RESOURCE GUIDE FOR IMPROVING DIVERSITY AND INCLUSION PROGRAMS FOR THE PUBLIC TRANSPORTATION INDUSTRY AMPLIFIED WORK PLAN

INTERIM DELIVERABLE

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Resource Guide for Improving Diversity and Inclusion Programs for the Public Transportation Industry

Summary of Results in the Interim Report

TCRP seeks a resource guide that will assist different types of public transportation organizations develop and improve diversity and inclusion programs. The guide will include policies, plans and practices that have been successfully implemented within the industry. It will also provide better data for organizations of different sizes to compare their efforts with their peers.

This Interim Report provides a mid-point update concerning research results.

Research Objectives

This research has four primary objectives:

• Evaluate the current state of diversity and inclusion practices, including the identification of any gaps in programs and provide recommendations as to how public transit agencies can perform program assessments within their organizations;
• Examine how diversity and inclusion policies have successfully been implemented and define methods for public transportation agencies to develop goals and objectives by creating a template that can be utilized for diversity and inclusion programs;
• Identify methods of measuring the success and effectiveness of diversity and inclusion programs; and
• Develop an inclusive resource guide that provides recommendations on how to best apply research findings as well as identifies any impacts associated with program implementation.

This Interim Report summarizes study results after completing the background research, examination of legal issues, and in-depth interviews with staff from 13 transit agencies. The next tasks are to conduct an online survey of 300 staff from transit agencies and complete case studies of at least four organizations.

Key Results that Influence Remaining Tasks

Preliminary research results are based on interviews with 13 medium and large transit agencies across the country (37 interviewees across many departments) and other initial research. These results are summarized into the eight themes listed below.

1. Federal law requires transit agencies to ensure non-discrimination and equity across all aspects of their operations. There are also federal requirements for inclusion. Diversity can be a means to measure progress toward equity and inclusion, and may result in improved decision-making, service to communities and other aspects of business operations. (Appendix A summarizes federal legal requirements and important federal and state legal constraints.)
2. Some transit agencies go beyond “check the box” compliance to incorporate equity, diversity and inclusion into the culture of how staff interact with one another, work with the communities they serve, and make decisions as an organization. For some organizations, this shift has occurred in just the past three to four years, based on study team interviews with 13 transit agencies. (Appendix C reviews results from in-depth interviews with 37 staff from these agencies.)

3. In the interviews conducted to date in this study, transit agencies expressed diversity and inclusion concerns as going beyond characteristics such as race, national origin and gender to include sexual orientation, different mental and physical abilities, young adults, and ex-offenders (as examples). And, diversity and inclusion (for many organizations) has moved beyond “putting people in buckets” to building a culture where everyone is appreciated for who they are and encouraged to bring “their whole selves” to work. This is seen as a “less exclusionary” approach that includes all employees, which may contribute to long-term success.

4. Large transit agencies have many of the same governmental responsibilities as municipalities, from real estate development to policing and serving homeless populations. This breadth of responsibility creates additional issues regarding equity, diversity and inclusion. For example, transit agencies building new rail lines can dislocate minority or low-income populations, affect small businesses and change accessibility of jobs for disadvantaged workers. And, they must involve diverse communities in these decisions. These issues might be as pressing for an organization as increasing the diversity of its workforce.

5. The study team recommends adding “equity” to the concept of “diversity and inclusion” for this assignment (see Working Definitions of Diversity and Inclusion later in this Interim Report for more detail).

6. The study team also recommends adding “service provision and other aspects of operations” to the scope of this study. As such, the assignment will examine employment, procurement, service provision and other activities.

7. As a compliance issue, equity, diversity and inclusion are not new concerns for transit agencies. Many federal requirements affect transit agencies. Because most have been in place for decades, there is a long history of transit agency efforts to comply with those requirements. FTA has issued Circulars that guide transit agencies on what they must do to be compliant.

8. Attempting to ensure equity, diversity and inclusion is difficult and sometimes unsuccessful. For example, there are some types of public transportation jobs where agencies report little progress in diversity, especially for female employees. Some transit agency representatives reported that diversity and inclusion initiatives can lose traction or be conflicting, or that some programs can have the reverse effect.

9. For all of the reasons described above, the present research should focus on (a) generally describing measures employed by transit agencies to address these issues (including how widely they are used), (b) highlighting innovative and emerging practices for different types and sizes of agencies, and (c) identifying ways to effectively measure the effects of particular initiatives (which appears to be a large gap in the current knowledge).

10. A study completed in 2003 is the most recent comprehensive TCRP review of diversity programs for transit agencies (National Academies of Sciences, Engineering, and Medicine 2003). It examined diversity training initiatives in transit agencies through a literature review, survey and case studies. The study focused on employment. By providing a snapshot of transit agency employment diversity initiatives nearly 20 years ago, it provides a springboard for the employment component of the present study.

As part of the tasks included in this Interim Report, the study team re-contacted the agencies participating in the 2003 study. Results are summarized in a later portion of the Interim Report and discussed in-depth in Appendix C. A first draft of the proposed 2020 survey of transit agencies provided
in Appendix D builds upon the questions included in this previous survey. (It is a first draft, subject to substantial revision based on project panel input.)

11. There appears to be no TRB literature focusing on equity in procurement (unlike state DOTs and airports). The study team’s literature review in Appendix B relied on other sources for both procurement and service provision.

12. The initial questions posed in the Augmented Work Plan for this assignment remain highly relevant to transit agencies. Thirteen of the 14 agencies in the 2003 study that were invited to participate in the current study did so, which is one indication of thirst for additional information. Key challenges at the time of this Interim Report are: (a) the growing scope of the topic, and (b) conducting this type of research during the COVID-19 Pandemic. The study team has other research in the field at this time, so, we hope to know more about how to effectively survey and conduct case studies during a pandemic by the time we hold the April project panel meeting.

The remainder of this Interim Report summarizes key aspects of this research in the following parts:

• Federal, state and local legal issues affecting diversity and inclusion efforts;
• TRB literature on equity and inclusion;
• Results of in-depth interviews with transit agencies;
• Working definitions of diversity and inclusion; and
• Next steps.

Federal, State and Local Legal Issues Affecting Diversity and Inclusion Efforts

Federal, state and local law place requirements on public agencies providing public transportation as well as constrain the actions of those agencies. Requirements and limitations pertain to equity and inclusion in:

• Employment;
• Contracting;
• Service provision; and
• Other aspects of operations.

Some of the requirements and limitations pertain to any public entity and others specifically apply to recipients of U.S. DOT or FTA funds. There are many resources pertaining to these topic, including, for example, NCHRP Legal Research Digest 77: Update of Selected Studies in Transportation Law (Thomas 2019).

Federal Requirements

Federal requirements apply to different aspects of equity and inclusion in employment, contracting, service provision and other aspects of transit agency operations.

Employment

Transit agencies are prohibited from discriminating against certain groups of individuals in employment. As Federal Transit Administration (FTA) grantees, agencies must comply with Equal Employment Opportunity (EEO) provisions of federal law, including:

• Americans with Disabilities Act of 1990 (ADA);
• Title VI of the Civil Rights Act of 1964 (Title VI);
• Title VII of the Civil Rights Act of 1964 (Title VII);
• Section 504 of the Rehabilitation Act of 1973 (which prohibits employment discrimination on the basis of disability for activities that receive federal funding);
• Uniformed Services Employment and Reemployment Rights Act of 1994; and

**Groups Considered in the Requirements.** Different federal laws prohibit employment discrimination for different groups. For example, Title VI prohibits discrimination based on race, color, and national origin for organizations receiving federal funds (see, e.g., regulations at 49 CFR § 21.5(c)). Title VII includes these same prohibitions for employers with 15 or more employees and adds prohibition of discrimination on the basis of religion or sex.

Federal Transit Laws (49 U.S.C. Section 5332) protects each of the above groups from employment discrimination, plus prohibits discrimination based on disability and age. FTA Circular C 4704 1A explains that protections on the basis of “sex” under Federal Transit Laws include pregnancy and childbirth, gender identity and sexual orientation. Title II of the Genetic Information Nondiscrimination Act of 2008 also applies to employers with at least 15 employees and prohibits employment discrimination based on genetic information (including family medical history).

Even if a public transportation provider receives its USDOT funds indirectly through its state DOT, it must comply with federal regulations in its employment. Certain regulations extend to companies working on federally funded contracts awarded by public transportation providers.

Some of the above requirements have been in place for more than 50 years, and as federal law has evolved, so has FTA guidance to transit agencies regarding compliance. FTA Circular C 4704 1A summarizes requirements for FTA grantees and subgrantees regarding these and other aspects of federal law that prohibits employment discrimination.

**Employment Goals and Affirmative Action Programs.** Title VII also requires virtually all state and local governments to comply with certain employment reporting requirements and to develop affirmative action plans that include goals and timetables to achieve a representative workforce.

**Contracting**

Nondiscrimination in contracting is another requirement pertaining to transit agencies when they award contracts using USDOT funds.

The federal government requires state and local agencies to operate the Federal Disadvantaged Business Enterprise (DBE) Program if they use USDOT funds for transportation projects. Federal regulations governing the Federal DBE Program are provided in 49 Code of Federal Regulations (CFR) Part 26. There is also Official USDOT Guidance to state and local agencies operating the program. Some form of these requirements regarding nondiscrimination in contracting have been in place since the 1970s.

**Groups Considered in the Requirements.** The Federal DBE Program applies to socially and economically disadvantaged businesses. Under the Program, the following racial, ethnic and gender groups can be presumed to be socially disadvantaged:
• Black Americans (or “African Americans” in this study);
• Hispanic Americans;
• Native Americans;
• Asian-Pacific Americans;
• Subcontinent Asian Americans; and
• Women of any race or ethnicity.
To be economically disadvantaged, a company must be below an overall revenue limit and an industry-specific limit, and its firm owner(s) must be below personal net worth limits (49 CFR § 26 (d)).

Requirements. FTA recipients must have a DBE Program if they receive planning, capital or operating assistance from FTA and award prime contracts using more than $250,000 in FTA funds in a federal fiscal year. (This total does not include transit vehicle purchases using FTA funds.)

To comply with the Federal DBE Program, a transit agency must:
- Every three years, develop an overall annual goal for DBE participation in its FTA-funded contracts and establish the portion of its overall goal to be met through race-neutral means (such as small business programs) and race-conscious measures (such as DBE contract goals);
- Determine whether all racial/ethnic/gender groups will be eligible for any race- or gender-conscious elements of the program;
- Implement its neutral measures and, if needed, DBE contract goals; and
- Report DBE participation to FTA every six months.

Court Challenges. Since the 1980s, there have been lawsuits challenging the constitutionality of the Federal DBE Program and individual state and local agencies’ implementation of the Program. The Federal DBE Program has been upheld as valid and constitutional. For the most part, state and local agencies have been successful in defending against legal challenges. Western States Paving Company, however, was successful in challenging the Washington State Department of Transportation’s implementation of the Federal DBE Program. Many state and local agencies, especially those in the West (i.e., states within the Ninth Circuit), made adjustments in their implementation of the Federal DBE Program to comply with the United States Ninth Circuit Court of Appeals decision in the Western States Paving case, and in accordance with the Official USDOT Guidance issued after the decision.

Groups have also challenged the constitutionality of state or local government Minority Business Enterprise and Women Business Enterprise (MBE/WBE) programs related to non-federally funded contracts (discussed on the next page).

Nondiscrimination Provisions and Prohibitions on Adverse Effects in Transit Activities

Federal regulations pertaining to Title VI and Environmental Justice require certain actions regarding nondiscrimination and avoiding adverse effects on certain groups across all transit agency activities.

Section 601 of Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, or national origin under any program or activity receiving federal financial assistance. It also prohibits exclusion from participation in or being denied the benefits of any such program or activity based on these personal characteristics.

Executive Order 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” was signed in 1994. The U.S. DOT Order 5610.2(a) “Actions to Address Environmental Justice in Minority Populations and Low-Income Populations” outlines how it applies Environmental Justice (EJ) principles (77 FR 27534, (May 10, 2012)). Any transit agency receiving FTA funds must incorporate EJ principles into its transportation decision-making and environmental review.

Groups Considered in the Requirements. As summarized above, Title VI focuses on nondiscrimination based on:
- Race and color; and
- National origin (nation where a person was born, or where the person’s parents or ancestors were born).

It also pertains to denial of meaningful access for limited English proficient (LEP) persons.
EJ regulations pertain to actions that will have a disproportionately high and adverse effect on:
- Minority populations; or
- Low-income populations.

Definitions of “minority persons” in FTA Circular C 4703.1 are as follows:
- American Indian and Alaska Native;
- Asian;
- Black or African American;
- Hispanic or Latino; and
- Native Hawaiian or Other Pacific Islander.

FTA Circular C 4703.1 explains that “low-income populations” generally means a group of low-income persons who live in geographic proximity. “Low-income” is defined as median household income at or below the U.S. Department of Health and Human Services poverty guidelines (FTA Circular C 4703.1, p. 7 (Aug. 15, 2012)).

Prohibited Actions. Beyond the differences in groups included in the regulations, Title VI and EJ regulations have a somewhat different focus.

Title VI prohibits practices that have discriminatory effects. The Circular includes the following definition of discrimination:

“All action or inaction, whether intentional or unintentional, in any program or activity of a Federal aid recipient, subrecipient, or contract that results in disparate treatment, disparate impact, or perpetuating the effects of prior discrimination based on race, color, or national origin.”

Under Title VI, intentional discrimination based on race, color or national origin is prohibited. Unintentional actions that result in discrimination on the basis of race, color or national origin also violate U.S. DOT regulations “unless the recipient can show the policies or practices are substantially justified and there is no less discriminatory alternative” (FTA Circular C 4702.1B, p. 6 (Oct. 1, 2012, p. 6)).

EJ regulations only allows U.S. DOT programs, policies or activities that have a disproportionately high and adverse effect on targeted groups if “further mitigation measures or alternatives that would reduce the disproportionately high and adverse effects are not practicable” (FTA Circular C 4703.1, p. 5 (Aug. 15, 2012)). The regulations go on to state that “social, economic (including costs) and environmental effects of avoiding or mitigating the adverse effects will be taken into account” when determining whether mitigation or an alternative is “practicable.”

FTA Circular C 4703.1 defines “disproportionately high and adverse effect” as an effect on a minority population or low-income population that:
- Is predominantly borne by that population, or
- Will be suffered by that population and is appreciably more severe or greater in magnitude than the adverse effect that will be suffered by the non-minority population and/or non-low-income population.

In sum, Federal Title VI and EJ regulations overlap but are still distinct as they apply to different groups and different types of impacts. FTA Circulars C 4702.1B and C 4703.1 explain the commonalities and differences in how transit agencies need to respond to these regulations.
Service and Fare Equity Analysis. This Interim Report does not cover every aspect of a transit agency’s operations affected by Title VI and EJ regulations, which are very broad. One aspect of these regulations merits further explanation: requirements regarding equity in services and fares for fixed route transit providers.

Regulations in Section (3)(iii) Appendix C to 49 CFR Part 21 provide that:

“[n]o person or group of persons shall be discriminated against with regard to the routing, scheduling, or quality of service of transportation service furnished as a part of the project on the basis of race, color, or national origin. Frequency of service, age and quality of vehicles assigned to routes, quality of stations servicing different routes, and location of routes may not be determined on the basis of race, color, or national origin.”

To comply, FTA Circular C 4702.1B explains that all fixed route transit providers must set service standards and policies for each mode of service that identify how “service is distributed across the transit system, and must ensure that the manner of the distribution affords users access to these assets.” This requirement extends to service policies “to ensure service design and operations practices do not result in discrimination on the basis of race, color, or national origin.”

FTA Circular C 4702.1B places requirements on transit providers that operate fixed route service. Although these requirements do not apply, there are other requirements (including ADA) for providers that (a) only operate demand response services and (b) non-profits that only serve their own riders and not the general public.

Basic requirements pertain to any fixed route service transit provider. All fixed route providers must develop quantitative standards for service for each fixed route modes regarding vehicle load, headway, on-time performance and services availability (for example, the percentage of all residents in the service are within a certain distance of the transit service). They must also develop a policy for distribution of transit amenities for each mode (e.g., seating at stops/stations) and vehicle assignment for each mode (age, type of vehicle or type of service provided).

All fixed route operators must develop Title VI Programs that outline system-wide service standards and policies. Additional data collection and monitoring requirements apply to transit providers that operate 50 or more fixed route vehicles in peak services and are located in an urbanized area with a population of 200,000 or more. These additional requirements also include:

- Description of the public engagement process for setting the major service change policy and disparate impact policy;
- Results of equity analyses that examine effects of major services changes and/or fare changes; and
- Documentation of their board’s awareness and approval of related policies and equity analyses.

Although low-income populations are not included under Title VI, FTA Circular C 4702.1B requires transit providers to evaluate service equity for low-income populations including whether they will bear a disproportionate burden of service or fare changes.

Incorporating EJ Principles into NEPA Process. The National Environmental Policy Act (NEPA) requires consideration of environmental and other impacts in decision making regarding major federal actions (42 U.S.C. § 4321 et seq.). Federal regulations direct agencies to take certain actions, including examining ways to “avoid, minimize, or mitigate adverse effects of these actions upon the quality of the human environment,” (40 CFR § 1500.5) consider the “social, economic, and environmental impacts of the proposed transportation improvement,” (23 CFR § 771) and encourage public involved in these decisions (40 CFR § 1500.2).

EO 12898 directs agencies to ensure that environmental reviews under NEPA address disproportionately high and adverse effects on minority populations and low-income populations.

FTA Circular C 4703.1 describes how EJ should be addressed in all NEPA decision-making for projects involving federal funding. FTA has issued regulations in 23 CFR Part 771 that address review under NEPA.
A review can take the form of an Environmental Impact Statement (EIS), Environmental Assessment (EA) or a Categorical Exclusion (CE), which describe actions that do not have a significant environmental effect. FTA Circular C 4703.1 summarizes the steps that an agency should take as follows:

- Define the project area and identify EJ populations; and
- Identify adverse environmental effects on EJ populations (examples include health and environmental risks, effects on aesthetic values, disruption of community cohesion or economic vitality, displacement of people or businesses, and increased isolation of minority or low-income individuals within a community or from the broader community).

**Nondiscrimination in Service Provision for Persons with Disabilities**

In addition to prohibiting discrimination against persons with disabilities in employment, providers of transportation services must ensure their services, vehicles, and facilities are accessible to persons with disabilities. Unlike EJ, all types and sizes of transit services providers must comply. Certain requirements extend to a private entity for fixed route or demand responsive service that enters an agreement to provide those services for a public transit agency (49 CFR § 37.23).

FTA Circular C 4710.1 explains requirements for transit agencies emerging from the Americans with Disabilities Act (ADA) of 1990 and Section 504 of the Rehabilitation Act of 1973 (FTA Circular C 4710.1 (Nov. 4, 2015)). Federal regulations are set forth in 49 CFR Parts 27, 37, 38, and 39.

**Groups Considered in the Requirements.** Disability is defined as a physical or mental impairment that substantially limits one or more of the major life activities of an individual. Further “physical or mental impairment” includes a physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting the body as well as any mental or psychological disorder. The definitions specifically include emotional illness, drug addiction and alcoholism (49 CFR § 37.3).

**Requirements and Prohibited Actions.** In addition to providing services, there are requirements for a transit provider regarding:

- Use and maintenance of accessibility-related equipment or features (such as lifts, ramps, lighting, elevators, platforms and signage);
- Allowing service animals to accompany individual with disabilities (defined as an animal individually trained to work or perform tasks);
- Allowing an individual with a disability to travel with a respirator or portable oxygen supply (with certain restrictions);
- Providing information to individual with disabilities through accessible formats and technology;
- Providing training to transit personnel about proper assistance for persons with disabilities; and
- Making reasonable modifications in policies and practices to avoid discrimination on the basis of disability (with certain exceptions).

There are certain situations where a transit provider can deny service, such as when the “individual engages in violent, seriously disruptive, or illegal conduct, or represents a direct threat to the health or safety of others” (49 CFR § 37.5(h)).

FTA Circular C 4710.1 also provides information specific to:

- New construction of transportation facilities and alterations of existing facilities;
- Design of new, used and remanufactured transit vehicles;
- Service provision on fixed routes (such as priority seating and stop announcements);
- Provision of demand responsive services and paratransit services;
- Services provided by passenger ferries;
- Transit services provided by monorails, trams and other less common vehicles; and
- Processes for tracking and resolving complaints from persons with disabilities.
Federal, State and Local Limitations Regarding Race and Gender Preferences in Employment and Contracting

Public sector decision-making that considers factors such as race or gender can also be subject to legal challenge in federal or state court. These legal constraints differ by group (race compared with gender or physical ability, for example) and by state. For example, states such as Arizona, California, Louisiana and Washington prohibit or limit a state or local government’s use of preferences based on race in employment and contracting (unless required to receive federal funds).

These issues are extensive and merit consideration in their own study, and they are only summarized here (and in Appendix A).

Title VII

Although Title VII prohibits discrimination in employment based on race and gender, a voluntary race-or gender-conscious program is permissible if (1) there is a showing of a “manifest imbalance” in the work force; (2) the plan does not “unnecessarily trammel” the rights of members of the non-preferred class or “create an absolute bar to their advancement,” and (3) the plan does no more than is necessary to attain a balance. This analysis is the same for distinctions based on race or gender. (See Appendix A for a discussion of relevant cases and their consideration of the issues identified above.)

Constitutional Standards for Affirmative Action Programs

Race and Gender Preferences. The Equal Protection Clause of the 14th Amendment to the U.S. Constitution also affects the ability of any government entity to use race as a factor in its decision-making. For public transit agencies, this limits voluntary affirmative action programs for employment and minority business enterprise (MBE) programs related to their non-U.S. DOT-funded contracts.

In City of Richmond v. J.A. Croson Co., 488 U.S. at 469 (1989), the U.S. Supreme Court held that local governments may utilize racial classifications only to serve a compelling state interest, and then the method chosen must be narrowly tailored to serve that interest. Thus, the constitutional standard applicable to federal, state, or local governmental programs creating preferences based on race and ethnicity is the strict scrutiny test. Appendix A discusses how courts have applied this legal standard. Programs for women business enterprises (WBEs) can be challenged as well (see Appendix A).

Preferences for Other Groups. A preference program for public agency employment or contracting can be legally challenged even if the program does not consider race, ethnicity or gender. However, such programs are much more easily defended. The public entity generally need only show that it has a “rational basis” for such a program, depending upon its components and how it is implemented.

Needing only to meet the rational basis test makes it easier to defend public sector employment preferences for persons with disabilities, veterans or other groups not defined based on race, ethnicity or gender. Contracting programs that give preferences or set goals for companies owned by groups such as persons with disabilities, veterans or service-disabled veterans would be more easily defended than programs that provide preferences to minority- or women-owned businesses.

It is important to note that legal restrictions can apply to preferences based on geographic location of the individual or business. And, some types of geographic preferences are prohibited when using federal funds.
Literature on Equity and Inclusion

There is considerable research that examines equity, diversity and inclusion issues related to transportation.

Workforce

The study team examined the following TRB research on workforce diversity for transit agencies published since 2000.

TCRP Synthesis 46: Diversity Training Initiatives

This 2003 study represents the most recent comprehensive TCRP review of diversity programs for transit agencies (National Academies of Sciences, Engineering, and Medicine 2003). It examined diversity training initiatives in transit agencies through a literature review, a survey and case studies. The current study team re-contacted the agencies participating in the 2003 study, with results discussed in the next portion of this Interim Report. The proposed 2020 survey of transit agencies provided in Appendix D builds upon the questions included in this previous survey.

The 2003 study authors reported that participating transit agencies indicated that diversity initiatives successfully increased the recruitment, retention and promotion of women and minorities in the transit industry. Additionally, these diversity efforts corresponded with improved customer satisfaction. Overall, respondents reported a commitment to diversity throughout the public transit organization, including management, operations and service provision.

Although the study found that most diversity initiatives were driven by the human resources department, there was also strong commitment to diversity among agency leadership including board members, executives and general managers.

This report also found that diversity initiatives within the transit industry vary. The authors cite variation within policy development and a lack of standardization with regard to diversity programs.

The authors note that diversity trainings, “have moved beyond race and sex to incorporate cultural, religious, geographic, economic, socioeconomic, and political differences, as well as consideration of people with varying abilities and disabilities.” The researchers also note that many transit agencies have diversity plans, committees, task forces and/or staffed positions to focus on the implementation of diversity initiatives within their organization.

This report includes a review of various definitions of diversity utilized by scholars, as well as private and public agencies. Many definitions of diversity include a broad range of group or individual differences, differences in identity and “otherness.” Some include different dimensions of diversity, with the “primary characteristics” including age, gender, race/ethnicity, physical and mental ability and sexual orientation, while the “secondary characteristics” include aspects that may change such as education, income, religious beliefs, work experience, etc.

Study authors conducted a survey of transit agencies. These agencies were asked about the definition of diversity within their organization, diversity initiatives within their organization, how diversity is managed, organizational barriers to diversity and an overall rating of diversity efforts within the agency.

Defining Diversity. Answers relating to definitions of diversity identified who was held accountable for ensuring diversity in the agency.

- Survey respondents reported that diversity was included in a variety of places within the organization and the managerial hierarchy, including in policies and procedures, mission statements, goals and objectives, employee recruitment and training plans.
• Accountability for diversity initiatives were primarily the responsibility of the human resources department, although some agencies included affirmative action, civil rights, equal opportunity, and other departments that were charged with overseeing the overall implementation of diversity initiatives.

• The survey also asked respondents to identify diversity within the agency hierarchy. Respondents indicated diversity within many aspects of transit agencies, including with executive, senior and middle management, first-line supervisors, technical and professional positions, and driver and mechanic positions.

• Respondents reported that diversity within the agency was associated with different resource allocation. For example, these agencies linked diversity to investment in the Federal DBE Program, incentives to increase the recruitment of diverse employees, providing internships to women and minorities, and funding diversity training and staff to manage the implementation of diversity efforts.

Diversity Initiatives. The survey also addressed types of diversity initiatives within transit agencies.

• The vast majority of respondents reported programs to increase diversity awareness, such as seminars and workshops, cultural awareness, sensitivity training and diversity orientation programs. Others reported that diversity initiatives took the form of diversity councils or task forces, diversity plans, diversity vision statements and diversity as a core business strategy.

• Some transit agencies cited mentoring networks, programs to improve work/life balance, cultural celebrations, diversity poster programs or other initiatives to enhance diversity.

• Others noted that they utilize organizational assessments, staff retreats, and employee satisfaction and climate surveys to identify the need for further diversity initiatives.

When asked how agencies measured the success of these diversity initiatives, respondents cited that meeting their affirmative action goals or reducing the number of charges of discrimination, employee and Equal Employment Opportunity Commission complaints, grievances and employee management conflicts were common measures of success. Some respondents noted that diversity efforts were measured by how closely the makeup of agency employees match the demographics of the community.

More broadly, however, some agencies responded that they measured the success of projects by the number of employees trained in diversity awareness, the number of women and minorities promoted, the number of participants with a particular cultural event, or the number of networking channels available for the promotion of internal staff.

Managing Diversity. Included in the survey were questions relating to managerial methods of diversity within the transit agency. In this section, respondents listed specific programs and activities that promoted diversity within the agency. The report summarizes initiatives in:

• Hillsborough Area Regional Transit Agency (HART);
• Los Angeles County Metropolitan Transit Authority (LACMTA);
• ATC-Phoenix (now Valley Metro);
• Alameda-Contra Costa (AC) Transit Agency;
• Greater Cleveland Regional Transportation Agency (GCRTA);
• Port Authority of Allegheny County (PAAC);
• Metropolitan Transit Authority of Harris County (Houston-METRO);
• Massachusetts Bay Transit Authority (MBTA);
• Bay Area Rapid Transit (BART); and
• Pierce Transit Agency.

Many of these agencies reported training programs, events and celebrations, committees and task forces, and recruitment efforts that emphasize diversity.
**Communicating Diversity.** The survey instrument included information about how diversity initiatives and goals are communicated within the agency. Common responses included:

- New hire orientation programs.
- Employee participation in community-based events.
- Professional associations (including APTA and COMTO).
- On-site speakers and facilitators.
- All-staff meetings.
- In-service training, seminars and workshops.
- Newsletters, magazines, pamphlets and other printed materials.
- Focus groups and video trainings.
- Counseling and employee assistance programs in the case of workplace conflict.

Additionally, some transit agencies included diversity initiatives in their strategic operational goals. For example, transit agencies provided technical assistance for diverse vendors (such as disadvantaged business enterprises) who worked for the agency. Some transit agencies also reported strategic operational goals aimed at ensuring diversity within work teams, task forces, committees and other groups of employees. Other respondents cited strategic operational goals that established performance measures of diversity initiatives.

**Organizational Barriers to Diversity.** Survey respondents were also asked to identify barriers within the organization that limited diversity initiatives. Although some agencies reported no barriers, others responded that informal communication networks were the most significant barrier in their agency. On a related note, some referenced informal rules, socialization protocols and expected managerial style acted as barriers to diversity initiatives. When asked about any personal barriers that limit success of diversity programs, respondents cited mode of communication, along with age, race, perceived personal style, perceived socioeconomic status, perceived level of education and perceived potential for leadership.

**Rating of Diversity Initiatives.** Finally, respondents were asked to rate their agency’s diversity initiative implementation efforts. Many respondents rated their agency’s efforts as “very aggressive.” Additionally, many reported that their agency had diversity goals in place, included diversity as part of their overall strategic plan and mission statement, and noted it as a core value of their agency. Respondents reported that diversity goals are in place and must be met by management, and no agency reported that it did not value diversity. Overall, few respondents reported the need for increased coordination of diversity initiatives.

**Case Studies.** The researchers also explore differences in workplaces as having an impact on the success of such diversity initiatives. The case studies include four agencies (HART, WMATA, BART and PAAC) and examine committees or task forces designed to assist with diversity initiatives. The authors note the following activities as vital to the committees or task forces:

- Governance or authority;
- Leadership;
- Developing diverse teams within the agency;
- Training and staff development;
- Planning diversity initiatives; and
- Communicating diversity initiatives.
Finally, the case studies identify similar barriers to diversity implementation as those identified by the survey.

**Other TRB Reports Regarding Diversity In Employment**

Other past TRB reports reviewed in Appendix D are:
- TCRP Report 77: Managing Transit’s Workforce in the New Millennium (Transit Cooperative Research Program 2002);
- TRB Special Report 275: The Transportation Workforce Challenge (National Academies of Sciences, Engineering, and Medicine 2003);
- TCRP Report 120/NCHRP Report 585: Racial and Gender Diversity in State DOTs and Transit Agencies (National Academies of Sciences, Engineering, and Medicine 2007); and

**Procurement**

TRB studies have also examined the Federal DBE Program and other means to ensure equity in procurement. These studies have focused on state DOTs and airports. They are reviewed in Appendix B.

The research team also examined other studies related to equity, diversity and inclusion issues in employment that are relevant to transit agencies.

**Other Research Regarding Employment**

The research team also examined other studies related to equity, diversity and inclusion issues in employment that are relevant to transit agencies.

Appendix B summarizes commonly used approaches to increasing organizational diversity and inclusion, including:
- Required initiatives;
- Initiatives that impact work environment;
- Human resource strategies;
- Initiatives that establish responsibility or accountability;
- Initiatives that leverage external relationships; and
- Approaches to identifying outstanding barriers.

Although EEO programs may be required, some researchers suggest that they are not necessarily an effective way to increase diversity. For example, EEO programs include a formal grievance process where employees can file a complaint with the Equal Employment Opportunity Commission (EEOC) if they experience discrimination at work based on their race, color, religion, sex, national origin, age, disability or genetic information. One study analyzed almost 90,000 discrimination complaints filed with the federal Equal Employment Opportunity Commission in 2015 and found that 45 percent of those complaints resulted in retaliation. When employees see that the grievance procedure is ineffective, they are more likely to avoid reporting incidents of discrimination. This is supported by responses from employee surveys, which indicate that most people do not report discrimination. As a result of the few complaints, organizations conclude that they do not have problems with discrimination. Additionally, studies have found that protective measures such as grievance systems may lead people to let bias affect their decisions more, as they believe that organization policies guarantee fairness (Dobbin and Kalev 2016).
Research Concerning Equity and Inclusion in other Aspects of Transit Operations

The study team also reviewed research on:

- Equity and environmental justice;
- Fare setting; and
- Transit network design.

**Equity and Environmental Justice**

Environmental justice includes efforts to achieve equitable protection from environmental harm and equitable access to benefits across demographic groups. Researchers have found that communities of color and low-income communities are exposed to greater harm and receive fewer benefits from transportation systems when compared to the general population. Transportation-related environmental justice can be understood through costs (including air pollution and noise) and benefits (such as increased accessibility). Although transportation planning agencies are required to analyze the impacts of their plans for inequity, these reports rarely find that projects could result in disproportionate impacts (Rowangould et al. 2016).

Some research has evaluated job accessibility impacts of transit improvements among low-income individuals. The researchers found that a new light rail line in Minneapolis-St. Paul has generated significant job accessibility benefits for all workers. In some but not all areas, low-wage workers benefitted more than medium- and high-wage workers (Fan et al. 2012).

Other research has focused on the causal relationships that trace why low-income individuals and people of color are disproportionately exposed to pollution. In addition, gentrification prompted by transit system improvements can lead to displacement and further inequity (Banzhaf et al. 2019; Rodier et al. 2019).

Researchers explain that transportation equity can be understood using two dimensions: horizontal equity and vertical equity.

- **Horizontal equity** refers to distribution of impacts (i.e. costs and benefits) across groups that are considered equal in ability and need. This type of equity may include spatial and generational equity.
- **Vertical equity** refers to the distribution of transportation impacts on groups that differ in ability and needs, such as disabled or special needs groups and groups across different social and income classes (Bills and Walker 2017).

Another author explains that while vertical equity requires that different groups receive different amounts of a benefit, horizontal equity requires that within each group of similar individuals, a similar benefit is received. The two types of equity together imply that transit dependent groups should have access to equal amounts of quality transit, and those most dependent on transit should receive more access to transit service (Welch 2013).

Appendix B reviews these and other studies.
**Fare Pricing**

Researchers have also explored equity in public transit fare pricing. There are a variety of types of transit fare structures including flat fees, distance-based fares, zone-based fares, service-type based pricing, time of day pricing and concession fares (concession fares are sold by different agencies to different groups at various discount levels, such as student passes and senior passes). Some agencies use a combination of pricing strategies, and prices may also vary depending on the method of payment, such as transit card users versus those who pay in cash (Ma et al. 2017; Lipscombe 2016).

Horizontal equity in terms of pricing can be described as when there is equal distribution among equal members of society. In the context of the transit pricing, horizontal equity is achieved when passengers pay as much as they use. Vertical equity in transit pricing requires that the costs/benefits are distributed according to the users’ need for the service or their capability for payment. Disparities between the benefit a passenger receives (trip length) and cost (fare) implies inequality. In the social equity literature, researchers note that pricing structures are efficient when riders contribute to the costs of their services in line with the benefits they receive (as reflected by the marginal costs of their trips). However, fares are considered equitable when they take into account the income capacities of riders (Bandegani and Akbarzadeh 2016).

**Transit Network Design**

Researchers have also examined equity in transportation network design and the ways in which transit routes are determined. There are many ways to design a transit network in a community, each with different equity outcomes. For example, one study presents a set of 69 approaches (and combinations of approaches) to dealing with network design, frequency setting and timetabling (Guihaire and Hao 2008).

Some researchers who have analyzed transit networks use horizontal criteria to divide equity into modal and spatial equity.

- Modal equity includes the travel time between the origin and destination of each mode, where modes are divided into passenger car and transit, and the travel time of each mode is the total travel time from the origin to the destination. Modal equity is achieved when the difference between transit travel time and cars’ travel time is negligible because of the transit network. (Kim et al. 2019; Ferguson et al. 2012).
- Spatial equity is achieved when the difference in modal equity among regions is negligible because priority is given to transit improvements in regions with lower modal equity (Kim et al. 2019).

Some of the literature concerning transit network design place this issue in the larger context of racial discrimination in the built environment. One author explains that the built environment, characterized by the man-made physical features that make it difficult for certain individuals to access certain places, can be used as a mechanism of exclusion (Schindler 2015).

There is considerable literature on spatial mismatch, where African Americans have worse employment outcomes because of job inaccessibility, have lower rates of residential mobility, and experience housing and labor market discrimination. Studies have found a connection between increasing concentrations of minorities to decreasing accessibility and lower levels of transit service (Karner and Niemeier 2013).

**Results of In-Depth Interviews with Transit Agencies**

Keen Independent conducted in-depth interviews with 37 agency leaders, HR professionals and others with diversity and inclusion responsibilities from 13 of the 14 transit agencies included in the 2003 TCRP study. Table 1 lists the participating agencies.
Approach

Keen Independent prepared an interview guide and a plan for identifying and contacting interviewees. Interviewees were contacted based on a tiered structure, beginning first with leadership, second with human resources representatives, and third with others having diversity and inclusion responsibilities (regarding procurement, transit customers, community interface and other aspects of operations and governance) for a cross-section of large and small public sector transit organizations. An online search resulted in contact information, including email addresses and phone numbers, which were used to reach leadership or their representatives at each of the participating transit agencies. Initial communications were sent via email, which included an attached letter from the Transportation Research Board.

Keen Independent proposed a total of 24 in-depth interviews and conducted 37. Appendix C provides an in-depth discussion of this task’s approach and the input collected from the in-depth interviews.

Table 1. Transit agencies participation in the in-depth interviews.

<table>
<thead>
<tr>
<th>Transit agencies</th>
<th>Location</th>
<th>Participated in 2003 study</th>
<th>Participated in 2020 study</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alameda Contra Costa Transit Agency</td>
<td>CA</td>
<td>✔️</td>
<td>✔️</td>
</tr>
<tr>
<td>Bay Area Rapid Transit</td>
<td>CA</td>
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<td>✔️</td>
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<tr>
<td>Birmingham Jefferson County Transit Authority</td>
<td>AL</td>
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<tr>
<td>Greater Cleveland Regional Transit Authority</td>
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<td>Wash. DC</td>
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</tbody>
</table>

Note: Via was also invited to participate in the 2020 study, the company did schedule an in-depth interview.
Source: Keen Independent Research

Results

Appendix C provides detailed results from the 37 interviews. Results can be grouped into the eight themes listed below.

1. Diversity and inclusion includes a broad range of different ideas (see Working Definitions of Diversity and Inclusion below for more detail).
2. Organizations may have originally developed diversity initiatives to comply with federal requirements. Many agencies have moved beyond a “check the box” mentality to incorporate diversity and inclusion into their organizational culture. For some organizations, this shift has occurred in just the past three to four years.
3. Transit agencies expressed diversity and inclusion concerns as going beyond characteristics such as race, national origin and gender to include sexual orientation, different mental and physical abilities, young adults, and ex-offenders (as examples).
4. The combined effect of points #1, #2 and #3 is that diversity and inclusion (for many organizations) has moved beyond “putting people in buckets” to building a culture where everyone is appreciated for who they are and encouraged to bring “their whole selves” to work. This is seen as a “less exclusionary” approach that includes all employees, which may contribute to long-term success.

5. Diversity policies are used to hold transit agency leaders accountable for inclusive practices. “Obviously we would hope that people would follow it because it’s the ‘right thing to do’ but if for whatever reason they have difficulty understanding that, there are policies in place that make them comply.”

6. Building diverse leadership teams and ensuring equitable advancement within organizations was top of mind for many transit agencies.

7. When gauging progress regarding diversity and inclusion, headcount numbers for employment and share of contract dollars for procurement are still used as key metrics. Some agencies are measuring employee satisfaction to track progress on diversity and inclusion.

8. This work is difficult and sometimes unsuccessful. There are some types of public transportation jobs where it is very difficult to obtain representation of diverse groups, especially for women. Some transit agency representatives reported that diversity and inclusion initiatives can lose traction or be conflicting, or that some diversity and inclusion programs can have the reverse effect. Training people and developing an inclusive corporate culture is especially difficult when many types of jobs in the field are relatively isolated. Agency leaders often lean on resources such as APTA and try to learn from peer organizations to improve their practices.

