

**San Francisco Bay Area Rapid Transit District  
EQUAL EMPLOYMENT OPPORTUNITY PROGRAM**



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## 1.0 Executive Summary

The Office of Civil Rights (OCR) has undertaken a triennial review of the District's Equal Employment Opportunity (EEO) Program compliance to provide feedback to the Federal Transit Administration (FTA).

The Equal Employment Opportunity Program (EEOP) contains an analysis of the District's workforce representation over a three year period (January 1, 2007 thru December 31, 2009) and presents new workforce placement goals for the review period (January 1, 2010 thru December 31, 2013). OCR monitors workforce data and employment practices to identify trends to ensure current employment practices (i.e., recruitment, promotion, transfer, termination and discipline) do not operate as employment barriers and unjustifiably contribute to underutilization.

A comparison of 2010 Placement Percentage Goals to 2007 Placement Percentage Goals shows that the District continues to have underutilization in the following job groups:

- **Executive & Manager** (Female, Minority, Asian Female, Asian Male, Hispanic Female)
- **Supervisor, Transportation** (Hispanic Male)
- **Supervisor, Other** (Female, Minority, Black Female, Asian Female, Hispanic Female)
- **Foreworker, Other** (Hispanic Male)
- **Engineer** (Female, Black Female, Hispanic Male)
- **Professional** (Hispanic Male)
- **Technician** (Female, Black Male, Asian Female, Hispanic Female, Hispanic Male)
- **Train Operator** (Native American Male, Hispanic Male)
- **Station Agent** (Female, Asian Female, Hispanic Female)
- **Skilled Worker** (Female, Minority, Black Female, Asian Female, Native American Male, Hispanic Female, Hispanic Male)
- **Semi-Skilled Worker** (Hispanic Female, Hispanic Male)
- **Transit Vehicle Mechanic** (Female, Hispanic Female, Hispanic Male)
- **Clerical** (Asian Male, Hispanic Female)
- **Police Officer** (Female)
- **Police Supervisor & Manager** (Female, Minority)

The District no longer has underutilization and therefore has removed placement percentage goals in the following job groups:

- **Supervisor, Transportation** (Minority, Hispanic Female)
- **Supervisor, Other** (Asian Male, Hispanic Male)
- **Foreworkers – Transportation** (Asian Male)
- **Foreworker – Other** (Asian Male)
- **Engineer** (Hispanic Female)
- **Professional** (Hispanic Male)
- **Technician** (Black Female)

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- **Train Operator** (Asian Female)
- **Station Agent** (Native American Female)
- **Police Supervisor & Manager** (Black Female, Asian Male, Hispanic Male)
- Male)

New Placement Percentage Goals for the 2010 - 2013 reporting period were created in the following job groups:

- **Foreworker – Transportation** (Female, Black Female)
- **Foreworker – Other** (Minority)
- **Train Operator** (Hispanic Female)
- **Clerical** (Hispanic Male)
- **Police Officer** (Hispanic Female)
- **Police Civilian** (Hispanic Male)

The placement goals established for 2010 - 2013 are targets reasonably attainable by means of applying good faith efforts to make all aspects of the Equal Employment Opportunity Program work. The established goals are a guidepost and may be used as a measure of District progress in remedying identified underutilization in the workforce. By setting realistic goals, based on expected vacancies and anticipated availability of skills within the relevant labor areas and using job-related selection criteria, the District should be able to meet goals, assuming we conduct effective recruitment to ensure an adequate pool of qualified female and/or minority applicants.

During the next review period, OCR staff will continue to work with the Human Resources department and hiring managers to develop strategies to address areas of underutilization.

## **2.0 Introduction**

The San Francisco Bay Area Rapid Transit District (BART or District) is committed to providing a workplace free of discrimination, harassment and retaliation. The District strives to hire a qualified and diverse workforce through inclusive recruitment and employment practices; Equal Employment Opportunity (EEO) training for employees, supervisors and managers; an EEO review of all hires and promotions; and clear Affirmative Action/Equal Employment Opportunity (AA/EEO) performance standards for all supervisors and managers. To further enhance the ability to address EEO Program requirements, the District has revised its hiring selection process to include the requirement of Office of Civil Rights (OCR) concurrence on both the selection process and the final decision on all District hires and promotions. Through these efforts, the District plans to increase its effort to develop an inclusive and diverse workforce, attract qualified applicants and ensure that the District provides equal employment opportunities to all applicants and employees.

## **3.0 Background**

The District is a recipient of FTA funding assistance and is therefore subject to EEO compliance conditions associated with the use of these funds pursuant to 49 U.S.C. Section 5332, FTA Circular 4704.1 and 49 CFR Part 27. Additionally, as a federal contractor, the District is subject to affirmative action requirements of Executive Order 11246.

As a recipient of federal assistance, the District is required to submit an updated Equal Employment Opportunity Program (EEOP) to the FTA on a triennial basis or as major changes occur in the work force or employment. The District's previous EEOP was submitted to the FTA in 2007 and covered the EEO plan period January 1, 2007 thru December 31, 2009. Placement goals were analyzed based on workforce composition as of December 31, 2006. This EEOP contains placement goals for the period January 1, 2010 – December 31, 2012 and includes the following required EEO program components specified by the FTA:

1. Statement of Policy
2. Dissemination of Information
3. Designation of Personnel Responsibility
4. Utilization Analyses
5. Goals and Timetables
6. Assessment of Employment Practices to Identify Causes of Underutilization
7. Affirmative Actions to Remedy Problem Areas
8. Monitoring and Reporting System

On December 3, 2009, the BART Board of Directors adopted the following revised EEO

Civil Rights Policies:

- Equal Employment Opportunity (EEO)
- Prevention of Sexual Harassment in the Workplace

The Equal Employment Opportunity policy for the District complies with applicable state and federal regulations and laws. The adopted EEO policy incorporates the following revisions:

