code requires the Secretary of Transportation, prior to approving federal-aid highway projects, to receive assurances from each State that employment on such projects will be provided in a non-discriminatory manner. The Federal Highway Administration (FHWA) has been authorized to administer the statute, to oversee the States' actions in fulfilling their assurances, to establish procedures to effectuate the statute, and to maintain a vigorous monitoring and review process to ensure nondiscrimination and affirmative action in federal and federally-assisted highway construction projects.

This interim memorandum of understanding provides that the OFCCP and the FHWA will exchange information, so that the agencies can carry out their responsibilities efficiently and effectively, with as little duplication of effort as possible.

The parties to the memorandum agree as follows:

- (1) The "agencies" referred to in this memorandum are the Office of Federal Contract Compliance Programs (OFCCP) within the Department of Labor, and the Federal Highway Administration (FHWA) within the Department of Transportation.
- (2) The "appropriate officials" for the DOL/OFCCP are
 - (a) The Secretary and Under Secretary of Labor;
 - (b) The Solicitor of Labor;
 - (c) The Assistant Secretary for Employment Standards;
 - (d) The Director or Deputy Director of the OFCCP (The official title of the Director of the OFCCP is now the Deputy Assistant Secretary for Federal Contract Compliance [DAS]);

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- (e) The Associate Solicitor of Labor for Labor Relations and Civil Rights (now known as the Associate Solicitor of Labor for Civil Rights);
 - (f) Any ESA Assistant Regional Administrator of the OFCCP (now known as OFCCP Regional Director);
 - (g) Any Regional Solicitor, Associate Regional Solicitor or Regional Attorney; and
 - (h) Any ESA Area Office Director for OFCCP (now known as District Director or Assistant District Director for OFCCP).
- (3) The "appropriate officials" for the DOL/FHWA are
- (a) The Secretary and Deputy Secretary of Transportation;
 - (b) The Administrator and Deputy Administrator of the FHWA;
 - (c) The Directors of Civil Rights for the Department of Transportation and the FHWA; and
 - (d) Any FHWA Regional Administrator, Division Administrator, or Regional Director of Civil Rights
- (4) On a quarterly basis, the agencies shall exchange information regarding schedules of review and investigation.
- (5) An appropriate official for one agency may request permission to inspect and copy any documents pertaining to any contractor or complaint within the jurisdiction of the other agency. The documents referred to in this paragraph include, but are not limited to, the following:
- (a) Affirmative Action Programs or contract specifications;
 - (b) Investigative files;
 - (c) Conciliation agreements;
 - (d) Compliance review (evaluation) reports;
 - (e) Listings of enforcement actions (debarments, suspensions, terminations, etc.);
 - (f) Community data;
 - (g) Lists of complainants' charge or allegation; and

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- (h) Copies of judicial or administrative decisions.
- (6) Whenever an agency receives a request under paragraph (5), and the agency possesses the documents that are the subject of the request, the agency shall make the documents available to be inspected and copied by the requesting officials, or by another person whom the requesting official may designate.
- (7) An agency receiving a request under paragraph (5) shall respond to the official who made the request, or to another person whom the requesting official may designate, within fourteen days after the request is received; except that documents not immediately available may be provided within forty-five days after the request is received.
- (8) Within thirty days after this memorandum is ratified, the FHWA shall provide the OFCCP with a detailed inventory of the contractor compliance records in its possession.
- (9) The OFCCP shall rely on the Headquarters or a field office of the FHWA for access to records, reports, or other documents or information in the possession of State highway agencies. The Director (DAS) or Assistant Regional Administrator (Regional Director) for the OFCCP may waive this requirement, but only in cases where the materials are needed immediately and it would cause an unacceptable delay to request them through the FHWA. The official who makes such a waiver shall notify the corresponding official of the FHWA at once. When time permits, the OFCCP shall request such materials through FHWA in writing.
- (10) Each agency shall notify its field office and other appropriate parties of the content of this memorandum promptly upon its ratification.
- (11) Each agency shall forward to the other agency, for review, all regulations and other instructions that may be developed to implement this memorandum.
- (12) Each agency shall periodically review its own implementation of this memorandum.
- (13) Each agency shall use information obtained under this memorandum only in the performance of its own statutory or administrative functions, and shall not act as the agent of, or on behalf of, the other agency.
- (14) Within 120 days after this memorandum is ratified, the Department of Transportation and the Department of Labor will develop a similar agreement applicable to all components of the Department of Transportation.

Signed 12-7-79
Ray Marshall, Sec. of Labor

Signed 10-26-79
Neil Goldschmidt, Sec. of Transportation