Keen Independent will use these results to inform each of the subsequent research tasks.

**Working Definitions of Diversity and Inclusion**

Results from the in-depth interviews revealed that multiple definitions exist for diversity and inclusion. For example, when leadership in transit agencies are asked to define diversity and inclusion, their responses often include having people of different backgrounds in their organizations feel welcome. Others expressed diversity in terms of “diversity of thought,” which was seen as a benefit to decision making in transit agencies.

“Equity” and viewing issues “through an equity lens” are also often included in the conversation. Some interviewees mentioned equity in treatment of their riders in discussions about diversity and inclusion. Others talked about “leveling the playing field” for diverse businesses when seeking contract opportunities. (And, many of the federal requirements on transit agencies, from hiring to contracting and service delivery, emphasize “equity” and “non-discrimination.”) However, many interviewees emphasized that it was important that their employees and vendors be diverse so that the organizations “look like their communities.”

As there was no common definition of diversity emerging from the initial results, the study team will ask this question in the forthcoming online survey.

**Next Steps**

**Online Survey**

Keen Independent will survey leaders, HR professionals and other staff with responsibilities for diversity and inclusion at 100 public transportation organizations throughout the country (300 survey participants with an expected 30% response rate in total, split equally between people in leadership, HR positions and other positions). As with the in-depth interviews, we will include a cross-section of large and small public transit agencies, state departments of transportation and private sector organizations.
Keen Independent will develop a 10-minute survey, which will include telephone and online versions. We will develop contact information for representatives from the office of executive director or general manager and the HR office of each organization. The Keen Independent team will conduct a pilot survey with ten agencies to ensure clarity of questions, quality of responses and potentially “close” certain open-ended questions. Based on the pilot, Keen Independent will refine the questions before fully executing the survey.

Upon survey execution, we will contact the identified agencies via email (or mail when we do not have an email address) and offer the option of completing the survey online, via mail/fax, or over the phone. We will follow-up by email and via phone as necessary to ensure that we receive some response (including refusals) from at least 50% of the agencies contacted. The study team will statistically determine whether there is any evidence that non-response affected the overall survey results.

Keen Independent will review, code and clean survey data as those data are received. We will follow-up with individual agencies as needed to clarify information submitted. The study team will analyze survey responses, make appropriate comparisons and prepare a report appendix that summarizes the survey effort and results. The results from the survey will help organizations of different types and sizes gauge where they are with their inclusion efforts with a random sample of their peers. Appendix D provides a first draft online survey instrument for purposes of further discussion with the TCRP project panel.

Case Studies

Keen Independent will conduct at least four case studies to examine how diversity and inclusion efforts started and evolved at different types of organizations. We will chose these case studies from the transit agencies included in the in-depth interviews.

For each organization, Keen Independent will review a wide range of current and historic policies and other documents, past reports regarding progress toward inclusion and other information about the organization. The focus of these case studies will be sharing successes and failures of diversity and inclusion efforts over time, how the organizations built on successes and addressed failures, and the current status of those initiatives. Keen Independent will gauge the level of board and community involvement at key junctures; involvement of employees, union representatives and others in the efforts; and the history of communicating policies and progress to stakeholders.

In each case study, we will review how inclusion and diversity dovetail (or did not fit) with other personnel management initiatives. We will also document how organizations measured success and whether they incorporated inclusion and diversity into the performance metrics for the organization and its leadership. Keen Independent will also conduct four to six telephone interviews with leaders responsible for different parts of each of the case study organizations. Case study candidates will be selected from the list of in-depth interviews conducted.

Results from the case studies will focus on the evolution of diversity and inclusion at different organizations with “lessons learned” from each example, which will be helpful to similar agencies looking to start, improve and sustain their diversity and inclusion efforts.
APPENDIX A

Legal Issues

Federal, state and local law place requirements on public agencies providing public transportation as well as constrain the actions of those agencies. Requirements and limitations pertain to equity and inclusion in:

- Employment;
- Contracting;
- Service provision; and
- Other aspects of operations.

Federal, State and Local Legal Issues Affecting Diversity and Inclusion Efforts

Some of the requirements and limitations pertain to any public entity and others specifically apply to recipients of USDOT or Federal Transit Administration (FTA) funds. There are many resources pertaining to these topics, including, for example, NCHRP Legal Research Digest 77: Update of Selected Studies in Transportation Law (Thomas 2019).

Federal Requirements

Federal requirements apply to different aspects of equity and inclusion in employment, contracting, service provision and other aspects of transit agencies.

Employment

Transit agencies are prohibited from discriminating against certain groups of individuals in employment. As Federal Transit Administration (FTA) grantees, agencies must comply with Equal Employment Opportunity (EEO) provisions of federal law, including:

- Americans with Disabilities Act of 1990 (ADA);
- Title VI of the Civil Rights Act of 1964 (Title VI);
- Title VII of the Civil Rights Act of 1964 (Title VII);
- Section 504 of the Rehabilitation Act of 1973 (which prohibits employment discrimination on the basis of disability for activities that receive federal funding);
- Uniformed Services Employment and Reemployment Rights Act of 1994; and
Groups Considered in the Requirements. Different federal laws prohibit employment discrimination for different groups. For example, Title VI prohibits discrimination based on race, color, and national origin for organizations receiving federal funds (see, e.g., regulations at 49 CFR § 21.5(c)). Title VII includes these same prohibitions for employers with 15 or more employees and adds prohibition of discrimination on the basis of religion or sex.

Federal Transit Laws (49 U.S.C. Section 5332) protects each of the above groups from employment discrimination, plus prohibits discrimination based on disability and age. FTA Circular C 4704 1A explains that protections on the basis of “sex” under Federal Transit Laws include pregnancy and childbirth, gender identity and sexual orientation. Title II of the Genetic Information Nondiscrimination Act of 2008 also applies to employers with at least 15 employees and prohibits employment discrimination based on genetic information (including family medical history).

Even if a public transportation provider receives its USDOT funds indirectly through its state DOT, it must comply with federal regulations in its employment. Certain regulations extend to companies working on federally funded contracts awarded by public transportation providers.

Some of the above requirements have been in place for more than 50 years, and as federal law has evolved, so has FTA guidance to transit agencies regarding compliance. FTA Circular C 4704 1A summarizes requirements for FTA grantees and subgrantees regarding these and other aspects of federal law that prohibits employment discrimination.

Employment Goals and Affirmative Action Programs. Title VII also requires virtually all state and local governments to comply with certain employment reporting requirements and to develop affirmative action plans that include goals and timetables to achieve a representative workforce.

Contracting

Nondiscrimination in contracting is another requirement pertaining to transit agencies when they award contracts using USDOT funds.

The federal government requires state and local agencies to operate the Federal Disadvantaged Business Enterprise (DBE) Program if they use USDOT funds for transportation projects. Federal regulations governing the Federal DBE Program are provided in 49 Code of Federal Regulations (CFR) Part 26. There is also Official USDOT Guidance to state and local agencies operating the program. Some form of these requirements regarding nondiscrimination in contracting have been in place since the 1970s.

Groups Considered in the Requirements. The Federal DBE Program applies to socially and economically disadvantaged businesses. Under the Program, the following racial, ethnic and gender groups can be presumed to be socially disadvantaged:

- Black Americans (or “African Americans” in this study);
- Hispanic Americans;
- Native Americans;
- Asian-Pacific Americans;
- Subcontinent Asian Americans; and
- Women of any race or ethnicity.
The Federal DBE Program includes the following elements.

**Setting an Overall Goal for DBE Participation.** Every three years, a transit agency must develop an overall annual goal for DBE participation in its FTA-funded contracts (and, separately, FHWA-funded contracts, if it receives those funds). The Federal DBE Program sets forth the steps an agency must follow in establishing its goal, including development of a “base figure” and consideration of possible “step 2” adjustments to the goal (49 CFR § 26.45).

An agency’s overall goal for DBE participation is aspirational. Its failure to meet an annual DBE goal does not automatically cause any USDOT penalties unless that agency fails to administer the DBE Program in good faith. However, if an agency does not meet its overall DBE goal, federal regulations require it to analyze the reasons for any shortfall and develop a corrective action plan to meet the goal in the next fiscal year (49 CFR § 26.47). Noncompliance can cause suspension of federal funding to the agency.

**Establishing the Portion of the Overall DBE Goal to be met Through Neutral Means.** The Federal DBE Program allows for state and local governments to operate the program without the use or with limited use of race- or gender-based measures such as DBE contract goals. According to program regulations 49 CFR Section 26.51, a state or local agency must meet the maximum feasible portion of its overall goal for DBE participation through “race-neutral means.”

Race-neutral program measures include removing barriers to participation and promoting use of small businesses. The Federal DBE Program requires agencies to develop programs to assist small businesses (49 CFR § 26.39). For example, small business preference programs, including reserving contracts on which only small businesses can bid, are allowable under the Federal DBE Program.

If an agency can meet its goal solely through race-neutral means, it must not use race-conscious program elements. The Federal DBE Program requires that an agency project the portion of its overall DBE goal that it will meet through neutral measures and the portion, if any, to be met through race-conscious measures such as DBE contract goals. USDOT has outlined factors for an agency to consider when making that determination (see Chapter 10 of this report for an in-depth discussion of these factors). Some transit agencies operate a 100 percent race- and gender-neutral program and do not apply DBE contract goals. Other transit agencies project that they will meet their overall DBE goal through a combination of race-neutral and race-conscious measures.

**Determining Whether all Racial/Ethnic/Gender Groups will be Eligible for Race- or Gender-Conscious Elements of the Federal DBE Program.** To be certified as a DBE, the firm’s owner must be both socially and economically disadvantaged. The racial, ethnic and gender groups presumed to be socially disadvantaged are identified in the previous page of this appendix.

To be economically disadvantaged, a company must be below an overall revenue limit and an industry-specific limit, and its firm owner(s) must be below personal net worth limits (49 CFR § 26 (d)). Note that there is a gross receipts limit (currently not more than a $23.98 million annual three-year average revenue, and lower limits for certain lines of business) and a personal net worth limit (currently $1.32 million excluding equity in the business and primary personal residence) that firms and firm owners must fall below to be able to be certified as a DBE. Under 49 CFR Section 26.67(b), a certifying agency may consider other factors to determine if an individual is able to accumulate substantial wealth, in which certification is denied (annual gross income of the owner and whether the fair market value of the owner’s assets exceeds $6 million are two such factors that may be considered).

White male-owned firms and other ethnicities not listed above can also meet the federal certification requirements and be certified as DBEs if they demonstrate that they are both socially and economically disadvantaged, as described in 49 CFR Part 26.67(d).
Some transit agencies, especially under the jurisdiction of the U.S. Ninth Circuit Court of Appeals, limit participation in race- and gender-conscious elements of the program to groups for which the agency has independently identified as affected by discrimination affecting that agency’s contracting. In such instances, only DBEs in the identified groups can count toward meeting an assigned DBE contract goal.

Transit agencies and other local and state governments sometimes perform “disparity studies” to determine their overall DBE goal, assess whether race- and gender-conscious program elements are needed, and identify the individual DBE groups to participate in those program components. FTA has provided guidance to transit agencies under the jurisdiction of the Ninth Circuit Court of Appeals to perform disparity studies in order to provide information to support operation of the Program.

**Court Challenges.** Since the 1980s, there have been lawsuits challenging the constitutionality of the Federal DBE Program and individual state and local agencies’ implementation of the Program. To summarize:

- The Federal DBE Program has been upheld as valid and constitutional.
- For the most part, state and local agencies have been successful in defending against legal challenges. Western States Paving Company, however, was successful in challenging the Washington State Department of Transportation’s implementation of the Federal DBE Program.
- Many state and local agencies, especially those in the West (i.e., states within the Ninth Circuit), made adjustments in their implementation of the Federal DBE Program to comply with the United States Ninth Circuit Court of Appeals decision in the *Western States Paving* case, and in accordance with the Official USDOT Guidance issued after the decision.
- The Ninth Circuit Court of Appeals held California Department of Transportation’s implementation of the Federal DBE Program was valid and complied with the decision in *Western States Paving*.

Individual companies and trade associations have also challenged the constitutionality of state or local government Minority Business Enterprise and Women Business Enterprise (MBE/WBE) programs related to non-federally funded contracts operated by state and local agencies. The legal issues surrounding non-federal programs that encourage minority- and women-owned business participation in transit agency contracting are discussed later in this appendix.

**Examples of Neutral Efforts in the Federal DBE Program.** Examples of neutral remedies used in operation of the Federal DBE Program include:

- Providing classes, training sessions, or online training;
- Training academies and general training courses;
- One-on-one business assistance from state DOT staff or consultants;
- Reimbursement for training or other expenses;
- Mentor-protégé programs;
- Business development programs;
- Dissemination of DBE directory;
- Routine notification of DBEs of contract opportunities;
- Meet and greets with public sector staff;
- General networking events with primes;
- DBE conferences and events;
- Project-specific outreach events;
- Prompt payment and return of retainage requirements;
- Small contract bidding restricted to small businesses;
- Unbundling of contracts suitable for bidding by DBEs as primes;
- Small business contract goals; and
- Other efforts to increase DBE participation as primes (National Academies of Sciences, Engineering, and Medicine 2019).
Nondiscrimination Provisions and Prohibitions on Adverse Effects in Transit Activities

Federal regulations pertaining to Title VI and Environmental Justice require certain actions regarding nondiscrimination and avoiding adverse effects on certain groups across all transit agency activities.

Section 601 of Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, or national origin under any program or activity receiving federal financial assistance. It also prohibits exclusion from participation in or being denied the benefits of any such program or activity based on these personal characteristics.

Executive Order 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” was signed in 1994. The U.S. DOT Order 5610.2(a) “Actions to Address Environmental Justice in Minority Populations and Low-Income Populations” outlines how it applies Environmental Justice (EJ) principles (77 FR 27534, (May 10, 2012)). Any transit agency receiving FTA funds must incorporate EJ principles into its transportation decision-making and environmental review.

Groups Considered in the Requirements. As summarized above, Title VI focuses on nondiscrimination based on:

- Race and color; and
- National origin (particular nation in which a person was born, or where the person’s parents or ancestors were born).

It also pertains to denial of meaningful access for limited English proficient (LEP) persons.

EJ regulations pertain to actions that will have a disproportionately high and adverse effect on:

- Minority populations; or
- Low-income populations.

Definitions of “minority persons” in FTA Circular C 4703.1 are as follows:

- American Indian and Alaska Native;
- Asian;
- Black or African American;
- Hispanic or Latino; and
- Native Hawaiian or Other Pacific Islander.

FTA Circular C 4703.1 explains that “low-income populations” generally means a group of low-income persons who live in geographic proximity. “Low-income” is defined as median household income at or below the U.S. Department of Health and Human Services poverty guidelines (FTA Circular C 4703.1, p. 7 (Aug. 15, 2012)).

Prohibited Actions. Beyond the differences in groups included in the regulations, Title VI and EJ regulations have a somewhat different focus.

Title VI prohibits practices that have discriminatory effects. The Circular includes the following definition of discrimination:

“Any action or inaction, whether intentional or unintentional, in any program or activity of a Federal aid recipient, subrecipient, or contract that results in disparate treatment, disparate impact, or perpetuating the effects of prior discrimination based on race, color, or national origin.”
Disparate treatment is defined as:

“Actions that result in circumstances where similarly situated persons are intentionally treated differently (i.e., less favorably) than others because of their race, color, or national origin.”

Disparate impact is defined as:

“A facially neutral policy or practices that disproportionately affects members of a group identified by race, color, or national origin, where the recipient’s policy or practices lacks a substantial legitimate justification and where there exists one or more alternatives that would serve the same legitimate objectives but with less disproportionate effect on the basis of race, color, or national origin.”

Under Title VI, intentional discrimination based on race, color or national origin is prohibited. Facially neutral (i.e., unintentional) actions that result in discrimination (defined above) on the basis of race, color or national origin also violate U.S. DOT regulations “unless the recipient can show the policies or practices are substantially justified and there is no less discriminatory alternative” (FTA Circular C 4702.1B, p. 6 (Oct. 1, 2012, p. 6)).

EJ regulations only allows U.S. DOT programs, policies or activities that have a disproportionately high and adverse effect on targeted groups if “further mitigation measures or alternatives that would reduce the disproportionately high and adverse effects are not practicable” (FTA Circular C 4703.1, p. 5 (Aug. 15, 2012)). The regulations go on to state that “social, economic (including costs) and environmental effects of avoiding or mitigating the adverse effects will be taken into account” when determining whether mitigation or an alternative is “practicable.”

FTA Circular C 4703.1 defines “disproportionately high and adverse effect” as an effect on a minority population or low-income population that:

- Is predominantly borne by that population, or
- Will be suffered by that population and is appreciably more severe or greater in magnitude than the adverse effect that will be suffered by the non-minority population and/or non-low-income population.

In sum, Federal Title VI and EJ regulations overlap but are still distinct as they apply to different groups and different types of impacts. FTA Circulars C 4702.1B and C 4703.1 explain the commonalities and differences in how transit agencies need to respond to these regulations.

**Service and Fare Equity Analysis.** This appendix does not cover every aspect of a transit agency’s operations affected by Title VI and EJ regulations, which are very broad. One aspect of these regulations merits further explanation: requirements regarding equity in services and fares for fixed route transit providers.

Regulations in Section (3)(iii) Appendix C to 49 CFR Part 21 provide that:

“[n]o person or group of persons shall be discriminated against with regard to the routing, scheduling, or quality of service of transportation service furnished as a part of the project on the basis of race, color, or national origin. Frequency of service, age and quality of vehicles assigned to routes, quality of stations servicing different routes, and location of routes may not be determined on the basis of race, color, or national origin.”

To comply, FTA Circular C 4702.1B explains that all fixed route transit providers must set service standards and policies for each mode of service that identify how “service is distributed across the transit system, and must ensure that the manner of the distribution affords users access to these assets.” This requirement extends to service policies “to ensure service design and operations practices do not result in discrimination on the basis of race, color, or national origin.”
FTA Circular C 4702.1B places requirements on transit providers that operate fixed route service. Although these requirements do not apply, there are other requirements (including ADA) for providers that (a) only operate demand response services and (b) non-profits that only serve their own riders and not the general public.

Basic requirements pertain to any fixed route service transit provider. All fixed route providers must develop quantitative standards for service for each fixed route modes regarding:

- Vehicle load for peak and off-peak (for example, ratio of riders to number of seats);
- Vehicle headway (amount of time between transit vehicles traveling in the same direction on a transit line);
- On-time performance (percentage of runs completed as schedule); and
- Service availability (for example, the percentage of all residents in the service are within a certain distance of the transit service).

They must also develop a policy for the following service indicators:

- Distribution of transit amenities for each mode (seating at stops/stations, shelters and canopies, provision of information, escalators, elevators, and waste receptacles); and
- Vehicle assignment for each mode (age, type of vehicle or type of service provided).

All fixed route operators must develop Title VI Programs that outline system-wide service standards and policies.

Additional requirements apply to transit providers that operate 50 or more fixed route vehicles in peak services and are located in an urbanized area with a population of 200,000 or more. Title VI plans for larger operators must add:

- Demographic analysis of the service area (including demographic and service profile maps and charts);
- Data regarding customer demographics and travel patterns collected from passenger surveys (race, color, national origin, English proficiency, language spoken at home, household income, and travel patterns);
- Results of the monitoring program of service standards and policies (including analysis of performance regarding routes for disproportionately minority-serving routes compared with non-minority serving routes);
- Description of the public engagement process for setting the major service change policy and disparate impact policy; and
- Results of equity analyses that examine effects of major services changes and/or fare changes (including analysis of any disparate impacts of service or fare changes on the basis of race, color, or national origin).

Larger operators must also document their board’s awareness and approval of related policies and equity analyses.

Although low-income populations are not included under Title VI, FTA Circular C 4702.1B requires transit providers to evaluate service equity for low-income populations including whether they will bear a disproportionate burden of service or fare changes.

**Incorporating EJ Principles into NEPA Process.** The National Environmental Policy Act (NEPA) requires consideration of environmental and other impacts in decision making regarding major federal actions (42 U.S.C. § 4321 et seq.). Federal regulations direct agencies to take certain actions, including examining ways to “avoid, minimize, or mitigate adverse effects of these actions upon the quality of the human environment,” (40 CFR § 1500.s) consider the “social, economic, and environmental impacts of the proposed transportation improvement,” (23 CFR § 771) and encourage public involved in these decisions (40 CFR § 1500.2).

EO 12898 directs agencies to ensure that environmental reviews under NEPA address disproportionately high and adverse effects on minority populations and low-income populations.
FTA Circular C 4703.1 describes how EJ should be addressed in all NEPA decision-making for projects involving federal funding. FTA has issued regulations in 23 CFR Part 771 that address review under NEPA. A review can take the form of an Environmental Impact Statement (EIS), Environmental Assessment (EA) or a Categorical Exclusion (CE), which describe actions that do not have a significant environmental effect.

FTA Circular C 4703.1 summarizes the steps that an agency should take as follows.

- Define the project area and identify EJ populations; and
- Identify adverse environmental effects on EJ populations (examples include health and environmental risks, effects on aesthetic values, disruption of community cohesion or economic vitality, displacement of people or businesses, and increased isolation of minority or low-income individuals within a community or from the broader community).

Examining effects on minority and low-income populations includes review of short-term and long-term effects and any mitigation and enhancement measures. Effects can include both adverse effects and positive benefits. FTA Circular C 4703.1 directs agencies to consider “the totality of the circumstances” before determining whether there will be a disproportionately high and adverse effects on minority populations or low-income populations (FTA Circular C 4703.1, p. 46 (Aug. 15, 2012)).

**Nondiscrimination in Service Provision for Persons with Disabilities**

In addition to prohibiting discrimination against persons with disabilities in employment, providers of transportation services must ensure their services, vehicles, and facilities are accessible to persons with disabilities. Unlike EJ, all types and sizes of transit services providers must comply. Certain requirements extend to a private entity for fixed route or demand responsive service that enters an agreement to provide those services for a public transit agency (49 CFR § 37.23).

FTA Circular C 4710.1 explains requirements for transit agencies emerging from the Americans with Disabilities Act (ADA) of 1990 and Section 504 of the Rehabilitation Act of 1973 (FTA Circular C 4710.1 (Nov. 4, 2015)). Federal regulations are set forth in 49 CFR Parts 27, 37, 38, and 39.

**Groups Considered in the Requirements.** Disability is defined as a physical or mental impairment that substantially limits one or more of the major life activities of an individual. Further “physical or mental impairment” includes a physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting the body as well as any mental or psychological disorder. The definitions specifically include emotional illness, drug addiction and alcoholism (49 CFR § 37.3).

**Requirements and Prohibited Actions.** In addition to providing services, there are requirements for a transit provider regarding:

- Use and maintenance of accessibility-related equipment or features (such as lifts, ramps, lighting, elevators, platforms and signage);
- Allowing service animals to accompany individual with disabilities (defined as an animal individually trained to work or perform tasks);
- Allowing an individual with a disability to travel with a respirator or portable oxygen supply (with certain restrictions);
- Providing information to individual with disabilities through accessible formats and technology;
- Providing training to transit personnel about proper assistance for persons with disabilities; and
- Making reasonable modifications in policies and practices to avoid discrimination on the basis of disability (with certain exceptions).

There are certain situations where a transit provider can deny service, such as when the “individual engages in violent, seriously disruptive, or illegal conduct, or represents a direct threat to the health or safety of others” (49 CFR § 37.5(h)).
FTA Circular C 4710.1 also provides information specific to:
- New construction of transportation facilities and alterations of existing facilities;
- Design of new, used and remanufactured transit vehicles;
- Service provision on fixed routes (such as priority seating and stop announcements);
- Provision of demand responsive services and paratransit services;
- Services provided by passenger ferries;
- Transit services provided by monorails, trams and other less common vehicles; and
- Processes for tracking and resolving complaints from persons with disabilities.

Federal, State and Local Limitations Regarding Race and Gender Preferences in Employment and Contracting

Public sector decision-making that consider factors such as race or gender can also be subject to legal challenge in federal or state court. These legal constraints differ by group (race compared with gender or physical ability, for example) and by state. For example, states such as Arizona, California, Louisiana and Washington prohibit or limit a state or local government’s use of preferences based on race in employment and contracting (unless required to receive federal funds).

These issues are extensive and merit consideration in their own study, and they are only summarized here.

Title VII

Although Title VII prohibits discrimination in employment based on race and gender, a voluntary race- or gender-conscious program is permissible if (1) there is a showing of a “manifest imbalance” in the work force; (2) the plan does not “unnecessarily trammel[ ]” the rights of members of the non-preferred class or “create an absolute bar to their advancement,” and (3) the plan does no more than is necessary to attain a balance (Doe v. Kamehameha Sch./Bernice Pauahi Bishop Estate, 470 F.3d 827, 840 (9th Cir. 2006) (citing Rudebusch v. Hughes, 313 F.3d 506, 520-21 (9th Cir. 2002)). This analysis is the same for distinctions based on race or gender (Rudebusch, 313 F.3d at 520).


Manifest Imbalance. According to U.S. Supreme Court precedent, to justify a race- or gender-conscious program there must be a “manifest imbalance” that reflects underrepresentation of minorities or women in “traditionally segregated job categories” (Rudebusch, 313 F.3d at 520). More recently, the Ninth Circuit Court of Appeals has stated the requirement more simply as a “manifest imbalance in the work force” (Doe, 470 F.3d at 840; Rudebusch, 313 F.3d at 521). This standard assures that race or gender will be considered in a manner consistent with Title VII’s purpose of eliminating the effects of employment discrimination, while ensuring that the interests of non-preferred individuals will not be unduly infringed (Johnson, 480 U.S. at 632; Davis v. City & County. of San Francisco, 890 F.2d 1438, 1448 (9th Cir. 1989)).

For jobs that do not require special expertise or for job training programs, the court compares the percentage of minorities or women in the workforce with the percentage in the area labor market or general population (Johnson, 480 U.S. at 631-32 & n.10; Davis, 890 F.2d at 1448). For jobs requiring special expertise, the comparison is with the labor force possessing the relevant qualifications (Johnson, 480 U.S. at 632).
Statistics are used to establish a manifest imbalance (Johnson, 480 U.S. at 630, 632-33 n.11). The employer need not point to its own prior discriminatory practices (Johnson, 480 U.S. at 630, 632-33 n.11). In the case of a voluntary race- or gender-conscious program, as long as there is a “statistical imbalance,” the statistics do not need to meet the higher “prima facie” evidentiary standard required under the equal protection (Johnson, 480 U.S. at 632-33 & n.11). As the U.S. Supreme Court explained in Johnson v. Transp. Agency, Santa Clara County, application of the “prima facie” standard in Title VII cases “could inappropriately create a significant disincentive for employers to adopt an affirmative action plan” (Johnson, 480 U.S. at 632-33). However, the Supreme Court has not defined what is mathematically required to establish a “manifest” or “statistical” imbalance. Regardless of what is required to show such an imbalance under Title VII, employers will have to meet the higher “prima facie” evidentiary standard since individuals seeking to challenge the program would likely bring claims under both Title VII and the Equal Protection Clause. That higher “prima facie” standard is discussed under the Equal Protection analysis section of this appendix.

**Unnecessary Trammel.** A plan is less likely to “unnecessarily trammel” the rights of the non-preferred class if there are no quotas, race and/or gender is only one factor that is considered, and minorities and women must be qualified and must compete with other qualified applicants (Johnson, 480 U.S. at 637-38; Higgins v. City of Vallejo, 823 F.2d 351, 357 (9th Cir. 1987)).

Title VII does not prohibit quotas in race- or gender-conscious plans. For example, in United Steelworkers of America v. Weber, the Supreme Court upheld a plan requiring that 50 percent of new trainees be black (443 U.S. at 199, 208; see also Davis, 890 F.2d at 1448-49 (affirming voluntary consent decree mandating the promotion of a certain number of minorities, following Weber)). Because Weber involved a private, not public, employer, there was no equal protection analysis (443 U.S. at 200). However, quotas will likely run afoul of the Equal Protection Clause (Bakke v. Regents of Univ. of Cal., 18 Cal. 3d 34, 62 (1976)). Further, in the post-Weber Title VII case of Johnson v. Transp. Agency, Santa Clara County, the Supreme Court emphasized the lack of quotas. Thus, it is best for a public agency to steer clear of quotas and focus on race and/or gender as one of many factors in evaluating qualified candidates.

Another relevant factor to the “unnecessarily trammel” analysis is whether the plaintiff has “absolute entitlement” to the position (Johnson, 480 U.S. at 638; Higgins, 823 F.2d at 357). For example, if the decision-maker has authority to promote or hire from the top candidates who receive the highest score on an exam or interview, then the number one candidate obviously is not entitled to the position (Johnson, 480 U.S. at 638; Higgins, 823 F.2d at 357). Further, at least in the context of promotions, the people who are not promoted should still retain their same jobs, salaries, seniority, and eligibility for future promotions (Johnson, 480 U.S. at 638; Higgins, 823 F.2d at 357).

**Attain a Balance.** A plan should be temporary and designed to “attain a balanced work force,” but “not to maintain one” (Johnson, 480 U.S. at 639; Doe, 470 F.3d at 840). Plans with a stated goal of attaining a balanced work force, and with a case-by-case approach that will lead to gradual changes — like those where race and gender is only one factor to be considered for qualified applicants — do not need a specific end date or an express assurance to show they are temporary (Johnson, 480 U.S. at 639-40; Higgins, 823 F.2d at 357). If a program has quotas (which, as noted, is not recommended), then it should contain an end date to assure it is temporary (Johnson, 480 U.S. at 639-40).

**Constitutional Standards for Affirmative Action Programs**

The Equal Protection Clause of the 14th Amendment to the U.S. Constitution also affects the ability of any government entity to use race as a factor in its decision-making. For public transit agencies, this limits voluntary affirmative action programs for employment and minority business enterprise (MBE) programs related to their non-U.S. DOT-funded contracts.
In *City of Richmond v. J.A. Croson Co.*, 488 U.S. at 469 (1989), the U.S. Supreme Court held that local governments may utilize racial classifications only to serve a compelling state interest, and then the method chosen must be narrowly tailored to serve that interest. Thus, the constitutional standard applicable to federal, state, or local governmental programs creating preferences based on race and ethnicity is the strict scrutiny test. While imposing a substantial burden, the *Croson* Court stated that nothing from its decision “precludes a state or local entity from taking action to rectify the effects of identified discrimination within its jurisdiction…. In the extreme case, some form of narrowly tailored racial preference might be necessary to break down patterns of deliberate exclusion” (*Croson*, 488 U.S. at 509). Under the strict scrutiny standard of judicial review, a court evaluates whether the race-based program (1) serves a “compelling governmental interest,” and (2) is “narrowly tailored” to satisfy that interest (*Croson*, 488 U.S. at 469).

**Compelling Governmental Interest.** Although *Croson* requires that a public employer must have a “strong basis in evidence” of discrimination when defending an affirmative action plan, the Supreme Court has never required that, before implementing affirmative action, the employer must have already proved that it has discriminated. On the contrary, the Supreme Court has held that formal findings of discrimination need neither precede nor accompany the adoption of affirmative action (*Wygant v. Jackson Bd. of Educ.*, 476 U.S. 267, 286 (O’Connor, J., concurring) (rejecting any formal findings requirement); *id.* at (Marshall, J., dissenting, joined by Brennan and Blackmun, JJ.) (stating that “the Court is correct to recognize, as it does at least implicitly today, that formal findings of past discrimination are not a necessary predicate to the adoption of affirmative-action policies”); *id.* at 313 (Stevens, J., dissenting) (arguing that a showing of past discrimination is not necessary to finding a compelling interest in racial classifications with purely prospective effect); see also, *Donaghy v. Omaha*, 933 F.2d 1448, 1459 (8th Cir. 1991). The Supreme Court has required a public employer defending an affirmative action plan to show only that it has “a strong basis in evidence for its conclusion that remedial action was necessary” (*Croson*, 488 U.S. at 500, 109 S. Ct. at 725 (quoting *Wygant*, 476 U.S. at 277, (plurality opinion); see also *Donaghy v. Omaha*, 933 F.2d 1448, 1459 (8th Cir. 1991)).

One way a governmental entity can meet its evidentiary showing is by demonstrating gross statistical disparities between the proportion of minorities hired and the proportion of minorities willing to do the work (*Croson*, 488 U.S. at 509). Additionally, a government entity may establish its compelling interest by presenting evidence of its own direct participation in racial discrimination or its passive participation in private discrimination in a system of racial exclusion practiced by elements of a local industry (*Croson*, 488 U.S. at 492).

Courts have thus upheld remedial affirmative action plans where the public entity presented evidence of a “statistical disparity between the number of qualified minority contractors willing and able to perform a particular service and the number of such contractors actually engaged by the locality or the locality’s prime contractors” (*Croson*, 488 U.S. at 509).

**Narrowly Tailored.** Even if a jurisdiction has a strong basis in evidence to believe that race-based measures are needed to remedy identified discrimination, the program must be narrowly tailored to that evidence. Under the strict scrutiny test, “the means chosen [must] ‘fit’ [the] compelling goal so closely that there is little or no possibility that the motive for the classification was illegitimate racial prejudice or stereotype” (*Croson*, 488 U.S. at 492; see also, *Engineering Contractors Ass’n*, 122 F.3d at 906). *Croson* sets forth four factors for determining whether a race-based affirmative action program is narrowly tailored. The factors include (1) the utilization of race-neutral measures prior to the adoption of a race conscious measure, (2) the basis offered for the percentage selected, (3) the presence of waivers and flexibility, and (4) whether the ordinance or statute is geographically tailored and not over-inclusive (*Croson*, 488 U.S. at 507-508).
Consideration of race-neutral alternatives prior to the adoption of race-conscious measures is critical. In *H.B. Rowe Co., Inc. v. Tippett*, 615 F.3d 233, 52–53 (4th Cir. 2010), the court concluded that the State of North Carolina gave serious good faith consideration to race-neutral alternatives prior to adopting its statutory scheme that required a contractor to demonstrate “good faith efforts” to obtain a predesignated level of minority participation in a state-funded road construction project contract. The State of North Carolina had set up a Small Business Program that favored small businesses for highway construction procurement contracts of $500,000 or less. The program also allowed a waiver to institutional barriers of bonding and licensing requirements on such contracts and sought to assist disadvantaged business enterprises with bookkeeping, accounting, marketing, bidding, and other aspects of entrepreneurial development.

Race-based programs and remedies must also maintain flexibility with regard to local conditions in the public and private sectors (See, e.g., *Midwest Fence*, 840 F.3d 932, 937-939, 947-954 (7th Cir. 2016); *H. B. Rowe*, 615 F.3d at 252-255; *Sherbrooke*, 345 F.3d at 971-972; *Associated Gen. Contractors of Ca., Inc. v. Coalition for Economic Equality* (“AGC of Ca.”), 950 F.2d 1401, 1417 (9th Cir. 1991); *Coral Constr. Co. v. King County.*, 941 F.2d 910, 942 (9th Cir. 1991); *Cone Corp. v. Hillsborough County*, 908 F.2d 908, 917 (11th Cir. 1990)). Courts have thus suggested project-by-project goal setting and waiver provisions (See, e.g., *Builders Ass’n of Greater Chi. v. City of Chi.*., 298 F. Supp. 2d 725, 740 (N.D. Ill. 2003) (“Waivers are rarely or never granted…The City program is a rigid numerical quota…formulistic percentages cannot survive strict scrutiny.”)) as a means of ensuring fairness to all vendors (*Sherbrooke*, 345 F. 3d at 972, quoting *Grutter v. Bollinger*, 539 U.S. 306 (2003); see also *Coral Constr.*, 941 F.2d at 923). Also, “review” or “sunset” provisions are strongly suggested components for a race-based program to guarantee that remedies do not outlive their intended remedial purpose (*Peightal v. Metro. Dade County.*, 26 F.3d 1545, 1559 (11th Cir. 1994)). Finally, race-based programs must be limited in its geographical scope to the boundaries of the enacting jurisdiction (*Coral Constr.*, 941 F.2d at 925) and its remedies should only be available to groups for which there was evidence of discrimination (*Associated Gen. Contractors of Am. v. Cal. DOT*, 713 F.3d 1187, 1198-1199 (9th Cir. 2013). (See also, e.g., *H. B. Rowe*, 615 F.3d at 252-255; *Western States Paving Co. v. Wash. State DOT*, 407 F.3d 983, 998 (9th Cir. 2005); *Sherbrooke Turf, Inc.*, 2001 WL 1502841 (unpublished opinion), aff’d 345 F.3d 964 (8th Cir 2003); *AGC of Ca.*, 950 F.2d at 1417).

**Gender-Based Programs.** The U.S. Supreme Court has remained silent with respect to the appropriate standard of review for gender-conscious programs such as gender preferences in employment or voluntary women-owned business enterprise (WBE) programs for non-federally funded contracts. Because the only guidance the Supreme Court has provided for deciding affirmative action cases comes from opinions analyzing race-based programs under strict scrutiny, the proper level of scrutiny for analyzing gender-based affirmative action is unclear. In other contexts, however, the Supreme Court has ruled that gender classifications are not subject to the rigorous strict scrutiny standard applied to racial classifications. Instead, gender classifications are subject only to an “intermediate” level of review, regardless of which gender is favored (see, e.g., *Craig v. Boren*, 429 U.S. 190 (1976) (finding statutory sex classifications subject to intermediate scrutiny); *Mississippi University for Women v. Hogan*, 458 U.S. 718 (1982) (requiring an “exceedingly persuasive justification” for sex-based classification to be valid); *United States v. Virginia*, 518 U.S. 515 (1996) (applying standard of “exceedingly persuasive justification” in striking down Virginia Military Institute’s males only admissions policy)). Lower courts are thus split on this issue.
The Sixth Circuit, as well as the Georgia Supreme Court, have subjected gender-based affirmative action programs to strict scrutiny while analyzing all other gender-based classifications under intermediate scrutiny (see Brunet v. City of Columbus, 1 F.3d 390, 403-04 (6th Cir. 1993); Vogel v. City of Cincinnati, 959 F.2d 594 (6th Cir. 1992); Long v. City of Saginaw, 911 F.2d 1192 (6th Cir. 1990); Conlin v. Blanchard, 890 F.2d 811 (6th Cir. 1989); American Subcontractors Ass’n v. City of Atlanta, 376 S.E.2d 662, 664 (Ga. 1989) (applying strict scrutiny to program favoring minority and female-owned enterprises in awarding city contracts)).

In contrast, the Third, Ninth, Tenth, and Eleventh Circuits used intermediate scrutiny to analyze all gender-based classifications, including affirmative action (see Contractors Ass’n v. City of Phila., 6 F.3d 990, 1000-01 (3d Cir. 1993); Coral Constr., 941 F.2d at 930; Concrete Works, Inc. v. City & County of Denver, 36 F.3d 1513, 1519 (10th Cir. 1994); Engineering Contractors Ass’n v. Metropolitan Dade County, 122 F.3d 895, 907-08 (11th Cir. 1997), cert. denied, 118 S. Ct. 1186 (1998); Ensley Branch, NAACP v. Seibels, 31 F.3d 1548 (11th Cir. 1994)).

The Eighth Circuit has similarly held that programs with gender-based classifications should be evaluated for constitutionality under the more relaxed level of intermediate scrutiny (see Geyer Signal, 2014 U.S. Dist. LEXIS 43945, n. 4 (“The DBE Program also contains a gender-conscious provision, a classification that would be subject to intermediate scrutiny.”), (citing Nguyen v. I.N.S., 533 U.S. 53, 60 (2001)); see also Duckworth v. St. Louis Metro Police Dept., 491 F.3d 401, 406 (8th Cir. 2007) (“For a gender-based classification to withstand equal protection scrutiny, it must be established at least that the challenged classification serves important governmental objectives and that the discriminatory means employed are substantially related to the achievement of those objectives.”) (emphasis added; citation omitted)).