- Changes name of from Employment Opportunity (EO) Policy to Equal Employment Opportunity (EEO) Policy
- Adds Genetic Information as a basis of discrimination
- Changes basis of discrimination from Vietnam era veteran status to veteran status
- Designates Department Manager of the Office of Civil Rights as the EEO Officer and assigns responsibility to the General Manager for implementation of the EEO Policy and Equal Employment Opportunity Program
- States commitment to undertake an affirmative action program consistent with federal and state laws

#### **4.0 Equal Employment Opportunity Program**

A vital component of the District's Equal Employment Opportunity Program is its proactive policy and procedure banning discrimination and harassment in the workplace on the basis of EEO protected status. The District's Office of Civil Rights carries out this mandate by effectively responding to EEO concerns and issues throughout the organization. Supervisors and managers are encouraged to consult with OCR staff on personnel matters that may be EEO-related and employees are encouraged to report concerns about EEO discrimination or harassment in the workplace on either an informal or formal basis. The Office of Civil Rights strives to resolve all such concerns and complaints fairly and effectively by taking appropriate interventions when necessary.

#### **4.1. Statement of Policy**

***Requirement: An EEO Program must include a statement issued by the General Manager regarding EEO policy affecting all employment practices, including recruitment, selection, promotions, terminations, transfers, layoffs, compensation, training, benefits, and other terms and conditions of employment.***

Annually, the General Manager sends a letter to all District personnel reaffirming the District's Equal Employment Opportunity (EEO) policies. Employees also are sent a letter signed by the General Manager reaffirming the District's EEO policies and updates as necessary to comply with state and federal laws. **(Exhibit 1 – 2010 Annual Letters to BART Employees).**

The District's EEO policy designates the Department Manager, Office of Civil Rights as

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the EEO Officer. The Department Manager, Office of Civil Rights has dotted line reporting responsibility to the General Manager for all EEO matters. **(Exhibit 2 Organization Chart and Exhibit 3 Job Description: Department Manager, Office of Civil Rights).**

**BART Equal Employment Opportunity and Prevention of Sexual Harassment Policies**

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**4.1.1 EQUAL EMPLOYMENT OPPORTUNITY (EEO)**

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The San Francisco Bay Area Rapid Transit District (BART or District) intends to maintain a diverse workforce based upon the principles of equal employment opportunity.

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**Statement of Policy:**

The San Francisco Bay Area Rapid Transit District (BART or District) is committed to providing a work place free of discrimination, harassment and retaliation for filing a complaint. It is also the District's policy and practice to assure equal employment opportunity in all personnel transactions including hiring, promotions, terminations, transfers, layoffs, compensation, training, benefits and other terms and conditions of employment without regard to race, color, marital status, sexual orientation, religion, national origin, ancestry, age, sex, gender identity, disability, medical condition (cancer), genetic information, family and medical care leave, pregnancy disability leave or veteran status.

**Implementation:**

The District is committed to implementing its Equal Employment Opportunity (EEO) policy through its Equal Employment Opportunity Program (EEOP). The Department Manager of the Office of Civil Rights is the designated EEO Officer responsible for daily management of the District's EEO Policy Statement and EEOP. The General Manager is responsible for the implementation of the EEO Policy Statement and EEOP.

Consistent with applicable federal and state laws, the District's EEOP is an affirmative action program that includes goals and timetables designed to overcome the effects of past discrimination of minorities and women. The successful achievement of EEO goals will benefit the District through fuller utilization and will enhance the District's efforts to achieve a workforce reflective of the labor market in the community it serves.

All managers and supervisors will be responsible for the implementation of the District's

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EEO policy and the EEOP. Their performance will be evaluated on the success of the implementation of the EEO policy and EEOP in the same way as their performance is evaluated on other District goals.

All BART employees are responsible for conducting themselves in accordance with the District's EEO Policy Statement. An employee or job applicant who believes that they have been a victim of discrimination, harassment or retaliation has the right to file a complaint with the Office of Civil Rights.

**Retaliation**

Retaliation for filing a complaint is prohibited by law. Retaliation against employees alleging discrimination and harassment, or involved as witnesses in a discrimination or harassment investigation is prohibited. Employees who oppose and/or refuse to participate in illegal discrimination or harassment are also protected against retaliation.

**Reporting**

Any employee who believes he/she has experienced EEO discrimination, harassment and/or retaliation is encouraged to file a complaint with the District's Office of Civil Rights. Complaints of discrimination, harassment or retaliation should be directed to:

**Office of Civil Rights**  
**300 Lakeside Drive, Suite 1800**  
**Oakland, CA 94612**  
**(510)464-6107**  
**[officeofcivilrights@bart.gov](mailto:officeofcivilrights@bart.gov)**

**4.1.2 PREVENTION OF SEXUAL HARASSMENT**

## IN THE WORKPLACE

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### **Statement of Policy:**

The San Francisco Bay Area Rapid Transit District (BART or District) is committed to maintaining a workplace that is free of sexual harassment. In keeping with the District's long-standing, Equal Employment Opportunity (EEO) policy, sexual harassment in the workplace will not be tolerated. The District is committed to enforcing this policy and to providing training to its managers, supervisors, and employees to assist them in dealing sensitively and effectively with this important issue.

All BART employees are responsible for conducting themselves in accordance with the District's rules of employee conduct, including but not limited to, the EEO policy.

Any employee who believes he/she has been the victim of harassment on the basis of sex has the right to file a complaint with the District's Office of Civil Rights. All complaints of sexual harassment will be investigated. Retaliation against an employee for filing a complaint is prohibited by law. All parties involved will be treated in a fair and impartial manner. Employee privacy and confidentiality will be protected to the extent permitted by law.

Employees who violate this policy will be subject to disciplinary action, up to and including discharge.

### **Definition**

Sexual harassment is a form of sex discrimination and is an unlawful employment practice. It is a personal affront to the affected employee and negatively impacts morale, motivation and job performance. This policy includes sexual harassment of District employees by non-employees. Unwelcome sexual advances, request for sexual favors, and verbal, physical, visual, or other conduct of a sexual nature, constitutes sexual harassment and are prohibited by this policy when:

- Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- Submission to or rejection of such conduct by an individual is used as the basis for an employment decision; and/or
- Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment.