Because the measure of evidence required to satisfy intermediate scrutiny is less than that necessary to satisfy strict scrutiny, courts applying the intermediate standard to gender-based programs have all reasoned that affirmative action may be upheld even absent proof that the government entity adopting the program necessarily discriminated against women (Coral Constr., 941 F.2d at 931-932; See Eng’g Contractors Ass’n, 122 F.3d at 910). Under the intermediate scrutiny, the “inquiry turns on whether there is evidence of past discrimination in the economic sphere at which the affirmative action program is directed” (Eng’g Contractors Ass’n, 122 F.3d at 910, quoting Ensley Branch, 31 F.3d at 1581).

In addition, under intermediate scrutiny, the program need only be “substantially related” to the goal of redressing the effects of prior discrimination, and, contrary to strict scrutiny, this does not require that the numerical goals be closely tied to the proportion of qualified women in the market (Eng’g Contractors Ass’n, 122 F.3d at 929). Further, because there is no requirement that gender classifications be “narrowly tailored,” the preference may extend to some fields where women were not disadvantaged, provided that, overall, the women benefitted actually suffered a disadvantage (Coral Constr., 941 F.2d at 932 (holding that King County’s preference for women was justified even if it included women in all industries contracting with the county); Associated Gen. Contractors of Cal. v. City & County. of S. F., 813 F.2d 922, 941–42 (9th Cir. 1987) (holding that although broad preferences can reinforce harmful stereotypes, they may still be upheld because, unlike racial preferences, there is no requirement that they be “narrowly” tailored to the government’s objective)).

Two principal guidelines thus mark the boundaries of intermediate scrutiny evidentiary analysis. First, there must be sufficiently probative evidence of “societal discrimination” against women in the “relevant economic sector” (Eng’g Contractors, 122 F.3d at 910). Second, the evidence must “show that the preference rests on evidence-informed analysis rather than on stereotypical generalizations” (Eng’g Contractors, 122 F.3d at 910).
Sufficiently probative evidence of gender discrimination can support remedial actions by a government, provided that the means are substantially related to the important state interest of ameliorating such discrimination. Means that are “substantially related” to the important interest of remedying gender discrimination generally include gender-neutral provisions to encourage the participation of women, flexible participation goals rather than fixed quotas that are tied to the particular industry or economic sector where the discrimination exists, and some type of mechanism to either track the persistence of discrimination or limit the program’s duration.

The Requisite Statistical Data and Anecdotal Evidence to Justify Racial and Gender Preferences Under Croson. Because the remedying of past discrimination is widely accepted as a compelling interest, “the true test of an affirmative action program is … the adequacy of the evidence of discrimination offered to show that interest” (Paradise, 480 U.S. at 171 (1987) (plurality opinion); see, e.g., United States v. Sec’y of Hous. & Urban Dev., 239 F.3d 211, 219 (2d Cir. 2001); Adarand, 228 F.3d 1147, 1177-78 (10th Cir. 2000), cert. granted, 532 U.S. 941 (2001), cert. dismissed, 534 U.S. 103 (2001) (per curiam); Walker v. City of Mesquite, 169 F.3d 973, 982 (5th Cir. 1999); Ensley Branch, 31 F.3d at 1569; Hayes v. N. State Law Enforcement Officers Ass’n, 10 F.3d 207, 216 (4th Cir. 1993.).) Under strict scrutiny, a government entity must have had a “strong basis in evidence” for it to conclude that race-based remedial action was necessary (Croson, 488 U.S. at 500 (quoting Wygant, 476 U.S. at 277 (1986) (plurality opinion) (internal quotation marks omitted))). Indeed, a strong basis in evidence is required for a government to demonstrate both a compelling interest and a narrowly tailored remedy (See Croson, 488 U.S. at 510 (“Proper findings in this regard are necessary to define both the scope of the injury and the extent of the remedy necessary to cure its effects.”)).

The Croson Court recognized that this country’s history of private and public discrimination “has contributed to a lack of opportunities for black [and other minority] entrepreneurs” (Croson, 488 U.S. at 499). Nevertheless, it held that an “amorphous claim” of past discrimination within an industry is insufficient (Croson, 488 U.S. at 498). Consequently, Croson rejected as insufficient evidence of discrimination the district court’s finding that minority businesses received less than one percent of the city’s prime contracts, even though minorities constituted one-half of its population (see Croson, 488 U.S. at 499-500. The Court observed that “[i]t is sheer speculation how many minority firms there would be in Richmond absent past societal discrimination .... Defining these sorts of injuries as ‘identified discrimination’ would give local governments license to create a patchwork of racial preferences based on statistical generalizations about any particular field of endeavor.”). The Court found such a comparison to the general population of “little probative value” when “special qualifications are required to fill particular jobs,” such as public construction projects (Croson, 488 U.S. at 501 (quoting Hazelwood Sch. Dist. v. United States, 433 U.S. 299, 307-08 (1977) (internal quotation marks omitted))). To show discriminatory exclusion in a field requiring special skills, the relevant group for comparison, therefore, is the number of qualified minorities (Croson, 488 U.S. at 501-020). Furthermore, it is not enough to demonstrate nationwide discrimination in the construction industry; rather, policy makers must have a “strong basis in evidence” of discrimination within the relevant local industry (See Croson, 488 U.S. at 504).

Moreover, to satisfy either the compelling-interest or narrow-tailoring prong of strict scrutiny, a government must have a strong basis in evidence of discrimination against each racial group included in the remedial plan (See Croson, 488 U.S. at 506). Thus, for example, if a government has sufficient evidence of discrimination against only African-American contractors, it may not include other minority groups as beneficiaries in a contract-preference program (See Croson, 488 U.S. at 506; Builders Ass’n of Greater Chi. v. County of Cook, 256 F.3d 642, 646 (7th Cir. 2001)).

Government entities wishing to implement race- and/or gender-conscious programs must construct a strong evidentiary framework to stave off legal challenges and ensure compliance with the stringent requirements of Croson’s strict scrutiny standard.
Preferences for Other Groups. A preference program for public agency employment or contracting can be legally challenged even if the program does not consider race, ethnicity or gender. However, such programs are much more easily defended. The public entity generally need only show that it has a “rational basis” for such a program, depending upon its components and how it is implemented.

Needing only to meet the rational basis test makes it easier to defend public sector employment preferences for persons with disabilities, veterans or other groups not defined based on race, ethnicity or gender. Contracting programs that give preferences or set goals for companies owned by groups such as persons with disabilities, veterans or service-disabled veterans would be more easily defended than programs that provide preferences to minority- or women-owned businesses.

It is important to note that legal restrictions can apply to preferences based on geographic location of the individual or business. And, some types of geographic preferences are prohibited when using federal funds.
APPENDIX B

Literature Review

The study team began this assignment by reviewing TRB and other research regarding equity, diversity and inclusion. This research focuses on workforce, procurement and other issues for transit agencies. It also presents examples of work regarding other types of organizations. As this area of research is extensive, the literature focuses on three areas, with just the first pertaining to TRB research:

- TRB literature on equity and inclusion (across topic areas).
- Other research regarding employment.
- Research on other issues pertaining to transit agencies.

TRB Literature on Equity and Inclusion

There is considerable TRB-sponsored research that examines equity, diversity and inclusion issues related to transportation.

Workforce

The study team examined the following TRB research on workforce diversity for transit agencies published since 2000.

TCRP Synthesis 46: Diversity Training Initiatives

This 2003 report summarizes diversity training initiatives in transit agencies, includes a literature review, as well as data collected via survey responses from 22 transit agencies and 10 case studies (National Academies of Sciences, Engineering, and Medicine 2003).

Research collected from participants indicate that diversity initiatives successfully increased the recruitment, retention and promotion of women and minorities in the transit industry. Additionally, these diversity efforts correspond with improved customer satisfaction. Overall, respondents reported a commitment to diversity throughout the public transit organization, including management, operations and service provision.

Although the study found that most diversity initiatives were driven by the human resources department, there was also strong commitment to diversity among agency leadership including board members, executives and general managers. Commitment to diversity was seen in diversity statements in agency publications, along with print media and mission and value statements. The sense that diversity improved business was seen through emphasis on diversity in policies, procedures and strategic business plans.

This report also found that diversity initiatives within the transit industry vary. The authors cite variation within policy development and a lack of standardization with regard to diversity programs.
The authors note that diversity trainings, “have moved beyond race and sex to incorporate cultural, religious, geographic, economic, socioeconomic, and political differences, as well as consideration of people with varying abilities and disabilities.” The researchers also note that many transit agencies have diversity plans, committees, task forces and/or staffed positions to focus on the implementation of diversity initiatives within their organization. Additionally, this report explains the importance of diversity within the transit industry, to improve both business and the workplace.

This report includes a review of various definitions of diversity utilized by scholars, as well as private and public agencies. Many definitions of diversity include a broad range of group or individual differences, differences in identity and “otherness.” Some include different dimensions of diversity, with the “primary characteristics” including age, gender, race/ethnicity, physical and mental ability and sexual orientation, while the “secondary characteristics” include aspects that may change such as education, income, religious beliefs, work experience, etc. Others, however, incorporate the value of diversity into their definition. For example, Texas Instrument defines diversity as how successfully they use the talents of individuals with different backgrounds, experiences and perspectives.

Study authors conducted a survey of transit agencies. These agencies were asked about the definition of diversity within their organization, diversity initiatives within their organization, how diversity is managed, organizational barriers to diversity and an overall rating of diversity efforts within the agency.

**Defining Diversity.** Answers relating to definitions of diversity identified who was held accountable for ensuring diversity in the agency.

- Survey respondents reported that diversity was included in a variety of places within the organization and the managerial hierarchy, including in policies and procedures, mission statements, goals and objectives, employee recruitment and training plans.
- Accountability for diversity initiatives were primarily the responsibility of the human resources department, although some agencies included affirmative action, civil rights, equal opportunity, and other departments that were charged with overseeing the overall implementation of diversity initiatives.
- The survey also asked respondents to identify diversity within the agency hierarchy. Respondents indicated diversity within many aspects of transit agencies, including with executive, senior and middle management, first-line supervisors, technical and professional positions, and driver and mechanic positions.
- Nearly all respondents reported that their agency had experience with employees filing internal and external discrimination complaints, grievances and lawsuits.
- Respondents reported that diversity within the agency was associated with different resource allocation. For example, these agencies linked diversity to investment in the Federal Disadvantaged Business Enterprise Program, incentives to increase the recruitment of diverse employees, providing internships to women and minorities, and funding diversity training and staff to manage the implementation of diversity efforts.

**Diversity Initiatives.** The survey also addressed types of diversity initiatives within transit agencies.

- The vast majority of respondents reported programs to increase diversity awareness, such as seminars and workshops, cultural awareness, sensitivity training and diversity orientation programs. Others reported that diversity initiatives took the form of diversity councils or task forces, diversity plans, diversity vision statements and diversity as a core business strategy.
- Some transit agencies cited mentoring networks, programs to improve work/life balance, cultural celebrations, diversity poster programs or other initiatives to enhance diversity.
- Others noted that they utilize organizational assessments, staff retreats, and employee satisfaction and climate surveys to identify the need for further diversity initiatives.
When asked how agencies measure the success of these diversity initiatives, respondents cited that meeting their affirmative action goals or reducing the number of charges of discrimination, employee and Equal Employment Opportunity Commission complaints, grievances and employee management conflicts were common measures of success. Some respondents noted that diversity efforts were measured by how closely the makeup of agency employees match the demographics of the community.

More broadly, however, some agencies responded that they measured the success of initiatives by the number of employees trained in diversity awareness, the number of women and minorities promoted, the number of participants with a particular cultural event, or the number of networking channels available for the promotion of internal staff.

Managing Diversity. Included in the survey were questions relating to managerial methods of diversity within the transit agency. In this section, respondents listed specific programs and activities that promoted diversity within the agency. The report summarizes initiatives in:

- Hillsborough Area Regional Transit Agency (HART);
- Los Angeles County Metropolitan Transit Authority (LACMTA);
- ATC-Phoenix;
- Alameda-Contra Costa (AC) Transit Agency;
- Greater Cleveland Regional Transportation Agency (GCRTA);
- Port Authority of Allegheny County (PAAC);
- Metropolitan Transit Authority of Harris County (Houston-METRO);
- Massachusetts Bay Transit Authority (MBTA);
- Bay Area Rapid Transit (BART); and
- Pierce Transit Agency.

Many of these agencies reported training programs, events and celebrations, committees and task forces, and recruitment efforts that emphasize diversity.

Communicating Diversity. The survey instrument included information about how diversity initiatives and goals are communicated within the agency. Common responses included:

- New hire orientation programs.
- Employee participation in community-based events.
- Professional associations (including APTA and COMTO).
- On-site speakers and facilitators.
- All-staff meetings.
- In-service training, seminars and workshops.
- Newsletters, magazines, pamphlets and other printed materials.
- Focus groups and video trainings.
- Counseling and employee assistance programs in the case of workplace conflict.

Additionally, some transit agencies have included diversity initiatives in their strategic operational goals. For example, transit agencies provided technical assistance for diverse vendors (such as disadvantaged business enterprises) who worked for the agency. Some transit agencies also reported strategic operational goals aimed at ensuring diversity within work teams, task forces, committees and other groups of employees. Other respondents cited strategic operational goals that established performance measures of diversity initiatives.
Organizational Barriers to Diversity. Survey respondents were also asked to identify barriers within the organization that limited diversity initiatives. Although some agencies reported no barriers, others responded that informal communication networks were the most significant barrier in their agency.

On a related note, some referenced informal rules, socialization protocols and expected managerial style acted as barriers to diversity initiatives. When asked about any personal barriers that limit success of diversity programs, respondents cited mode of communication, along with age, race, perceived personal style, perceived socioeconomic status, perceived level of education and perceived potential for leadership.

Rating of Diversity Initiatives. Finally, respondents were asked to rate their agency’s diversity initiative implementation efforts. Many respondents rated their agency’s efforts as “very aggressive.” Additionally, many reported that their agency had diversity goals in place, included diversity as part of their overall strategic plan and mission statement, and noted it as a core value of their agency. Respondents reported that diversity goals are in place and must be met by management, and no agency reported that it did not value diversity. Overall, few respondents reported the need for increased coordination of diversity initiatives.

Case Studies. The researchers also explore differences in workplaces as having an impact on the success of such diversity initiatives. The case studies include four agencies (HART, WMATA, BART and PAAC) and examine committees or task forces designed to assist with diversity initiatives. The authors note the following activities as vital to the committees or task forces:

- Governance or authority;
- Leadership;
- Developing diverse teams within the agency;
- Training and staff development;
- Planning diversity initiatives; and
- Communicating diversity initiatives.

Finally, the case studies identify similar barriers to diversity implementation as those identified by the survey.

This report concludes with an interview with Dr. Benjamin Harrison, who has experience designing diversity initiatives, and case studies of diversity initiatives within the private sector.

*TCRP Report 77: Managing Transit’s Workforce in the New Millennium and TRB Special Report 275: The Transportation Workforce Challenge*

Some past TCRP reports that examined transit industry workforce needs included elements regarding employee diversity. Two studies from the early 2000s are discussed below.

Managing Transit’s Workforce in the New Millennium examined the transit industry’s workforce needs and common practices as of 2002 (Transit Cooperative Research Program 2002). Researchers present the results of a literature review, as well as survey responses and in-depth case studies. The researchers note a shortage of quality and quantity of staff within the transit industry, and (1) address the industry’s workforce needs and prospects, (2) propose strategies to recruit, develop and retain a qualified workforce and (3) create tools and guidelines for monitoring workforce needs.

This report includes a review of best practices of recruiting, training and retaining a well-qualified workforce within the transit industry and analyzes how many transit agencies were using these practices.
As of 2002, transit agencies were competing for workers with other organizations in a booming economy. Research suggests that employers place as much emphasis on marketing themselves as desirable places to work as they do on marketing themselves to consumers. These practices have included flexible work schedules, offering pet insurance, sign-on bonuses and employee-referral programs. Research shows, however, that employees most value challenging work, feeling valued and listened to, opportunities for growth and competitive salaries. Additionally, previous literature suggests that the same factors that attract employees also contribute to employee retention. The consensus within the research is that the majority of employees leave organizations due to negative relationships with their supervisors. Because of this, many organizations now examine their supervisors more closely and have increased the preparation and accountability required for managers within their organization.

Research also suggests that employees who are recruited from inside sources (such as former employees or internal job postings) are more likely to stay employed longer than workers recruited by other means. Additionally, researchers have highlighted the need for tailoring jobs and job postings based on career life cycles. There are multiple stages, including career establishment (where the main motivators are salary, training and corporate structure), family building (where employees value work-life balance, opportunities for advancement and competitive wages) and closure (where people are primarily concerned with pension plans, elder care and personal work interests). By adjusting job positions and recruiting tactics based on these phases, organizations may be more successful at recruiting qualified employees.

Employees consistently named three factors as vital for employee retention: the quality of relationship with their supervisor or manager, the ability to balance work and home life, and the feeling of making a difference at work. Additionally, the vast majority of employees reported that job loyalty is built from contributions to work rather than tenure. Success is based on job responsibilities and accomplishments rather than salaries or titles. Similarly, research has found that employees expect to have formal upward communication systems to ensure their voice is heard, have competent management that creates a positive and respectful culture, and expect to help carry out the organization’s mission.

Survey responses indicated effective use of various recruitment methods, including (from most utilized to least utilized) internal job announcements, newspaper classified advertisements and competitive compensation packages. Respondents also indicated that retention practices were not as formalized as recruitment initiatives. From most identified to least, respondents indicated agencies utilizing formal employee orientation, safety incentives, upward communication and/or feedback, management and leadership development, attendance incentives, rewards for high employee involvement and planned career paths. Training methods were also reported in the study, with efforts including (from most utilized to least) performance-based needs assessment, performance-based instruction, tutoring, self-paced instruction, individualized learning plans and roll over of trainees.

Finally, the survey identified various labor-management partnerships developed by transit agencies. About 50 percent of the largest transit agencies reported labor-management agreements, with about 40 percent of respondents reporting that these agreements were codified in labor-contract provisions. Of the smallest transit agencies, only 11 percent reported labor agreements and none were codified. Outside of these labor-management relationships, respondents also cited apprenticeship programs in labor contracts, hiring into training programs from a union hall and involving unions in employee selection as partnerships used by their agency.
In general, organizations that prioritize employee recruitment and retention are more successful in maintaining a qualified workforce and adapting to changing workforce conditions. The organizational structure of transit agencies may be adapted to better support a high-quality workforce.

- Partnerships between different groups within transit agencies may help to create a qualified workforce. Although such partnerships may take many forms (such as HR partnering with marketing departments to portray the agency as a preferred employer or HR partnering with employees to act as an internal recruitment and retention resource), organizations that prioritize these relationships may benefit more from them.

- Managers may also better maintain a qualified workforce by using more non-traditional recruitment strategies (such as attending career fairs and offering jobs on the spot), or by utilizing a “grow our own” strategy in which agencies recruit interns, or entry-level employees from the community.

- Transit agencies have developed and improved training resources (for example, offering remedial education for workers to qualify for certain positions), and have established connections with community-based workforce-development resources (such as working with welfare-to-work organizations and the Job Corps to train workers, or partnering with local technical schools and community colleges to provide certain trainings to students).

- Management can increase retention, although survey respondents reported that retention strategies were less effective than recruitment and training strategies. Exit interviews, for example, may be used to identify issues relating to employee retention within the organization. Managers may then use this information to make improvements.

- Managers of qualified workforces may also benefit from labor-management partnerships. In the transit industry most such partnerships were a formal labor management committee (LMC), which include the general manager or senior manager of the transit agency and the president of the union. Successful LMCs often have strong relationships and trust, as well as training and accountability on both sides.

The Transportation Workforce Challenge, a 2003 TRB study, focused on workforce in the transit industry and discussed diversity in that context (National Academies of Sciences, Engineering, and Medicine 2003). Diversity was an important consideration in recruiting, training and retention of qualified workers in the transit industry. The authors mention language and cultural training as ways to make diversity succeed. Additionally, the authors conclude that such actions result in expanded applicant pool, reduced employee turnover and improved productivity.

**TCRP Report 120/NCHRP Report 585: Racial and Gender Diversity in State DOTs and Transit Agencies**

This 2007 TRB report examined the state of data collection and reporting regarding racial and gender diversity in transit agencies and state DOTs as of 2006 (National Academies of Sciences, Engineering, and Medicine 2007). The study also summarized literature on promoting, recruiting and retaining a diverse workforce at transit agencies and state DOTs. This report attempted to establish a benchmark of racial and gender diversity, however the researchers determined that the reported data were incomplete and a credible benchmark could not be determined.

The data used to analyze diversity in this report were primarily equal employment opportunity (EEO) data, where agencies reported the number of women and minorities employed within various EEO categories (officials and administrators, professionals, technicians, protective service workers, administrative support, skilled craft workers and service maintenance workers). These data were then compared to what was reported on the FHWA-1392 form (the Federal-Aid Highway Construction Summary of Employment Data form), which includes total employment on Federal-Aid Highway Program projects. This report reviewed data for 52 state Departments of Transportation (all states in addition to Washington D.C. and Puerto Rico) and 50 transit agencies.
The report highlighted the importance of collecting affirmative action plans, as well as utilization and availability analysis of EEO programs. The authors summarized that data should include if an agency is compliant, if data are consistent, if data are comprehensive and if the agency is confident in the data it reports. Of data collected, little analysis could be completed because of what information was reported and how the information was reported.

This report also includes a review of the relevant literature (as of 2006).

The report indicates that state DOTs have two responsibilities: to not exclude women and minorities, and to take steps to attract and retain women and minorities (this responsibility includes the implementation of an affirmative action plan and completing an EEO-4 report). The EEO-4 reports include information by job category, race and salary. Analysis of the data collected found that in general, state DOTs have a high level of compliance with EEO laws and submission requirements.

Federal regulations state that affirmative action plans should include, among others: specific, measurable, attainable hiring and promotion goals with target dates; identification of minorities and women who are qualified or qualifiable to fill jobs; a survey of the labor market area in terms of population makeup, skills and availability for employment; and a procedure that allows employees and applicants to submit allegations of discrimination without fear of reprisal to an impartial body.

Only 58 percent of reporting state DOTs submitted a comprehensive report that included both incumbency numbers (utilization rates) and an availability analysis. Minimum components of an availability analysis include data on state population, labor market in the state (with information by race/ethnicity and gender) and an analysis of how these factors connect to the availability of personnel and jobs within the DOT. These reports should also include target goals for women and minorities in specific occupations.

The study also found discrepancies with the consistency of reported data. These inconsistencies primarily related to the date of availability data, source of availability data, measures of underrepresentation and adverse impacts, geographic and organizational units to assess representation, and racial/ethnic categories used when reporting employment counts.

Overall, the study found overutilization of white men, black men and black women in all occupational categories. White women were underutilized in all occupational categories, while Hispanic men, Hispanic women, Asian women and American Indian women were underutilized in most occupational categories.

The authors provide a series of recommendations based on this analysis. These include:

- Making it easier for agencies to be compliant;
- Providing standardized training and facilitating the sharing of information and best practices among agencies;
- Communicating the key elements of an effective affirmative action plan;
- Increasing accuracy by promoting the improvement of internal monitoring and tracking systems; and
- Making diversity an agency priority by holding everyone accountable for achieving diversity goals.
This 2011 report examined practical resources to recruit and retain minorities for Chief Executive Officer positions at public transportation agencies. The report also addressed specific recruitment models, selection processes and retention practices (National Academies of Sciences, Engineering, and Medicine 2011).

The researchers of this report completed a literature review of research related to recruiting and retaining minorities and women. They found that making diversity a central part of the organization (such as increasing diversity at the executive level or linking diversity to outcomes such as performance evaluations) was a common theme. In terms of recruitment, the authors found that many researchers recommended that recruiters expand where employers search for minority and female candidates to “nontraditional avenues.” There was a common misconception among recruiters and managers that qualified minority candidates do not exist, cannot perform like their counterparts or are not a cultural fit. Others (such as the National Football League and the State of Oregon) require some decisionmakers to consider at least one minority candidate for certain hiring decisions. There was little agreement in the literature about retaining minority executives.

This paper also addressed the financial benefits of prioritizing diversity in hiring. The authors noted that diversity has a positive return on investment (ROI) and discussed the measurement of that ROI.

The researchers also discuss diversity models (which strategically align diversity as a primary company goal) and explain that the consensus within the literature is that firms that are strategically aligned can identify and retain employees better, and also score better on a wide variety of business indicators and employee satisfaction.

This paper outlines six methods for recruiting minority CEOs at public transit agencies. These include:

- Combining internal and external executive recruitment methods;
- Creating diversity executive recruitment programs;
- Requiring a mandatory diverse talent pool;
- Creating succession planning and leadership development programs;
- Leveraging professional associations; and
- Conducting extensive internet searches to identify minority executive candidates (this is the primary method in the private sector).

To increase retention, the authors highlight executive coaching, realistic job previews, mentoring and on-boarding as instrumental in maintaining current employees and limiting turnover.

**Procurement**

TRB studies have also examined the Federal DBE Program and other means to ensure equity in procurement.

**NCHRP Research Report 913: Compendium of Successful Practices, Strategies, and Resources in the U.S. DOT Disadvantaged Business Enterprise Program**

This report outlines factors that make Disadvantaged Business Enterprises (DBEs) successful in the Program, initiatives used by state departments of transportations (DOTs) found to help DBEs be successful and further keys to DBE success. In this study, researchers include DBEs that have “graduated” from the program, meaning that firm owners no longer meet the program eligibility requirements, which include gross revenue and wealth ceilings.

Overall, this research found that successful DBEs attribute some of their success to the DBE program. DBE firm owners reported using training and other technical assistance services offered by state DOTs and indicated that they would continue to do so.
This study found that DBEs that work with state DOTs may graduate from the DBE program, although as many as one-third eventually regain eligibility and re-enter the program. Because graduated firms no longer benefit from the DBE program, there are some disincentives to graduating. Additionally, DBE certification does not guarantee a firm will win work with a state DOT, and state DOTs identified a small portion of certified DBEs as “successful.”

According to the study, most DBEs identified as successful perform construction or professional services work, are older firms that have been certified for many years, work as prime contractors or consultants, and about one-half were owned by white women. The primary strategies that DBEs have used to become successful include diversification or vertical integration, serving a geographically large market area and bidding or proposing as a prime contractor or consultant.

This report also includes a description of approaches state DOTs use to assist DBEs. Overall, state DOTs that provide training and technical assistance to DBEs and include contract goals in their DBE programs are most effective at supporting DBEs.

Finally, this study outlines recommendations that state DOTs and others may use in helping DBEs become successful. These approaches include, among other, successfully delivering basic services of DBE programs (including certification, goal setting and monitoring), offering training tailored to the transportation industry, providing individualized assistance, addressing barriers in accessing capital and bonding, offering more prime contract opportunities to small businesses, tracking successful DBEs and developing multi-state efforts to assist DBEs, encouraging successful DBEs to support emerging DBEs, and easing the transition when graduating from the DBE program.

NCHRP Synthesis 481: Current Practices to Set and Monitor DBE Goals on Design-Build Projects and Other Alternative Project Delivery Methods

This report describes current practices and challenges that state DOTs face as they set and monitor DBE program goals, including setting DBE contract goals, procurement policies, program compliance and state DOT enforcement mechanisms.

DBE program implementation with the design-bid-build process is determined by federal regulations and years of state DOT implementation. Typically, the design-bid-build process begins with the state DOT setting a goal for DBE participation (often expressed as a percentage of total cost). Bidders must then either meet the DBE goal or show good faith efforts to do so. If they do not do so, federal regulations require their bid to be rejected. After contracts are awarded, the state DOT then monitors to ensure that DBEs actually receive work on their particular project.
This study compares the design-bid-build approach to three alternative methods of procurement. The design-build delivery method combines two services into a single contract, which often includes a single fixed-fee contract for both architectural/engineering services and construction. Construction manager at risk (CMAR) or construction manager/general contractor (CMGC) allow owners to engage a construction manager during the design process, frequently providing input on scheduling, pricing, phasing and other aspects of the project. Public-private partnerships (P3s) are contractual agreements between a public agency and a private sector entity, which results in greater private sector participation in the delivery and funding of the project.

At the time of this study, at least 45 states along with Washington, D.C. and Puerto Rico had used design-build as a delivery method for state DOT projects. Somewhat fewer states had used public-private partnerships (P3s) and construction manager at risk (CMAR) or construction manager/general contractor (CMGC) delivery methods. Among those that used alternative delivery methods for projects funded by U.S. DOT, 33 utilized DBE contract goals.

Further research with state DOTs uncovered significant difficulties applying the traditional DBE contract goals to alternative delivery method projects. This study found that new methods that focus on a DBE plan at the time of proposal (rather than commitment to specific DBEs) can be a more effective approach. Additionally, state DOTs may require or urge proposers to include multiple strategies for assisting DBEs in their plans. State DOTs reported that higher DBE goals can be set and consistently achieved under the new approaches, although they do require additional monitoring to ensure that DBE plans are implemented by the contractor.

This report further explores these alternative delivery methods, investigates how state DOTs apply DBE goals using various methods and reviews state DOT’s experiences when implementing these goals.

*Transportation Project Delivery: Alternative Contracting Methods Research*

This report further explores alternative contracting methods used in the transit industry. This study includes recent trends in the research, application and implementation of these contracting methods. The traditional method of procurement, the design-bid-build approach, is seen as limiting the opportunities for collaboration between project stakeholders. The alternative contracting methods explored in this report include design-build and construction manager/general contractor. These alternative methods allow for more innovation and collaboration in the designing and building process, with significant contractor engagement in the design process.

*ACRP Report 126: A Guidebook for Increasing Diverse and Small Business Participation in Airport Business Opportunities*

This guidebook includes information about the legal background of the federal Disadvantaged Business Enterprise (DBE) program and the airport concession disadvantaged business enterprise (ACDBE) program, examples of other non-federal business enterprise programs utilized by airports, a discussion of the roles and responsibilities in the implementation of these policies, and contracting methods used to obtain diversity. Additionally, this guidebook addresses barriers to the success of diverse businesses, strategies to enhance diverse business participation, as well as an investigation of six airports included as case studies.

The U.S. Department of Transportation (DOT) established the DBE program for contracts funded under the Federal Aviation Administration’s (FAA) Airport Improvement Program (AIP), as well as the ACDBE program for airport concessions and certain management contracts. The goal of both programs is to ensure non-discrimination in awarding AIP-funded contracts and airport concessions contracts. While the U.S. DOT establishes rules and regulations for these programs, regional offices of the FAA oversee program implementation.
The discussion of the DBE program includes explanation of the enabling legislation and grant assurances, as well as the general framework and requirements of the federal regulations for certain concessions and for airport contracts.

Airport DBE Programs are established under 49 CFR Part 26. The regulations require certain airport grant recipients to develop, implement and enforce the DBE Program in good faith. Airport grant recipients that award prime contracts of $250,000 or less in a federal fiscal year for airport planning or development are not required to have a DBE program. When implementing a DBE program, airports must create and distribute a policy statement within the organization and to the relevant business community. 49 CFR Part 26 also outlines the administrative requirements for airports implementing the Program.

Notably, DBE programs are not uniform. Instead, each participating airport must design and implement their own program based on their organization. Airports must design programs to meet the aspirational goal outlined in 49 CFR Part 26.45 for DBE participation in federally-funded contracts over a three-year period, using either race- and gender-neutral means or, if necessary, race- and gender-conscious means. Setting an overall goal involves two steps: first, developing a base figure for DBE participation based on DBE availability in the market area, then airports may adjust the base figure to account for factors that impact DBE availability. In order to receive grant funds, an airport must have the FAA approve its DBE Program Plan, must be in compliance with its DBE Plan, and must annually report DBE participation to FAA.

General administrative requirements are also discussed in this publication. These requirements include but are not limited to maintaining detailed records and bidders lists of DBE and non-DBE firms, designate a DBE Liaison Officer (DBELO) who is responsible for implementing all aspects of the airport’s DBE program, maintain a directory that identifies all certified DBEs, structure contracts to facilitate small business competition.

This report also summarizes regulations guiding the ACDBE Program, established by 49 CFR Part 23. These guidelines require airport grant recipients to develop, implement and enforce a program for concession businesses that meet the goals of the ACDBE Program. As with the DBE Program, airports participating in the ACDBE program are required to develop and distribute a policy statement, and meet the same non-discrimination requirements that are established for DBE programs in 49 CFR Part 26 with respect to the award of concession, management, purchase or lease, or other agreements.

The administrative requirements of the ACDBE Program are largely similar to those of the DBE Program. As such, airports that implement both Programs may combine shared program requirements and may issue one policy statement and appoint one DBELO for both programs. As with the DBE Program, airports must set aspirational three-year overall goals for ACDBE participation in concession opportunities and design measures to meet these goals through race- and gender-neutral or race- and gender-conscious approaches. Airports must also determine goals based on ACDBE availability in the relevant market, and airports must submit these goals to FAA after consulting with a variety of stakeholders. Additionally, the ACDBE program includes two participation goals: one for car rentals and one for other concessions (these goals must be set separately). Similar to the DBE Program, an airport is only eligible if it submits its ACDBE Plan to FAA and that Plan is then approved. ACDBE programs must include monitoring and enforcement mechanisms to ensure regulatory compliance, and airports must annually report ACDBE participation to FAA.

After the administrative requirements of both the DBE and the ACDBE Programs, this report discusses the constitutionality of these Programs. The U.S. Supreme Court rulings in City of Richmond v. J.A. Croson in 1989 and Adarand Constructors, Inc., v. Pena in 1995 guide these programs. These rulings also establish that federal programs that use race or ethnicity in decision making are subject to “strict scrutiny,” which is the most rigorous standard of judicial review. Because of the similarities between the two Programs, legal justification of the DBE Program can also be applied to the ACDBE Program.
This publication also explores non-federal business enterprise programs. These are often called local business enterprise (LBE) programs, small business enterprise (SBE) programs, and minority or women’s business enterprise (MBE/WBE) programs. The report includes examples and discussions of each type of program, as well as a description of the process of creating LBE or SBE Programs.

Additionally, this report addresses policy and implementation roles and responsibilities of the major actors. These include governing bodies (such as the airport authority or the airport department of a municipality), chief executives, DBE liaison officers and other offices and departments. The researchers found that diversity programs are best executed when fully supported (by culture, staff and resources) and implemented as a collaborative effort, meaning that airports that are committed to the ideals of business diversity programs and have dedicated resources are more successful. This report also explains four key components of successful diversity programs include commitment, shared responsibility, a diverse team and collaborative efforts.

This study also examines lasting impediments to the success of diverse businesses. Among these obstacles, they cite certification requirements, proposal requirements (such as the standard term of an airport concession agreement, which is 10 years), large contract size, bonding and insurance requirements, limited financial resources, not receiving prompt payment and politics as limiting the success of diverse businesses.

The researchers also explore which contracting methods best support diversity efforts. Among the contracting methods discussed, some approaches are highlighted as having the potential to increase diversity. For example, these include:
- Limiting eligibility to bid on a project to small businesses (small business set-asides);
- Encouraging qualified and eligible firms to obtain DBE certification;
- Offering smaller-sized and direct opportunities;
- Breaking the scope of a contract into smaller dollar amounts and lower risk projects,
- Supporting and communicating with joint-venture participants; and
- Relaxing bonding and insurance requirements.

Further, the researchers recommend strategies and partnerships to increase diverse business participation. These approaches include:
- Planning for diverse business participation;
- Conducting a disparity study;
- Offering language translation services;
- Utilizing new technology in promoting contract opportunities;
- Measuring internal performance of diversity goals;
- Sharing business diversity accomplishments both internally and externally;
- Develop and maintain relationships with industry associations or other local partnerships; and
- Develop and implement training programs.

This report concludes with case studies of airports of various sizes including Columbia Metropolitan Airport, Richmond International Airport, Oakland International Airport, Raleigh-Durham International Airport, San Diego International Airport, and Phoenix Sky Harbor International Airport.
Other Research Regarding Employment

The research team also examined other studies related to equity, diversity and inclusion issues in employment that are relevant to transit agencies.

Approaches

This portion of the literature review summarizes commonly used approaches to increasing organizational diversity and inclusion. This section outlines:

• Required initiatives;
• Initiatives that impact work environment;
• Human resource strategies;
• Initiatives that establish responsibility or accountability;
• Initiatives that leverage external relationships; and
• Approaches to identifying outstanding barriers.

Required Initiatives

Certain diversity and inclusion initiatives may be required for some organizations. Affirmative action programs, for example, may be required by federal regulations (Kalev et al. 2006). According to these regulations, affirmative action plans should include: specific, measurable, attainable hiring and promotion goals with target dates; identification of minorities and women who are qualified or qualifiable to fill jobs; a survey of the labor market area in terms of population makeup, skills and availability for employment; and a procedure that allows employees and applicants to submit allegations of discrimination without fear of reprisal to an impartial body, among others things (National Academies of Science, Engineering, and Medicine 2007). Organizations may also measure overall diversity progress by their progress toward their affirmative action goals (National Academies of Science, Engineering, and Medicine 2003).

In addition to affirmative action requirements, some agencies are subject to Equal Employment Opportunity (EEO) regulations (Newkirk 2019). EEO requirements protect against discrimination based on race, color, religion, national origin, sex, age, genetic information, disability or veteran status. Recent revisions also include protection for lesbian, gay, bisexual and transgender individuals (Federal Transit Administration 2016). Some organizations may track the number of EEO complaints filed and may use this as a measure of diversity success (National Academies of Science, Engineering, and Medicine 2003).

Certain agencies are required to develop, implement and submit programs for diversity and inclusion. According to Federal Transit Administration Circular 4704.1A, EEO programs include seven elements:

• Statement of policy, which includes the agency’s commitment to EEO;
• Dissemination of EEO policy statement both internally and externally;
• Designation of personnel responsibility, including the EEO Officer that is responsible for EEO Program management and oversight;
• Utilization analysis, which compares minorities and women in the agency’s workforce to minorities and women available in the local workforce for each job category;
• Goals and timetables for addressing problems identified in the utilization analysis;
• Assessment of employment practices, identifying why problems identified in the utilization analysis exist (for example, issues may arise due to recruitment, promotions and transfers, seniority practices, training, compensation and benefits, disciplinary and termination practices, among others), along with an analysis of the statistical impact of employment practices on minorities, women and veterans; and
• Monitoring and reporting, including practices to monitor EEO within the agency and with subrecipients or contractors, procedures for reviewing equity in contracting and monitoring complaints, as well as the frequency and results of EEO-related meetings.
Although EEO programs may be required, some researchers suggest that they are not necessarily an effective way to increase diversity. For example, EEO programs include a formal grievance process where employees can file a complaint with the Equal Employment Opportunity Commission (EEOC) if they experience discrimination at work based on their race, color, religion, sex, national origin, age, disability or genetic information. One study analyzed almost 90,000 discrimination complaints filed with the federal Equal Employment Opportunity Commission in 2015 and found that 45 percent of those complaints resulted in retaliation. When employees see that the grievance procedure is ineffective, they are more likely to avoid reporting incidents of discrimination. This is supported by responses from employee surveys, which indicate that most people do not report discrimination. As a result of the few complaints, organizations conclude that they do not have problems with discrimination. Additionally, studies have found that protective measures such as grievance systems may lead people to let bias affect their decisions more, as they believe that organization policies guarantee fairness (Dobbin and Kalev 2016).

A review of the ways in which equal employment opportunity (EEO) and affirmative action (AA) laws had been enforced found that, in a random sample of 1,024 federal civil rights cases decided after the 1964 Civil Rights Act, judges base company compliance on the existence of diversity programs, policies or officers, and do not analyze their efficiency. Because of previous court decisions, plaintiffs in such cases must prove not only the impact of workplace policies but must also prove the employers’ intent to discriminate. Therefore, employment discrimination lawsuits are some of the most difficult to win with a success rate of about 21 percent. While firms create visible symbols of EEO/AA efforts, these diversity initiatives are not required to decrease discrimination (Newkirk 2019).

**Human Resource Strategies**

Some organizations utilize human resource strategies aimed at increasing diversity and inclusion. These approaches are aimed at hiring and recruiting practices, policies that increase retention and limit employee turnover, promotion practices, diversity training and communication within the organization.