### **Reporting**

Prompt and appropriate action should be taken to prevent or stop incidents of sexual harassment. Any employee who believes he or she has been the target of sexual harassment is encouraged to inform the offending person orally or in writing that such conduct is unwelcome, offensive and must stop. An employee, however, is not required to communicate directly with the offending person, or if communication has been ineffective, the employee can complain directly to the Office of Civil Rights or any District supervisor. Failure to communicate with the perpetrator does not prevent an employee from filing a complaint, nor does it in any way exonerate the harasser.

Any manager or supervisor who witnesses or has knowledge of sexual harassment or other forms of harassment or conduct prohibited by District rules must promptly report such conduct to and consult with the Office of Civil Rights. Managers and supervisors have a legal responsibility to take action if they know or have reason to believe of a harassing situation. Managers/Supervisors must take action to address the situation regardless of the victim's stated desire to pursue or not to pursue the matter.

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### **Enforcement**

The Office of Civil Rights can provide both formal and informal consultation and provide information regarding harassment concerns. Complaints and cases of sexual harassment brought to the attention of the Office of Civil Rights or any District manager/supervisor will be handled promptly through a confidential procedure.

Retaliation against employees alleging sexual harassment or involved as witnesses in a sexual harassment investigation is prohibited.

Complaints of sexual harassment or inquires concerning the application of federal and state laws and regulations should be directed to:

**Office of Civil Rights**  
**300 Lakeside Drive, Suite 1800**  
**Oakland, CA 94612**  
**(510)464-6107**  
**[officeofcivilrights@bart.gov](mailto:officeofcivilrights@bart.gov)**

### **4.2 Dissemination of Information**

***Requirement: Formal communication mechanism should be established to publicize and disseminate the agency's EEO policy as well as appropriate elements of the program, to its employees, applicants and the general public.***

The District's non-discrimination policies, as well as federal and state compliance posters are posted throughout the District in conspicuous and accessible locations including break rooms, near time keeping machines and in the Human Resources department. These posters are accessible for all employees and applicants to ensure they are aware of the District's EEO commitment.

To publicize and notify external agencies of BART's EEO commitment, the Office of Civil Rights requests the assistance of local community based organizations (CBOs) to attract qualified candidates for District employment. CBOs are requested to refer qualified minorities, women, persons with disabilities, veterans and other protected groups for available positions at BART. **(Exhibit 4 – 2009 Letter to Community Based Organizations and list of Community Based Organizations).**

BART Dissemination of Information Methods:

- Annual letter to employees from BART's General Manager reaffirming commitment to EEO and providing a copy of the EEO Policy Statements
- EEO Policy Statements on webBART (BART intranet)
- EEO Policy Statements on BART.gov (BART website)
- EEO Policy Statements posted in all BART facilities
- EEO Policy Statements distributed to all new hires during New Hire Orientation
- BART managers and supervisors are made aware of EEO issues through department meetings with the Office of Civil Rights
- EEO clauses are incorporated in employment applications, purchase orders, leases and contracts.
- BART has distributed its EEO Policy to local minority and women's organizations, educational institutions and community based organizations.

### **4.3 Designation of Personnel Responsibility**

Requirement: *The importance of an EEO program is indicated by the individual the*

***agency has named to manage the program and the authority this individual possesses. An executive should be appointed as Manager/Director of EEO who reports and is directly responsible to the agency's General Manager.***

BART EEO Personnel Responsibility:

As part of its efforts to ensure equal employment opportunity for all individuals, BART has designated Wayne T. Wong, Department Manager of the Office of Civil Rights as the EEO Officer responsible for daily management of its EEO Policy Statement and EEOP. The EEO Officer reports directly to the General Manager for matters specific to equal employment opportunity compliance. The General Manager is responsible for the implementation of the EEO Policy Statement and EEOP.

The Manager, EEO Programs reports directly the EEO Officer and is responsible for developing, recommending and monitoring the Equal Employment Opportunity Program (EEOP) and EEO policies. The Manager, EEO Programs ensures that relevant policies and procedures are understood and implemented through policy dissemination and EEO training. The following staff report to the Manager, EEO Programs: (2) Principal Administrative Analyst, (1) Senior Civil Rights Officer and (1) Senior Personnel Analyst.

All EEO personnel are responsible for the following:

- Assisting management in collecting, analyzing employment data, identifying problem areas, setting goals and timetables and developing programs to achieve goals.
- Designing, implementing and monitoring internal audit and reporting systems to measure program effectiveness and determining where progress has been made and where further action is needed;
- Reporting periodically to the General Manager on progress of each unit in relation to the BART's placement goals;
- Serving as a liaison between BART, Federal, State and local governments, regulatory agencies, minority, handicapped and women's organizations and other community groups;
- Assuring that current legal information affecting affirmative action is disseminated to responsible officials;
- Assisting in recruitment of minority, disabled and women applicants and establishing outreach sources for use by hiring officials;
- Concurring in all hires and promotions; and
- Processing employment discrimination complaints.

District managers are expected to carry out the following responsibilities, as part of their job, in implementing BART's EEO Program:

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- 1) Assist in identifying problem areas and establishing agency and unit goals and objectives;
- 2) Be actively involved with local minority organizations, women's and disabled groups, community action organizations and community service programs designed to promote EEO;
- 3) Participate actively in periodic audits of all aspects of employment in order to identify and to remove barriers obstructing the achievement of specified goals and objectives;
- 4) Hold regular discussions with other managers, supervisors and employees to assure the agency's policies and procedures are followed;
- 5) Review the qualifications of all employees to assure that minorities, people with disabilities, and women are given full opportunities for transfers, promotions, training, salary increases, and other forms of compensation;
- 6) Participate in the review and/or investigation of complaints alleging discrimination;
- 7) Conduct and support career counseling for all employees; and
- 8) Participate in periodic audits to ensure that each agency unit is in compliance (e.g. EEO posters are properly displayed on all employee bulletin boards.