**Hiring and Recruiting.** Staffing has been identified as a key component of diversity and inclusion efforts (Newkirk 2019). Some organizations use targeted recruiting or in general place a greater emphasis on minority recruitment and recruiting women (Nishii et al. 2018; Morgan Roberts and Mayo 2019; National Academies of Sciences, Engineering, and Medicine 2003).

Other agencies have adopted more concrete changes to hiring practices such as recruiting from nontraditional avenues, combining internal and external executive recruitment methods and conducting extensive internet searches to identify minority candidates (National Academies of Sciences, Engineering, and Medicine, 2001).

Some agencies have developed internship or apprenticeship programs, and others utilize diversity executive recruitment programs (Ivey et al. 2019; National Academies of Sciences, Engineering, and Medicine 2001). Further, organizations may use name-blind applications in the hiring process or administer hiring tests for all candidates to ensure that the minimum job requirements are met (Leslie 2019; Dobbin and Kalev 2016).
Retention and Limiting Employee Turnover. Some initiatives aimed at increasing employee retention and limiting turnover may be used to increase organizational diversity and inclusion. For example, providing on-boarding, new-hire orientation resources, on-the-job training, and presenting realistic job previews may help support diversity by increasing employee retention (National Academies of Sciences, Engineering, and Medicine 2001; National Academies of Sciences, Engineering, and Medicine 2003; Harnack 2010).

Additionally, compensation has been identified as a key factor in achieving and maintaining organizational diversity (Newkirk 2019). Organizations may place greater emphasis on paying fair market wages in order to recruit and retain a diverse and qualified workforce (Ivey et al. 2019).

Many organizations support mentoring or networking opportunities to increase diversity within the agency (Morgan Roberts and Mayo 2019; Kalev et al. 2006). Mentoring may occur through formal programs, formal networks or informal networks (Kalev et al. 2006; National Academies of Sciences, Engineering, and Medicine 2003). These programs or networks, which may include only disadvantaged individuals or people of a certain race/ethnicity or gender, can be a form of “diversity mentoring” (Leslie 2019).

Other organizations emphasize sponsorships in retaining a diverse workforce. This may include recommending diverse employees for promotions and assignments with high responsibilities, or sponsoring minority employees for leadership-development programs (Morgan Roberts and Mayo 2019).

Promotion. Further human resource strategies aim to increase employee retention through promotion practices. Organizations have identified performance management, career development and succession planning as key factors that impact diversity (Newkirk 2019).

 Agencies utilize leadership development programs and executive coaching to prepare minorities and women in the workforce for promotions (U.S. Office of Personnel Management 2011; National Academies of Science, Engineering, and Medicine 2001). Organizations may support diversity by using performance ratings, offering candid feedback and consideration for promotions and developing a succession planning system with outreach to a wide variety of potential leaders (Dobbin and Kalev 2016; U.S. Office of Personnel Management 2011). Additionally, managing career development across all life stages (including tailored initiatives) has also been used to increase diversity (Morgan Roberts and Mayo 2019).

Although promotion decisions may be used to improve employee retention, these decisions are not always objective. For example, the vast majority of organizations use performance ratings to identify and reward good workers, and performance rating systems can be cited as a method to prevent bias and therefore protect the organization against litigation. Researchers have found, however, that some raters tend to lowball women and minorities in performance reviews. Other managers give all employees good reviews to avoid hassles. Because of these trends, performance ratings are not an effective and reliable way to reduce bias. In fact, these researchers found that introducing performance ratings had no effect on the number of minority managers in the organization in five years, and the number of white women in management fell by 4 percent on average (Dobbin and Kalev 2016).


**Training.** Diversity trainings are one of the most common approaches to increasing organizational diversity and inclusion. Agencies have named diversity education as vital in increasing diversity within an agency (Newkirk 2019). Government publications have also highlighted the importance of ensuring that all employees have access to diversity training and education (U.S. Office of Personnel Management 2011).

There is significant variation within diversity training delivery and design. For example, diversity trainings may focus on reducing bias in behavior and actions, may emphasize multicultural education or awareness, may include sensitivity training, or may provide more general information about diversity (Morgan Roberts and Mayo 2019; Levy Paluck and Green 2009; National Academies of Sciences, Engineering, and Medicine 2003; Berzukova et al. 2012). Trainings may involve on-site speakers, all-staff meetings, focus groups, video training, seminars, workshops, lecture-based trainings and simulation-based exercises. In addition to variety among methods, there is also variation among the number of methods used, with some trainings using multiple approaches and others using only one (National Academies of Sciences, Engineering, and Medicine 2003; Berzukova et al. 2012).

Diversity training may also be delivered as a stand-alone training, which often includes a single training session focused on legal and compliance issues, or delivered as an integrated diversity training, which includes training as one part of a system of diversity-related activities. Trainings may also be required or mandatory (about 75% of diversity trainings are mandatory), and the duration of training may vary (Berzukova et al. 2012). Additionally, trainings may be either group-specific (which focus on race or gender, for example) or inclusive (and emphasize inclusiveness across multiple groups) (Berzukova et al. 2016).

Although diversity trainings continue to be one of the most popular initiatives, researchers examining the effectiveness of diversity trainings have not reached a consensus on the effectiveness of this approach. For example, one study found that trainings improve a variety of cognitive- and skill-based outcomes (Kalinoski et al. 2013), while others reported that these trainings improve diversity test scores of some participants for about two days (Dobbin and Kalev 2016; Levy Paluck and Green 2009).

**Communication Within the Organization.** Human resource strategies may also focus on communication of initiatives and organizational commitment to diversity, and intra-organizational methods of communication.

Some approaches, such as new-hire orientation programs and all-staff meetings, are aimed at communicating diversity initiatives throughout the organization (National Academies of Sciences, Engineering, and Medicine 2003). These methods may also be an effective way to communicate commitment to diversity and the ways in which diversity is integrated into the agency (Newkirk 2019).

Other diversity initiatives attempt to increase communication among employees. For example, some organizations employ self-managed teams (where peers work together toward a common goal), cross training (where employees rotate through departments and work with a variety of managers) or organize dialogue groups across a variety of individuals (Dobbin and Kalev 2016; Levy Paluck and Green 2009). Some agencies promote employee participation in community-based events outside of work (National Academies of Sciences, Engineering, and Medicine 2003).

Additionally, strategies may design effective conflict resolution and trainings plans, or offer counseling and employee assistance programs in the case of workplace conflict (Roberts 2011; National Academies of Sciences, Engineering, and Medicine 2003). Other human resources strategies establish grievance procedures for minorities and women to report issues or instances of discrimination (Dobbin and Kalev 2016).

Although firms may communicate a commitment to diversity within their organization, some researchers suggest that diversity initiatives are used by organizations not in good faith, but rather as a form of defense in the event that legal action is taken against them (Newkirk 2019). Such initiatives may lack authority or resources and may therefore be ineffective.
Supporting minorities and women through hiring, retention, promotion, training and communication policies can support diverse workers and increase organizational diversity.

**Initiatives That Impact Work Environment**

Some organizations have initiatives aimed at shaping various aspects of the organization’s work environment. These approaches improve diversity and inclusion by affecting the organization through strategic plans, engaging managers, involving employees, or changing overall culture or physical workspace.

Some organizations establish diversity as a core business strategy, develop diversity plans or diversity vision statements (National Academies of Sciences, Engineering, and Medicine 2003). Others implement an agency-specific diversity and inclusion strategic plan, then develop and track performance measures and distribute those measures of progress (U.S. Office of Personnel Management 2011).

Agencies also utilize diversity initiatives through engaging managers. For example, some organizations involve managers in college recruitment programs, in mentoring programs and in solving diversity problems in the agency (Dobbin and Kalev 2016). Organizations may also benefit by committing resources to training managers to better understand how their identities impact how they interact with others (Cohen and Gavett 2019).

Further, some initiatives encourage managers to make employees feel safe and valued, build relationships across team members and leaders, and provide growth opportunities and communicate value to employees. Organizations are also promoting communication and learning at the managerial level by encouraging managers to ask employees what they need, have regular check-ins, ask employees if they feel supported and safe at work, troubleshoot issues, and understand and support their aspirations (Cohen and Gavett 2019). Additionally, agencies may increase diversity at the executive level and allow employees access to senior leadership (U.S. Office of Personnel Management 2011).

Other organizations have increased the support and engagement of human resource managers. For example, some empower human resource managers to assist managers advance inclusive behavior, and others have taken steps to formally incorporate diversity and inclusion specialists into the human resources team (Cohen and Gavett 2019; Ivey et al. 2019).

Some diversity initiatives attempt to shape the work environment by engaging staff, with diversity programs specifically designed to include the entire organization (Morgan Roberts and Mayo 2019). Initiatives may increase on-the-job contact with female and minority workers, include employees in staff retreats or otherwise encourage employees to have relationships with people different than themselves (Dobbin and Kalev 2016; National Academies of Sciences, Engineering, and Medicine 2003; Cohen and Gavett 2019).

Other staff engagement initiatives include cultural celebrations, diversity poster programs, employee participation in resource groups and incentives for employees (National Academies of Sciences, Engineering, and Medicine 2003; U.S. Office of Personnel Management 2011; Cohen and Gavett 2019).

Finally, initiatives may emphasize changes in physical work environment or workplace culture. For example, some agencies ensure that physical offices continue to be accessible to all. Others attempt to ensure a welcoming workplace by including diversity and inclusion in workplace planning activities, establishing supportive environments for diverse individuals, creating a culture that values diversity and maintaining that culture throughout the workplace. Some agencies conduct internal research to assess cultural climate (Ivey et al. 2019; U.S. Office of Personnel Management 2011; Cohen and Gavett 2019; Roberts 2011).

Other workplace diversity initiatives include an orientation that addresses agency culture and networking opportunities, communication of expectations to leaders, holding staff accountable for upholding company values, and encouraging open conversations about race, especially with senior leaders (U.S. Office of Personnel Management 2011; Cohen and Gavett 2019; Morgan Roberts and Mayo 2019).
Finally, organizations have developed programs to improve work/life balance, more flexible workplace policies and more flexible work arrangements in general (National Academies of Sciences, Engineering, and Medicine 2003; Nishii et al. 2018). Such policies are designed to improve organizational work environment and, in turn, improve agency diversity and inclusion.

**Initiatives That Establish Accountability or Responsibility**

Further initiatives establish accountability or responsibility for diversity and inclusion efforts. Approaches may establish accountability throughout the organization and with organization leaders (Roberts 2011). For example, some organizations incorporate diversity in performance evaluations, and particularly in the evaluations of managers. Agencies may also encourage the consideration of diverse candidates when hiring or promoting, with some organizations requiring decisionmakers to consider at least one minority candidate for hiring decisions (National Academies of Sciences, Engineering, and Medicine 2001; Leslie 2019; Newkirk 2019).

Some initiatives allocate responsibility to a diversity task force or committee (Dobbin and Kalev 2016; Kalev et al. 2006). These groups may include employees or senior leadership and employee forums (Newkirk 2019). Diversity committees or task forces analyze diversity numbers across organizational levels and recommend solutions, increase engagement when designing new diversity strategies and progress metrics, and spread responsibility for diversity throughout the organization (Dobbin and Kalev 2016; U.S. Office of Personnel Management 2011). Effective diversity task forces or committees are given the resources and power to affect change (Roberts 2011).

Finally, some organizations establish responsibility for diversity with a single diversity manager, chief diversity officer or other staffed positions (Leslie 2019). These individuals have the ability to question management about decision making (Dobbin and Kalev 2016). As with diversity task forces or committees, effective diversity employees are given the necessary power and resources (Roberts 2011).

**Initiatives That Leverage External Relationships**

Some organizations leverage partnerships and external relationships as part of their diversity efforts. In addition to increasing diversity, these efforts may also lead to a more qualified workforce (Ivey et al. 2019).

For example, some organizations administer media campaigns or distribute newsletters, magazines, pamphlets and other printed materials aimed at expanding their applicant pool and increasing diversity within their workforce (Levy Paluck and Green 2009; National Academies of Sciences, Engineering, and Medicine 2003). Agencies may also work with community organizations that serve populations of interest to gain insight and build relationships that can increase the diversity of applicants (Ivey et al. 2019). Others build relationships and recruit from colleges and other local organizations (Dobbin and Kalev 2016; Harnack 2010).

Organizations may also become more diverse by leveraging professional associations, including professional associations for minority groups or women, providing technical assistance for diverse vendors and attending seminars and other events where stakeholders share challenges, best practices and strategies (National Academies of Sciences, Engineering, and Medicine 2001; National Academies of Sciences, Engineering, and Medicine 2003; Ivey et al. 2019).

Finally, some initiatives attempt to identify any outstanding barriers to diversity and inclusion. Some organizations continue to evaluate issues such as implicit bias, recruitment practices and the diversity of their reach and bias in hiring practices (Ivey et al. 2019; U.S. Office of Personnel Management 2011). These evaluations may be in the form of diversity evaluations, employee satisfaction and climate surveys, reviews of practices, or general organizational assessments (Kalev et al. 2006; National Academies of Sciences, Engineering, and Medicine 2003; U.S. Office of Personnel Management 2011). These evaluations often include diverse groups of current employees (Ivey et al. 2019).
Equity and Inclusion in other Aspects of Transit Operations

The study team also reviewed research on:
- Equity and environmental justice;
- Fare setting; and
- Transit network design.

Equity and Environmental Justice

The following summarizes relevant research from publications and reports related to equitable treatment of neighborhoods and groups as well as environmental justice in the transit industry.

Environmental justice includes efforts to achieve equitable protection from environmental harm and equitable access to benefits across demographic groups. Researchers have found that communities of color and low-income communities are exposed to greater harm and receive fewer benefits from transportation systems when compared to the general population. Transportation-related environmental justice can be understood through costs (including air pollution and noise) and benefits (such as increased accessibility). Although transportation planning agencies are required to analyze the impacts of their plans for inequity, these reports rarely find that projects could result in disproportionate impacts (Rowangould et al. 2016).

Another author argues that a transportation system is fair if and only if it “provides a sufficient level of accessibility to all under most circumstances” (Martens 2016).

Some research has evaluated job accessibility impacts of transit improvements among low-income individuals. The researchers found that a new light rail line in Minneapolis-St. Paul has generated significant job accessibility benefits for all workers. In some but not all areas, low-wage workers benefitted more than medium- and high-wage workers (Fan et al. 2012).

Other research has focused on the causal relationships that trace why low-income individuals and people of color are disproportionately exposed to pollution. In addition, gentrification prompted by transit system improvements can lead to displacement and further inequity (Banzhaf et al. 2019; Rodier et al. 2019).

One of the criticisms of the use of cost-benefit analysis in transportation planning is that are forward-looking, while environmental justice assessments examine harms that have already occurred (Epting 2016).

Researchers have explored various definitions of transportation equity. In general, transportation equity refers to the fair distribution of transportation costs and benefits among current and future members of society. In this concept, “fair” may include a variety of distributions, referred to as “equity standards.” Transportation costs include environmental costs such as direct emissions from auto use, traffic congestion and noise pollution, as well as the real costs of building, operating and maintaining the transportation infrastructure. Transportation benefits include reductions in travel time and travel costs, as well as improvements in accessibility, mobility and economic vitality (Bills and Walker 2017).

In terms of transit service quality measures, many agencies use measures such as number of routes in an area or frequencies at a specific stop. Accessibility is often measured by walk time proximity, although some may use land use and other characteristics (Welch 2013).

Some researchers argue that although many measures of accessibility exist when analyzing transit networks, limited research has been done on developing a tool to measure how equitable the distribution of transit access is (Welch 2013). Some argue that there is no standard or streamlined method for identifying transportation justice areas across transit agencies (Oswald Beiler and Mohammed 2016).
Researchers explain that transportation equity can be understood using two dimensions: horizontal equity and vertical equity.

- Horizontal equity refers to distribution of impacts (i.e. costs and benefits) across groups that are considered equal in ability and need. This type of equity may include spatial and generational equity.
- Vertical equity refers to the distribution of transportation impacts on groups that differ in ability and needs, such as disabled or special needs groups and groups across different social and income classes (Bills and Walker 2017).

Another author explains that while vertical equity requires that different groups receive different amounts of a benefit, horizontal equity requires that within each group of similar individuals, a similar benefit is received. The two types of equity together imply that transit dependent groups should have access to equal amounts of quality transit, and those most dependent on transit should receive more access to transit service (Welch 2013).

Other researchers have introduced even more frameworks for fairness for transportation. One group has argued that the distributional effects of transport policies should consider the minimum standards of accessibility to key destinations and the extent to which the transit system prioritize disadvantaged groups, reduce inequalities of opportunities and mitigate transport externalities (Pereira et al. 2017).

Researchers have critiqued the existing equity analysis processes. Criticisms pertain to the unit of analysis used and method of comparing equity indicators. For example, analyses often classify the target group into “communities of concern” or environmental justice communities. Identification may be done using a variety of factors such as income or ethnicity, but they typically have a high concentration of minority and low-income residents. These communities may be by census tract or travel analysis zones and, because of aggregation, can create bias when evaluating the impact on population segments. Because segments of both populations likely live in both areas, this method makes it impossible to isolate the impacts for the different groups (Bills and Walker 2017; Karner 2018). Additionally, researchers note that the use of equity indicators can be problematic, as frequently the mean indicator values are compared across population segments. This method does not reveal individual level outcomes (Bills and Walker 2017).

There is considerable research on potential improvements to measuring transportation equity. One set of researchers propose an alternative equity analysis approach that uses disaggregated data from activity-based travel demand models (Bills and Walker 2017).

Most existing research defines equity in this context as equal distribution of accessibility, or the ease of reaching a number of key activities and opportunities (although not all scholars consider the same activities “key”).

**Fare Pricing**

Researchers have also explored equity in public transit fare pricing.

Studies have found that transit-dependent groups often travel more frequently and during off-peak hours, often use buses more than rail, and make more transfers between modes of transit. Minorities and low-income households are disproportionately represented among the transit dependent (Taylor et al. 2012). These factors affect equity in fare pricing.

There are a variety of types of transit fare structures including flat fees, distance-based fares, zone-based fares, service-type based pricing, time of day pricing and concession fares (concession fares are sold by different agencies to different groups at various discount levels, such as student passes and senior passes). Some agencies use a combination of pricing strategies, and prices may also vary depending on the method of payment, such as transit card users versus those who pay in cash (Ma et al. 2017; Lipscombe 2016).
Horizontal equity in terms of pricing can be described as when there is equal distribution among equal members of society. In the context of the transit pricing, horizontal equity is achieved when passengers pay as much as they use. Vertical equity in the transit pricing requires that the costs/benefits are distributed according to the users’ need for the service or their capability for payment. Disparities between the benefit a passenger receives (trip length) and cost (fare) implies inequality. In the social equity literature, researchers note that pricing structures are efficient when riders contribute to the costs of their services in line with the benefits they receive (as reflected by the marginal costs of their trips). However, fares are considered equitable when they take into account the income capacities of riders (Bandegani and Akbarzadeh 2016).

One research paper proposed three criteria for equitably setting fares:

- The benefit criterion, or the idea that people should pay for services in proportion to the benefits they receive from them;
- The cost criterion, which is the idea that people should be charged for the use of the service in proportion to the cost of providing the service to them; and
- The ability to pay criterion, or the idea that the amount people should be charged for the service should be in proportion to their wealth (Nuworsoo et al. 2009).

Some researchers note that many analysts favor distance-based fares in equity analyses, however they argue that it is not necessarily as clear-cut as it seems. They cite spatial mismatch (defined as significant spatial separations between low-income and minority households and suitable locations of employment or other participation), and note that distance-based fares may increase out-of-pocket expenses for spatially mismatched households that have long-distance travel routines. Such a change may result in increased use of cars and, therefore, increased greenhouse gas emissions, more traffic accidents and increased traffic congestion. These factors must be considered when evaluating the social benefits as well as the economic and environmental costs of distance-based fares (Farber et al. 2014).

Some authors conclude that finding the ideal mix of horizontal and vertical equity is subjective, and depends on values (namely, to what extent should government agencies redistribute income to increase equality) as well as efficiency and effectiveness (considering factors such as congestion during peak periods and limiting mobility for those who urgently need transit). They argue that, previously, transit agencies have used policies such as distanced-based fares to increase fare equity (operating on the assumption that those living farther from the city have higher incomes). Now, however, with that assumption not holding and an increasing amount of travel data, agencies may consider a different fare pricing structure (Haney et al. 2019).

Other researchers argue that subsidized transit fares or variable pricing models based on income should be used to increase overall social equity in a community (Bullard et al. 2017).

Some researchers note that transit fare and justice have not been researched as thoroughly as the other transportation equity topics, and existing research remains largely theoretical. The researchers identified only one existing empirical paper that evaluates the spatial and equity implications of various fare structures (Zhou et al. 2019).
Transit Network Design

This section refers to transportation network design, and the ways in which transit routes are determined. However, there is limited research on transit network design as it relates to discrimination and inequality. There are many ways to design a transit network in a community, each with different equity outcomes. For example, one study presents a set of 69 approaches (and combinations of approaches) to dealing with network design, frequency setting and timetabling (Guihaire and Hao 2008).

Some researchers who have analyzed transit networks use horizontal criteria to divide equity into modal and spatial equity.

- **Modal equity** includes the travel time between the origin and destination of each mode, where modes are divided into passenger car and transit, and the travel time of each mode is the total travel time from the origin to the destination. Modal equity is achieved when the difference between transit travel time and cars’ travel time is negligible because of the transit network. (Kim et al. 2019; Ferguson et al. 2012).
- **Spatial equity** is achieved when the difference in modal equity among regions is negligible because priority is given to transit improvements in regions with lower modal equity (Kim et al. 2019).

Some of the literature concerning transit network design place this issue in the larger context of racial discrimination in the built environment. One author explains that the built environment, characterized by the man-made physical features that make it difficult for certain individuals to access certain places, can be used as a mechanism of exclusion. She notes that certain bridges were designed to be low so that buses could not reach certain destinations, and walls, fences and highways separate historically white neighborhoods from historically black ones. Additionally, wealthier communities often decline to be served by public transit, making it difficult for transit-dependent individuals to access their neighborhoods. These built-environment factors act as a form of regulation, often without individuals realizing it (Schindler 2015).

Other studies explore the relationship between race and travel. There is considerable literature on spatial mismatch, where African Americans have worse employment outcomes because of job inaccessibility, have lower rates of residential mobility, and experience housing and labor market discrimination. Studies have found a connection between increasing concentrations of minorities to decreasing accessibility and lower levels of transit service. Although different measures of spatial mismatch exist, researchers argue that using any of these measures alone or highly aggregated is not appropriate, as travel-related behavior varies by group. They argue that planning agencies must spatially distinguish the information derived from their decision-making tools (including travel-demand models) and link this information to race and ethnicity. Research on travel behavior rarely considers race and ethnicity as an explanatory variable, despite the fact that multiple studies have found race and ethnicity have an effect on travel behavior after controlling for income, family structure, land use and accessibility (Karner and Niemeier 2013).
APPENDIX C

Interviews with Transit Agencies

Approach to In-Depth Interviews with Transit Agencies

In-Depth Interviews

The study team prepared an interview guide and a plan for identifying and contacting interviewees. We began conducting in-depth interviews with agency leaders, HR professionals and others with diversity and inclusion responsibilities (regarding procurement, transit customers, community interface, etc.) for a cross-section of large and small public sector transit organizations. We also attempted to include one private ride-share organization but did not receive a response from the contacted individuals. As with our other studies for TRB, comments will be included in the report, but not attributed to specific interviewees. We will use results of these interviews to inform each of the subsequent tasks and to refine a working definition of diversity and inclusion.

Interview Guide

The study team developed an interview guide, which started with background about the study, participation instructions, and notification of recording. Additionally, it asked for background information and included questions about diversity and inclusion programs. The interview guide was approved by the TCRP Research Panel.

The questions included in the interview guide are:
1. What does diversity and inclusion mean to you? How is it defined within your agency?
2. Why is diversity and inclusion important to your organization? Is it more important for specific agency functions? If so, what functions?
3. [If implemented] How is diversity and inclusion put into practice in various functions of your agency? [If not mentioned, ask about personnel, procurement, service provision, public engagement, other.]
4. Which staff positions are responsible for different aspects of diversity and inclusion within the organization? How could these positions receive more support? (What would the “org chart” for different aspects of diversity and inclusion look like?)
5. Briefly describe the history of diversity and inclusion practices within your organization. How long have different practices been in place? What prompted their initiation?
6. What measures are used to gauge success of these practices or initiatives?
7. Are diversity and inclusion measures at your transit agency improving, getting worse or staying the same? Why? [If not mentioned, ask function by function.]
8. Are there gaps in the diversity and inclusion efforts at your agency? If so, are they being addressed? How?
9. As your organization has implemented or refined diversity and inclusion practices, where do you go for advice or other information on best practices? What resources do you tap? What, if anything, would you like to know that isn’t readily available?
10. What should I have asked about that I didn’t?
Interviewee Plan

Interviewees were contacted based on a tiered structure, beginning first with leadership, second with human resource representatives, and third with others having diversity and inclusion responsibilities (regarding procurement, transit customers, community interface and other aspects of operations and governance). An online search resulted in contact information, including email addresses and phone numbers, which were used to reach leadership or their representatives at each of the participating transit agencies. Initial communications were sent via email, which included an attached letter from the Transportation Research Board.

In some cases, transit agency leadership referred us to additional contacts within the agencies. After contacting each of the first-tier transit agency interviewees, second tier communications were made with human resource representatives whose contact information was retrieved either via recommendation from leadership (or their representatives), or from an online search. Further contact information was collected from recommendations by agency representatives throughout the interview process.

Final communications were made to remaining third tier interviewees. Where emails did not result in returned communication, calls were made to designated contact persons, or to phone numbers that were found in the online search or provided by first and second tier interviewees.

Qualitative Information from In-Depth Interviews

Interviews Conducted

The study team initially proposed a total of 24 in-depth interviews, eight with agency leadership, eight with HR directors and eight with other staff. Additionally, TCRP requested that Keen Independent contact one private ride-sharing company, Via.

The study was able to complete in-depth interviews and group discussions with 37 interviewees from 13 agencies including transit agencies’ Chief Executive Officers, Chief Operating Officers, General Managers and division and department managers, as well as representatives from Human Relations (HR), Civil Rights, Procurement and other departments including Public Engagement, Learning and Organizational Development, Communications and Change Management. Interviewees provided background information on the state of diversity and inclusion within their agencies.

To encourage open discussion, interviewees were informed that their comments would be reported in aggregate and coded as #I-01, #I-0, etc.

Key themes from these interviews follows.

Defining Diversity and Inclusion

Interviewee responses described diversity and inclusion, both how it relates to them, as well as how it is defined within their agencies.

- “It means that it is accepting of diversity of all types and that I don’t have to assimilate. That I can be myself” [#I-02]
- “When we talk about diversity and inclusion here, we talk about providing a welcoming environment that’s free of judgement and embraces different cultures and ways of life.” [I-07]
- I view diversity and inclusion as, making sure that I’m considerate of including people from different walks of life with different backgrounds.” [#I-09]
- “Inclusion is perhaps more important somehow than diversity.” “You can bring all kinds of different people together, but are they really included? Or are you creating the beginnings of a hostile work environment?” [#I-01]
- “Inclusion is about making sure that people feel like the parts of them that make them different are welcome.” [#I-04]
“Diversity and inclusion means … recognizing that all people are different and that is a gift to any organization. That we should not only recognize that people are different, but we should look to those differences and appreciate them. [We should] create environments… that allow those differences to provide input into decision making, allow those differences to rise to the top in an organization, allow those differences to participate in decisions about what the organization is doing and to generally make a difference because people are different.”[#I-19]

Support Compliance Policies through Culture

Transit agency representatives discussed the evolution of compliance-based diversity initiatives to mission-based over time.

Using Policy as a Tool. Diversity policy is an essential tool designed to hold organizational leaders accountable for inclusive practices, according to interviews at many transit organizations. For most agencies interviewed, diversity went beyond meeting federal requirements.

• “Well certainly employment is [responsible for diversity] because I monitor the numbers to see who’s coming in and what sites they’re utilizing because I don’t want any excuses about hiring a ‘homogeneous group’ into the company when in fact the people that we service are diverse …” [#I-02]

• “Obviously we would hope that people would follow it because it’s the ‘right thing to do’ but if for whatever reason they have difficulty understanding that, there are policies in place that make them comply.” [#I-02]

• “… but then … division heads are responsible for what goes on in their division.” [#I-02]

• “Whether it’s mandated by the federal government or not, we would still approach [diversity] that way and we would still do [diversity initiatives].” [#I-18]

There was recognition among transit agency leadership that much of the diversity efforts are required. For example, “Everybody in the public sector has to do an affirmative action plan.” [#I-22]

Going Beyond Compliance. Although compliance is still an important reason for diversity, many agencies have attempted to build diversity and inclusion into organizational cultures. They say they would promote diversity and inclusion even if there were no requirements. This is one way interviewees described how diversity initiatives have evolved over time.

• “I think if we were the poster child for anything, it’s probably just doing our best to incorporate [diversity and inclusion] as part of our culture and not necessarily calling it out as a separate ‘check box.’” [#I-36]

• “It’s not just that we follow the law but it’s that we recognize that there are differences and we celebrate those and are excited about those.” [#I-04]

• “We also define diversity as different from compliance. ‘Compliance’ are the things that we have to do by law.” [#I-19]

• “We’re trying to look at a more global approach on equity.” [#I-21]

• “We’ve started implementing across the entire agency a different culture and I think that’s made a huge difference ….” [#I-35]

• “When people talked about diversity and inclusion, they were talking in terms of equal employment opportunity … and they were putting people in buckets …. And so we established a strategy that was about awareness … where we communicated to all employees that diversity included all of them, that it was more than compliance, that everyone is to be appreciated for who they are and we encourage them to be who they are and bring their whole selves to work.” [#I-19]
Some agencies described fairly recent evolution from “compliance-driven” diversity efforts to those that support the strategic vision of the organization.

- “I think that the culture in this organization has changed over the last three or four years to a more inclusive culture, and what I can an accountability culture versus an entitlement culture. I think in going around talking to folks, I think we’ve made a lot of progress towards a culture of high morale and accountability and diversity and inclusion … if it’s a compliance issue for everybody to get along, that doesn’t make sense to me.” [#I-10]

- “The diversity measures we had when I started were focused on the affirmative action plan … but that’s not the sole effort that helps to create a culture of diversity and inclusion. Over the last three years, and particularly this last year, we’ve started to define what diversity and inclusion means beyond compliant, beyond baseline. We want our employees to be more connected with our community … to understand that [we] are open to everyone … and then how do we help people understand that they can be whoever they are, as it helps to accomplish our goals.” [#I-22]

However, some agencies still operate diversity programs because of the requirements they face.

- “I think most of our diversity programs have been ‘compliance driven’ … and there’s nothing wrong with that … but I think that your motives are echoed very loudly when it’s just compliance-based versus changing a culture.” [#I-01]

**Defining Equity, Diversity and Inclusion.** Many interviewees emphasized the importance of building a “culture” where diversity is integrated into the overarching mission of the transit agency and other affiliated systems. Comments from transit agency representatives include:

- “I use an equation: Diversity equals equity + inclusion. That’s kind of what diversity, equity and inclusion mean to me. Diversity in the workplace is really a function of equitable action on the part of the organization combined with inclusive behavior on the part of the organization.” [#I-20]

- “We added the lens of equity and we’ve made that a part of our committee’s charter. Equity says it’s more about breaking down some of those barriers that we find whether it’s in different levels of professional development or hiring or really anything.” [#I-04]

**Expanding Inclusiveness Initiatives Over Time.** Some transit agency representatives reported on the evolution of how diversity and inclusion has changed at their agencies.

- “In terms of the broad perspective that we have on diversity, sure it is race, gender, national origin and all those things … but it’s much broader than that. It’s culture, it’s different age groups, it’s very broad in terms of how people think and bring all of that into the workplace.” [#I-13]

- “It’s culture, it’s different age groups, it’s very broad in terms of how people think, and bring all of that into the workplace. We have programs around that and work to make sure that folks feel included.” [#I-15]

- “We want to make sure that everyone is celebrated, and everyone feels like they’re welcome here.” [#I-29]

A few interviewees specifically recognized LGBTQ communities as a growing focus at their agencies even when there is still work to do. Comments include:

- “We not only are active LGBTQ employers; we also participate in the [Pride] Parades … those are direct actions that show the community how we are inclusive.” [#I-03]

- “One thing that we’re seeing a lot now is people’s pronoun descriptors …. We have tried to do more outreach at specific events such as the Gay Pride event.” [#I-07]

- “Where I think we have some work to do would be with some of the ‘newer initiatives’ and that is with the LGBTQ community … we’re not there ….” [#I-01]
Learn from Public Perception

Some Transit Agency Representatives Reported on Inclusiveness from the Public’s Perspective. Mirroring the communities served. A number of interviewees reported that to achieve diversity and inclusion within a transit agency, an agency must mirror the diverse communities it serves.

- “We have a very diverse community and … the organization mirroring that diversity is what our goal is.” [#I-03]
- “Our company is reflective of the public that we serve … We do hire diversity throughout the company, that’s our mission that’s our mandate.” [#I-02]
- “We serve the general population of our service area so … [diversity] is overarching in all areas.” [#I-05]
- “If we want to have people work here, they have to see themselves within this institution,” and added, “We also are serving a diverse community, so … they would like to be able to see people that look like themselves providing the service.” #I-02
- “To me, diversity is a reflection of the local marketplace … that our employees are a reflection of the local marketplace in every respect … in terms of ethnicity, gender, race, etc.” [#I-32]
- “In order to serve the community, we need to look and believe and feel like the community we’re serving,” and “that is the best way to make up a workforce … have it representative of the population that you are serving.” [#I-01]
- “From an HR standpoint, we want to make sure that we have a diverse workforce so that we have the best people working in the jobs that we can, and we want to make sure that we also mirror our demographic.” [# I-17]

Sustaining Communities through Transportation. Some transit agency representatives reported on how transportation can connect with and sustain communities of all kinds.

- “It’s an opportunity to provide equal involvement by all individuals involved in transportation, whether it’s sexual orientation, ethnic background, fiscal ability, it’s truly bringing all parties together within the community we serve to provide the … modes of transportation … needed for the commuters to survive.” [#I-23]
- “We’re working through this right now; we’re trying to rebrand the organization and through that process we’re able to see a lot of research that tells us what our riders think of us …. There’s what we as senior managers think and feel about our organization and … then there’s what our rider populations think of us and think about what we do and the decisions that we make … we’re hearing very clearly … that a large segment of our rider population doesn’t feel that we care about them, that we aren’t connecting with them in a way that they feel we’re making decisions that show and demonstrate that we care about them as residents of this county … [our] rider population is … lower income riders and they feel … we don’t treat them fairly or equitably so … being public facing, I think that’s a problem … there’s a huge disconnect here …. It’s really a great point in time for us to ‘self-check and hone in on’ the things internally that we’re doing … that relate to diversity … to inclusion.” [#I-09]

Build Diversity within the Organization

Transit agency representatives commented on how they build diversity within their agencies.

Leadership and Management. For some, diversity starts at the top. However, at leadership and management levels, diverse groups may be underrepresented in some transit agencies. Comments include the following:

- “From the very, very top, all the way down to right at the bottom.” [#I-33]
• “I would say first of all that diversity and inclusion from a transit standpoint in my mind means making sure that the leadership in the organization is reflective of the population that we serve as best we can … all levels of leadership are also charged with the same thing [referencing consistency in diversity messaging and delivery].” [#I-10]

“And I think that that emanates from the ‘top down.’ When people see a diverse senior leadership team, then they begin to think, you know, diversity is valued here.” [#I-10]

• “Ultimately the ‘bus stops here’ as the VP of HR but there’s a responsibility for diversity and inclusion all the way down to our supervisors and leads and dispatch and so we all kind of work together.” [#I-17]

• “The diversity-and-inclusion ‘hat’ is worn across the board from all executive levels … and then of course it’s practiced all the way down to the frontline supervisors … we’re working with our employees.” [#I-23]

• “[HR] wants to be really clear that just because someone does something different or believes something different [it] cannot be [perceived as] a negative thing … all levels of leadership are also charged with the same thing.” [#I-01]

• “I don’t think our management reflects the diversity of our community and I think that’s an area that we have put more emphasis on …. In our management staff, I believe that there are a lot of white people and older people, our average age is like 54, we have a very tenured staff ….” [#I-07]

• “If you saw a picture of our chief level positions you would identify that they all look pretty similar.” [#I-01]

Workforce Recruitment. A few transit agency representatives reported on workforce recruitment as well as the importance of having diversity advocates among HR staff. For some, “nepotism” is a barrier to increasing diversity. Another reported that recruitment should focus on who “brings the best package to the table.” These comments include:

• “We’ve specifically targeted our residents to show that [the agency] is a place where we recognize diversity and where we specifically are making it a priority to build a workforce that reflects our community.” [#I-03]

• “I want to be able to get the diverse population we serve and keep that momentum throughout all the ranks of our agency …. I would charge my entire HR and training department as true advocates of diversity and inclusion because at every level of hiring, training, promotion and termination they have to really understand not only the bare minimum requirements of the law but [that] they have to understand the direction of [the agency].” [#I-01]

• “One of the things that we did just recently do this past year is we looked at our nepotism and realized that it was kind of hurting us in [our recruitment efforts], especially in our transit operator ranks, because we have so many families that work here, and then they’re sort of in the know and then their families know when to apply.” [#I-07]

• “If you saw a picture of our chief level positions, you would identify that they all look pretty similar. So, on the surface it may appear that there is not a strong diversity effort. I have sat on the interview panels, as we have had an exceptionally diverse group of people applying for and interviewing for the positions that we were filling as the chief level positions and what we were definitely looking for is the best fit, as well as buying into the culture here. So again, it would appear that diversity is not on the forefront, but it really is. It looks to be a particular way, and I think there then becomes this effort to … [dictate that] the next chief position has to be a minority or a male or ‘a this or a that’ instead of focusing on who is going to bring the very best package to the table to best impact the entire agency.” [#I-01]

Emphasizing Equitable Advancement. Some transit representatives pointed out the importance of fairness in advancement, others emphasized advancement from within. For instance:

• “… [diversity means] creating opportunities … for growth and development for all employees at every level …. I want to have a plan … for somebody to grow into a leadership role ….” [#I-01]

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• “I’m the first African American to hold a seat of COO … and I believe [one other in leadership] … is the first minority woman to own that seat so when you’re looking at it from an executive level, there is movement in that regard in that area. So, trying to promote from within is a big focus ….” [#I-23]

Diversity Training. Although many reported staff training on diversity, some transit agency representatives spoke about the challenge of reaching all employees.
• “Many of our employees … they’re in bus depts, they’re in train yards, they’re now on the ground under the tracks, and not everyone has access to a computer, and so we need to figure out how we make sure that all employees have access to all information and that they are able to participate in the things that many of the employees participate in.” [#I-19]
• “We do [training] much better with our administrative employees, folks that are in the offices. We do have issues with our operators so we have [500+] operators and there’s just no way we can take them all of their work to do it, but we do try to at least provide some paid time and go to our computer lab to do the required trainings. I can’t guarantee it gets done every year.” [#I-07]
[After funding losses in 2000 – 2008 we are replacing past initiatives with] online tools and in-person training.” [#I-07]

Encourage Diversity in Decision-Making
Interviewees identified “diversity of thought” as a defining characteristic of diversity and inclusion, as well as an important contribution to decision-making. For example:
• We also understand that with diversity is diversity of thought.” [#I-06]
• “Diversity is not only identifying people who look different, came from different backgrounds, and came from different communities … it’s also diversity in thought.” [#I-01]
• “… and we are making sure that we are including everyone, respecting everyone, trusting everyone, and that we involve others to make decisions and help make decisions within the organization.” [#I-35]
• “Not only does it mean we attract and bring those people into the organization but that they have a voice and that their opinion is valued, and it is included in our decision making and how we run the organization. So, it’s not just okay we bring them in, but how are they valued in terms of their contribution to the organization.” [#I-15]
• “When we do projects, we try to make sure that we have a wide array of thoughts because anytime that we’re trying to make decisions for the organization we need to make sure we have as broad of spectrum as possible.” [#I-04]
• “An organization is stronger when you have a diverse set of experiences and a diverse set of thought leadership; that’s really how you solve complicated and complex problems.” [#I-20]
  “I have a ‘2 x 2 matrix’ that I use to explain [diversity]. And it comes down to diversity of thought and diversity of experience.” “That’s the benefit of diversity for a large organization; When you have that many employees across multiple business units … having diverse experience and diverse thought really makes your organization stronger and puts better problem-solving teams together.” [ #I-20]
• “Create environments … that allow … differences to provide input into decision-making … allow those differences to rise to the top in an organization, allow those differences to participate in decisions about what the organization is doing.” [#I-19]

Ensure a Level Playing Field in Transit Procurements
Many transit agency representatives reported on the need to be inclusive in transit procurement opportunities including expanding minority business pipelines and opening up opportunities for small subcontractors to prime some jobs. Comments include:
• “… considering the diverse populations that we serve; they should also be reflected in the projects and our projects should be looked at through that lens as well.” [#I-10]
• “We want to make sure that what we do from a contracting side is equitable, that there are no barriers that could prohibit woman- and minority-owned companies to participate in our contracting activities, that there’s a level playing field, and that what we do in terms of how our dollars are spent reflect the business community.” [#I-18]
• “We weren’t meeting the goals that were established by the authority and so we started reaching out into the community growing our small business diversity minority
• ‘bus line.’” [#I-12]
• “We hear from diverse businesses, ‘What is our ladder for growth? We want to participate in your contracts, it’s great to be a sub, but what I would like to do is grow my business with you … have the opportunity to bid this work as a prime.’” [#I-20]
“[To level the playing field] we’re working on finalizing dashboards that will give a
• ‘360-degree view’ of a construction project that will tell us [those] contributions to our equity programs … relative to all of the other projects and programs that we have.” [#I-20]
• “[To ensure a level playing field] I am in the process of writing up the best practices for our DBE program … I’m compiling … documented best practices for the good faith efforts, for prompt payments, for commercially useful function verification, for setting goals ….” [#I-08]

**Measure Success Across Divisions and Departments**

Transit agency representatives reported on how they measure the outcomes of diversity and inclusion initiatives across departments.

**Take the Pulse.** One transit agency relied on taking the “pulse” of the agency to gauge effectiveness of diversity and inclusion initiatives. “For us it’s organic; I take the ‘pulse’ of the organization.” Another said, “… everybody has a role in ensuring we maintain diversity here …” [#I-23, #I-20]

**Consider Employee Complaints.** Others used the number of employee complaints as a metric.
• “The number of complaints that are filed within employee relations would be a good indicator as to whether or not things are working.” [#I-02]
• “Whenever we did our initial brainstorm [regarding metrics for success], people wanted to use these compliance factors, like let’s see if we decrease the number of complaints ….” [#I-01]

**Measure Compliance.** Some relied on EEO compliance and other factors.
• “We have placement goals that are part of our EEO program, so we have just hard metrics around what are our categories that we’re setting placement goals and what are the positions and what are the goals for underrepresented minorities and/or women. One of the things that I am initiating is a formal audit of our hiring and our organizations job tracks.” [#I-20]
• “We measure it at the EEO level for occupational codes but also at the level of management … [we measure at the executive director level] how many women are there … we haven’t really had a lot of measures other than what we look at how we’re recruiting and people participating in the program and we have a measure that we use in our employee engagement survey for measuring how well we’re doing in our efforts ….” [#I-04]
• “From a compliance perspective, there is a council for economic inclusion survey that we have done over the years.” [#I-22]
Track Information Across Departments. Some tracked information across departments drawing from federal guidance and best practices benchmarks, employee data and surveys, transit-user questionnaires, public input and other information collection and analysis. Some examples follow:

- “What we are starting to take a look at is an ‘employee engagement meter’ … what we call a ‘net promoter score,’ increase in different areas of engagement … driven by … diversity and inclusion efforts. We’ve done a number of different surveys over the past few years and we’ve asked questions to gauge the level of engagement an employee has; we know a lot of our diversity and inclusion work has helped to shape these. [# I-22]

  This year we are looking at a number of employee engagement efforts, a lot of which will be centered around social sustainability. We’ve been tracking surveys from 2015-2018 to gauge how the employee attitudes and opinions shift. We are analyzing with the net promoter score format … hoping to see that net promoter score increase by 5 percent.” [# I-22]

- “We are measuring our employee pool … for race and gender diversity and we even break it down to different areas of the agency. And we have a DBE goal so right now we are trying to reestablish some different DBE goals … tracking both subs and primes for DBE’s. They track any Title VI complaints of course. We do keep an eye on how many people that they are not approving for paratransit.” [#I-07]

- “If we are conceiving of a service improvement or major corridor strategy or a budgetary item, our public involvement plan that’s required by both our own policies as well as other guidelines, requires to conduct extensive outreach both in terms of in person outreach in the community as well as outreach to community-based organizations who then act as force multipliers for us to engage, especially with those challenging to reach populations; we metric our outreach based upon the composition of the respondents by demography and by race, and are constantly benchmarking that, not only against our system averages but also against the baseline demography of the region. We are trying to make sure at all points in time that our feedback is not only extensive but also representative of the communities that we serve. [#I-16]

  It should also be noted that when we conduct our bus and rail censuses, which is unlike some other transit properties which simply use census information or ACS information to best gauge the demography of both their ridership profile and baseline profile, we actually conduct in-person intercept surveys every three years and we gather anywhere between 60,000 and 70,000 individual intercept surveys, so we can best understand our widening community and we engage in additional effort in communities that are traditionally hard to survey … limited English proficient, we have over 15 languages that are spoken here as primary home languages in the [specified] area, as well as those that are minority or low-income communities in vulnerable geographies.” [#I-16]

- “We are constantly comparing ourselves to industry standards, from a best practices perspective regarding … recruitment, reaching out to different communities to attract the best talent that we can possibly find and focus on inclusiveness as well as process ….“ [#I-11]

  “Whenever we change any policies, and even something as simple as a fare increase, we conduct an in-depth analysis to ensure that certain communities are not adversely impacted.” [#I-11]
Evaluating Outreach Efforts. Some transit agency representatives discussed how they evaluate the effectiveness of community outreach, job fairs and partnerships, for instance.

- “We metric our outreach based upon the composition of the respondents by demography and by race and are constantly benchmarking against our system but also against the baseline demography of the region.” [#I-16]
- “… I constantly am asking my team, let’s think ‘outside the box,’ how can we be better at this, how can we better engage with people as the needs of the people we serve change.” [#I-20]
- “One of the areas that is an area of emphasis for me is community-based outreach, what I’ve learned in my career here is that if we aren’t constantly in contact with the community, then we start to lose that connection …. We average an outreach meeting every ten days or twelve days … that was just us participating in or hosting it ourselves, we go out in the community and we partner with other agencies to collaboratively work to develop job fairs to participate in job fairs, we were the sponsor of a contractors expo … where we bring in contractors and other agencies, we constantly are trying to partner with the other transit agency partners in the regions and other agencies through the business outreach committee and other groups we work with to try to increase and include small businesses in our participation.” [#I-20]
- “One of the main things we measure in those meetings is what we call our ‘pass-through rate,’ so when we go out and connect with someone in the community, do they take an affirmative step to try to work with us or to engage with us beyond the outreach meeting. And then from the contracting side, what is their success rate.” [#I-20]

Identify Gaps

Many transit agency representatives reported gaps in delivery of diversity and inclusion initiatives. Examples follow:

- “[A gap in] funding sometimes is an issue ….” [#I-13]
- “All agencies in the transit industry would have some gaps and specifically, for us … there are certain jobs historically that have been dominated by men. A classic example would be maintenance. So, the answer to the question is there [are] more men that are doing mechanical work than woman so to the extent that that’s a common theme in the industry then ‘yeah I would have those issues.’ We obviously can’t produce them if they don’t exist … we set up a relationship with … trade schools so that we can try to the best of our ability and also the military to try to see if we can get woman that can do those jobs. But … everyone is vying for the same thing … so those individuals get the valuable training here and then they wind up going someplace else.” [#I-02]
- “We do enough inclusive activities, I don't think we do a good enough job yet in making our community, our service area communities, feel that their voice is heard, that we are listening to them, I don’t think that we’re creating enough opportunity for them to do that. That’s something that we are tackling this year. We’re going out and probably doing more outreach across our service area ….” [#I-09]
- “I know from an HR standpoint the gap that we have is that … we’ve gone too long without training … we’re going to start rolling out [training] annually, it’s just not something that we've done on an annual basis previously.” [#I-17]
Pursue and Share Internal and External Resources

A number of transit agency representatives spoke of shared resources or looking to outside sources to augment diversity and inclusion initiatives.

- “We read just about every publication and conduct our own research through all available means, through our association APTA and various other organizations.” [#I-11]
- “My counterparts [at other transit agencies and certification agencies] … opportunity to reach out to them during the meetings and also just informally if I have questions and things like that; I’ll just share things informally by phone and so that’s a resource as well … there are plenty of agencies that do or have similar programs both on the private and public sector sides so we use each other as resources, bounce things off of each other.” [#I-18]
- “We talk frequently with folks at [specified transit agency] and over time we’ve learned how they go about doing different things, different policies, engage the community … [we] point to them … that’s helpful.” [#I-09]
- “[We] belong to a talent development [association] which is a workforce development group … [we have] a networking connection with the chair of their diversity and inclusion council so we’ve ‘found people.’ I think that we’ve done it informally trying to find different groups that we can participate with and get information from.” [#I-04]
- “We have various nonprofit organizations that we work with, we have woman organizations, we have ex-offender organizations, we have facilitators in our leadership academy that stress these issues, we have a quarterly leadership forum where we bring in all of the leaders in the organization to include people in our leadership academy … we bring in guest speakers around the topic of diversity and inclusion and all those things and so, we’re constantly reinforcing the message of inclusion and I think that you have to do that constantly because people will lose track of the importance of the issue.” [#I-10]
- “I think participating in American Public Transportation Authority (APTA) … and trying to be leaders on subgroups of diversity and inclusion council on APTA. I think being active in our community ….” [#I-03]
- “The community colleges and four-year colleges. We have a good relationship with [specified] university. We have … partnership, they’re like a link to the [local] chamber of commerce. We also link to the [regional] diversity center. We have a link to the transportation learning center which helps us with national outreach for developing training curriculums as it relates to transit training. There’s a really good healthy base as it stands now.” [#I-22]

Remove Barriers that Inhibit Success

Some transit agency representatives reported that diversity and inclusion initiatives can lose traction or be conflicting, or that some diversity and inclusion programs often have the reverse effect. Others identified common institutional barriers that inhibit success. Examples follow:

- “We’re constantly reinforcing the message of inclusion and I think that you have to do that constantly because people will lose track of the importance of the issue.” [#I-10]
- “We are … at the beginning stages. I would love to see succession planning that follows people in all different roles. This is where it starts to become a gray area …. I find it truly challenging to have a great program … as we’re saying, ‘Okay we’re going to look at the Latino community or we’re going to look at the Asian community or we’re going to focus on the woman.’ I really want it to be about the people and whatever it is that they’re bringing to the table and how to grow the individuals.” [#I-01]
- “Now I also have a responsibility as the EEO officer to ensure that I am truly being diverse and so I find that to be challenging …. it sometimes feels conflicting.” [#I-01]
• “There are competing needs in the organization … and what I don’t want is for the equity and the diversity needs to be lost in the ‘noise’ of everything a large organization has going on.” [I-20]
  “One of the concerns you often hear in terms of equity and inclusion is, there maybe are unintended results of facially neutral policies, so an artificial glass ceiling for example … is there one in your organization and if so, how do you get at that. And how you get at that … is by collecting your data and then running statistical significance testing to see if any issues you identify or any challenges you identify are anecdotal and/or due to chance or if there is some significance to it so that we can respond to them proactively, which is a new process for our organization that we’ve initiated in the last few months. Pay equity, diversity around hiring, etc.” [I-20]

• What a lot of people don’t realize is that there are a lot of institutional barriers in place and so being aware of what those are … so thinking about hiring people … and if you have a minimum qualification that requires an associate’s degree or a bachelor’s degree, actually looking at that body of work and deciding, is that appropriate, or is that just something that we’ve had in place forever.” [I-04]
  And then for some of the testing, not all groups do testing well, and so trying to make sure that you’re looking at those barriers and saying, ‘Are those still filling a need, is there something else we can do.’ I think that’s where a lot of organizations should be looking because we recognize different celebrations throughout the year and that brings a lot of inclusion and people ‘feel good’ but you need to do more than that. You have to do the hard stuff, which is figuring out what kinds of institutional things you have in place that are preventing people from getting promoted, preventing people from getting hired.” [I-04]
APPENDIX D

Online Survey (First Draft)
The Transportation Cooperative Research Program (TCRP) has retained Keen Independent Research to develop the Resource Guide for Improving Diversity and Inclusion Programs for the Public Transportation Industry. TCRP is managed by the Transportation Research Board (TRB), a division of the National Academy of Sciences, Engineering and Medicine (see attached).

Keen Independent is an economic and policy research firm with offices in Phoenix and Denver (www.keenindependent.com). We have completed previous research studies for TRB.

If you have questions regarding this survey, please contact TRB at: xx

Survey Approach

We are asking representatives of transit agencies of all sizes as well as private sector transportation organizations throughout the country to respond to this 10- to 20-minute survey.

Your input will be a valuable contribution as we create a resource guide to help transit agencies across the Country promote diversity and inclusion in the public transportation industry.

This survey has two sets of questions regarding:

A. Organizational scan; and

B. Diversity and inclusion initiatives.
A. Organizational Scan

1. Please check the kind of organization you represent.
   - Transit agency
   - Other: _______________________

2. Which staff positions are responsible for diversity and inclusion in the organization? (check all that apply)
   - Senior leadership (CEO, General Manager, other senior leadership)
   - Human resources (HR) director/manager
   - Procurement, contracting, DBE Program director/manager
   - Civil rights, equity assurance, other director/manager
   - Title VI/ADA director/manager
   - Legal (attorney/director/manager)
   - Other: _______________________

3. When you think about diversity and inclusion in your organization, do you perceive it as being mostly compliance-based, mostly culture-based or equally compliance- and culture-based?
   - Mostly compliance-based
   - Mostly culture-based
   - Equally compliance- and culture-based
   - Other: _______________________

4. Have you seen any diversity and inclusion initiatives in your transit agency change since the early 2000s?
   - Yes
   - No
   - Don’t know

5. Are diversity and inclusion measures at your organization improving, getting worse or staying the same?
   - Improving
   - Getting worse
   - Staying the same
   - Don’t know
6. Are there any gaps in diversity and inclusion practices in your organization regarding employment?
   - Yes
   - No
   - Don’t know

7. [If yes to Q6] What are the gaps and how is your organization filling those gaps?
   [Open-ended, limit response to 50 characters]

8. Are there any gaps in diversity and inclusion practices in your organization regarding procurement, contracting, DBE Program?
   - Yes
   - No
   - Don’t know

9. [If yes to Q8] What are the gaps and how is your organization filling those gaps?
   [Open-ended, limit response to 50 characters]

10. Are there any gaps in diversity and inclusion practices in your organization regarding board development?
    - Yes
    - No
    - Don’t know

11. [If yes to Q10] What are the gaps and how is your organization filling those gaps?
    [Open-ended, limit response to 50 characters]

12. Are there any gaps in diversity and inclusion practices in other areas in your organization?
    - Yes
    - No
    - Don’t know

13. [If yes to Q12] What are the gaps and how is your organization filling those gaps?
    [Open-ended, limit response to 50 characters]

14. Has your organization ever retired any diversity and inclusion initiatives because they were ineffective or had a negative effect?
    - Yes
    - No
    - Don’t know

15. [If yes to Q14] Please explain [Open-ended, limit response to 50 characters]
16. Beyond regulatory information sources, what resources have you tapped when seeking ways to improve diversity and inclusion practices at your organization? (check all that apply)

- Transportation Research Board e-newsletters
- Transportation Research Board peer-reviewed publications, other TRB periodicals
- Conference sessions/trainings/workshops
- Industry associations/alliances (e.g., APTA, CTAA, NAPTA, regional transit associations/alliances such as CALACT)
- Colleagues at other public sector transit agencies
- Private sector partners
- Academic resources (e.g., community colleges, colleges, universities)
- eLearning sources
- Other: ___________________________
B. Diversity and Inclusion Initiatives

17. Review the following list of diversity and inclusion initiatives regarding employee recruitment. (check all that are being applied by your organization)
   - □ Diverse interview panels
   - □ Workforce utilization analysis
   - □ Targeted recruitment
   - □ Job placement opportunities for individuals with disabilities
   - □ Performance evaluations include EEO policy goals and objectives
   - □ Monitoring of interview/selection process
   - □ Other: ______________________

18. Review the following list of diversity and inclusion initiatives regarding current employees. (check all that are being applied by your organization)
   - □ Civil Rights/EEO Training
   - □ Diversity Employee Resource Group (ERG)
   - □ Diversity awareness workshops/training
   - □ Diversity and inclusion committee
   - □ Facilities for all gender identities
   - □ Diverse cultural celebrations for employees
   - □ Recognition of diverse holidays/discretionary holidays
   - □ Other: ______________________

19. Review the following list of diversity and inclusion initiatives regarding procurement, contracting, DBE Program. (check all that are being applied by your organization)
   - □ DBE training seminars/workshops
   - □ Technical assistance programs
   - □ Networking events
   - □ Mentor-Protege Program
   - □ DBE and SBE initiatives for non-federally funded contracts
   - □ Unbundling of contracts
   - □ Prompt payment policies
   - □ Small business preferences/set-asides
   - □ Capital, bonding and insurance assistance
   - □ Notifying DBEs regarding solicitation opportunities
   - □ Other: ______________________
20. Review the following list of diversity and inclusion initiatives regarding **customer service**. (check all that are being applied by your organization)

- [ ] Posting of Title VI policy
- [ ] Incorporating diversity in advertising policy
- [ ] Language assistance
- [ ] Notice of Civil Rights posted in multiple languages
- [ ] Passenger survey of customer needs
- [ ] Minority representation on boards, councils, and committees

- Other: ____________________________

21. Review the following list of diversity and inclusion initiatives regarding **community service and environmental justice**. (check all that are being applied by your organization)

- [ ] Development of a public participation plan
- [ ] Bus stop and street guidelines incorporate equity
- [ ] Outreach to disadvantaged communities for public events
- [ ] Language interpreters provided for project meetings
- [ ] Community Relations Department
- [ ] Community-focused cultural activities/events
- [ ] Support of LGBTQ in community programs

- Other: ____________________________

22. From your perspective, what are some of the most innovative diversity and inclusion initiatives, if any? [Open-ended, limit response to 50 characters]

23. From your perspective, what are some of the failures of diversity and inclusion initiatives, if any? [Open-ended, limit response to 50 characters]

24. What are some of the barriers to implementing diversity initiatives, if any? [Open-ended, limit response to 50 characters]

Name: _____________________________________________

Title: ______________________________________________

Agency/organization: ________________________________

Thank you for your assistance!
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RESOURCE GUIDE FOR IMPROVING DIVERSITY AND INCLUSION PROGRAMS FOR THE PUBLIC TRANSPORTATION INDUSTRY AMPLIFIED WORK PLAN

INTERIM DELIVERABLE

Prepared for
TCRP
Transportation Research Board

of

The National Academies of Sciences, Engineering, and Medicine

TRANSPORTATION RESEARCH BOARD OF THE NATIONAL ACADEMIES OF SCIENCES, ENGINEERING, AND MEDICINE PRIVILEGED DOCUMENT

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David J. Keen
Keen Independent Research LLC
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March 2020
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INTERIM REPORT

Resource Guide for Improving Diversity and Inclusion Programs for the Public Transportation Industry

Summary of Results in the Interim Report

TCRP seeks a resource guide that will assist different types of public transportation organizations develop and improve diversity and inclusion programs. The guide will include policies, plans and practices that have been successfully implemented within the industry. It will also provide better data for organizations of different sizes to compare their efforts with their peers.

This Interim Report provides a mid-point update concerning research results.

Research Objectives

This research has four primary objectives:

• Evaluate the current state of diversity and inclusion practices, including the identification of any gaps in programs and provide recommendations as to how public transit agencies can perform program assessments within their organizations;
• Examine how diversity and inclusion policies have successfully been implemented and define methods for public transportation agencies to develop goals and objectives by creating a template that can be utilized for diversity and inclusion programs;
• Identify methods of measuring the success and effectiveness of diversity and inclusion programs; and
• Develop an inclusive resource guide that provides recommendations on how to best apply research findings as well as identifies any impacts associated with program implementation.

This Interim Report summarizes study results after completing the background research, examination of legal issues, and in-depth interviews with staff from 13 transit agencies. The next tasks are to conduct an online survey of 300 staff from transit agencies and complete case studies of at least four organizations.

Key Results that Influence Remaining Tasks

Preliminary research results are based on interviews with 13 medium and large transit agencies across the country (37 interviewees across many departments) and other initial research. These results are summarized into the eight themes listed below.

1. Federal law requires transit agencies to ensure non-discrimination and equity across all aspects of their operations. There are also federal requirements for inclusion. Diversity can be a means to measure progress toward equity and inclusion, and may result in improved decision-making, service to communities and other aspects of business operations. (Appendix A summarizes federal legal requirements and important federal and state legal constraints.)
2. Some transit agencies go beyond “check the box” compliance to incorporate equity, diversity and inclusion into the culture of how staff interact with one another, work with the communities they serve, and make decisions as an organization. For some organizations, this shift has occurred in just the past three to four years, based on study team interviews with 13 transit agencies. (Appendix C reviews results from in-depth interviews with 37 staff from these agencies.)

3. In the interviews conducted to date in this study, transit agencies expressed diversity and inclusion concerns as going beyond characteristics such as race, national origin and gender to include sexual orientation, different mental and physical abilities, young adults, and ex-offenders (as examples). And, diversity and inclusion (for many organizations) has moved beyond “putting people in buckets” to building a culture where everyone is appreciated for who they are and encouraged to bring “their whole selves” to work. This is seen as a “less exclusionary” approach that includes all employees, which may contribute to long-term success.

4. Large transit agencies have many of the same governmental responsibilities as municipalities, from real estate development to policing and serving homeless populations. This breadth of responsibility creates additional issues regarding equity, diversity and inclusion. For example, transit agencies building new rail lines can dislocate minority or low-income populations, affect small businesses and change accessibility of jobs for disadvantaged workers. And, they must involve diverse communities in these decisions. These issues might be as pressing for an organization as increasing the diversity of its workforce.

5. The study team recommends adding “equity” to the concept of “diversity and inclusion” for this assignment (see Working Definitions of Diversity and Inclusion later in this Interim Report for more detail).

6. The study team also recommends adding “service provision and other aspects of operations” to the scope of this study. As such, the assignment will examine employment, procurement, service provision and other activities.

7. As a compliance issue, equity, diversity and inclusion are not new concerns for transit agencies. Many federal requirements affect transit agencies. Because most have been in place for decades, there is a long history of transit agency efforts to comply with those requirements. FTA has issued Circulars that guide transit agencies on what they must do to be compliant.

8. Attempting to ensure equity, diversity and inclusion is difficult and sometimes unsuccessful. For example, there are some types of public transportation jobs where agencies report little progress in diversity, especially for female employees. Some transit agency representatives reported that diversity and inclusion initiatives can lose traction or be conflicting, or that some programs can have the reverse effect.

9. For all of the reasons described above, the present research should focus on (a) generally describing measures employed by transit agencies to address these issues (including how widely they are used), (b) highlighting innovative and emerging practices for different types and sizes of agencies, and (c) identifying ways to effectively measure the effects of particular initiatives (which appears to be a large gap in the current knowledge).

10. A study completed in 2003 is the most recent comprehensive TCRP review of diversity programs for transit agencies (National Academies of Sciences, Engineering, and Medicine 2003). It examined diversity training initiatives in transit agencies through a literature review, survey and case studies. The study focused on employment. By providing a snapshot of transit agency employment diversity initiatives nearly 20 years ago, it provides a springboard for the employment component of the present study.

As part of the tasks included in this Interim Report, the study team re-contacted the agencies participating in the 2003 study. Results are summarized in a later portion of the Interim Report and discussed in-depth in Appendix C. A first draft of the proposed 2020 survey of transit agencies provided
in Appendix D builds upon the questions included in this previous survey. (It is a first draft, subject to substantial revision based on project panel input.)

11. There appears to be no TRB literature focusing on equity in procurement (unlike state DOTs and airports). The study team’s literature review in Appendix B relied on other sources for both procurement and service provision.

12. The initial questions posed in the Augmented Work Plan for this assignment remain highly relevant to transit agencies. Thirteen of the 14 agencies in the 2003 study that were invited to participate in the current study did so, which is one indication of thirst for additional information. Key challenges at the time of this Interim Report are: (a) the growing scope of the topic, and (b) conducting this type of research during the COVID-19 Pandemic. The study team has other research in the field at this time, so, we hope to know more about how to effectively survey and conduct case studies during a pandemic by the time we hold the April project panel meeting.

The remainder of this Interim Report summarizes key aspects of this research in the following parts:

• Federal, state and local legal issues affecting diversity and inclusion efforts;
• TRB literature on equity and inclusion;
• Results of in-depth interviews with transit agencies;
• Working definitions of diversity and inclusion; and
• Next steps.

Federal, State and Local Legal Issues Affecting Diversity and Inclusion Efforts

Federal, state and local law place requirements on public agencies providing public transportation as well as constrain the actions of those agencies. Requirements and limitations pertain to equity and inclusion in:

• Employment;
• Contracting;
• Service provision; and
• Other aspects of operations.

Some of the requirements and limitations pertain to any public entity and others specifically apply to recipients of U.S. DOT or FTA funds. There are many resources pertaining to these topic, including, for example, NCHRP Legal Research Digest 77: Update of Selected Studies in Transportation Law (Thomas 2019).

Federal Requirements

Federal requirements apply to different aspects of equity and inclusion in employment, contracting, service provision and other aspects of transit agency operations.

Employment

Transit agencies are prohibited from discriminating against certain groups of individuals in employment. As Federal Transit Administration (FTA) grantees, agencies must comply with Equal Employment Opportunity (EEO) provisions of federal law, including:

• Americans with Disabilities Act of 1990 (ADA);
• Title VI of the Civil Rights Act of 1964 (Title VI);
• Title VII of the Civil Rights Act of 1964 (Title VII);
• Section 504 of the Rehabilitation Act of 1973 (which prohibits employment discrimination on the basis of disability for activities that receive federal funding);
• Uniformed Services Employment and Reemployment Rights Act of 1994; and

**Groups Considered in the Requirements.** Different federal laws prohibit employment discrimination for different groups. For example, Title VI prohibits discrimination based on race, color, and national origin for organizations receiving federal funds (see, e.g., regulations at 49 CFR § 21.5(c)). Title VII includes these same prohibitions for employers with 15 or more employees and adds prohibition of discrimination on the basis of religion or sex.

Federal Transit Laws (49 U.S.C. Section 5332) protects each of the above groups from employment discrimination, plus prohibits discrimination based on disability and age. FTA Circular C 4704 1A explains that protections on the basis of “sex” under Federal Transit Laws include pregnancy and childbirth, gender identity and sexual orientation. Title II of the Genetic Information Nondiscrimination Act of 2008 also applies to employers with at least 15 employees and prohibits employment discrimination based on genetic information (including family medical history).

Even if a public transportation provider receives its USDOT funds indirectly through its state DOT, it must comply with federal regulations in its employment. Certain regulations extend to companies working on federally funded contracts awarded by public transportation providers.

Some of the above requirements have been in place for more than 50 years, and as federal law has evolved, so has FTA guidance to transit agencies regarding compliance. FTA Circular C 4704 1A summarizes requirements for FTA grantees and subgrantees regarding these and other aspects of federal law that prohibits employment discrimination.

**Employment Goals and Affirmative Action Programs.** Title VII also requires virtually all state and local governments to comply with certain employment reporting requirements and to develop affirmative action plans that include goals and timetables to achieve a representative workforce.

**Contracting**

Nondiscrimination in contracting is another requirement pertaining to transit agencies when they award contracts using USDOT funds.

The federal government requires state and local agencies to operate the Federal Disadvantaged Business Enterprise (DBE) Program if they use USDOT funds for transportation projects. Federal regulations governing the Federal DBE Program are provided in 49 Code of Federal Regulations (CFR) Part 26. There is also Official USDOT Guidance to state and local agencies operating the program. Some form of these requirements regarding nondiscrimination in contracting have been in place since the 1970s.

**Groups Considered in the Requirements.** The Federal DBE Program applies to socially and economically disadvantaged businesses. Under the Program, the following racial, ethnic and gender groups can be presumed to be socially disadvantaged:

• Black Americans (or “African Americans” in this study);
• Hispanic Americans;
• Native Americans;
• Asian-Pacific Americans;
• Subcontinent Asian Americans; and
• Women of any race or ethnicity.
To be economically disadvantaged, a company must be below an overall revenue limit and an industry-specific limit, and its firm owner(s) must be below personal net worth limits (49 CFR § 26 (d)).

**Requirements.** FTA recipients must have a DBE Program if they receive planning, capital or operating assistance from FTA and award prime contracts using more than $250,000 in FTA funds in a federal fiscal year. (This total does not include transit vehicle purchases using FTA funds.)

To comply with the Federal DBE Program, a transit agency must:

- Every three years, develop an overall annual goal for DBE participation in its FTA-funded contracts and establish the portion of its overall goal to be met through race-neutral means (such as small business programs) and race-conscious measures (such as DBE contract goals);
- Determine whether all racial/ethnic/gender groups will be eligible for any race- or gender-conscious elements of the program;
- Implement its neutral measures and, if needed, DBE contract goals; and
- Report DBE participation to FTA every six months.

**Court Challenges.** Since the 1980s, there have been lawsuits challenging the constitutionality of the Federal DBE Program and individual state and local agencies’ implementation of the Program. The Federal DBE Program has been upheld as valid and constitutional. For the most part, state and local agencies have been successful in defending against legal challenges. Western States Paving Company, however, was successful in challenging the Washington State Department of Transportation’s implementation of the Federal DBE Program. Many state and local agencies, especially those in the West (i.e., states within the Ninth Circuit), made adjustments in their implementation of the Federal DBE Program to comply with the United States Ninth Circuit Court of Appeals decision in the *Western States Paving* case, and in accordance with the Official USDOT Guidance issued after the decision.

Groups have also challenged the constitutionality of state or local government Minority Business Enterprise and Women Business Enterprise (MBE/WBE) programs related to non-federally funded contracts (discussed on the next page).

**Nondiscrimination Provisions and Prohibitions on Adverse Effects in Transit Activities**

Federal regulations pertaining to Title VI and Environmental Justice require certain actions regarding nondiscrimination and avoiding adverse effects on certain groups across all transit agency activities.

Section 601 of Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, or national origin under any program or activity receiving federal financial assistance. It also prohibits exclusion from participation in or being denied the benefits of any such program or activity based on these personal characteristics.

Executive Order 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” was signed in 1994. The U.S. DOT Order 5610.2(a) “Actions to Address Environmental Justice in Minority Populations and Low-Income Populations” outlines how it applies Environmental Justice (EJ) principles (77 FR 27534, (May 10, 2012)). Any transit agency receiving FTA funds must incorporate EJ principles into its transportation decision-making and environmental review.

**Groups Considered in the Requirements.** As summarized above, Title VI focuses on nondiscrimination based on:

- Race and color; and
- National origin (nation where a person was born, or where the person’s parents or ancestors were born).

It also pertains to denial of meaningful access for limited English proficient (LEP) persons.
EJ regulations pertain to actions that will have a disproportionately high and adverse effect on:

- Minority populations; or
- Low-income populations.

Definitions of “minority persons” in FTA Circular C 4703.1 are as follows:

- American Indian and Alaska Native;
- Asian;
- Black or African American;
- Hispanic or Latino; and
- Native Hawaiian or Other Pacific Islander.

FTA Circular C 4703.1 explains that “low-income populations” generally means a group of low-income persons who live in geographic proximity. “Low-income” is defined as median household income at or below the U.S. Department of Health and Human Services poverty guidelines (FTA Circular C 4703.1, p. 7 (Aug. 15, 2012)).

**Prohibited Actions.** Beyond the differences in groups included in the regulations, Title VI and EJ regulations have a somewhat different focus.

Title VI prohibits practices that have discriminatory effects. The Circular includes the following definition of discrimination:

“Any action or inaction, whether intentional or unintentional, in any program or activity of a Federal aid recipient, subrecipient, or contract that results in disparate treatment, disparate impact, or perpetuating the effects of prior discrimination based on race, color, or national origin.”

Under Title VI, intentional discrimination based on race, color or national origin is prohibited. Unintentional actions that result in discrimination on the basis of race, color or national origin also violate U.S. DOT regulations “unless the recipient can show the policies or practices are substantially justified and there is no less discriminatory alternative” (FTA Circular C 4702.1B, p. 6 (Oct. 1, 2012, p. 6)).

EJ regulations only allows U.S. DOT programs, policies or activities that have a disproportionately high and adverse effect on targeted groups if “further mitigation measures or alternatives that would reduce the disproportionately high and adverse effects are not practicable” (FTA Circular C 4703.1, p. 5 (Aug. 15, 2012)). The regulations go on to state that “social, economic (including costs) and environmental effects of avoiding or mitigating the adverse effects will be taken into account” when determining whether mitigation or an alternative is “practicable.”

FTA Circular C 4703.1 defines “disproportionately high and adverse effect” as an effect on a minority population or low-income population that:

- Is predominantly borne by that population, or
- Will be suffered by that population and is appreciably more severe or greater in magnitude than the adverse effect that will be suffered by the non-minority population and/or non-low-income population.

In sum, Federal Title VI and EJ regulations overlap but are still distinct as they apply to different groups and different types of impacts. FTA Circulars C 4702.1B and C 4703.1 explain the commonalities and differences in how transit agencies need to respond to these regulations.
Service and Fare Equity Analysis. This Interim Report does not cover every aspect of a transit agency’s operations affected by Title VI and EJ regulations, which are very broad. One aspect of these regulations merits further explanation: requirements regarding equity in services and fares for fixed route transit providers.

Regulations in Section (3)(iii) Appendix C to 49 CFR Part 21 provide that:

“[n]o person or group of persons shall be discriminated against with regard to the routing, scheduling, or quality of service of transportation service furnished as a part of the project on the basis of race, color, or national origin. Frequency of service, age and quality of vehicles assigned to routes, quality of stations servicing different routes, and location of routes may not be determined on the basis of race, color, or national origin.”

To comply, FTA Circular C 4702.1B explains that all fixed route transit providers must set service standards and policies for each mode of service that identify how “service is distributed across the transit system, and must ensure that the manner of the distribution affords users access to these assets.” This requirement extends to service policies “to ensure service design and operations practices do not result in discrimination on the basis of race, color, or national origin.”

FTA Circular C 4702.1B places requirements on transit providers that operate fixed route service. Although these requirements do not apply, there are other requirements (including ADA) for providers that (a) only operate demand response services and (b) non-profits that only serve their own riders and not the general public.

Basic requirements pertain to any fixed route service transit provider. All fixed route providers must develop quantitative standards for service for each fixed route modes regarding vehicle load, headway, on-time performance and services availability (for example, the percentage of all residents in the service are within a certain distance of the transit service). They must also develop a policy for distribution of transit amenities for each mode (e.g., seating at stops/stations) and vehicle assignment for each mode (age, type of vehicle or type of service provided).

All fixed route operators must develop Title VI Programs that outline system-wide service standards and policies. Additional data collection and monitoring requirements apply to transit providers that operate 50 or more fixed route vehicles in peak services and are located in an urbanized area with a population of 200,000 or more. These additional requirements also include:

- Description of the public engagement process for setting the major service change policy and disparate impact policy;
- Results of equity analyses that examine effects of major services changes and/or fare changes; and
- Documentation of their board’s awareness and approval of related policies and equity analyses.

Although low-income populations are not included under Title VI, FTA Circular C 4702.1B requires transit providers to evaluate service equity for low-income populations including whether they will bear a disproportionate burden of service or fare changes.

Incorporating EJ Principles into NEPA Process. The National Environmental Policy Act (NEPA) requires consideration of environmental and other impacts in decision making regarding major federal actions (42 U.S.C. § 4321 et seq.). Federal regulations direct agencies to take certain actions, including examining ways to “avoid, minimize, or mitigate adverse effects of these actions upon the quality of the human environment,” (40 CFR § 1500.5) consider the “social, economic, and environmental impacts of the proposed transportation improvement,” (23 CFR § 771) and encourage public involved in these decisions (40 CFR § 1500.2).

EO 12898 directs agencies to ensure that environmental reviews under NEPA address disproportionately high and adverse effects on minority populations and low-income populations.

FTA Circular C 4703.1 describes how EJ should be addressed in all NEPA decision-making for projects involving federal funding. FTA has issued regulations in 23 CFR Part 771 that address review under NEPA.
A review can take the form of an Environmental Impact Statement (EIS), Environmental Assessment (EA) or a Categorical Exclusion (CE), which describe actions that do not have a significant environmental effect. FTA Circular C 4703.1 summarizes the steps that an agency should take as follows:

- Define the project area and identify EJ populations; and
- Identify adverse environmental effects on EJ populations (examples include health and environmental risks, effects on aesthetic values, disruption of community cohesion or economic vitality, displacement of people or businesses, and increased isolation of minority or low-income individuals within a community or from the broader community).

**Nondiscrimination in Service Provision for Persons with Disabilities**

In addition to prohibiting discrimination against persons with disabilities in employment, providers of transportation services must ensure their services, vehicles, and facilities are accessible to persons with disabilities. Unlike EJ, all types and sizes of transit services providers must comply. Certain requirements extend to a private entity for fixed route or demand responsive service that enters an agreement to provide those services for a public transit agency (49 CFR § 37.23).

FTA Circular C 4710.1 explains requirements for transit agencies emerging from the Americans with Disabilities Act (ADA) of 1990 and Section 504 of the Rehabilitation Act of 1973 (FTA Circular C 4710.1 (Nov. 4, 2015)). Federal regulations are set forth in 49 CFR Parts 27, 37, 38, and 39.

**Groups Considered in the Requirements.** Disability is defined as a physical or mental impairment that substantially limits one or more of the major life activities of an individual. Further “physical or mental impairment” includes a physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting the body as well as any mental or psychological disorder. The definitions specifically include emotional illness, drug addiction and alcoholism (49 CFR § 37.3).

**Requirements and Prohibited Actions.** In addition to providing services, there are requirements for a transit provider regarding:

- Use and maintenance of accessibility-related equipment or features (such as lifts, ramps, lighting, elevators, platforms and signage);
- Allowing service animals to accompany individual with disabilities (defined as an animal individually trained to work or perform tasks);
- Allowing an individual with a disability to travel with a respirator or portable oxygen supply (with certain restrictions);
- Providing information to individual with disabilities through accessible formats and technology;
- Providing training to transit personnel about proper assistance for persons with disabilities; and
- Making reasonable modifications in policies and practices to avoid discrimination on the basis of disability (with certain exceptions).

There are certain situations where a transit provider can deny service, such as when the “individual engages in violent, seriously disruptive, or illegal conduct, or represents a direct threat to the health or safety of others” (49 CFR § 37.5(h)).

FTA Circular C 4710.1 also provides information specific to:

- New construction of transportation facilities and alterations of existing facilities;
- Design of new, used and remanufactured transit vehicles;
- Service provision on fixed routes (such as priority seating and stop announcements);
- Provision of demand responsive services and paratransit services;
- Services provided by passenger ferries;
- Transit services provided by monorails, trams and other less common vehicles; and
- Processes for tracking and resolving complaints from persons with disabilities.
Federal, State and Local Limitations Regarding Race and Gender Preferences in Employment and Contracting

Public sector decision-making that considers factors such as race or gender can also be subject to legal challenge in federal or state court. These legal constraints differ by group (race compared with gender or physical ability, for example) and by state. For example, states such as Arizona, California, Louisiana and Washington prohibit or limit a state or local government’s use of preferences based on race in employment and contracting (unless required to receive federal funds).