Additionally, OCR staff assists District management by collecting and analyzing employment data to identify areas of underutilization and to set placement goals for those areas. In their direct day-to-day contact with BART employees, managers and supervisors help facilitate BART's compliance with equal employment opportunity programs and effective implementation of the EEOP.

#### **4.4 . Utilization Analysis**

***Requirement: The purpose of the utilization analysis is to identify those job categories where there is an underutilization and/or concentration of minorities and women in relation to their availability in the relevant labor market.***

##### **4.4.1 BART Utilization Analysis**

BART conducted a utilization analysis using 2000 Census data. The utilization analysis is used to identify those job groups where there is underutilization of females and minorities in BART's workforce when compared to availability in the labor market. It is also used to set placement goals for job groups where there is underutilization.

The utilization analysis used by BART complies with the guidelines of the Federal Transit Administration (FTA Circular 4704.1). Guidelines issued by the Office of Federal Contract Compliance Programs (OFCCP) were also used as a reference in conducting the utilization analysis. **(Table 1 2010 EEOP District Placement Percentage Goals)**

A comparison of 2010 Placement Percentage Goals to 2007 Placement Percentage goals shows that the District continues to have underutilization in the following job groups:

**Equal Employment Opportunity Plan**

- **Executive & Manager** (Female, Minority, Asian Female, Asian Male, Hispanic Female)
- **Supervisor, Transportation** (Hispanic Male)
- **Supervisor, Other** (Female, Minority, Black Female, Asian Female, Hispanic Female)
- **Foreworker, Other** (Hispanic Male)
- **Engineer** (Female, Black Female, Hispanic Male)
- **Professional** (Hispanic Male)
- **Technician** (Female, Black Male, Asian Female, Hispanic Female, Hispanic Male)
- **Train Operator** (Native American Male, Hispanic Male)
- **Station Agent** (Female, Asian Female, Hispanic Female)
- **Skilled Worker** (Female, Minority, Black Female, Asian Female, Native American Male, Hispanic Female, Hispanic Male)
- **Semi-Skilled Worker** (Hispanic Female, Hispanic Male)
- **Transit Vehicle Mechanic** (Female, Hispanic Female, Hispanic Male)
- **Clerical** (Asian Male, Hispanic Female)
- **Police Officer** (Female)
- **Police Supervisor & Manager** (Female, Minority)

The District no longer has placement percentage goals in the following job groups:

- **Supervisor, Transportation** (Minority, Hispanic Female)
- **Supervisor, Other** (Asian Male, Hispanic Male)
- **Foreworkers – Transportation** (Asian Male)
- **Foreworker – Other** (Asian Male)
- **Engineer** (Hispanic Female)
- **Professional** (Hispanic Male)
- **Technician** (Black Female)
- **Train Operator** (Asian Female)
- **Station Agent** (Native American Female)
- **Police Supervisor & Manager** (Black Female, Asian Male, Hispanic Male)

New Placement Percentage Goals for 2010 were created in the following job groups:

- **Foreworker – Transportation** (Female, Black Female)
- **Foreworker – Other** (Minority)
- **Train Operator** (Hispanic Female)
- **Clerical** (Hispanic Male)
- **Police Officer** (Hispanic Female)
- **Police Civilian** (Hispanic Male)

**(Table 2 District Placement Percentage Goals Comparison Chart)**

4.4.2 Workforce Analysis

The Workforce Analysis examined BART's workforce using a number of factors including

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race, sex, job group, job classification, lines of progression, salary code, executive office, department and cost center. A separate analysis by sex within race was also conducted. The BART Workforce Analysis profiled the workforce composition as of December 31, 2009. This information was compared with availability data.

#### 4.4.3 Job Group Analysis

Following the Workforce Analysis, similar or related job titles were assigned to job groups. The following guidelines were followed in developing the BART job groups:

- The content of the jobs included in a group should be similar in job responsibility and requisite skill required.
- The wage or salary rate for the jobs included in a group should be similar and considered in conjunction with job content.
- Job titles placed in a job group should be similar in opportunity to take advantage of training, transfers, promotions, job mobility and other employment benefits.
- A job group should not include jobs with clearly different utilization patterns.

The size of the District's workforce is a major factor in determining how well the guidelines can be met in developing job groups. Job groups must have a sufficient number of incumbents to permit meaningful utilization analysis and goal setting. District classifications were consolidated into 17 job groups. **(Exhibit 6 - List of BART Job Titles by Job Group)**. OCR staff will continue to review job groups to ensure positions are assigned to the appropriate job group. Job groups are classified as follows:

- Executive & Manager
- Supervisor-Transportation
- Supervisor-Other
- Foreworker - Transportation
- Foreworker - Other
- Engineer
- Professional
- Technician
- Train Operator
- Station Agent
- Skilled Worker
- Semi-Skilled Worker
- Transit Vehicle Mechanic
- Clerical
- Police Officer
- Police-Civilian
- Police Supervisor-Manager

#### 4.4.4 Availability Analysis

The availability analysis consisted of the examination of 2000 Census information to

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identify potential qualified applicants by race and sex, based on the defined labor areas, labor markets, and occupational title for each of the job groups identified.

With valid availability data, BART can compare the percentages of those who could reasonably be expected to be employed with those of current BART employment (workforce analysis), identify problem areas or areas of deficiency and establish goals to address problem areas.

#### 4.4.5 Availability Factors

OFCCP regulations require federal government contractors consider the following availability factors when developing availability estimates for each job group:

1. External Data: The percentage of females or minorities with the requisite skills in the reasonable recruitment area. The reasonable recruitment area is defined as the geographical area from which the contractor usually seeks or reasonably could seek workers to fill the positions in question. Data considered for this factor

includes: a) requisite skills data from the 2000 Census Special EEO Tabulation for the local labor area; and b) requisite skills from the 2000 Census Special EEO Tabulation for the reasonable recruitment area.

2. Internal Data: The percentage of females or minorities among those promotable, transferable, and/or trainable within the contractor's organization. Trainable refers to those who could, with appropriate training which the contractor is reasonably able to provide, become promotable or transferable during the Affirmative Action Plan (AAP) years. Data considered for this factor includes the composition of feeder job groups and employer-provided training designed to facilitate upward mobility of females and minorities.

#### 4.4.6 Defining the Labor Market

Labor markets represent the geographical locations where BART conducts recruitment. There are two types of labor markets: "Reasonable Recruitment Area" and "Local Labor Market".

The "Reasonable Recruitment Area" (area from which BART usually seeks or reasonably could seek workers for a particular job group) consists of the State of California and the United States.

The "Local Labor Market" (area from which employees may reasonably commute to BART facilities) consists of the four counties BART serves: Alameda, San Francisco, Contra Costa and San Mateo (see BART map next page).



#### 4.4.7 Conducting the Availability Analysis

To conduct the availability analysis, Office of Civil Rights staff used *Peopleclick Authoria CAAMS®*, a client-server application program that is customized to meet BART's specific job standards. The *CAAMS®* program uses official census data and workforce information from BART's payroll system to perform the analysis and placement goal development. The data used for the 2010 EEO Plan were collected from payroll records as of December 31, 2009.

#### 4.4.8 Weighing Labor Markets

Each of the labor markets was given a weight as a portion of the total labor market. The weight given each factor varied according to the factor's relevance to the job group. The weight was used to calculate an applicant availability percentage in each labor market and to produce a total applicant availability percentage by sex and race.

#### 4.4.9 Comparing Incumbency to Availability

Once final availability estimates were made for each group, the percentages of incumbents in each job group were compared to their corresponding availability. A comparison was made between the percentage employed as of December 31, 2009 and that group's final availability.

Where the identified underutilization was not in excess of a statistically significant difference, that job group was excluded from underutilization goal setting. Under the law, a determination of underutilization is not a finding of discrimination. Furthermore, BART

does not discriminate in any of its employment practices.

#### **4.5. Goals and Timetables**

***Requirement:*** *Goals and timetables are an excellent management tool to assist in the optimum utilization of human resources.*

Using statistically significant methods (one whole person threshold), BART established percentage placement goals whenever it found that minority or female representation within a job group was less than would reasonably be expected given their availability. These goals take into account the availability of qualified persons in the relevant labor area. They also take into account anticipated employment opportunities with the District.

BART believes these goals are attainable and will be reached primarily through recruitment to increase the pool of qualified minority and female applicants and through implementation of action-oriented programs.

The goals established are targets reasonably attainable by means of applying good faith efforts to make all aspects of the EEO work. The established goals are a guidepost and may be used as a measure of BART's progress in remedying identified underutilization in the workforce. By setting realistic goals, based on expected vacancies and anticipated availability of skills within the relevant labor areas and using job-related selection criteria, BART should be able to meet goals, assuming we conduct effective recruitment to ensure an adequate pool of qualified minority and/or female applicants.

##### **4.5.1 Long –Term Placement Goals**

Long-Term (three year percentage goals) have been established by job group for achievement in a three-year period ending December 31, 2012. Long-term percentage goals may be adjusted when the goals are achieved prior to the three year period.

##### **4.5.2 Short-Term Placement Goals**

The following ongoing activities are additional short term efforts designed to ensure that the diversity of job applicants is maintained or enhanced and to further the District's commitment to Equal Employment Opportunity:

- District Placement Percentage Goals with significant representation of 5% will be the focus of OCR's short term placement goal for achievement by December 31, 2011. **(Table 3 – Placement Percentage Goals with Significant Under-Utilization of 5% or Greater)**
- The District will increase outreach to minority and female community based organizations to increase minorities and females in the District's job pools by December 31, 2011.

- The District will review non-traditional positions and increase outreach to communities to increase applicant pool by June 30, 2012.

#### **4.6 Assessment of Employment Practices**

***Requirement: Recipients, sub recipients, contractors and subcontractors must conduct a detailed assessment of present employment practices to identify those practices that operate as employment barriers and unjustifiably contribute to underutilization.***

Under FTA regulations, the District must take additional steps to meet its affirmative action responsibilities under federal law. The District must develop a qualitative and quantitative assessment of employment practices to identify any barriers that have an adverse impact on females and minorities. Areas of review include recruitment, hiring, promotions, compensation, testing, retention, termination, discipline and training.

OCR has begun its analysis of District personnel actions including hires, promotions, terminations and disciplines to identify those practices that operate as employment barriers and unjustifiably contribute to underutilization. The Human Resources Department currently provides OCR with quarterly reports of personnel transactions to assess adverse impact to women and minorities in District job groups. During the next assessment period, OCR will develop additional methods to review and analyze compensation, testing, retention and training as required.

##### **4.6.1 Application Procedures**

All candidates for open District positions must complete an application for employment. The “How to Apply for Jobs” brochure provides step-by-step instructions about how to submit an application using the District on-line application system. **(Exhibit 7 - How to Apply for Jobs Brochure).**

##### **4.6.2 Recruitment Process**

The Human Resources Department is committed to attracting and selecting the most qualified candidates. Hiring managers and supervisors are accountable for ensuring compliance with the District’s recruitment and selection guidelines and procedures. Additionally, the District is committed to meeting Equal Employment Opportunity objectives while recruiting and retaining a diverse workforce that reflects the surrounding communities. This is accomplished, in coordination with OCR, by regularly assessing the demographic make-up of the District’s workforce to determine which job classifications are being underutilized.