These issues are extensive and merit consideration in their own study, and they are only summarized here (and in Appendix A).

**Title VII**

Although Title VII prohibits discrimination in employment based on race and gender, a voluntary race- or gender-conscious program is permissible if (1) there is a showing of a “manifest imbalance” in the work force; (2) the plan does not “unnecessarily trammel” the rights of members of the non-preferred class or “create an absolute bar to their advancement,” and (3) the plan does no more than is necessary to attain a balance. This analysis is the same for distinctions based on race or gender. (See Appendix A for a discussion of relevant cases and their consideration of the issues identified above.)

**Constitutional Standards for Affirmative Action Programs**

**Race and Gender Preferences.** The Equal Protection Clause of the 14th Amendment to the U.S. Constitution also affects the ability of any government entity to use race as a factor in its decision-making. For public transit agencies, this limits voluntary affirmative action programs for employment and minority business enterprise (MBE) programs related to their non-U.S. DOT-funded contracts.

In *City of Richmond v. J.A. Croson Co.*, 488 U.S. at 469 (1989), the U.S. Supreme Court held that local governments may utilize racial classifications only to serve a compelling state interest, and then the method chosen must be narrowly tailored to serve that interest. Thus, the constitutional standard applicable to federal, state, or local governmental programs creating preferences based on race and ethnicity is the strict scrutiny test. Appendix A discusses how courts have applied this legal standard. Programs for women business enterprises (WBEs) can be challenged as well (see Appendix A).

**Preferences for Other Groups.** A preference program for public agency employment or contracting can be legally challenged even if the program does not consider race, ethnicity or gender. However, such programs are much more easily defended. The public entity generally need only show that it has a “rational basis” for such a program, depending upon its components and how it is implemented.

Needing only to meet the rational basis test makes it easier to defend public sector employment preferences for persons with disabilities, veterans or other groups not defined based on race, ethnicity or gender. Contracting programs that give preferences or set goals for companies owned by groups such as persons with disabilities, veterans or service-disabled veterans would be more easily defended than programs that provide preferences to minority- or women-owned businesses.

It is important to note that legal restrictions can apply to preferences based on geographic location of the individual or business. And, some types of geographic preferences are prohibited when using federal funds.
Literature on Equity and Inclusion

There is considerable research that examines equity, diversity and inclusion issues related to transportation.

Workforce

The study team examined the following TRB research on workforce diversity for transit agencies published since 2000.

TCRP Synthesis 46: Diversity Training Initiatives

This 2003 study represents the most recent comprehensive TCRP review of diversity programs for transit agencies (National Academies of Sciences, Engineering, and Medicine 2003). It examined diversity training initiatives in transit agencies through a literature review, a survey and case studies. The current study team re-contacted the agencies participating in the 2003 study, with results discussed in the next portion of this Interim Report. The proposed 2020 survey of transit agencies provided in Appendix D builds upon the questions included in this previous survey.

The 2003 study authors reported that participating transit agencies indicated that diversity initiatives successfully increased the recruitment, retention and promotion of women and minorities in the transit industry. Additionally, these diversity efforts corresponded with improved customer satisfaction. Overall, respondents reported a commitment to diversity throughout the public transit organization, including management, operations and service provision.

Although the study found that most diversity initiatives were driven by the human resources department, there was also strong commitment to diversity among agency leadership including board members, executives and general managers.

This report also found that diversity initiatives within the transit industry vary. The authors cite variation within policy development and a lack of standardization with regard to diversity programs.

The authors note that diversity trainings, “have moved beyond race and sex to incorporate cultural, religious, geographic, economic, socioeconomic, and political differences, as well as consideration of people with varying abilities and disabilities.” The researchers also note that many transit agencies have diversity plans, committees, task forces and/or staffed positions to focus on the implementation of diversity initiatives within their organization.

This report includes a review of various definitions of diversity utilized by scholars, as well as private and public agencies. Many definitions of diversity include a broad range of group or individual differences, differences in identity and “otherness.” Some include different dimensions of diversity, with the “primary characteristics” including age, gender, race/ethnicity, physical and mental ability and sexual orientation, while the “secondary characteristics” include aspects that may change such as education, income, religious beliefs, work experience, etc.

Study authors conducted a survey of transit agencies. These agencies were asked about the definition of diversity within their organization, diversity initiatives within their organization, how diversity is managed, organizational barriers to diversity and an overall rating of diversity efforts within the agency.

Defining Diversity. Answers relating to definitions of diversity identified who was held accountable for ensuring diversity in the agency.

- Survey respondents reported that diversity was included in a variety of places within the organization and the managerial hierarchy, including in policies and procedures, mission statements, goals and objectives, employee recruitment and training plans.
• Accountability for diversity initiatives were primarily the responsibility of the human resources department, although some agencies included affirmative action, civil rights, equal opportunity, and other departments that were charged with overseeing the overall implementation of diversity initiatives.

• The survey also asked respondents to identify diversity within the agency hierarchy. Respondents indicated diversity within many aspects of transit agencies, including with executive, senior and middle management, first-line supervisors, technical and professional positions, and driver and mechanic positions.

• Respondents reported that diversity within the agency was associated with different resource allocation. For example, these agencies linked diversity to investment in the Federal DBE Program, incentives to increase the recruitment of diverse employees, providing internships to women and minorities, and funding diversity training and staff to manage the implementation of diversity efforts.

Diversity Initiatives. The survey also addressed types of diversity initiatives within transit agencies.

• The vast majority of respondents reported programs to increase diversity awareness, such as seminars and workshops, cultural awareness, sensitivity training and diversity orientation programs. Others reported that diversity initiatives took the form of diversity councils or task forces, diversity plans, diversity vision statements and diversity as a core business strategy.

• Some transit agencies cited mentoring networks, programs to improve work/life balance, cultural celebrations, diversity poster programs or other initiatives to enhance diversity.

• Others noted that they utilize organizational assessments, staff retreats, and employee satisfaction and climate surveys to identify the need for further diversity initiatives.

When asked how agencies measured the success of these diversity initiatives, respondents cited that meeting their affirmative action goals or reducing the number of charges of discrimination, employee and Equal Employment Opportunity Commission complaints, grievances and employee management conflicts were common measures of success. Some respondents noted that diversity efforts were measured by how closely the makeup of agency employees match the demographics of the community.

More broadly, however, some agencies responded that they measured the success of initiatives by the number of employees trained in diversity awareness, the number of women and minorities promoted, the number of participants with a particular cultural event, or the number of networking channels available for the promotion of internal staff.

Managing Diversity. Included in the survey were questions relating to managerial methods of diversity within the transit agency. In this section, respondents listed specific programs and activities that promoted diversity within the agency. The report summarizes initiatives in:

• Hillsborough Area Regional Transit Agency (HART);
• Los Angeles County Metropolitan Transit Authority (LACMTA);
• ATC-Phoenix (now Valley Metro);
• Alameda-Contra Costa (AC) Transit Agency;
• Greater Cleveland Regional Transportation Agency (GCRTA);
• Port Authority of Allegheny County (PAAC);
• Metropolitan Transit Authority of Harris County (Houston-METRO);
• Massachusetts Bay Transit Authority (MBTA);
• Bay Area Rapid Transit (BART); and
• Pierce Transit Agency.

Many of these agencies reported training programs, events and celebrations, committees and task forces, and recruitment efforts that emphasize diversity.
Communicating Diversity. The survey instrument included information about how diversity initiatives and goals are communicated within the agency. Common responses included:

- New hire orientation programs.
- Employee participation in community-based events.
- Professional associations (including APTA and COMTO).
- On-site speakers and facilitators.
- All-staff meetings.
- In-service training, seminars and workshops.
- Newsletters, magazines, pamphlets and other printed materials.
- Focus groups and video trainings.
- Counseling and employee assistance programs in the case of workplace conflict.

Additionally, some transit agencies included diversity initiatives in their strategic operational goals. For example, transit agencies provided technical assistance for diverse vendors (such as disadvantaged business enterprises) who worked for the agency. Some transit agencies also reported strategic operational goals aimed at ensuring diversity within work teams, task forces, committees and other groups of employees. Other respondents cited strategic operational goals that established performance measures of diversity initiatives.

Organizational Barriers to Diversity. Survey respondents were also asked to identify barriers within the organization that limited diversity initiatives. Although some agencies reported no barriers, others responded that informal communication networks were the most significant barrier in their agency. On a related note, some referenced informal rules, socialization protocols and expected managerial style acted as barriers to diversity initiatives. When asked about any personal barriers that limit success of diversity programs, respondents cited mode of communication, along with age, race, perceived personal style, perceived socioeconomic status, perceived level of education and perceived potential for leadership.

Rating of Diversity Initiatives. Finally, respondents were asked to rate their agency’s diversity initiative implementation efforts. Many respondents rated their agency’s efforts as “very aggressive.” Additionally, many reported that their agency had diversity goals in place, included diversity as part of their overall strategic plan and mission statement, and noted it as a core value of their agency. Respondents reported that diversity goals are in place and must be met by management, and no agency reported that it did not value diversity. Overall, few respondents reported the need for increased coordination of diversity initiatives.

Case Studies. The researchers also explore differences in workplaces as having an impact on the success of such diversity initiatives. The case studies include four agencies (HART, WMATA, BART and PAAC) and examine committees or task forces designed to assist with diversity initiatives. The authors note the following activities as vital to the committees or task forces:

- Governance or authority;
- Leadership;
- Developing diverse teams within the agency;
- Training and staff development;
- Planning diversity initiatives; and
- Communicating diversity initiatives.
Finally, the case studies identify similar barriers to diversity implementation as those identified by the survey.

**Other TRB Reports Regarding Diversity In Employment**

Other past TRB reports reviewed in Appendix D are:
- TCRP Report 77: Managing Transit’s Workforce in the New Millennium (Transit Cooperative Research Program 2002);
- TRB Special Report 275: The Transportation Workforce Challenge (National Academies of Sciences, Engineering, and Medicine 2003);
- TCRP Report 120/NCHRP Report 585: Racial and Gender Diversity in State DOTs and Transit Agencies (National Academies of Sciences, Engineering, and Medicine 2007); and

**Procurement**

TRB studies have also examined the Federal DBE Program and other means to ensure equity in procurement. These studies have focused on state DOTs and airports. They are reviewed in Appendix B. The research team also examined other studies related to equity, diversity and inclusion issues in employment that are relevant to transit agencies.

**Other Research Regarding Employment**

The research team also examined other studies related to equity, diversity and inclusion issues in employment that are relevant to transit agencies. Appendix B summarizes commonly used approaches to increasing organizational diversity and inclusion, including:
- Required initiatives;
- Initiatives that impact work environment;
- Human resource strategies;
- Initiatives that establish responsibility or accountability;
- Initiatives that leverage external relationships; and
- Approaches to identifying outstanding barriers.

Although EEO programs may be required, some researchers suggest that they are not necessarily an effective way to increase diversity. For example, EEO programs include a formal grievance process where employees can file a complaint with the Equal Employment Opportunity Commission (EEOC) if they experience discrimination at work based on their race, color, religion, sex, national origin, age, disability or genetic information. One study analyzed almost 90,000 discrimination complaints filed with the federal Equal Employment Opportunity Commission in 2015 and found that 45 percent of those complaints resulted in retaliation. When employees see that the grievance procedure is ineffective, they are more likely to avoid reporting incidents of discrimination. This is supported by responses from employee surveys, which indicate that most people do not report discrimination. As a result of the few complaints, organizations conclude that they do not have problems with discrimination. Additionally, studies have found that protective measures such as grievance systems may lead people to let bias affect their decisions more, as they believe that organization policies guarantee fairness (Dobbin and Kalev 2016).
Research Concerning Equity and Inclusion in other Aspects of Transit Operations

The study team also reviewed research on:
- Equity and environmental justice;
- Fare setting; and
- Transit network design.

Equity and Environmental Justice

Environmental justice includes efforts to achieve equitable protection from environmental harm and equitable access to benefits across demographic groups. Researchers have found that communities of color and low-income communities are exposed to greater harm and receive fewer benefits from transportation systems when compared to the general population. Transportation-related environmental justice can be understood through costs (including air pollution and noise) and benefits (such as increased accessibility). Although transportation planning agencies are required to analyze the impacts of their plans for inequity, these reports rarely find that projects could result in disproportionate impacts (Rowangould et al. 2016).

Some research has evaluated job accessibility impacts of transit improvements among low-income individuals. The researchers found that a new light rail line in Minneapolis-St. Paul has generated significant job accessibility benefits for all workers. In some but not all areas, low-wage workers benefitted more than medium- and high-wage workers (Fan et al. 2012).

Other research has focused on the causal relationships that trace why low-income individuals and people of color are disproportionately exposed to pollution. In addition, gentrification prompted by transit system improvements can lead to displacement and further inequity (Banzhaf et al. 2019; Rodier et al. 2019).

Researchers explain that transportation equity can be understood using two dimensions: horizontal equity and vertical equity.
- Horizontal equity refers to distribution of impacts (i.e. costs and benefits) across groups that are considered equal in ability and need. This type of equity may include spatial and generational equity.
- Vertical equity refers to the distribution of transportation impacts on groups that differ in ability and needs, such as disabled or special needs groups and groups across different social and income classes (Bills and Walker 2017).

Another author explains that while vertical equity requires that different groups receive different amounts of a benefit, horizontal equity requires that within each group of similar individuals, a similar benefit is received. The two types of equity together imply that transit dependent groups should have access to equal amounts of quality transit, and those most dependent on transit should receive more access to transit service (Welch 2013).

Appendix B reviews these and other studies.
Fare Pricing

Researchers have also explored equity in public transit fare pricing.

There are a variety of types of transit fare structures including flat fees, distance-based fares, zone-based fares, service-type based pricing, time of day pricing and concession fares (concession fares are sold by different agencies to different groups at various discount levels, such as student passes and senior passes). Some agencies use a combination of pricing strategies, and prices may also vary depending on the method of payment, such as transit card users versus those who pay in cash (Ma et al. 2017; Lipscombe 2016).

Horizontal equity in terms of pricing can be described as when there is equal distribution among equal members of society. In the context of the transit pricing, horizontal equity is achieved when passengers pay as much as they use. Vertical equity in transit pricing requires that the costs/benefits are distributed according to the users’ need for the service or their capability for payment. Disparities between the benefit a passenger receives (trip length) and cost (fare) implies inequality. In the social equity literature, researchers note that pricing structures are efficient when riders contribute to the costs of their services in line with the benefits they receive (as reflected by the marginal costs of their trips). However, fares are considered equitable when they take into account the income capacities of riders (Bandegani and Akbarzadeh 2016).

Transit Network Design

Researchers have also examined equity in transportation network design and the ways in which transit routes are determined.

There are many ways to design a transit network in a community, each with different equity outcomes. For example, one study presents a set of 69 approaches (and combinations of approaches) to dealing with network design, frequency setting and timetabling (Guihaire and Hao 2008).

Some researchers who have analyzed transit networks use horizontal criteria to divide equity into modal and spatial equity.

- Modal equity includes the travel time between the origin and destination of each mode, where modes are divided into passenger car and transit, and the travel time of each mode is the total travel time from the origin to the destination. Modal equity is achieved when the difference between transit travel time and cars’ travel time is negligible because of the transit network. (Kim et al. 2019; Ferguson et al. 2012).
- Spatial equity is achieved when the difference in modal equity among regions is negligible because priority is given to transit improvements in regions with lower modal equity (Kim et al. 2019).

Some of the literature concerning transit network design place this issue in the larger context of racial discrimination in the built environment. One author explains that the built environment, characterized by the man-made physical features that make it difficult for certain individuals to access certain places, can be used as a mechanism of exclusion (Schindler 2015).

There is considerable literature on spatial mismatch, where African Americans have worse employment outcomes because of job inaccessibility, have lower rates of residential mobility, and experience housing and labor market discrimination. Studies have found a connection between increasing concentrations of minorities to decreasing accessibility and lower levels of transit service (Karner and Niemeier 2013).

Results of In-Depth Interviews with Transit Agencies

Keen Independent conducted in-depth interviews with 37 agency leaders, HR professionals and others with diversity and inclusion responsibilities from 13 of the 14 transit agencies included in the 2003 TCRP study. Table 1 lists the participating agencies.
Approach

Keen Independent prepared an interview guide and a plan for identifying and contacting interviewees. Interviewees were contacted based on a tiered structure, beginning first with leadership, second with human resources representatives, and third with others having diversity and inclusion responsibilities (regarding procurement, transit customers, community interface and other aspects of operations and governance) for a cross-section of large and small public sector transit organizations. An online search resulted in contact information, including email addresses and phone numbers, which were used to reach leadership or their representatives at each of the participating transit agencies. Initial communications were sent via email, which included an attached letter from the Transportation Research Board.

Keen Independent proposed a total of 24 in-depth interviews and conducted 37. Appendix C provides an in-depth discussion of this task’s approach and the input collected from the in-depth interviews.

Table 1. Transit agencies participation in the in-depth interviews.

<table>
<thead>
<tr>
<th>Transit Agencies</th>
<th>Location</th>
<th>Participated in 2003 study</th>
<th>Participated in 2020 study</th>
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<tbody>
<tr>
<td>Alameda Contra Costa Transit Agency</td>
<td>CA</td>
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<tr>
<td>Bay Area Rapid Transit</td>
<td>CA</td>
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<tr>
<td>Birmingham Jefferson County Transit Authority</td>
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<td>Greater Cleveland Regional Transit Authority</td>
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<td>Hillsborough Area Regional Transit Authority</td>
<td>FL</td>
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<td>Houston Metro</td>
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<tr>
<td>Los Angeles County Metropolitan Transportation Authority</td>
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<td>Pierce County Transit Authority</td>
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<td>■</td>
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<tr>
<td>Port Authority of Allegheny County</td>
<td>PA</td>
<td>■</td>
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<tr>
<td>Trinity Metro Mass Transportation System</td>
<td>TX</td>
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<td>Valley Metro Transit System</td>
<td>AZ</td>
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<td>■</td>
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<tr>
<td>Washington Metropolitan Area Transit Authority</td>
<td>Wash. DC</td>
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Note: Via was also invited to participate in the 2020 study, the company did schedule an in-depth interview.
Source: Keen Independent Research

Results

Appendix C provides detailed results from the 37 interviews. Results can be grouped into the eight themes listed below.

1. Diversity and inclusion includes a broad range of different ideas (see Working Definitions of Diversity and Inclusion below for more detail).

2. Organizations may have originally developed diversity initiatives to comply with federal requirements. Many agencies have moved beyond a “check the box” mentality to incorporate diversity and inclusion into their organizational culture. For some organizations, this shift has occurred in just the past three to four years.

3. Transit agencies expressed diversity and inclusion concerns as going beyond characteristics such as race, national origin and gender to include sexual orientation, different mental and physical abilities, young adults, and ex-offenders (as examples).
4. The combined effect of points #1, #2 and #3 is that diversity and inclusion (for many organizations) has moved beyond “putting people in buckets” to building a culture where everyone is appreciated for who they are and encouraged to bring “their whole selves” to work. This is seen as a “less exclusionary” approach that includes all employees, which may contribute to long-term success.

5. Diversity policies are used to hold transit agency leaders accountable for inclusive practices. “Obviously we would hope that people would follow it because it’s the ‘right thing to do’ but if for whatever reason they have difficulty understanding that, there are policies in place that make them comply.”

6. Building diverse leadership teams and ensuring equitable advancement within organizations was top of mind for many transit agencies.

7. When gauging progress regarding diversity and inclusion, headcount numbers for employment and share of contract dollars for procurement are still used as key metrics. Some agencies are measuring employee satisfaction to track progress on diversity and inclusion.

8. This work is difficult and sometimes unsuccessful. There are some types of public transportation jobs where it is very difficult to obtain representation of diverse groups, especially for women. Some transit agency representatives reported that diversity and inclusion initiatives can lose traction or be conflicting, or that some diversity and inclusion programs can have the reverse effect. Training people and developing an inclusive corporate culture is especially difficult when many types of jobs in the field are relatively isolated. Agency leaders often lean on resources such as APTA and try to learn from peer organizations to improve their practices.

Keen Independent will use these results to inform each of the subsequent research tasks.

**Working Definitions of Diversity and Inclusion**

Results from the in-depth interviews revealed that multiple definitions exist for diversity and inclusion. For example, when leadership in transit agencies are asked to define diversity and inclusion, their responses often include having people of different backgrounds in their organizations feel welcome. Others expressed diversity in terms of “diversity of thought,” which was seen as a benefit to decision making in transit agencies.

“Equity” and viewing issues “through an equity lens” are also often included in the conversation. Some interviewees mentioned equity in treatment of their riders in discussions about diversity and inclusion. Others talked about “leveling the playing field” for diverse businesses when seeking contract opportunities. (And, many of the federal requirements on transit agencies, from hiring to contracting and service delivery, emphasize “equity” and “non-discrimination.”) However, many interviewees emphasized that it was important that their employees and vendors be diverse so that the organizations “look like their communities.”

As there was no common definition of diversity emerging from the initial results, the study team will ask this question in the forthcoming online survey.

**Next Steps**

**Online Survey**

Keen Independent will survey leaders, HR professionals and other staff with responsibilities for diversity and inclusion at 100 public transportation organizations throughout the country (300 survey participants with an expected 30% response rate in total, split equally between people in leadership, HR positions and other positions). As with the in-depth interviews, we will include a cross-section of large and small public transit agencies, state departments of transportation and private sector organizations.
Keen Independent will develop a 10-minute survey, which will include telephone and online versions. We will develop contact information for representatives from the office of executive director or general manager and the HR office of each organization. The Keen Independent team will conduct a pilot survey with ten agencies to ensure clarity of questions, quality of responses and potentially “close” certain open-ended questions. Based on the pilot, Keen Independent will refine the questions before fully executing the survey.

Upon survey execution, we will contact the identified agencies via email (or mail when we do not have an email address) and offer the option of completing the survey online, via mail/fax, or over the phone. We will follow-up by email and via phone as necessary to ensure that we receive some response (including refusals) from at least 50% of the agencies contacted. The study team will statistically determine whether there is any evidence that non-response affected the overall survey results.

Keen Independent will review, code and clean survey data as those data are received. We will follow-up with individual agencies as needed to clarify information submitted. The study team will analyze survey responses, make appropriate comparisons and prepare a report appendix that summarizes the survey effort and results. The results from the survey will help organizations of different types and sizes gauge where they are with their inclusion efforts with a random sample of their peers. Appendix D provides a first draft online survey instrument for purposes of further discussion with the TCRP project panel.

Case Studies

Keen Independent will conduct at least four case studies to examine how diversity and inclusion efforts started and evolved at different types of organizations. We will chose these case studies from the transit agencies included in the in-depth interviews.

For each organization, Keen Independent will review a wide range of current and historic policies and other documents, past reports regarding progress toward inclusion and other information about the organization. The focus of these case studies will be sharing successes and failures of diversity and inclusion efforts over time, how the organizations built on successes and addressed failures, and the current status of those initiatives. Keen Independent will gauge the level of board and community involvement at key junctures; involvement of employees, union representatives and others in the efforts; and the history of communicating policies and progress to stakeholders.

In each case study, we will review how inclusion and diversity dovetail (or did not fit) with other personnel management initiatives. We will also document how organizations measured success and whether they incorporated inclusion and diversity into the performance metrics for the organization and its leadership. Keen Independent will also conduct four to six telephone interviews with leaders responsible for different parts of each of the case study organizations. Case study candidates will be selected from the list of in-depth interviews conducted.

Results from the case studies will focus on the evolution of diversity and inclusion at different organizations with “lessons learned” from each example, which will be helpful to similar agencies looking to start, improve and sustain their diversity and inclusion efforts.
APPENDIX A

Legal Issues

Federal, state and local law place requirements on public agencies providing public transportation as well as constrain the actions of those agencies. Requirements and limitations pertain to equity and inclusion in:

- Employment;
- Contracting;
- Service provision; and
- Other aspects of operations.

Federal, State and Local Legal Issues Affecting Diversity and Inclusion Efforts

Some of the requirements and limitations pertain to any public entity and others specifically apply to recipients of USDOT or Federal Transit Administration (FTA) funds. There are many resources pertaining to these topics, including, for example, NCHRP Legal Research Digest 77: Update of Selected Studies in Transportation Law (Thomas 2019).

Federal Requirements

Federal requirements apply to different aspects of equity and inclusion in employment, contracting, service provision and other aspects of transit agencies.

Employment

Transit agencies are prohibited from discriminating against certain groups of individuals in employment. As Federal Transit Administration (FTA) grantees, agencies must comply with Equal Employment Opportunity (EEO) provisions of federal law, including:

- Americans with Disabilities Act of 1990 (ADA);
- Title VI of the Civil Rights Act of 1964 (Title VI);
- Title VII of the Civil Rights Act of 1964 (Title VII);
- Section 504 of the Rehabilitation Act of 1973 (which prohibits employment discrimination on the basis of disability for activities that receive federal funding);
- Uniformed Services Employment and Reemployment Rights Act of 1994; and
**Groups Considered in the Requirements.** Different federal laws prohibit employment discrimination for different groups. For example, Title VI prohibits discrimination based on race, color, and national origin for organizations receiving federal funds (see, e.g., regulations at 49 CFR § 21.5(c)). Title VII includes these same prohibitions for employers with 15 or more employees and adds prohibition of discrimination on the basis of religion or sex.

Federal Transit Laws (49 U.S.C. Section 5332) protects each of the above groups from employment discrimination, plus prohibits discrimination based on disability and age. FTA Circular C 4704 1A explains that protections on the basis of “sex” under Federal Transit Laws include pregnancy and childbirth, gender identity and sexual orientation. Title II of the Genetic Information Nondiscrimination Act of 2008 also applies to employers with at least 15 employees and prohibits employment discrimination based on genetic information (including family medical history).

Even if a public transportation provider receives its USDOT funds indirectly through its state DOT, it must comply with federal regulations in its employment. Certain regulations extend to companies working on federally funded contracts awarded by public transportation providers.

Some of the above requirements have been in place for more than 50 years, and as federal law has evolved, so has FTA guidance to transit agencies regarding compliance. FTA Circular C 4704 1A summarizes requirements for FTA grantees and subgrantees regarding these and other aspects of federal law that prohibits employment discrimination.

**Employment Goals and Affirmative Action Programs.** Title VII also requires virtually all state and local governments to comply with certain employment reporting requirements and to develop affirmative action plans that include goals and timetables to achieve a representative workforce.

**Contracting**

Nondiscrimination in contracting is another requirement pertaining to transit agencies when they award contracts using USDOT funds.

The federal government requires state and local agencies to operate the Federal Disadvantaged Business Enterprise (DBE) Program if they use USDOT funds for transportation projects. Federal regulations governing the Federal DBE Program are provided in 49 Code of Federal Regulations (CFR) Part 26. There is also Official USDOT Guidance to state and local agencies operating the program. Some form of these requirements regarding nondiscrimination in contracting have been in place since the 1970s.

**Groups Considered in the Requirements.** The Federal DBE Program applies to socially and economically disadvantaged businesses. Under the Program, the following racial, ethnic and gender groups can be presumed to be socially disadvantaged:

- Black Americans (or “African Americans” in this study);
- Hispanic Americans;
- Native Americans;
- Asian-Pacific Americans;
- Subcontinent Asian Americans; and
- Women of any race or ethnicity.
The Federal DBE Program includes the following elements.

**Setting an Overall Goal for DBE Participation.** Every three years, a transit agency must develop an overall annual goal for DBE participation in its FTA-funded contracts (and, separately, FHWA-funded contracts, if it receives those funds). The Federal DBE Program sets forth the steps an agency must follow in establishing its goal, including development of a “base figure” and consideration of possible “step 2” adjustments to the goal (49 CFR § 26.45).

An agency’s overall goal for DBE participation is aspirational. Its failure to meet an annual DBE goal does not automatically cause any USDOT penalties unless that agency fails to administer the DBE Program in good faith. However, if an agency does not meet its overall DBE goal, federal regulations require it to analyze the reasons for any shortfall and develop a corrective action plan to meet the goal in the next fiscal year (49 CFR § 26.47). Noncompliance can cause suspension of federal funding to the agency.

**Establishing the Portion of the Overall DBE Goal to be met Through Neutral Means.** The Federal DBE Program allows for state and local governments to operate the program without the use or with limited use of race- or gender-based measures such as DBE contract goals. According to program regulations 49 CFR Section 26.51, a state or local agency must meet the maximum feasible portion of its overall goal for DBE participation through “race-neutral means.”

Race-neutral program measures include removing barriers to participation and promoting use of small businesses. The Federal DBE Program requires agencies to develop programs to assist small businesses (49 CFR § 26.39). For example, small business preference programs, including reserving contracts on which only small businesses can bid, are allowable under the Federal DBE Program.

If an agency can meet its goal solely through race-neutral means, it must not use race-conscious program elements. The Federal DBE Program requires that an agency project the portion of its overall DBE goal that it will meet through neutral measures and the portion, if any, to be met through race-conscious measures such as DBE contract goals. USDOT has outlined factors for an agency to consider when making that determination (see Chapter 10 of this report for an in-depth discussion of these factors). Some transit agencies operate a 100 percent race- and gender-neutral program and do not apply DBE contract goals. Other transit agencies project that they will meet their overall DBE goal through a combination of race-neutral and race-conscious measures.

**Determining Whether all Racial/Ethnic/Gender Groups will be Eligible for Race- or Gender-Conscious Elements of the Federal DBE Program.** To be certified as a DBE, the firm’s owner must be both socially and economically disadvantaged. The racial, ethnic and gender groups presumed to be socially disadvantaged are identified in the previous page of this appendix.

To be economically disadvantaged, a company must be below an overall revenue limit and an industry-specific limit, and its firm owner(s) must be below personal net worth limits (49 CFR § 26 (d)). Note that there is a gross receipts limit (currently not more than a $23.98 million annual three-year average revenue, and lower limits for certain lines of business) and a personal net worth limit (currently $1.32 million excluding equity in the business and primary personal residence) that firms and firm owners must fall below to be able to be certified as a DBE. Under 49 CFR Section 26.67(b), a certifying agency may consider other factors to determine if an individual is able to accumulate substantial wealth, in which certification is denied (annual gross income of the owner and whether the fair market value of the owner’s assets exceeds $6 million are two such factors that may be considered).

White male-owned firms and other ethnicities not listed above can also meet the federal certification requirements and be certified as DBEs if they demonstrate that they are both socially and economically disadvantaged, as described in 49 CFR Part 26.67(d).
Some transit agencies, especially under the jurisdiction of the U.S. Ninth Circuit Court of Appeals, limit participation in race- and gender-conscious elements of the program to groups for which the agency has independently identified as affected by discrimination affecting that agency’s contracting. In such instances, only DBEs in the identified groups can count toward meeting an assigned DBE contract goal.

Transit agencies and other local and state governments sometimes perform “disparity studies” to determine their overall DBE goal, assess whether race- and gender-conscious program elements are needed, and identify the individual DBE groups to participate in those program components. FTA has provided guidance to transit agencies under the jurisdiction of the Ninth Circuit Court of Appeals to perform disparity studies in order to provide information to support operation of the Program.

**Court Challenges.** Since the 1980s, there have been lawsuits challenging the constitutionality of the Federal DBE Program and individual state and local agencies’ implementation of the Program. To summarize:

- The Federal DBE Program has been upheld as valid and constitutional.
- For the most part, state and local agencies have been successful in defending against legal challenges. Western States Paving Company, however, was successful in challenging the Washington State Department of Transportation’s implementation of the Federal DBE Program.
- Many state and local agencies, especially those in the West (i.e., states within the Ninth Circuit), made adjustments in their implementation of the Federal DBE Program to comply with the United States Ninth Circuit Court of Appeals decision in the *Western States Paving* case, and in accordance with the Official USDOT Guidance issued after the decision.
- The Ninth Circuit Court of Appeals held California Department of Transportation’s implementation of the Federal DBE Program was valid and complied with the decision in *Western States Paving*.

Individual companies and trade associations have also challenged the constitutionality of state or local government Minority Business Enterprise and Women Business Enterprise (MBE/WBE) programs related to non-federally funded contracts operated by state and local agencies. The legal issues surrounding non-federal programs that encourage minority- and women-owned business participation in transit agency contracting are discussed later in this appendix.

**Examples of Neutral Efforts in the Federal DBE Program.** Examples of neutral remedies used in operation of the Federal DBE Program include:

- Providing classes, training sessions, or online training;
- Training academies and general training courses;
- One-on-one business assistance from state DOT staff or consultants;
- Reimbursement for training or other expenses;
- Mentor-protégé programs;
- Business development programs;
- Dissemination of DBE directory;
- Routine notification of DBEs of contract opportunities;
- Meet and greets with public sector staff;
- General networking events with primes;
- DBE conferences and events;
- Project-specific outreach events;
- Prompt payment and return of retainage requirements;
- Small contract bidding restricted to small businesses;
- Unbundling of contracts suitable for bidding by DBEs as primes;
- Small business contract goals; and
- Other efforts to increase DBE participation as primes (National Academies of Sciences, Engineering, and Medicine 2019).
Nondiscrimination Provisions and Prohibitions on Adverse Effects in Transit Activities

Federal regulations pertaining to Title VI and Environmental Justice require certain actions regarding nondiscrimination and avoiding adverse effects on certain groups across all transit agency activities.

Section 601 of Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, or national origin under any program or activity receiving federal financial assistance. It also prohibits exclusion from participation in or being denied the benefits of any such program or activity based on these personal characteristics.

Executive Order 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” was signed in 1994. The U.S. DOT Order 5610.2(a) “Actions to Address Environmental Justice in Minority Populations and Low-Income Populations” outlines how it applies Environmental Justice (EJ) principles. Any transit agency receiving FTA funds must incorporate EJ principles into its transportation decision-making and environmental review.

Groups Considered in the Requirements. As summarized above, Title VI focuses on nondiscrimination based on:

• Race and color; and
• National origin (particular nation in which a person was born, or where the person’s parents or ancestors were born).

It also pertains to denial of meaningful access for limited English proficient (LEP) persons.

EJ regulations pertain to actions that will have a disproportionately high and adverse effect on:

• Minority populations; or
• Low-income populations.

Definitions of “minority persons” in FTA Circular C 4703.1 are as follows:

• American Indian and Alaska Native;
• Asian;
• Black or African American;
• Hispanic or Latino; and
• Native Hawaiian or Other Pacific Islander.

FTA Circular C 4703.1 explains that “low-income populations” generally means a group of low-income persons who live in geographic proximity. “Low-income” is defined as median household income at or below the U.S. Department of Health and Human Services poverty guidelines.

Prohibited Actions. Beyond the differences in groups included in the regulations, Title VI and EJ regulations have a somewhat different focus.

Title VI prohibits practices that have discriminatory effects. The Circular includes the following definition of discrimination:

“Any action or inaction, whether intentional or unintentional, in any program or activity of a Federal aid recipient, subrecipient, or contract that results in disparate treatment, disparate impact, or perpetuating the effects of prior discrimination based on race, color, or national origin.”
Disparate treatment is defined as:

“Actions that result in circumstances where similarly situated persons are intentionally treated differently (i.e., less favorably) than others because of their race, color, or national origin.”

Disparate impact is defined as:

“A facially neutral policy or practices that disproportionately affects members of a group identified by race, color, or national origin, where the recipient’s policy or practices lacks a substantial legitimate justification and where there exists one or more alternatives that would serve the same legitimate objectives but with less disproportionate effect on the basis of race, color, or national origin.”

Under Title VI, intentional discrimination based on race, color or national origin is prohibited. Facially neutral (i.e., unintentional) actions that result in discrimination (defined above) on the basis of race, color or national origin also violate U.S. DOT regulations “unless the recipient can show the policies or practices are substantially justified and there is no less discriminatory alternative” (FTA Circular C 4702.1B, p. 6 (Oct. 1, 2012, p. 6)).

EJ regulations only allows U.S. DOT programs, policies or activities that have a disproportionately high and adverse effect on targeted groups if “further mitigation measures or alternatives that would reduce the disproportionately high and adverse effects are not practicable” (FTA Circular C 4703.1, p. 5 (Aug. 15, 2012)). The regulations go on to state that “social, economic (including costs) and environmental effects of avoiding or mitigating the adverse effects will be taken into account” when determining whether mitigation or an alternative is “practicable.”

FTA Circular C 4703.1 defines “disproportionately high and adverse effect” as an effect on a minority population or low-income population that:

• Is predominantly borne by that population, or
• Will be suffered by that population and is appreciably more severe or greater in magnitude than the adverse effect that will be suffered by the non-minority population and/or non-low-income population.

In sum, Federal Title VI and EJ regulations overlap but are still distinct as they apply to different groups and different types of impacts. FTA Circulars C 4702.1B and C 4703.1 explain the commonalities and differences in how transit agencies need to respond to these regulations.

Service and Fare Equity Analysis. This appendix does not cover every aspect of a transit agency’s operations affected by Title VI and EJ regulations, which are very broad. One aspect of these regulations merits further explanation: requirements regarding equity in services and fares for fixed route transit providers.

Regulations in Section (3)(iii) Appendix C to 49 CFR Part 21 provide that:

“[n]o person or group of persons shall be discriminated against with regard to the routing, scheduling, or quality of service of transportation service furnished as a part of the project on the basis of race, color, or national origin. Frequency of service, age and quality of vehicles assigned to routes, quality of stations servicing different routes, and location of routes may not be determined on the basis of race, color, or national origin.”

To comply, FTA Circular C 4702.1B explains that all fixed route transit providers must set service standards and policies for each mode of service that identify how “service is distributed across the transit system, and must ensure that the manner of the distribution affords users access to these assets.” This requirement extends to service policies “to ensure service design and operations practices do not result in discrimination on the basis of race, color, or national origin.”
FTA Circular C 4702.1B places requirements on transit providers that operate fixed route service. Although these requirements do not apply, there are other requirements (including ADA) for providers that (a) only operate demand response services and (b) non-profits that only serve their own riders and not the general public.

Basic requirements pertain to any fixed route service transit provider. All fixed route providers must develop quantitative standards for service for each fixed route modes regarding:

- Vehicle load for peak and off-peak (for example, ratio of riders to number of seats);
- Vehicle headway (amount of time between transit vehicles traveling in the same direction on a transit line);
- On-time performance (percentage of runs completed as schedule); and
- Service availability (for example, the percentage of all residents in the service are within a certain distance of the transit service).

They must also develop a policy for the following service indicators:

- Distribution of transit amenities for each mode (seating at stops/stations, shelters and canopies, provision of information, escalators, elevators, and waste receptacles); and
- Vehicle assignment for each mode (age, type of vehicle or type of service provided).

All fixed route operators must develop Title VI Programs that outline system-wide service standards and policies.

Additional requirements apply to transit providers that operate 50 or more fixed route vehicles in peak services and are located in an urbanized area with a population of 200,000 or more. Title VI plans for larger operators must add:

- Demographic analysis of the service area (including demographic and service profile maps and charts);
- Data regarding customer demographics and travel patterns collected from passenger surveys (race, color, national origin, English proficiency, language spoken at home, household income, and travel patterns);
- Results of the monitoring program of service standards and policies (including analysis of performance regarding routes for disproportionately minority-serving routes compared with non-minority serving routes);
- Description of the public engagement process for setting the major service change policy and disparate impact policy; and
- Results of equity analyses that examine effects of major services changes and/or fare changes (including analysis of any disparate impacts of service or fare changes on the basis of race, color, or national origin).

Larger operators must also document their board’s awareness and approval of related policies and equity analyses.

Although low-income populations are not included under Title VI, FTA Circular C 4702.1B requires transit providers to evaluate service equity for low-income populations including whether they will bear a disproportionate burden of service or fare changes.

**Incorporating EJ Principles into NEPA Process.** The National Environmental Policy Act (NEPA) requires consideration of environmental and other impacts in decision making regarding major federal actions (42 U.S.C. § 4321 et seq.). Federal regulations direct agencies to take certain actions, including examining ways to “avoid, minimize, or mitigate adverse effects of these actions upon the quality of the human environment,” (40 CFR § 1500.s) consider the “social, economic, and environmental impacts of the proposed transportation improvement,” (23 CFR § 771) and encourage public involved in these decisions (40 CFR § 1500.2).