Recruitment and selection processes are intended to comply with applicable statutes including:

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- Age Discrimination in Employment Act (ADEA)
- Americans with Disabilities Act (ADA)
- California Fair Employment and Housing Act (CFEHA)
- Civil Rights Act of 1964, Title VII
- Civil Rights Act of 1991
- Uniform Guidelines on Employee Selection Procedures
- California Investigative Consumer Reporting Agencies Act (CICRAA)
- Fair Credit Reporting Act (FCRA)

#### 4.6.3 Position/Job Description

A job analysis may be the first step in the selection process when a new position is added or when an existing position has a substantial change in content. Upon determination of a need to fill a position, the manager/supervisor works with the Staffing and Compensation Analyst to conduct the job analysis.

A job analysis collects information about the duties, responsibilities, necessary skills, outcomes, and work environment of a particular job. The purpose of the job analysis is to

establish and document the job content against the “job relatedness” of employment procedures such as training, selection, compensation and performance expectations. Additionally, the job analysis investigates the frequency and importance of duties, the percentage of time that an employee would spend completing the duties, whether the duty constitutes a fundamental part of the job, the extent to which duties can readily be assigned to other employees, and other aspects of the work.

The job analysis is used to create the Position/Job Description.

#### 4.6.4 Selection Standards and Procedures

The selection techniques used in the examination process are job related, impartial and assess the relative capabilities of the persons examined to execute the duties and responsibilities of the position. Examinations consist of selection techniques including achievement and aptitude test, review of work history and/or education, personal interviews, performance tests, physical ability tests, work samples, or any combination of these or other tests. Applicants meeting minimum qualifications are not guaranteed advancement through any portion of this phase of the selection process.

#### 4.6.5 Interview Procedures

Efforts are made in the selection of the interview panel to reflect the demographic make-up of the candidate pool. OCR staff is available to monitor the interview process to assure non-discrimination in the selection process.

#### 4.6.6 Documentation and Office of Civil Rights Review

A review of the selection process by the Office of Civil Rights is important in the checks and balances of that process. This measure will help ensure the District is in compliance with non-discrimination and equal employment opportunity procedures, policies and regulations. Once the examination is complete, all documentation including exam scores and interview notes is reviewed by Human Resources and the Office of Civil Rights, before making an offer, in order to ensure compliance with anti-discrimination and equal employment opportunity procedures, policies and regulations.

#### 4.6.7 Wage and Salary Structure

While compensation for many BART jobs is established through collective bargaining, non-represented employees, as well as members of the American Federation of State, County and Municipal Employees (AFSCME) are part of a classified compensation system, which is market-driven. The expectation is that periodic market studies will provide the information needed to maintain a competitive compensation posture for these positions.

The classification system also provides for the establishment of equitable relationships among different jobs through the measurement of certain qualities and characteristics of work to which the District assigns value.

The objective of the compensation program is to permit the District to recruit and retain a highly qualified workforce for positions to which it applies in a manner that:

- is cost effective,
- fosters internal career development,
- maintains a balance between internal equity and the external marketplace.

#### 4.6.8 Seniority Practices

District union employees are presented by five collective bargaining unions:

- American Federation of State, County & Municipal Employees (AFSCME)
- Amalgamated Transit Union (ATU)
- BART Police Management Association (BPMA)
- BART Police Officers Association (BPOA)
- Service Employees International Union (SEIU)

Each collective bargaining agreement outlines its seniority practices.

#### 4.6.9 Terminations

In general, terminations are voluntary or involuntary, as follows:

##### a. Voluntary Termination

Employees may decide to terminate their employment with the District at any time, for any reason. The following circumstances are most common:

1. Resignation/Retirement
2. Failure to return from Leave of Absence
3. Job Abandonment (i.e. no call/no show)

b. Involuntary Termination

At times it may be necessary for the District to initiate the termination of an employee. Some of the most common causes include:

1. Layoff/Reduction in Force
2. Misconduct
3. Performance
4. Position Elimination
5. Reorganization

4.6.10 Reductions in Force (Layoffs)

Reductions in Force (Layoffs) take place in a very specific procedural context. This type of termination is a displacement of employees from their position or from District employment due to fiscal matters, changes in organizational structure and/or processes.

4.6.11 Transfers

A transfer is defined as the appointment of an employee to a position in a different classification than the one to which he/she is presently assigned, but at the same pay grade. No change in compensation is indicated when an employee transfers, unless the position transferred to is subject to a market adjustment, in which case the market adjustment is to be applied.

4.6.12 Types of Disciplinary Actions

District management is responsible for the orderly and efficient operation of the system, including the establishment and enforcement of rules, instructions and procedures. In turn, it is reasonable to expect a good, productive effort and the recognition of responsibility on the part of each employee. All employees have the responsibility to their fellow co-workers to conduct themselves according to certain rules of good behavior, conduct and performance.

Failure to comply with any District work rule, instruction, regulation, guideline or procedure may result in disciplinary action. Formal disciplinary measures under the District Discipline Guidelines and collective bargaining agreement provisions may include the following:

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- Oral Reminder/Reprimand
- Written Reminder/Reprimand
- Decision Making Leave/Suspension
- Discharge from District

#### 4.6.13 Promotion Procedures

One of the goals of the District's Equal Employment Opportunity Program is to achieve an inclusive work force where the District's employees represent the diversity of the labor market at all levels of the organization. To better focus District recruitment and hiring efforts and to meet future workforce needs, the District's EEOP analyzes the District's recruitment and hiring efforts.

The Office of Civil Rights reviews all hires to provide feedback to department executive management on their good faith hiring efforts. OCR also reviews this data to identify trends to determine if current recruitment and staff development methods are effective.

By reviewing this data, OCR can better assess and recommend effective methods to improve the District's efforts to decrease underutilization.

#### 4.6.14 Testing Programs

In addition to the job interview, the District may utilize additional measures including the following tests in the selection process:

Cognitive Tests: Assess reasoning, memory, perceptual speed and accuracy, and skills in arithmetic and reading comprehension, as well as knowledge of a particular job function.

Physical Ability Tests: Measure the physical ability to perform a particular task.