EO 12898 directs agencies to ensure that environmental reviews under NEPA address disproportionately high and adverse effects on minority populations and low-income populations.
FTA Circular C 4703.1 describes how EJ should be addressed in all NEPA decision-making for projects involving federal funding. FTA has issued regulations in 23 CFR Part 771 that address review under NEPA. A review can take the form of an Environmental Impact Statement (EIS), Environmental Assessment (EA) or a Categorical Exclusion (CE), which describe actions that do not have a significant environmental effect. FTA Circular C 4703.1 summarizes the steps that an agency should take as follows.

- Define the project area and identify EJ populations; and
- Identify adverse environmental effects on EJ populations (examples include health and environmental risks, effects on aesthetic values, disruption of community cohesion or economic vitality, displacement of people or businesses, and increased isolation of minority or low-income individuals within a community or from the broader community).

Examining effects on minority and low-income populations includes review of short-term and long-term effects and any mitigation and enhancement measures. Effects can include both adverse effects and positive benefits. FTA Circular C 4703.1 directs agencies to consider “the totality of the circumstances” before determining whether there will be a disproportionately high and adverse effects on minority populations or low-income populations (FTA Circular C 4703.1, p. 46 (Aug. 15, 2012)).

**Nondiscrimination in Service Provision for Persons with Disabilities**

In addition to prohibiting discrimination against persons with disabilities in employment, providers of transportation services must ensure their services, vehicles, and facilities are accessible to persons with disabilities. Unlike EJ, all types and sizes of transit services providers must comply. Certain requirements extend to a private entity for fixed route or demand responsive service that enters an agreement to provide those services for a public transit agency (49 CFR § 37.23).

FTA Circular C 4710.1 explains requirements for transit agencies emerging from the Americans with Disabilities Act (ADA) of 1990 and Section 504 of the Rehabilitation Act of 1973 (FTA Circular C 4710.1 (Nov. 4, 2015)). Federal regulations are set forth in 49 CFR Parts 27, 37, 38, and 39.

**Groups Considered in the Requirements.** Disability is defined as a physical or mental impairment that substantially limits one or more of the major life activities of an individual. Further “physical or mental impairment” includes a physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting the body as well as any mental or psychological disorder. The definitions specifically include emotional illness, drug addiction and alcoholism (49 CFR § 37.3).

**Requirements and Prohibited Actions.** In addition to providing services, there are requirements for a transit provider regarding:

- Use and maintenance of accessibility-related equipment or features (such as lifts, ramps, lighting, elevators, platforms and signage);
- Allowing service animals to accompany individual with disabilities (defined as an animal individually trained to work or perform tasks);
- Allowing an individual with a disability to travel with a respirator or portable oxygen supply (with certain restrictions);
- Providing information to individual with disabilities through accessible formats and technology;
- Providing training to transit personnel about proper assistance for persons with disabilities; and
- Making reasonable modifications in policies and practices to avoid discrimination on the basis of disability (with certain exceptions).

There are certain situations where a transit provider can deny service, such as when the “individual engages in violent, seriously disruptive, or illegal conduct, or represents a direct threat to the health or safety of others” (49 CFR § 37.5(h)).
FTA Circular C 4710.1 also provides information specific to:

- New construction of transportation facilities and alterations of existing facilities;
- Design of new, used and remanufactured transit vehicles;
- Service provision on fixed routes (such as priority seating and stop announcements);
- Provision of demand responsive services and paratransit services;
- Services provided by passenger ferries;
- Transit services provided by monorails, trams and other less common vehicles; and
- Processes for tracking and resolving complaints from persons with disabilities.

Federal, State and Local Limitations Regarding Race and Gender Preferences in Employment and Contracting

Public sector decision-making that consider factors such as race or gender can also be subject to legal challenge in federal or state court. These legal constraints differ by group (race compared with gender or physical ability, for example) and by state. For example, states such as Arizona, California, Louisiana and Washington prohibit or limit a state or local government’s use of preferences based on race in employment and contracting (unless required to receive federal funds).

These issues are extensive and merit consideration in their own study, and they are only summarized here.

Title VII

Although Title VII prohibits discrimination in employment based on race and gender, a voluntary race- or gender-conscious program is permissible if (1) there is a showing of a “manifest imbalance” in the work force; (2) the plan does not “unnecessarily trammel[ ]” the rights of members of the non-preferred class or “create an absolute bar to their advancement,” and (3) the plan does no more than is necessary to attain a balance (Do v. Kamehameha Sch./Bernice Pauahi Bishop Estate, 470 F.3d 827, 840 (9th Cir. 2006) (citing Rudebusch v. Hughes, 313 F.3d 506, 520-21 (9th Cir. 2002)). This analysis is the same for distinctions based on race or gender (Rudebusch, 313 F.3d at 520).


Manifest Imbalance. According to U.S. Supreme Court precedent, to justify a race- or gender-conscious program there must be a “manifest imbalance” that reflects underrepresentation of minorities or women in “traditionally segregated job categories” (Rudebusch, 313 F.3d at 520). More recently, the Ninth Circuit Court of Appeals has stated the requirement more simply as a “manifest imbalance in the work force” (Do, 470 F.3d at 840; Rudebusch, 313 F.3d at 521). This standard assures that race or gender will be considered in a manner consistent with Title VII’s purpose of eliminating the effects of employment discrimination, while ensuring that the interests of non-preferred individuals will not be unduly infringed (Johnson, 480 U.S. at 632; Davis v. City & County. of San Francisco, 890 F.2d 1438, 1448 (9th Cir. 1989)).

For jobs that do not require special expertise or for job training programs, the court compares the percentage of minorities or women in the workforce with the percentage in the area labor market or general population (Johnson, 480 U.S. at 631-32 & n.10; Davis, 890 F.2d at 1448). For jobs requiring special expertise, the comparison is with the labor force possessing the relevant qualifications (Johnson, 480 U.S. at 632).
Statistics are used to establish a manifest imbalance (Johnson, 480 U.S. at 630, 632-33 n.11). The employer need not point to its own prior discriminatory practices (Johnson, 480 U.S. at 630, 632-33 n.11).

In the case of a voluntary race- or gender-conscious program, as long as there is a “statistical imbalance,” the statistics do not need to meet the higher “prima facie” evidentiary standard required under the equal protection (Johnson, 480 U.S. at 632-33 & n.11). As the U.S. Supreme Court explained in Johnson v. Transp. Agency, Santa Clara County, application of the “prima facie” standard in Title VII cases “could inappropriately create a significant disincentive for employers to adopt an affirmative action plan” (Johnson, 480 U.S. at 632-33). However, the Supreme Court has not defined what is mathematically required to establish a “manifest” or “statistical” imbalance. Regardless of what is required to show such an imbalance under Title VII, employers will have to meet the higher “prima facie” evidentiary standard since individuals seeking to challenge the program would likely bring claims under both Title VII and the Equal Protection Clause. That higher “prima facie” standard is discussed under the Equal Protection analysis section of this appendix.

Unnecessary Trammel. A plan is less likely to “unnecessarily trammel” the rights of the non-preferred class if there are no quotas, race and/or gender is only one factor that is considered, and minorities and women must be qualified and must compete with other qualified applicants (Johnson, 480 U.S. at 637-38; Higgins v. City of Vallejo, 823 F.2d 351, 357 (9th Cir. 1987)).

Title VII does not prohibit quotas in race- or gender-conscious plans. For example, in United Steelworkers of America v. Weber, the Supreme Court upheld a plan requiring that 50 percent of new trainees be black (443 U.S. at 199, 208; see also Davis, 890 F.2d at 1448-49 (affirming voluntary consent decree mandating the promotion of a certain number of minorities, following Weber)). Because Weber involved a private, not public, employer, there was no equal protection analysis (443 U.S. at 200). However, quotas will likely run afoul of the Equal Protection Clause (Bakke v. Regents of Univ. of Cal., 18 Cal. 3d 34, 62 (1976)). Further, in the post-Weber Title VII case of Johnson v. Transp. Agency, Santa Clara County, the Supreme Court emphasized the lack of quotas. Thus, it is best for a public agency to steer clear of quotas and focus on race and/or gender as one of many factors in evaluating qualified candidates.

Another relevant factor to the “unnecessarily trammel” analysis is whether the plaintiff has “absolute entitlement” to the position (Johnson, 480 U.S. at 638; Higgins, 823 F.2d at 357). For example, if the decision-maker has authority to promote or hire from the top candidates who receive the highest score on an exam or interview, then the number one candidate obviously is not entitled to the position (Johnson, 480 U.S. at 638; Higgins, 823 F.2d at 357). Further, at least in the context of promotions, the people who are not promoted should still retain their same jobs, salaries, seniority, and eligibility for future promotions (Johnson, 480 U.S. at 638; Higgins, 823 F.2d at 357).

Attain a Balance. A plan should be temporary and designed to “attain a balanced work force,” but “not to maintain one” (Johnson, 480 U.S. at 639; Doe, 470 F.3d at 840). Plans with a stated goal of attaining a balanced work force, and with a case-by-case approach that will lead to gradual changes — like those where race and gender is only one factor to be considered for qualified applicants — do not need a specific end date or an express assurance to show they are temporary (Johnson, 480 U.S. at 639-40; Higgins, 823 F.2d at 357). If a program has quotas (which, as noted, is not recommended), then it should contain an end date to assure it is temporary (Johnson, 480 U.S. at 639-40).

Constitutional Standards for Affirmative Action Programs

The Equal Protection Clause of the 14th Amendment to the U.S. Constitution also affects the ability of any government entity to use race as a factor in its decision-making. For public transit agencies, this limits voluntary affirmative action programs for employment and minority business enterprise (MBE) programs related to their non-U.S. DOT-funded contracts.
In *City of Richmond v. J.A. Croson Co.*, 488 U.S. at 469 (1989), the U.S. Supreme Court held that local governments may utilize racial classifications only to serve a compelling state interest, and then the method chosen must be narrowly tailored to serve that interest. Thus, the constitutional standard applicable to federal, state, or local governmental programs creating preferences based on race and ethnicity is the strict scrutiny test. While imposing a substantial burden, the *Croson* Court stated that nothing from its decision “precludes a state or local entity from taking action to rectify the effects of identified discrimination within its jurisdiction…. In the extreme case, some form of narrowly tailored racial preference might be necessary to break down patterns of deliberate exclusion” (*Croson*, 488 U.S. at 509). Under the strict scrutiny standard of judicial review, a court evaluates whether the race-based program (1) serves a “compelling governmental interest,” and (2) is “narrowly tailored” to satisfy that interest (*Croson*, 488 U.S. at 469).

**Compelling Governmental Interest.** Although *Croson* requires that a public employer must have a “strong basis in evidence” of discrimination when defending an affirmative action plan, the Supreme Court has never required that, before implementing affirmative action, the employer must have already proved that it has discriminated. On the contrary, the Supreme Court has held that formal findings of discrimination need neither precede nor accompany the adoption of affirmative action (*Wygant v. Jackson Bd. of Educ.*, 476 U.S. 267, 286 (O’Connor, J., concurring) (rejecting any formal findings requirement); *id. at* (Marshall, J., dissenting, joined by Brennan and Blackmun, JJ.) (stating that “the Court is correct to recognize, as it does at least implicitly today, that formal findings of past discrimination are not a necessary predicate to the adoption of affirmative-action policies”); *id. at* 313 (Stevens, J., dissenting) (arguing that a showing of past discrimination is not necessary to finding a compelling interest in racial classifications with purely prospective effect); see also, *Donaghy v. Omaha*, 933 F.2d 1448, 1459 (8th Cir. 1991). The Supreme Court has required a public employer defending an affirmative action plan to show only that it has “a ‘strong basis in evidence for its conclusion that remedial action was necessary’” (*see Croson*, 488 U.S. at 500, 109 S. Ct. at 725 (quoting *Wygant*, 476 U.S. at 277, (plurality opinion); see also *Donaghy v. Omaha*, 933 F.2d 1448, 1459 (8th Cir. 1991)).

One way a governmental entity can meet its evidentiary showing is by demonstrating gross statistical disparities between the proportion of minorities hired and the proportion of minorities willing to do the work (*Croson*, 488 U.S. at 509). Additionally, a government entity may establish its compelling interest by presenting evidence of its own direct participation in racial discrimination or its passive participation in private discrimination in a system of racial exclusion practiced by elements of a local industry (*Croson*, 488 U.S. at 492).

Courts have thus upheld remedial affirmative action plans where the public entity presented evidence of a “statistical disparity between the number of qualified minority contractors willing and able to perform a particular service and the number of such contractors actually engaged by the locality or the locality’s prime contractors” (*Croson*, 488 U.S. at 509).

**Narrowly Tailored.** Even if a jurisdiction has a strong basis in evidence to believe that race-based measures are needed to remedy identified discrimination, the program must be narrowly tailored to that evidence. Under the strict scrutiny test, “the means chosen [must] ‘fit’ [the] compelling goal so closely that there is little or no possibility that the motive for the classification was illegitimate racial prejudice or stereotype” (*Croson*, 488 U.S. at 492; see also, *Engineering Contractors Ass’n*, 122 F.3d at 906). *Croson* sets forth four factors for determining whether a race-based affirmative action program is narrowly tailored. The factors include (1) the utilization of race-neutral measures prior to the adoption of a race conscious measure, (2) the basis offered for the percentage selected, (3) the presence of waivers and flexibility, and (4) whether the ordinance or statute is geographically tailored and not over-inclusive (*Croson*, 488 U.S. at 507-508).
Consideration of race-neutral alternatives prior to the adoption of race-conscious measures is critical. In *H.B. Rowe Co., Inc. v. Tippett*, 615 F.3d 233, 52–53 (4th Cir. 2010), the court concluded that the State of North Carolina gave serious good faith consideration to race-neutral alternatives prior to adopting its statutory scheme that required a contractor to demonstrate “good faith efforts” to obtain a predesignated level of minority participation in a state-funded road construction project contract. The State of North Carolina had set up a Small Business Program that favored small businesses for highway construction procurement contracts of $500,000 or less. The program also allowed a waiver to institutional barriers of bonding and licensing requirements on such contracts and sought to assist disadvantaged business enterprises with bookkeeping, accounting, marketing, bidding, and other aspects of entrepreneurial development.

Race-based programs and remedies must also maintain flexibility with regard to local conditions in the public and private sectors (See, e.g., *Midwest Fence*, 840 F.3d 932, 937-939, 947-954 (7th Cir. 2016); *H. B. Rowe*, 615 F.3d at 252-255; *Sherbrooke*, 345 F.3d at 971-972; *Associated Gen. Contractors of Ca., Inc. v. Coalition for Economic Equality* (“AGC of Ca.”), 950 F.2d 1401, 1417 (9th Cir. 1991); *Coral Constr. Co. v. King County.*, 941 F.2d 910, 942 (9th Cir. 1991); *Cone Corp. v. Hillsborough County*, 908 F.2d 908, 917 (11th Cir. 1990)). Courts have thus suggested project-by-project goal setting and waiver provisions (See, e.g., *Builders Ass’n of Greater Chi. v. City of Chi.*., 298 F. Supp. 2d 725, 740 (N.D. Ill. 2003) (“Waivers are rarely or never granted…The City program is a rigid numerical quota…formulistic percentages cannot survive strict scrutiny.”)) as a means of ensuring fairness to all vendors (*Sherbrooke*, 345 F. 3d at 972, quoting *Grutter v. Bollinger*, 539 U.S. 306 (2003); see also *Coral Constr.*, 941 F.2d at 923). Also, “review” or “sunset” provisions are strongly suggested components for a race-based program to guarantee that remedies do not outlive their intended remedial purpose (*Peightal v. Metro. Dade County.*., 26 F.3d 1545, 1559 (11th Cir. 1994)). Finally, race-based programs must be limited in its geographical scope to the boundaries of the enacting jurisdiction (*Coral Constr.*, 941 F.2d at 925) and its remedies should only be available to groups for which there was evidence of discrimination (*Associated Gen. Contractors of Am. v. Cal. DOT*, 713 F.3d 1187, 1198-1199 (9th Cir. 2013). (See also, e.g., *H. B. Rowe*, 615 F.3d at 252-255; *Western States Paving Co. v. Wash. State DOT*, 407 F.3d 983, 998 (9th Cir. 2005); *Sherbrooke Turf, Inc.*, 2001 WL 1502841 (unpublished opinion), aff’d 345 F.3d 964 (8th Cir 2003); *AGC of Ca.*, 950 F.2d at 1417).

**Gender-Based Programs.** The U.S. Supreme Court has remained silent with respect to the appropriate standard of review for gender-conscious programs such as gender preferences in employment or voluntary women-owned business enterprise (WBE) programs for non-federally funded contracts. Because the only guidance the Supreme Court has provided for deciding affirmative action cases comes from opinions analyzing race-based programs under strict scrutiny, the proper level of scrutiny for analyzing gender-based affirmative action is unclear. In other contexts, however, the Supreme Court has ruled that gender classifications are not subject to the rigorous strict scrutiny standard applied to racial classifications. Instead, gender classifications are subject only to an “intermediate” level of review, regardless of which gender is favored (see, e.g., *Craig v. Boren*, 429 U.S. 190 (1976) (finding statutory sex classifications subject to intermediate scrutiny); *Mississippi University for Women v. Hogan*, 458 U.S. 718 (1982) (requiring an “exceedingly persuasive justification” for sex-based classification to be valid); *United States v. Virginia*, 518 U.S. 515 (1996) (applying standard of “exceedingly persuasive justification” in striking down Virginia Military Institute’s males only admissions policy)). Lower courts are thus split on this issue.
The Sixth Circuit, as well as the Georgia Supreme Court, have subjected gender-based affirmative action programs to strict scrutiny while analyzing all other gender-based classifications under intermediate scrutiny (see Brunet v. City of Columbus, 1 F.3d 390, 403-04 (6th Cir. 1993); Vogel v. City of Cincinnati, 959 F.2d 594 (6th Cir. 1992); Long v. City of Saginaw, 911 F.2d 1192 (6th Cir. 1990); Conlin v. Blanchard, 890 F.2d 811 (6th Cir. 1989); American Subcontractors Ass’n v. City of Atlanta, 376 S.E.2d 662, 664 (Ga. 1989) (applying strict scrutiny to program favoring minority and female-owned enterprises in awarding city contracts)).

In contrast, the Third, Ninth, Tenth, and Eleventh Circuits used intermediate scrutiny to analyze all gender-based classifications, including affirmative action (see Contractors Ass’n v. City of Phila., 6 F.3d 990, 1000-01 (3d Cir. 1993); Coral Constr., 941 F.2d at 930; Concrete Works, Inc. v. City & County of Denver, 36 F.3d 1513, 1519 (10th Cir. 1994); Engineering Contractors Ass’n v. Metropolitan Dade County, 122 F.3d 895, 907-08 (11th Cir. 1997), cert. denied, 118 S. Ct. 1186 (1998); Ensley Branch, NAACP v. Seibels, 31 F.3d 1548 (11th Cir. 1994)).

The Eighth Circuit has similarly held that programs with gender-based classifications should be evaluated for constitutionality under the more relaxed level of intermediate scrutiny (see Geyer Signal, 2014 U.S. Dist. LEXIS 43945, n. 4 (“The DBE Program also contains a gender-conscious provision, a classification that would be subject to intermediate scrutiny.”), citing Nguyen v. I.N.S., 533 U.S. 53, 60 (2001)); see also Duckworth v. St. Louis Metro Police Dept., 491 F.3d 401, 406 (8th Cir. 2007) (“For a gender-based classification to withstand equal protection scrutiny, it must be established at least that the challenged classification serves important governmental objectives and that the discriminatory means employed are substantially related to the achievement of those objectives.”) (emphasis added; citation omitted)).

Because the measure of evidence required to satisfy intermediate scrutiny is less than that necessary to satisfy strict scrutiny, courts applying the intermediate standard to gender-based programs have all reasoned that affirmative action may be upheld even absent proof that the government entity adopting the program necessarily discriminated against women (Coral Constr., 941 F.2d at 931-932; See Eng’g Contractors Ass’n, 122 F.3d at 910). Under the intermediate scrutiny, the “inquiry turns on whether there is evidence of past discrimination in the economic sphere at which the affirmative action program is directed” (Eng’g Contractors Ass’n, 122 F.3d at 910, quoting Ensley Branch, 31 F.3d at 1581).

In addition, under intermediate scrutiny, the program need only be “substantially related” to the goal of redressing the effects of prior discrimination, and, contrary to strict scrutiny, this does not require that the numerical goals be closely tied to the proportion of qualified women in the market (Eng’g Contractors Ass’n, 122 F.3d at 929). Further, because there is no requirement that gender classifications be “narrowly tailored,” the preference may extend to some fields where women were not disadvantaged, provided that, overall, the women benefitted actually suffered a disadvantage (Coral Constr., 941 F.2d at 932 (holding that King County’s preference for women was justified even if it included women in all industries contracting with the county); Associated Gen. Contractors of Cal. v. City & County. of S. F., 813 F.2d 922, 941–42 (9th Cir. 1987) (holding that although broad preferences can reinforce harmful stereotypes, they may still be upheld because, unlike racial preferences, there is no requirement that they be “narrowly” tailored to the government’s objective)).

Two principal guidelines thus mark the boundaries of intermediate scrutiny evidentiary analysis. First, there must be sufficiently probative evidence of “societal discrimination” against women in the “relevant economic sector” (Eng’g Contractors, 122 F.3d at 910). Second, the evidence must “show that the preference rests on evidence-informed analysis rather than on stereotypical generalizations” (Eng’g Contractors, 122 F.3d at 910).
Sufficiently probative evidence of gender discrimination can support remedial actions by a government, provided that the means are substantially related to the important state interest of ameliorating such discrimination. Means that are “substantially related” to the important interest of remedying gender discrimination generally include gender-neutral provisions to encourage the participation of women, flexible participation goals rather than fixed quotas that are tied to the particular industry or economic sector where the discrimination exists, and some type of mechanism to either track the persistence of discrimination or limit the program’s duration.

The Requisite Statistical Data and Anecdotal Evidence to Justify Racial and Gender Preferences Under Croson. Because the remedying of past discrimination is widely accepted as a compelling interest, “the true test of an affirmative action program is … the adequacy of the evidence of discrimination offered to show that interest” (Paradise, 480 U.S. at 171 (1987) (plurality opinion); see, e.g., United States v. Sec’y of Hous. & Urban Dev., 239 F.3d 211, 219 (2d Cir. 2001); Adarand, 228 F.3d 1147, 1177-78 (10th Cir. 2000), cert. granted, 532 U.S. 941 (2001), cert. dismissed, 534 U.S. 103 (2001) (per curiam); Walker v. City of Mesquite, 169 F.3d 973, 982 (5th Cir. 1999); Ensley Branch, 31 F.3d at 1569; Hayes v. N. State Law Enforcement Officers Ass’n, 10 F.3d 207, 216 (4th Cir. 1993).) Under strict scrutiny, a government entity must have had a “strong basis in evidence” for it to conclude that race-based remedial action was necessary (Croson, 488 U.S. at 500 (quoting Wygant, 476 U.S. at 277 (1986) (plurality opinion) (internal quotation marks omitted))). Indeed, a strong basis in evidence is required for a government to demonstrate both a compelling interest and a narrowly tailored remedy (see Croson, 488 U.S. at 510 (“Proper findings in this regard are necessary to define both the scope of the injury and the extent of the remedy necessary to cure its effects.”)).

The Croson Court recognized that this country’s history of private and public discrimination “has contributed to a lack of opportunities for black [and other minority] entrepreneurs” (Croson, 488 U.S. at 499). Nevertheless, it held that an “amorphous claim” of past discrimination within an industry is insufficient (Croson, 488 U.S. at 498). Consequently, Croson rejected as insufficient evidence of discrimination the district court’s finding that minority businesses received less than one percent of the city’s prime contracts, even though minorities constituted one-half of its population (see Croson, 488 U.S. at 499-500. The Court observed that “[i]t is sheer speculation how many minority firms there would be in Richmond absent past societal discrimination .... Defining these sorts of injuries as ‘identified discrimination’ would give local governments license to create a patchwork of racial preferences based on statistical generalizations about any particular field of endeavor.”). The Court found such a comparison to the general population of “little probative value” when “special qualifications are required to fill particular jobs,” such as public construction projects (Croson, 488 U.S. at 501 (quoting Hazelwood Sch. Dist. v. United States, 433 U.S. 299, 307-08 (1977) (internal quotation marks omitted))). To show discriminatory exclusion in a field requiring special skills, the relevant group for comparison, therefore, is the number of qualified minorities (Croson, 488 U.S. at 501-020). Furthermore, it is not enough to demonstrate nationwide discrimination in the construction industry; rather, policy makers must have a “strong basis in evidence” of discrimination within the relevant local industry (See Croson, 488 U.S. at 504).

Moreover, to satisfy either the compelling-interest or narrow-tailoring prong of strict scrutiny, a government must have a strong basis in evidence of discrimination against each racial group included in the remedial plan (See Croson, 488 U.S. at 506). Thus, for example, if a government has sufficient evidence of discrimination against only African-American contractors, it may not include other minority groups as beneficiaries in a contract-preference program (See Croson, 488 U.S. at 506; Builders Ass’n of Greater Chi. v. County of Cook, 256 F.3d 642, 646 (7th Cir. 2001)).

Government entities wishing to implement race- and/or gender-conscious programs must construct a strong evidentiary framework to stave off legal challenges and ensure compliance with the stringent requirements of Croson’s strict scrutiny standard.
Preferences for Other Groups. A preference program for public agency employment or contracting can be legally challenged even if the program does not consider race, ethnicity or gender. However, such programs are much more easily defended. The public entity generally need only show that it has a “rational basis” for such a program, depending upon its components and how it is implemented.

Needing only to meet the rational basis test makes it easier to defend public sector employment preferences for persons with disabilities, veterans or other groups not defined based on race, ethnicity or gender. Contracting programs that give preferences or set goals for companies owned by groups such as persons with disabilities, veterans or service-disabled veterans would be more easily defended than programs that provide preferences to minority- or women-owned businesses.

It is important to note that legal restrictions can apply to preferences based on geographic location of the individual or business. And, some types of geographic preferences are prohibited when using federal funds.
APPENDIX B

Literature Review

The study team began this assignment by reviewing TRB and other research regarding equity, diversity and inclusion. This research focuses on workforce, procurement and other issues for transit agencies. It also presents examples of work regarding other types of organizations. As this area of research is extensive, the literature focuses on three areas, with just the first pertaining to TRB research:

- TRB literature on equity and inclusion (across topic areas).
- Other research regarding employment.
- Research on other issues pertaining to transit agencies.

TRB Literature on Equity and Inclusion

There is considerable TRB-sponsored research that examines equity, diversity and inclusion issues related to transportation.

Workforce

The study team examined the following TRB research on workforce diversity for transit agencies published since 2000.

TCRP Synthesis 46: Diversity Training Initiatives

This 2003 report summarizes diversity training initiatives in transit agencies, includes a literature review, as well as data collected via survey responses from 22 transit agencies and 10 case studies (National Academies of Sciences, Engineering, and Medicine 2003).

Research collected from participants indicate that diversity initiatives successfully increased the recruitment, retention and promotion of women and minorities in the transit industry. Additionally, these diversity efforts correspond with improved customer satisfaction. Overall, respondents reported a commitment to diversity throughout the public transit organization, including management, operations and service provision.

Although the study found that most diversity initiatives were driven by the human resources department, there was also strong commitment to diversity among agency leadership including board members, executives and general managers. Commitment to diversity was seen in diversity statements in agency publications, along with print media and mission and value statements. The sense that diversity improved business was seen through emphasis on diversity in policies, procedures and strategic business plans.

This report also found that diversity initiatives within the transit industry vary. The authors cite variation within policy development and a lack of standardization with regard to diversity programs.
The authors note that diversity trainings, “have moved beyond race and sex to incorporate cultural, religious, geographic, economic, socioeconomic, and political differences, as well as consideration of people with varying abilities and disabilities.” The researchers also note that many transit agencies have diversity plans, committees, task forces and/or staffed positions to focus on the implementation of diversity initiatives within their organization. Additionally, this report explains the importance of diversity within the transit industry, to improve both business and the workplace.

This report includes a review of various definitions of diversity utilized by scholars, as well as private and public agencies. Many definitions of diversity include a broad range of group or individual differences, differences in identity and “otherness.” Some include different dimensions of diversity, with the “primary characteristics” including age, gender, race/ethnicity, physical and mental ability and sexual orientation, while the “secondary characteristics” include aspects that may change such as education, income, religious beliefs, work experience, etc. Others, however, incorporate the value of diversity into their definition. For example, Texas Instrument defines diversity as how successfully they use the talents of individuals with different backgrounds, experiences and perspectives.

Study authors conducted a survey of transit agencies. These agencies were asked about the definition of diversity within their organization, diversity initiatives within their organization, how diversity is managed, organizational barriers to diversity and an overall rating of diversity efforts within the agency.

**Defining Diversity.** Answers relating to definitions of diversity identified who was held accountable for ensuring diversity in the agency.

- Survey respondents reported that diversity was included in a variety of places within the organization and the managerial hierarchy, including in policies and procedures, mission statements, goals and objectives, employee recruitment and training plans.
- Accountability for diversity initiatives were primarily the responsibility of the human resources department, although some agencies included affirmative action, civil rights, equal opportunity, and other departments that were charged with overseeing the overall implementation of diversity initiatives.
- The survey also asked respondents to identify diversity within the agency hierarchy. Respondents indicated diversity within many aspects of transit agencies, including with executive, senior and middle management, first-line supervisors, technical and professional positions, and driver and mechanic positions.
- Nearly all respondents reported that their agency had experience with employees filing internal and external discrimination complaints, grievances and lawsuits.
- Respondents reported that diversity within the agency was associated with different resource allocation. For example, these agencies linked diversity to investment in the Federal Disadvantaged Business Enterprise Program, incentives to increase the recruitment of diverse employees, providing internships to women and minorities, and funding diversity training and staff to manage the implementation of diversity efforts.

**Diversity Initiatives.** The survey also addressed types of diversity initiatives within transit agencies.

- The vast majority of respondents reported programs to increase diversity awareness, such as seminars and workshops, cultural awareness, sensitivity training and diversity orientation programs. Others reported that diversity initiatives took the form of diversity councils or task forces, diversity plans, diversity vision statements and diversity as a core business strategy.
- Some transit agencies cited mentoring networks, programs to improve work/life balance, cultural celebrations, diversity poster programs or other initiatives to enhance diversity.
- Others noted that they utilize organizational assessments, staff retreats, and employee satisfaction and climate surveys to identify the need for further diversity initiatives.
When asked how agencies measure the success of these diversity initiatives, respondents cited that meeting their affirmative action goals or reducing the number of charges of discrimination, employee and Equal Employment Opportunity Commission complaints, grievances and employee management conflicts were common measures of success. Some respondents noted that diversity efforts were measured by how closely the makeup of agency employees match the demographics of the community.

More broadly, however, some agencies responded that they measured the success of initiatives by the number of employees trained in diversity awareness, the number of women and minorities promoted, the number of participants with a particular cultural event, or the number of networking channels available for the promotion of internal staff.

Managing Diversity. Included in the survey were questions relating to managerial methods of diversity within the transit agency. In this section, respondents listed specific programs and activities that promoted diversity within the agency. The report summarizes initiatives in:
- Hillsborough Area Regional Transit Agency (HART);
- Los Angeles County Metropolitan Transit Authority (LACMTA);
- ATC-Phoenix;
- Alameda-Contra Costa (AC) Transit Agency;
- Greater Cleveland Regional Transportation Agency (GCRTA);
- Port Authority of Allegheny County (PAAC);
- Metropolitan Transit Authority of Harris County (Houston-METRO);
- Massachusetts Bay Transit Authority (MBTA);
- Bay Area Rapid Transit (BART); and
- Pierce Transit Agency.

Many of these agencies reported training programs, events and celebrations, committees and task forces, and recruitment efforts that emphasize diversity.

Communicating Diversity. The survey instrument included information about how diversity initiatives and goals are communicated within the agency. Common responses included:
- New hire orientation programs.
- Employee participation in community-based events.
- Professional associations (including APTA and COMTO).
- On-site speakers and facilitators.
- All-staff meetings.
- In-service training, seminars and workshops.
- Newsletters, magazines, pamphlets and other printed materials.
- Focus groups and video trainings.
- Counseling and employee assistance programs in the case of workplace conflict.

Additionally, some transit agencies have included diversity initiatives in their strategic operational goals. For example, transit agencies provided technical assistance for diverse vendors (such as disadvantaged business enterprises) who worked for the agency. Some transit agencies also reported strategic operational goals aimed at ensuring diversity within work teams, task forces, committees and other groups of employees. Other respondents cited strategic operational goals that established performance measures of diversity initiatives.
Organizational Barriers to Diversity. Survey respondents were also asked to identify barriers within the organization that limited diversity initiatives. Although some agencies reported no barriers, others responded that informal communication networks were the most significant barrier in their agency.

On a related note, some referenced informal rules, socialization protocols and expected managerial style acted as barriers to diversity initiatives. When asked about any personal barriers that limit success of diversity programs, respondents cited mode of communication, along with age, race, perceived personal style, perceived socioeconomic status, perceived level of education and perceived potential for leadership.

Rating of Diversity Initiatives. Finally, respondents were asked to rate their agency’s diversity initiative implementation efforts. Many respondents rated their agency’s efforts as “very aggressive.” Additionally, many reported that their agency had diversity goals in place, included diversity as part of their overall strategic plan and mission statement, and noted it as a core value of their agency. Respondents reported that diversity goals are in place and must be met by management, and no agency reported that it did not value diversity. Overall, few respondents reported the need for increased coordination of diversity initiatives.

Case Studies. The researchers also explore differences in workplaces as having an impact on the success of such diversity initiatives. The case studies include four agencies (HART, WMATA, BART and PAAC) and examine committees or task forces designed to assist with diversity initiatives. The authors note the following activities as vital to the committees or task forces:
- Governance or authority;
- Leadership;
- Developing diverse teams within the agency;
- Training and staff development;
- Planning diversity initiatives; and
- Communicating diversity initiatives.

Finally, the case studies identify similar barriers to diversity implementation as those identified by the survey.

This report concludes with an interview with Dr. Benjamin Harrison, who has experience designing diversity initiatives, and case studies of diversity initiatives within the private sector.

TCRP Report 77: Managing Transit’s Workforce in the New Millennium and TRB Special Report 275: The Transportation Workforce Challenge

Some past TCRP reports that examined transit industry workforce needs included elements regarding employee diversity. Two studies from the early 2000s are discussed below.

Managing Transit’s Workforce in the New Millennium examined the transit industry’s workforce needs and common practices as of 2002 (Transit Cooperative Research Program 2002). Researchers present the results of a literature review, as well as survey responses and in-depth case studies. The researchers note a shortage of quality and quantity of staff within the transit industry, and (1) address the industry’s workforce needs and prospects, (2) propose strategies to recruit, develop and retain a qualified workforce and (3) create tools and guidelines for monitoring workforce needs.

This report includes a review of best practices of recruiting, training and retaining a well-qualified workforce within the transit industry and analyzes how many transit agencies were using these practices.
As of 2002, transit agencies were competing for workers with other organizations in a booming economy. Research suggests that employers place as much emphasis on marketing themselves as desirable places to work as they do on marketing themselves to consumers. These practices have included flexible work schedules, offering pet insurance, sign-on bonuses and employee-referral programs. Research shows, however, that employees most value challenging work, feeling valued and listened to, opportunities for growth and competitive salaries. Additionally, previous literature suggests that the same factors that attract employees also contribute to employee retention. The consensus within the research is that the majority of employees leave organizations due to negative relationships with their supervisors. Because of this, many organizations now examine their supervisors more closely and have increased the preparation and accountability required for managers within their organization.

Research also suggests that employees who are recruited from inside sources (such as former employees or internal job postings) are more likely to stay employed longer than workers recruited by other means. Additionally, researchers have highlighted the need for tailoring jobs and job postings based on career life cycles. There are multiple stages, including career establishment (where the main motivators are salary, training and corporate structure), family building (where employees value work-life balance, opportunities for advancement and competitive wages) and closure (where people are primarily concerned with pension plans, elder care and personal work interests). By adjusting job positions and recruiting tactics based on these phases, organizations may be more successful at recruiting qualified employees.

Employees consistently named three factors as vital for employee retention: the quality of relationship with their supervisor or manager, the ability to balance work and home life, and the feeling of making a difference at work. Additionally, the vast majority of employees reported that job loyalty is built from contributions to work rather than tenure. Success is based on job responsibilities and accomplishments rather than salaries or titles. Similarly, research has found that employees expect to have formal upward communication systems to ensure their voice is heard, have competent management that creates a positive and respectful culture, and expect to help carry out the organization’s mission.

Survey responses indicated effective use of various recruitment methods, including (from most utilized to least utilized) internal job announcements, newspaper classified advertisements and competitive compensation packages. Respondents also indicated that retention practices were not as formalized as recruitment initiatives. From most identified to least, respondents indicated agencies utilizing formal employee orientation, safety incentives, upward communication and/or feedback, management and leadership development, attendance incentives, rewards for high employee involvement and planned career paths. Training methods were also reported in the study, with efforts including (from most utilized to least) performance-based needs assessment, performance-based instruction, tutoring, self-paced instruction, individualized learning plans and roll over of trainees.

Finally, the survey identified various labor-management partnerships developed by transit agencies. About 50 percent of the largest transit agencies reported labor-management agreements, with about 40 percent of respondents reporting that these agreements were codified in labor-contract provisions. Of the smallest transit agencies, only 11 percent reported labor agreements and none were codified. Outside of these labor-management relationships, respondents also cited apprenticeship programs in labor contracts, hiring into training programs from a union hall and involving unions in employee selection as partnerships used by their agency.
In general, organizations that prioritize employee recruitment and retention are more successful in maintaining a qualified workforce and adapting to changing workforce conditions. The organizational structure of transit agencies may be adapted to better support a high-quality workforce.

- Partnerships between different groups within transit agencies may help to create a qualified workforce. Although such partnerships may take many forms (such as HR partnering with marketing departments to portray the agency as a preferred employer or HR partnering with employees to act as an internal recruitment and retention resource), organizations that prioritize these relationships may benefit more from them.
- Managers may also better maintain a qualified workforce by using more non-traditional recruitment strategies (such as attending career fairs and offering jobs on the spot), or by utilizing a “grow our own” strategy in which agencies recruit interns, or entry-level employees from the community.
- Transit agencies have developed and improved training resources (for example, offering remedial education for workers to qualify for certain positions), and have established connections with community-based workforce-development resources (such as working with welfare-to-work organizations and the Job Corps to train workers, or partnering with local technical schools and community colleges to provide certain trainings to students).
- Management can increase retention, although survey respondents reported that retention strategies were less effective than recruitment and training strategies. Exit interviews, for example, may be used to identify issues relating to employee retention within the organization. Managers may then use this information to make improvements.
- Managers of qualified workforces may also benefit from labor-management partnerships. In the transit industry most such partnerships were a formal labor management committee (LMC), which include the general manager or senior manager of the transit agency and the president of the union. Successful LMCs often have strong relationships and trust, as well as training and accountability on both sides.

The Transportation Workforce Challenge, a 2003 TRB study, focused on workforce in the transit industry and discussed diversity in that context (National Academies of Sciences, Engineering, and Medicine 2003). Diversity was an important consideration in recruiting, training and retention of qualified workers in the transit industry. The authors mention language and cultural training as ways to make diversity succeed. Additionally, the authors conclude that such actions result in expanded applicant pool, reduced employee turnover and improved productivity.

**TCRP Report 120/NCHRP Report 585: Racial and Gender Diversity in State DOTs and Transit Agencies**

This 2007 TRB report examined the state of data collection and reporting regarding racial and gender diversity in transit agencies and state DOTs as of 2006 (National Academies of Sciences, Engineering, and Medicine 2007). The study also summarized literature on promoting, recruiting and retaining a diverse workforce at transit agencies and state DOTs. This report attempted to establish a benchmark of racial and gender diversity, however the researchers determined that the reported data were incomplete and a credible benchmark could not be determined.