### 4.7. Affirmative Actions to Remedy Problem Areas

BART will tailor its affirmative action-oriented programs to ensure they are specific to identified problems. The following are examples of such programs to address underutilization.

- Review recruitment efforts for females and minorities in underutilized job groups to increase representation of qualified applicants.
- Review factors for discharge to ensure legitimate non-discriminatory basis for separation.
- OCR staff will work with the Human Resources Department to create recruitment strategies and conduct outreach to professional organizations, community based

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organizations, training centers and schools to provide information about employment at the District in an effort to enhance recruitment of qualified and diverse applicants for significantly underutilized job groups.

- OCR staff will increase EEO training for supervisory and non-supervisory employees.
- Review Position Classification Descriptions for all District jobs to ensure they are job related and do not provide artificial barriers to employment of females and minorities.

#### **4.8 Monitoring and Reporting**

***Requirement: An important part of any successful EEO program is the establishment of an effective and workable internal monitoring and reporting system.***

The Office of Civil Rights is the designated department responsible for establishing systems for reporting, monitoring and evaluating improvements in hiring, training, transfer and promotions in areas of underutilization. The Office of Civil Rights is part of the Transit System Compliance executive office and is headed by Wayne T. Wong, Office of Civil Rights Department Manager (EEO Officer). The Office of Civil Rights consists of the Disadvantaged Business Enterprise (DBE) unit, headed by Linda Wells Grogan, Manager, DBE Programs and the Equal Employment Opportunity (EEO) unit, headed by Sharon Campbell Moore, Manager, EEO Programs.

Annually, the Office of Civil Rights meets and provides a progress report to executive management. This report will include an analysis of District workforce representation, including job groups, availability data, utilization analysis, annual placement goal activity, placement goal progress and action-oriented programs.

As part of the District's monitoring of employment practices, the Office of Civil Rights must concur on all District hires and promotions and reports concurrences to the EEO Officer. **(Exhibit 5 – OCR Concurrence Memo)**. The District Human Resources department provides quarterly reports of employment practices including promotions, separations and disciplinary actions to OCR staff for monitoring and review.

EEO staff monitors and conducts EEO complaint investigations for current District employees and applicants and support career counseling for employees. EEO complaints are tracked in an Excel spreadsheet. EEO staff meets monthly with Human Resources, Labor Relations and General Counsel staff to discuss and monitor District complaint activity. The EEO complaint process will be further defined in Section 5.0 – Equal Employment Opportunity Complaint Procedure.

As of December 31, 2009, the District workforce was comprised as follows:

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|                   | <b>Total</b> | <b>White</b> | <b>Black</b> | <b>Asian</b> | <b>Hispanic</b> | <b>Native American</b> | <b>Total Minority</b> | <b>Percent Minority</b> | <b>Percent Female</b> |
|-------------------|--------------|--------------|--------------|--------------|-----------------|------------------------|-----------------------|-------------------------|-----------------------|
| <b>Male</b>       | 2292         | 937          | 433          | 575          | 325             | 22                     |                       |                         |                       |
| <b>Female</b>     | 830          | 246          | 301          | 163          | 112             | 8                      |                       |                         |                       |
| <b>Total</b>      | 3122         | 1183         | 734          | 738          | 437             | 30                     | 1939                  |                         |                       |
| <b>Percentage</b> | 100%         | 37.9%        | 23.5%        | 23.6%        | 14.0%           | 1.0%                   |                       | 62.1%                   | 26.6%                 |

Tables 4 - 6 provide a cumulative record on hiring, transfers, promotions, separations and disciplinary actions during the period January 1, 2007 – December 31, 2009. These reports allow an analysis of the District's personnel transactions to identify any barriers for minorities and women.

Additionally, section 5.0 describes the District's EEO complaint process and summarizes the EEO complaints filed during the period January 1, 2007 thru December 31, 2009.

Through these current measures of tracking, monitoring and reporting the District is able to establish an effective monitoring system. The District plans to continue to adjust its monitoring and reporting to ensure compliance with FTA requirements.

## 5.0 EQUAL EMPLOYMENT OPPORTUNITY COMPLAINT PROCEDURES

Addressing EEO complaints has been a priority for the Office of Civil Rights because discrimination (perceived or real) can have a significant impact on the morale of employees and BART's reputation. OCR staff continues to work closely with District managers, supervisors and employees to resolve EEO complaints received. In addition to formal complaint investigation, resolution of EEO complaints by supervisors provides timely closure to conflicts and increases employees' confidence in the District's commitment to equal employment opportunity. Managers and supervisors have been encouraged to consult with the Office of Civil Rights to increase their proactive responses to employees' concerns. **(Exhibit 8 – EEO Complaint Procedures)**

### 5.1 EEO Discrimination Complaints

OCR's intervention has been instrumental in helping supervisors and employees resolve EEO concerns before they become formal EEO complaints. The following table represents the EEO complaint activity for the period January 1, 2007 thru December 31, 2009.

| <b>EEO Complaint Activity</b>       | <b>2009</b> | <b>2008</b> | <b>2007</b> |
|-------------------------------------|-------------|-------------|-------------|
| Informal Complaints                 | 22          | 21          | 20          |
| Informal Consultation Supervisor    | 10          | 2           | -           |
| Formal Complaint                    | 8           | 12          | 17          |
| <b>Subtotal Internal Cases</b>      | <b>40</b>   | <b>35</b>   | <b>37</b>   |
| External Agency EEOC                | 0           | 8           | 3           |
| External Agency DFEH                | 2           | 5           | 15          |
| External Agency FTA                 | 0           | 1           | -           |
| <b>Subtotal External Complaints</b> | <b>2</b>    | <b>14</b>   | <b>18</b>   |
| <b>TOTAL</b>                        | <b>42</b>   | <b>49</b>   | <b>55</b>   |

OCR staff provides extensive guidance regarding appropriate corrective actions with assistance from the Office of the General Counsel and department management when EEO policy violations are found. To appropriately resolve both internal and external complaints, OCR staff conducts extensive research, investigates and thoroughly documents all EEO concerns, and consults with supervisors and managers to develop successful intervention strategies.

The following table represents the complaints filed by type during the reporting period.

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Please note, some complaints filed represent more than one basis of discrimination/harassment.

| <b>EEO Complaints by Type</b>   | <b>2009</b> | <b>2008</b> | <b>2007</b> |
|---------------------------------|-------------|-------------|-------------|
| Race                            | 10          | 26          | 18          |
| National Origin                 |             | 3           | 3           |
| Sexual Orientation              | 2           |             | 6           |
| Sexual Harassment               | 4           | 3           | 7           |
| Disability                      | 5           | 10          | 8           |
| Retaliation                     | 5           | 12          | 3           |
| Age                             | 1           | 12          | 4           |
| Gender                          |             |             | 7           |
| Medical Condition               |             | 1           |             |
| Veteran Status                  | 1           |             |             |
| Non-EEO                         | 23          | 34          | 15          |
| <b>TOTAL COMPLAINTS BY TYPE</b> | <b>51</b>   | <b>101</b>  | <b>71</b>   |

## 5.2 **Mediation and Settlement**

Additionally, the Office of Civil Rights is also available to provide in-house mediation services and provide an advisory role to assist management with settlement options as an alternative process to resolve EEO complaints. This is a voluntary process and both parties to the complaint must agree to participate.

Although these processes often require the same amount of staff time and intervention as a formal investigation, mediation and settlement offer a more confidential process to resolve employee disputes in a way that often results in improved workplace relationships and communication.

## 6.0 EQUAL EMPLOYMENT OPPORTUNITY TRAINING ACTIVITY

### 6.1 **AB 1825 Training Program Compliance**

California Assembly Bill (AB) 1825 mandates employers who do business in California and who have more than 50 employees to provide, within the first six months of employment, all newly hired or promoted supervisors with training on how to prevent sexual harassment in the workplace. Thereafter, the law requires refresher training every two years for supervisors and managers. The law allows this training to be conducted in via classroom training, “e-learning”, webinars and other “effective interactive training”.

During 2008 and 2009, OCR staff conducted sixty (60) AB 1825 training sessions for District supervisory staff. Four hundred sixty seven (467) District supervisory staff were trained during this period. In addition, OCR offered on-line classes through which eighty-five (85) District supervisor staff were trained. Trainees included: foreworkers, supervisors and managers.

| YEAR | CLASSROOM SESSIONS OFFERED | ATTENDEES | ON-LINE       |
|------|----------------------------|-----------|---------------|
| 2008 | 18                         | 98        | Not available |
| 2009 | 42                         | 369       | 85            |

In addition to AB 1825 training, OCR staff conducts or refers District employees to the following additional Civil Rights training:

- On-line training/webinars
- ADA on-line training
- Nuts & Bolts – EEO Training
- National Training Institute training
- OCR staff classroom training
- Video-based training program

### 6.2 **Civil Rights Training**

During the next assessment period OCR plans to work with Human Resources staff to revise its EEO training program. This training program will include additional EEO training programs for all District staff. The OCR EEO training program is intended to assure an informed workforce that fosters equity and respect in the workplace. This program is aimed at preventing workplace problems and addressing inappropriate workplace behavior.

The OCR EEO training program will include resources for internal and external EEO training as well as internal publications and video resources available for loan. EEO Training workshops to be conducted include:

- Handling and Preventing Workplace Harassment
- Valuing Diversity
- Beyond EEO Basics for Managers and Supervisors

## 7.0 OFFICE OF CIVIL RIGHTS SERVICES

In October, 2008 the BART Board of Directors adopted a Strategic Plan Update. The Office of Civil Rights has incorporated three (3) Implementing Strategies of the adopted Plan. These strategies are in the areas of: Policies & Procedures, Employment Outreach and Diversity Outreach Programs. Through these strategies, OCR has developed its overall departmental goals and objectives.

The table below indicates the current services provided by the Office of Civil Rights. These services have been designed to reflect the District's vision, values and mission. The second table indicates planned future efforts which will be implemented by OCR.

| Office of Civil Rights Services                |   |                                    |
|--|---|------------------------------------|
| EEO Program                                    | Service Group   | Area of Strategic Plan             |
| EEO<br>Discrimination/Harassment<br>Complaints | District employees, job<br>applicants and contractor<br>employees who feel that they<br>have been denied employment<br>opportunities due to EEO<br>discrimination or harassment | Policies and Procedures<br>Program |
| Selection Process<br>Monitoring                | All hiring managers and<br>supervisory staff  | Employment Outreach<br>Program     |
| EEO/Diversity Training                         | All District employees,<br>managers and supervisors   | Diversity Outreach<br>Program      |
| Title VI Program<br>Compliance                 | BART Customers  | Diversity Outreach<br>Program      |
| John Mack Young<br>Innovators Program          | Students in underserved public<br>schools interested in<br>transportation and related<br>areas of engineering/design<br>and transit operations<br>management                    | Employment Outreach<br>Program     |
| Summer Youth Program                           | Oakland Public School District<br>students attending high school<br>academies   | Employment Outreach<br>Program     |

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| <b>Future Office of Civil Rights Services</b>                                       |  |                             |
|---|--|-----------------------------|
| EEO Program   | Service  | Area of Strategic Plan      |
| Workforce Planning<br><i>(In collaboration with the Human Resources department)</i> | District managers addressing long-term staffing needs resulting from retirements and staff turnover. District supervisors willing to develop new skills to better attract and retain a qualified and diverse workforce. District employees who are looking for career development opportunities to enhance their employment skills | Employment Outreach Program |
| Outreach Recruitment Efforts  | Women and minorities interested in District employment in areas of under-utilization   | Employment Outreach Program |
| BART Diversity Initiative   | All District employees interested in promoting and celebrating cultural diversity activities throughout BART.  | Diversity Outreach Program  |