The data used to analyze diversity in this report were primarily equal employment opportunity (EEO) data, where agencies reported the number of women and minorities employed within various EEO categories (officials and administrators, professionals, technicians, protective service workers, administrative support, skilled craft workers and service maintenance workers). These data were then compared to what was reported on the FHWA-1392 form (the Federal-Aid Highway Construction Summary of Employment Data form), which includes total employment on Federal-Aid Highway Program projects. This report reviewed data for 52 state Departments of Transportation (all states in addition to Washington D.C. and Puerto Rico) and 50 transit agencies.
The report highlighted the importance of collecting affirmative action plans, as well as utilization and availability analysis of EEO programs. The authors summarized that data should include if an agency is compliant, if data are consistent, if data are comprehensive and if the agency is confident in the data it reports. Of data collected, little analysis could be completed because of what information was reported and how the information was reported.

This report also includes a review of the relevant literature (as of 2006).

The report indicates that state DOTs have two responsibilities: to not exclude women and minorities, and to take steps to attract and retain women and minorities (this responsibility includes the implementation of an affirmative action plan and completing an EEO-4 report). The EEO-4 reports include information by job category, race and salary. Analysis of the data collected found that in general, state DOTs have a high level of compliance with EEO laws and submission requirements.

Federal regulations state that affirmative action plans should include, among others: specific, measurable, attainable hiring and promotion goals with target dates; identification of minorities and women who are qualified or qualifiable to fill jobs; a survey of the labor market area in terms of population makeup, skills and availability for employment; and a procedure that allows employees and applicants to submit allegations of discrimination without fear of reprisal to an impartial body.

Only 58 percent of reporting state DOTs submitted a comprehensive report that included both incumbency numbers (utilization rates) and an availability analysis. Minimum components of an availability analysis include data on state population, labor market in the state (with information by race/ethnicity and gender) and an analysis of how these factors connect to the availability of personnel and jobs within the DOT. These reports should also include target goals for women and minorities in specific occupations.

The study also found discrepancies with the consistency of reported data. These inconsistencies primarily related to the date of availability data, source of availability data, measures of underrepresentation and adverse impacts, geographic and organizational units to assess representation, and racial/ethnic categories used when reporting employment counts.

Overall, the study found overutilization of white men, black men and black women in all occupational categories. White women were underutilized in all occupational categories, while Hispanic men, Hispanic women, Asian women and American Indian women were underutilized in most occupational categories.

The authors provide a series of recommendations based on this analysis. These include:

- Making it easier for agencies to be compliant;
- Providing standardized training and facilitating the sharing of information and best practices among agencies;
- Communicating the key elements of an effective affirmative action plan;
- Increasing accuracy by promoting the improvement of internal monitoring and tracking systems; and
- Making diversity an agency priority by holding everyone accountable for achieving diversity goals.
This 2011 report examined practical resources to recruit and retain minorities for Chief Executive Officer positions at public transportation agencies. The report also addressed specific recruitment models, selection processes and retention practices (National Academies of Sciences, Engineering, and Medicine 2011).

The researchers of this report completed a literature review of research related to recruiting and retaining minorities and women. They found that making diversity a central part of the organization (such as increasing diversity at the executive level or linking diversity to outcomes such as performance evaluations) was a common theme. In terms of recruitment, the authors found that many researchers recommended that recruiters expand where employers search for minority and female candidates to “nontraditional avenues.” There was a common misconception among recruiters and managers that qualified minority candidates do not exist, cannot perform like their counterparts or are not a cultural fit. Others (such as the National Football League and the State of Oregon) require some decisionmakers to consider at least one minority candidate for certain hiring decisions. There was little agreement in the literature about retaining minority executives.

This paper also addressed the financial benefits of prioritizing diversity in hiring. The authors noted that diversity has a positive return on investment (ROI) and discussed the measurement of that ROI.

The researchers also discuss diversity models (which strategically align diversity as a primary company goal) and explain that the consensus within the literature is that firms that are strategically aligned can identify and retain employees better, and also score better on a wide variety of business indicators and employee satisfaction.

This paper outlines six methods for recruiting minority CEOs at public transit agencies. These include:

- Combining internal and external executive recruitment methods;
- Creating diversity executive recruitment programs;
- Requiring a mandatory diverse talent pool;
- Creating succession planning and leadership development programs;
- Leveraging professional associations; and
- Conducting extensive internet searches to identify minority executive candidates (this is the primary method in the private sector).

To increase retention, the authors highlight executive coaching, realistic job previews, mentoring and on-boarding as instrumental in maintaining current employees and limiting turnover.

**Procurement**

TRB studies have also examined the Federal DBE Program and other means to ensure equity in procurement.

**NCHRP Research Report 913: Compendium of Successful Practices, Strategies, and Resources in the U.S. DOT Disadvantaged Business Enterprise Program**

This report outlines factors that make Disadvantaged Business Enterprises (DBEs) successful in the Program, initiatives used by state departments of transportations (DOTs) found to help DBEs be successful and further keys to DBE success. In this study, researchers include DBEs that have “graduated” from the program, meaning that firm owners no longer meet the program eligibility requirements, which include gross revenue and wealth ceilings.

Overall, this research found that successful DBEs attribute some of their success to the DBE program. DBE firm owners reported using training and other technical assistance services offered by state DOTs and indicated that they would continue to do so.
This study found that DBEs that work with state DOTs may graduate from the DBE program, although as many as one-third eventually regain eligibility and re-enter the program. Because graduated firms no longer benefit from the DBE program, there are some disincentives to graduating. Additionally, DBE certification does not guarantee a firm will win work with a state DOT, and state DOTs identified a small portion of certified DBEs as “successful.”

According to the study, most DBEs identified as successful perform construction or professional services work, are older firms that have been certified for many years, work as prime contractors or consultants, and about one-half were owned by white women. The primary strategies that DBEs have used to become successful include diversification or vertical integration, serving a geographically large market area and bidding or proposing as a prime contractor or consultant.

This report also includes a description of approaches state DOTs use to assist DBEs. Overall, state DOTs that provide training and technical assistance to DBEs and include contract goals in their DBE programs are most effective at supporting DBEs.

Finally, this study outlines recommendations that state DOTs and others may use in helping DBEs become successful. These approaches include, among other, successfully delivering basic services of DBE programs (including certification, goal setting and monitoring), offering training tailored to the transportation industry, providing individualized assistance, addressing barriers in accessing capital and bonding, offering more prime contract opportunities to small businesses, tracking successful DBEs and developing multi-state efforts to assist DBEs, encouraging successful DBEs to support emerging DBEs, and easing the transition when graduating from the DBE program.

**NCHRP Synthesis 481: Current Practices to Set and Monitor DBE Goals on Design-Build Projects and Other Alternative Project Delivery Methods**

This report describes current practices and challenges that state DOTs face as they set and monitor DBE program goals, including setting DBE contract goals, procurement policies, program compliance and state DOT enforcement mechanisms.

DBE program implementation with the design-bid-build process is determined by federal regulations and years of state DOT implementation. Typically, the design-bid-build process begins with the state DOT setting a goal for DBE participation (often expressed as a percentage of total cost). Bidders must then either meet the DBE goal or show good faith efforts to do so. If they do not do so, federal regulations require their bid to be rejected. After contracts are awarded, the state DOT then monitors to ensure that DBEs actually receive work on their particular project.
This study compares the design-bid-build approach to three alternative methods of procurement. The design-build delivery method combines two services into a single contract, which often includes a single fixed-fee contract for both architectural/engineering services and construction. Construction manager at risk (CMAR) or construction manager/general contractor (CMGC) allow owners to engage a construction manager during the design process, frequently providing input on scheduling, pricing, phasing and other aspects of the project. Public-private partnerships (P3s) are contractual agreements between a public agency and a private sector entity, which results in greater private sector participation in the delivery and funding of the project.

At the time of this study, at least 45 states along with Washington, D.C. and Puerto Rico had used design-build as a delivery method for state DOT projects. Somewhat fewer states had used public-private partnerships (P3s) and construction manager at risk (CMAR) or construction manager/general contractor (CMGC) delivery methods. Among those that used alternative delivery methods for projects funded by U.S. DOT, 33 utilized DBE contract goals.

Further research with state DOTs uncovered significant difficulties applying the traditional DBE contract goals to alternative delivery method projects. This study found that new methods that focus on a DBE plan at the time of proposal (rather than commitment to specific DBEs) can be a more effective approach. Additionally, state DOTs may require or urge proposers to include multiple strategies for assisting DBEs in their plans. State DOTs reported that higher DBE goals can be set and consistently achieved under the new approaches, although they do require additional monitoring to ensure that DBE plans are implemented by the contractor.

This report further explores these alternative delivery methods, investigates how state DOTs apply DBE goals using various methods and reviews state DOT’s experiences when implementing these goals.

Transportation Project Delivery: Alternative Contracting Methods Research

This report further explores alternative contracting methods used in the transit industry. This study includes recent trends in the research, application and implementation of these contracting methods. The traditional method of procurement, the design-bid-build approach, is seen as limiting the opportunities for collaboration between project stakeholders. The alternative contracting methods explored in this report include design-build and construction manager/general contractor. These alternative methods allow for more innovation and collaboration in the designing and building process, with significant contractor engagement in the design process.

ACRP Report 126: A Guidebook for Increasing Diverse and Small Business Participation in Airport Business Opportunities

This guidebook includes information about the legal background of the federal Disadvantaged Business Enterprise (DBE) program and the airport concession disadvantaged business enterprise (ACDBE) program, examples of other non-federal business enterprise programs utilized by airports, a discussion of the roles and responsibilities in the implementation of these policies, and contracting methods used to obtain diversity. Additionally, this guidebook addresses barriers to the success of diverse businesses, strategies to enhance diverse business participation, as well as an investigation of six airports included as case studies.

The U.S. Department of Transportation (DOT) established the DBE program for contracts funded under the Federal Aviation Administration’s (FAA) Airport Improvement Program (AIP), as well as the ACDBE program for airport concessions and certain management contracts. The goal of both programs is to ensure non-discrimination in awarding AIP-funded contracts and airport concessions contracts. While the U.S. DOT establishes rules and regulations for these programs, regional offices of the FAA oversee program implementation.
The discussion of the DBE program includes explanation of the enabling legislation and grant assurances, as well as the general framework and requirements of the federal regulations for certain concessions and for airport contracts.

Airport DBE Programs are established under 49 CFR Part 26. The regulations require certain airport grant recipients to develop, implement and enforce the DBE Program in good faith. Airport grant recipients that award prime contracts of $250,000 or less in a federal fiscal year for airport planning or development are not required to have a DBE program. When implementing a DBE program, airports must create and distribute a policy statement within the organization and to the relevant business community. 49 CFR Part 26 also outlines the administrative requirements for airports implementing the Program.

Notably, DBE programs are not uniform. Instead, each participating airport must design and implement their own program based on their organization. Airports must design programs to meet the aspirational goal outlined in 49 CFR Part 26.45 for DBE participation in federally-funded contracts over a three-year period, using either race- and gender-neutral means or, if necessary, race- and gender-conscious means. Setting an overall goal involves two steps: first, developing a base figure for DBE participation based on DBE availability in the market area, then airports may adjust the base figure to account for factors that impact DBE availability. In order to receive grant funds, an airport must have the FAA approve its DBE Program Plan, must be in compliance with its DBE Plan, and must annually report DBE participation to FAA.

General administrative requirements are also discussed in this publication. These requirements include but are not limited to maintaining detailed records and bidders lists of DBE and non-DBE firms, designate a DBE Liaison Officer (DBELO) who is responsible for implementing all aspects of the airport’s DBE program, maintain a directory that identifies all certified DBEs, structure contracts to facilitate small business competition.

This report also summarizes regulations guiding the ACDBE Program, established by 49 CFR Part 23. These guidelines require airport grant recipients to develop, implement and enforce a program for concession businesses that meet the goals of the ACDBE Program. As with the DBE Program, airports participating in the ACDBE program are required to develop and distribute a policy statement, and meet the same non-discrimination requirements that are established for DBE programs in 49 CFR Part 26 with respect to the award of concession, management, purchase or lease, or other agreements.

The administrative requirements of the ACDBE Program and largely similar to those of the DBE Program. As such, airports that implement both Programs may combine shared program requirements and may issue one policy statement and appoint one DBELO for both programs. As with the DBE Program, airports must set aspirational three-year overall goals for ACDBE participation in concession opportunities and design measures to meet these goals through race- and gender-neutral or race- and gender-conscious approaches. Airports must also determine goals based on ACDBE availability in the relevant market, and airports must submit these goals to FAA after consulting with a variety of stakeholders. Additionally, the ACDBE program includes two participation goals: one for car rentals and one for other concessions (these goals must be set separately). Similar to the DBE Program, an airport is only eligible if it submits its ACDBE Plan to FAA and that Plan is then approved. ACDBE programs must include monitoring and enforcement mechanisms to ensure regulatory compliance, and airports must annually report ACDBE participation to FAA.

After the administrative requirements of both the DBE and the ACDBE Programs, this report discusses the constitutionality of these Programs. The U.S. Supreme Court rulings in City of Richmond v. J.A. Croson in 1989 and Adarand Constructors, Inc., v. Pena in 1995 guide these programs. These rulings also establish that federal programs that use race or ethnicity in decision making are subject to “strict scrutiny,” which is the most rigorous standard of judicial review. Because of the similarities between the two Programs, legal justification of the DBE Program can also be applied to the ACDBE Program.
This publication also explores non-federal business enterprise programs. These are often called local business enterprise (LBE) programs, small business enterprise (SBE) programs, and minority or women’s business enterprise (MBE/WBE) programs. The report includes examples and discussions of each type of program, as well as a description of the process of creating LBE or SBE Programs.

Additionally, this report addresses policy and implementation roles and responsibilities of the major actors. These include governing bodies (such as the airport authority or the airport department of a municipality), chief executives, DBE liaison officers and other offices and departments. The researchers found that diversity programs are best executed when fully supported (by culture, staff and resources) and implemented as a collaborative effort, meaning that airports that are committed to the ideals of business diversity programs and have dedicated resources are more successful. This report also explains four key components of successful diversity programs include commitment, shared responsibility, a diverse team and collaborative efforts.

This study also examines lasting impediments to the success of diverse businesses. Among these obstacles, they cite certification requirements, proposal requirements (such as the standard term of an airport concession agreement, which is 10 years), large contract size, bonding and insurance requirements, limited financial resources, not receiving prompt payment and politics as limiting the success of diverse businesses.

The researchers also explore which contracting methods best support diversity efforts. Among the contracting methods discussed, some approaches are highlighted as having the potential to increase diversity. For example, these include:

- Limiting eligibility to bid on a project to small businesses (small business set-asides);
- Encouraging qualified and eligible firms to obtain DBE certification;
- Offering smaller-sized and direct opportunities;
- Breaking the scope of a contract into smaller dollar amounts and lower risk projects,
- Supporting and communicating with joint-venture participants; and
- Relaxing bonding and insurance requirements.

Further, the researchers recommend strategies and partnerships to increase diverse business participation. These approaches include:

- Planning for diverse business participation;
- Conducting a disparity study;
- Offering language translation services;
- Utilizing new technology in promoting contract opportunities;
- Measuring internal performance of diversity goals;
- Sharing business diversity accomplishments both internally and externally;
- Develop and maintain relationships with industry associations or other local partnerships; and
- Develop and implement training programs.

This report concludes with case studies of airports of various sizes including Columbia Metropolitan Airport, Richmond International Airport, Oakland International Airport, Raleigh-Durham International Airport, San Diego International Airport, and Phoenix Sky Harbor International Airport.
Other Research Regarding Employment

The research team also examined other studies related to equity, diversity and inclusion issues in employment that are relevant to transit agencies.

Approaches

This portion of the literature review summarizes commonly used approaches to increasing organizational diversity and inclusion. This section outlines:

• Required initiatives;
• Initiatives that impact work environment;
• Human resource strategies;
• Initiatives that establish responsibility or accountability;
• Initiatives that leverage external relationships; and
• Approaches to identifying outstanding barriers.

Required Initiatives

Certain diversity and inclusion initiatives may be required for some organizations. Affirmative action programs, for example, may be required by federal regulations (Kalev et al. 2006). According to these regulations, affirmative action plans should include: specific, measurable, attainable hiring and promotion goals with target dates; identification of minorities and women who are qualified or qualifiable to fill jobs; a survey of the labor market area in terms of population makeup, skills and availability for employment; and a procedure that allows employees and applicants to submit allegations of discrimination without fear of reprisal to an impartial body, among others things (National Academies of Science, Engineering, and Medicine 2007). Organizations may also measure overall diversity progress by their progress toward their affirmative action goals (National Academies of Science, Engineering, and Medicine 2003).

In addition to affirmative action requirements, some agencies are subject to Equal Employment Opportunity (EEO) regulations (Newkirk 2019). EEO requirements protect against discrimination based on race, color, religion, national origin, sex, age, genetic information, disability or veteran status. Recent revisions also include protection for lesbian, gay, bisexual and transgender individuals (Federal Transit Administration 2016). Some organizations may track the number of EEO complaints filed and may use this as a measure of diversity success (National Academies of Science, Engineering, and Medicine 2003).

Certain agencies are required to develop, implement and submit programs for diversity and inclusion. According to Federal Transit Administration Circular 4704.1A, EEO programs include seven elements:

• Statement of policy, which includes the agency’s commitment to EEO;
• Dissemination of EEO policy statement both internally and externally;
• Designation of personnel responsibility, including the EEO Officer that is responsible for EEO Program management and oversight;
• Utilization analysis, which compares minorities and women in the agency’s workforce to minorities and women available in the local workforce for each job category;
• Goals and timetables for addressing problems identified in the utilization analysis;
• Assessment of employment practices, identifying why problems identified in the utilization analysis exist (for example, issues may arise due to recruitment, promotions and transfers, seniority practices, training, compensation and benefits, disciplinary and termination practices, among others), along with an analysis of the statistical impact of employment practices on minorities, women and veterans; and
• Monitoring and reporting, including practices to monitor EEO within the agency and with subrecipients or contractors, procedures for reviewing equity in contracting and monitoring complaints, as well as the frequency and results of EEO-related meetings.
Although EEO programs may be required, some researchers suggest that they are not necessarily an effective way to increase diversity. For example, EEO programs include a formal grievance process where employees can file a complaint with the Equal Employment Opportunity Commission (EEOC) if they experience discrimination at work based on their race, color, religion, sex, national origin, age, disability or genetic information. One study analyzed almost 90,000 discrimination complaints filed with the federal Equal Employment Opportunity Commission in 2015 and found that 45 percent of those complaints resulted in retaliation. When employees see that the grievance procedure is ineffective, they are more likely to avoid reporting incidents of discrimination. This is supported by responses from employee surveys, which indicate that most people do not report discrimination. As a result of the few complaints, organizations conclude that they do not have problems with discrimination. Additionally, studies have found that protective measures such as grievance systems may lead people to let bias affect their decisions more, as they believe that organization policies guarantee fairness (Dobbin and Kalev 2016).

A review of the ways in which equal employment opportunity (EEO) and affirmative action (AA) laws had been enforced found that, in a random sample of 1,024 federal civil rights cases decided after the 1964 Civil Rights Act, judges base company compliance on the existence of diversity programs, policies or officers, and do not analyze their efficiency. Because of previous court decisions, plaintiffs in such cases must prove not only the impact of workplace policies but must also prove the employers’ intent to discriminate. Therefore, employment discrimination lawsuits are some of the most difficult to win with a success rate of about 21 percent. While firms create visible symbols of EEO/AA efforts, these diversity initiatives are not required to decrease discrimination (Newkirk 2019).

**Human Resource Strategies**

Some organizations utilize human resource strategies aimed at increasing diversity and inclusion. These approaches are aimed at hiring and recruiting practices, policies that increase retention and limit employee turnover, promotion practices, diversity training and communication within the organization.

**Hiring and Recruiting.** Staffing has been identified as a key component of diversity and inclusion efforts (Newkirk 2019). Some organizations use targeted recruiting or in general place a greater emphasis on minority recruitment and recruiting women (Nishii et al. 2018; Morgan Roberts and Mayo 2019; National Academies of Sciences, Engineering, and Medicine 2003).

Other agencies have adopted more concrete changes to hiring practices such as recruiting from nontraditional avenues, combining internal and external executive recruitment methods and conducting extensive internet searches to identify minority candidates (National Academies of Sciences, Engineering, and Medicine, 2001).

Some agencies have developed internship or apprenticeship programs, and others utilize diversity executive recruitment programs (Ivey et al. 2019; National Academies of Sciences, Engineering, and Medicine 2001). Further, organizations may use name-blind applications in the hiring process or administer hiring tests for all candidates to ensure that the minimum job requirements are met (Leslie 2019; Dobbin and Kalev 2016).
Retention and Limiting Employee Turnover. Some initiatives aimed at increasing employee retention and limiting turnover may be used to increase organizational diversity and inclusion. For example, providing on-boarding, new-hire orientation resources, on-the-job training, and presenting realistic job previews may help support diversity by increasing employee retention (National Academies of Sciences, Engineering, and Medicine 2001; National Academies of Sciences, Engineering, and Medicine 2003; Harnack 2010).

Additionally, compensation has been identified as a key factor in achieving and maintaining organizational diversity (Newkirk 2019). Organizations may place greater emphasis on paying fair market wages in order to recruit and retain a diverse and qualified workforce (Ivey et al. 2019).

Many organizations support mentoring or networking opportunities to increase diversity within the agency (Morgan Roberts and Mayo 2019; Kalev et al. 2006). Mentoring may occur through formal programs, formal networks or informal networks (Kalev et al. 2006; National Academies of Sciences, Engineering, and Medicine 2003). These programs or networks, which may include only disadvantaged individuals or people of a certain race/ethnicity or gender, can be a form of “diversity mentoring” (Leslie 2019).

Other organizations emphasize sponsorships in retaining a diverse workforce. This may include recommending diverse employees for promotions and assignments with high responsibilities, or sponsoring minority employees for leadership-development programs (Morgan Roberts and Mayo 2019).

Promotion. Further human resource strategies aim to increase employee retention through promotion practices. Organizations have identified performance management, career development and succession planning as key factors that impact diversity (Newkirk 2019).

Agencies utilize leadership development programs and executive coaching to prepare minorities and women in the workforce for promotions (U.S. Office of Personnel Management 2011; National Academies of Science, Engineering, and Medicine 2001). Organizations may support diversity by using performance ratings, offering candid feedback and consideration for promotions and developing a succession planning system with outreach to a wide variety of potential leaders (Dobbin and Kalev 2016; U.S. Office of Personnel Management 2011). Additionally, managing career development across all life stages (including tailored initiatives) has also been used to increase diversity (Morgan Roberts and Mayo 2019).

Although promotion decisions may be used to improve employee retention, these decisions are not always objective. For example, the vast majority of organizations use performance ratings to identify and reward good workers, and performance rating systems can be cited as a method to prevent bias and therefore protect the organization against litigation. Researchers have found, however, that some raters tend to lowball women and minorities in performance reviews. Other managers give all employees good reviews to avoid hassles. Because of these trends, performance ratings are not an effective and reliable way to reduce bias. In fact, these researchers found that introducing performance ratings had no effect on the number of minority managers in the organization in five years, and the number of white women in management fell by 4 percent on average (Dobbin and Kalev 2016).
**Training.** Diversity trainings are one of the most common approaches to increasing organizational diversity and inclusion. Agencies have named diversity education as vital in increasing diversity within an agency (Newkirk 2019). Government publications have also highlighted the importance of ensuring that all employees have access to diversity training and education (U.S. Office of Personnel Management 2011).

There is significant variation within diversity training delivery and design. For example, diversity trainings may focus on reducing bias in behavior and actions, may emphasize multicultural education or awareness, may include sensitivity training, or may provide more general information about diversity (Morgan Roberts and Mayo 2019; Levy Paluck and Green 2009; National Academies of Sciences, Engineering, and Medicine 2003; Berzukova et al. 2012). Trainings may involve on-site speakers, all-staff meetings, focus groups, video training, seminars, workshops, lecture-based trainings and simulation-based exercises. In addition to variety among methods, there is also variation among the number of methods used, with some trainings using multiple approaches and others using only one (National Academies of Sciences, Engineering, and Medicine 2003; Berzukova et al. 2012).

Diversity training may also be delivered as a stand-alone training, which often includes a single training session focused on legal and compliance issues, or delivered as an integrated diversity training, which includes training as one part of a system of diversity-related activities. Trainings may also be required or mandatory (about 75% of diversity trainings are mandatory), and the duration of training may vary (Berzukova et al. 2012). Additionally, trainings may be either group-specific (which focus on race or gender, for example) or inclusive (and emphasize inclusiveness across multiple groups) (Berzukova et al. 2016).

Although diversity trainings continue to be one of the most popular initiatives, researchers examining the effectiveness of diversity trainings have not reached a consensus on the effectiveness of this approach. For example, one study found that trainings improve a variety of cognitive- and skill-based outcomes (Kalinoski et al. 2013), while others reported that these trainings improve diversity test scores of some participants for about two days (Dobbin and Kalev 2016; Levy Paluck and Green 2009).

**Communication Within the Organization.** Human resource strategies may also focus on communication of initiatives and organizational commitment to diversity, and intra-organizational methods of communication.

Some approaches, such as new-hire orientation programs and all-staff meetings, are aimed at communicating diversity initiatives throughout the organization (National Academies of Sciences, Engineering, and Medicine 2003). These methods may also be an effective way to communicate commitment to diversity and the ways in which diversity is integrated into the agency (Newkirk 2019).

Other diversity initiatives attempt to increase communication among employees. For example, some organizations employ self-managed teams (where peers work together toward a common goal), cross training (where employees rotate through departments and work with a variety of managers) or organize dialogue groups across a variety of individuals (Dobbin and Kalev 2016; Levy Paluck and Green 2009). Some agencies promote employee participation in community-based events outside of work (National Academies of Sciences, Engineering, and Medicine 2003).

Additionally, strategies may design effective conflict resolution and trainings plans, or offer counseling and employee assistance programs in the case of workplace conflict (Roberts 2011; National Academies of Sciences, Engineering, and Medicine 2003). Other human resources strategies establish grievance procedures for minorities and women to report issues or instances of discrimination (Dobbin and Kalev 2016).

Although firms may communicate a commitment to diversity within their organization, some researchers suggest that diversity initiatives are used by organizations not in good faith, but rather as a form of defense in the event that legal action is taken against them (Newkirk 2019). Such initiatives may lack authority or resources and may therefore be ineffective.
Supporting minorities and women through hiring, retention, promotion, training and communication policies can support diverse workers and increase organizational diversity.

*Initiatives That Impact Work Environment*

Some organizations have initiatives aimed at shaping various aspects of the organization’s work environment. These approaches improve diversity and inclusion by affecting the organization through strategic plans, engaging managers, involving employees, or changing overall culture or physical workspace.

Some organizations establish diversity as a core business strategy, develop diversity plans or diversity vision statements (National Academies of Sciences, Engineering, and Medicine 2003). Others implement an agency-specific diversity and inclusion strategic plan, then develop and track performance measures and distribute those measures of progress (U.S. Office of Personnel Management 2011).

Agencies also utilize diversity initiatives through engaging managers. For example, some organizations involve managers in college recruitment programs, in mentoring programs and in solving diversity problems in the agency (Dobbin and Kalev 2016). Organizations may also benefit by committing resources to training managers to better understand how their identities impact how they interact with others (Cohen and Gavett 2019).

Further, some initiatives encourage managers to make employees feel safe and valued, build relationships across team members and leaders, and provide growth opportunities and communicate value to employees. Organizations are also promoting communication and learning at the managerial level by encouraging managers to ask employees what they need, have regular check-ins, ask employees if they feel supported and safe at work, troubleshoot issues, and understand and support their aspirations (Cohen and Gavett 2019). Additionally, agencies may increase diversity at the executive level and allow employees access to senior leadership (U.S. Office of Personnel Management 2011).

Other organizations have increased the support and engagement of human resource managers. For example, some empower human resource managers to assist managers advance inclusive behavior, and others have taken steps to formally incorporate diversity and inclusion specialists into the human resources team (Cohen and Gavett 2019; Ivey et al. 2019).

Some diversity initiatives attempt to shape the work environment by engaging staff, with diversity programs specifically designed to include the entire organization (Morgan Roberts and Mayo 2019). Initiatives may increase on-the-job contact with female and minority workers, include employees in staff retreats or otherwise encourage employees to have relationships with people different than themselves (Dobbin and Kalev 2016; National Academies of Sciences, Engineering, and Medicine 2003; Cohen and Gavett 2019).

Other staff engagement initiatives include cultural celebrations, diversity poster programs, employee participation in resource groups and incentives for employees (National Academies of Sciences, Engineering, and Medicine 2003; U.S. Office of Personnel Management 2011; Cohen and Gavett 2019).

Finally, initiatives may emphasize changes in physical work environment or workplace culture. For example, some agencies ensure that physical offices continue to be accessible to all. Others attempt to ensure a welcoming workplace by including diversity and inclusion in workplace planning activities, establishing supportive environments for diverse individuals, creating a culture that values diversity and maintaining that culture throughout the workplace. Some agencies conduct internal research to assess cultural climate (Ivey et al. 2019; U.S. Office of Personnel Management 2011; Cohen and Gavett 2019; Roberts 2011).

Other workplace diversity initiatives include an orientation that addresses agency culture and networking opportunities, communication of expectations to leaders, holding staff accountable for upholding company values, and encouraging open conversations about race, especially with senior leaders (U.S. Office of Personnel Management 2011; Cohen and Gavett 2019; Morgan Roberts and Mayo 2019).
Finally, organizations have developed programs to improve work/life balance, more flexible workplace policies and more flexible work arrangements in general (National Academies of Sciences, Engineering, and Medicine 2003; Nishii et al. 2018). Such policies are designed to improve organizational work environment and, in turn, improve agency diversity and inclusion.

**Initiatives That Establish Accountability or Responsibility**

Further initiatives establish accountability or responsibility for diversity and inclusion efforts. Approaches may establish accountability throughout the organization and with organization leaders (Roberts 2011). For example, some organizations incorporate diversity in performance evaluations, and particularly in the evaluations of managers. Agencies may also encourage the consideration of diverse candidates when hiring or promoting, with some organizations requiring decisionmakers to consider at least one minority candidate for hiring decisions (National Academies of Sciences, Engineering, and Medicine 2001; Leslie 2019; Newkirk 2019).

Some initiatives allocate responsibility to a diversity task force or committee (Dobbin and Kalev 2016; Kalev et al. 2006). These groups may include employees or senior leadership and employee forums (Newkirk 2019). Diversity committees or task forces analyze diversity numbers across organizational levels and recommend solutions, increase engagement when designing new diversity strategies and progress metrics, and spread responsibility for diversity throughout the organization (Dobbin and Kalev 2016; U.S. Office of Personnel Management 2011). Effective diversity task forces or committees are given the resources and power to affect change (Roberts 2011).

Finally, some organizations establish responsibility for diversity with a single diversity manager, chief diversity officer or other staffed positions (Leslie 2019). These individuals have the ability to question management about decision making (Dobbin and Kalev 2016). As with diversity task forces or committees, effective diversity employees are given the necessary power and resources (Roberts 2011).

**Initiatives That Leverage External Relationships**

Some organizations leverage partnerships and external relationships as part of their diversity efforts. In addition to increasing diversity, these efforts may also lead to a more qualified workforce (Ivey et al. 2019).

For example, some organizations administer media campaigns or distribute newsletters, magazines, pamphlets and other printed materials aimed at expanding their applicant pool and increasing diversity within their workforce (Levy Paluck and Green 2009; National Academies of Sciences, Engineering, and Medicine 2003). Agencies may also work with community organizations that serve populations of interest to gain insight and build relationships that can increase the diversity of applicants (Ivey et al. 2019). Others build relationships and recruit from colleges and other local organizations (Dobbin and Kalev 2016; Harnack 2010).

Organizations may also become more diverse by leveraging professional associations, including professional associations for minority groups or women, providing technical assistance for diverse vendors and attending seminars and other events where stakeholders share challenges, best practices and strategies (National Academies of Sciences, Engineering, and Medicine 2001; National Academies of Sciences, Engineering, and Medicine 2003; Ivey et al. 2019).

Finally, some initiatives attempt to identify any outstanding barriers to diversity and inclusion. Some organizations continue to evaluate issues such as implicit bias, recruitment practices and the diversity of their reach and bias in hiring practices (Ivey et al. 2019; U.S. Office of Personnel Management 2011). These evaluations may be in the form of diversity evaluations, employee satisfaction and climate surveys, reviews of practices, or general organizational assessments (Kalev et al. 2006; National Academies of Sciences, Engineering, and Medicine 2003; U.S. Office of Personnel Management 2011). These evaluations often include diverse groups of current employees (Ivey et al. 2019).
Equity and Inclusion in other Aspects of Transit Operations

The study team also reviewed research on:
- Equity and environmental justice;
- Fare setting; and
- Transit network design.

Equity and Environmental Justice

The following summarizes relevant research from publications and reports related to equitable treatment of neighborhoods and groups as well as environmental justice in the transit industry.

Environmental justice includes efforts to achieve equitable protection from environmental harm and equitable access to benefits across demographic groups. Researchers have found that communities of color and low-income communities are exposed to greater harm and receive fewer benefits from transportation systems when compared to the general population. Transportation-related environmental justice can be understood through costs (including air pollution and noise) and benefits (such as increased accessibility). Although transportation planning agencies are required to analyze the impacts of their plans for inequity, these reports rarely find that projects could result in disproportionate impacts (Rowangould et al. 2016).

Another author argues that a transportation system is fair if and only if it “provides a sufficient level of accessibility to all under most circumstances” (Martens 2016).

Some research has evaluated job accessibility impacts of transit improvements among low-income individuals. The researchers found that a new light rail line in Minneapolis-St. Paul has generated significant job accessibility benefits for all workers. In some but not all areas, low-wage workers benefitted more than medium- and high-wage workers (Fan et al. 2012).

Other research has focused on the causal relationships that trace why low-income individuals and people of color are disproportionately exposed to pollution. In addition, gentrification prompted by transit system improvements can lead to displacement and further inequity (Banzhaf et al. 2019; Rodier et al. 2019).

One of the criticisms of the use of cost-benefit analysis in transportation planning is that are forward-looking, while environmental justice assessments examine harms that have already occurred (Epting 2016).

Researchers have explored various definitions of transportation equity. In general, transportation equity refers to the fair distribution of transportation costs and benefits among current and future members of society. In this concept, “fair” may include a variety of distributions, referred to as “equity standards.” Transportation costs include environmental costs such as direct emissions from auto use, traffic congestion and noise pollution, as well as the real costs of building, operating and maintaining the transportation infrastructure. Transportation benefits include reductions in travel time and travel costs, as well as improvements in accessibility, mobility and economic vitality (Bills and Walker 2017).

In terms of transit service quality measures, many agencies use measures such as number of routes in an area or frequencies at a specific stop. Accessibility is often measured by walk time proximity, although some may use land use and other characteristics (Welch 2013).

Some researchers argue that although many measures of accessibility exist when analyzing transit networks, limited research has been done on developing a tool to measure how equitable the distribution of transit access is (Welch 2013). Some argue that there is no standard or streamlined method for identifying transportation justice areas across transit agencies (Oswald Beiler and Mohammed 2016).
Researchers explain that transportation equity can be understood using two dimensions: horizontal equity and vertical equity.

- **Horizontal equity** refers to distribution of impacts (i.e. costs and benefits) across groups that are considered equal in ability and need. This type of equity may include spatial and generational equity.
- **Vertical equity** refers to the distribution of transportation impacts on groups that differ in ability and needs, such as disabled or special needs groups and groups across different social and income classes (Bills and Walker 2017).

Another author explains that while vertical equity requires that different groups receive different amounts of a benefit, horizontal equity requires that within each group of similar individuals, a similar benefit is received. The two types of equity together imply that transit dependent groups should have access to equal amounts of quality transit, and those most dependent on transit should receive more access to transit service (Welch 2013).

Other researchers have introduced even more frameworks for fairness for transportation. One group has argued that the distributional effects of transport policies should consider the minimum standards of accessibility to key destinations and the extent to which the transit system prioritize disadvantaged groups, reduce inequalities of opportunities and mitigate transport externalities (Pereira et al. 2017).

Researchers have critiqued the existing equity analysis processes. Criticisms pertain to the unit of analysis used and method of comparing equity indicators. For example, analyses often classify the target group into “communities of concern” or environmental justice communities. Identification may be done using a variety of factors such as income or ethnicity, but they typically have a high concentration of minority and low-income residents. These communities may be by census tract or travel analysis zones and, because of aggregation, can create bias when evaluating the impact on population segments. Because segments of both populations likely live in both areas, this method makes it impossible to isolate the impacts for the different groups (Bills and Walker 2017; Karner 2018). Additionally, researchers note that the use of equity indicators can be problematic, as frequently the mean indicator values are compared across population segments. This method does not reveal individual level outcomes (Bills and Walker 2017).

There is considerable research on potential improvements to measuring transportation equity. One set of researchers propose an alternative equity analysis approach that uses disaggregated data from activity-based travel demand models (Bills and Walker 2017).

Most existing research defines equity in this context as equal distribution of accessibility, or the ease of reaching a number of key activities and opportunities (although not all scholars consider the same activities “key”).

### Fare Pricing

Researchers have also explored equity in public transit fare pricing.

Studies have found that transit-dependent groups often travel more frequently and during off-peak hours, often use buses more than rail, and make more transfers between modes of transit. Minorities and low-income households are disproportionately represented among the transit dependent (Taylor et al. 2012). These factors affect equity in fare pricing.

There are a variety of types of transit fare structures including flat fees, distance-based fares, zone-based fares, service-type based pricing, time of day pricing and concession fares (concession fares are sold by different agencies to different groups at various discount levels, such as student passes and senior passes). Some agencies use a combination of pricing strategies, and prices may also vary depending on the method of payment, such as transit card users versus those who pay in cash (Ma et al. 2017; Lipscombe 2016).
Horizontal equity in terms of pricing can be described as when there is equal distribution among equal members of society. In the context of the transit pricing, horizontal equity is achieved when passengers pay as much as they use. Vertical equity in the transit pricing requires that the costs/benefits are distributed according to the users’ need for the service or their capability for payment. Disparities between the benefit a passenger receives (trip length) and cost (fare) implies inequality. In the social equity literature, researchers note that pricing structures are efficient when riders contribute to the costs of their services in line with the benefits they receive (as reflected by the marginal costs of their trips). However, fares are considered equitable when they take into account the income capacities of riders (Bandegani and Akbarzadeh 2016).

One research paper proposed three criteria for equitably setting fares:

- The benefit criterion, or the idea that people should pay for services in proportion to the benefits they receive from them;
- The cost criterion, which is the idea that people should be charged for the use of the service in proportion to the cost of providing the service to them; and
- The ability to pay criterion, or the idea that the amount people should be charged for the service should be in proportion to their wealth (Nuworsoo et al. 2009).

Some researchers note that many analysts favor distance-based fares in equity analyses, however they argue that it is not necessarily as clear-cut as it seems. They cite spatial mismatch (defined as significant spatial separations between low-income and minority households and suitable locations of employment or other participation), and note that distance-based fares may increase out-of-pocket expenses for spatially mismatched households that have long-distance travel routines. Such a change may result in increased use of cars and, therefore, increased greenhouse gas emissions, more traffic accidents and increased traffic congestion. These factors must be considered when evaluating the social benefits as well as the economic and environmental costs of distance-based fares (Farber et al. 2014).

Some authors conclude that finding the ideal mix of horizontal and vertical equity is subjective, and depends on values (namely, to what extent should government agencies redistribute income to increase equality) as well as efficiency and effectiveness (considering factors such as congestion during peak periods and limiting mobility for those who urgently need transit). They argue that, previously, transit agencies have used policies such as distance-based fares to increase fare equity (operating on the assumption that those living farther from the city have higher incomes). Now, however, with that assumption not holding and an increasing amount of travel data, agencies may consider a different fare pricing structure (Haney et al. 2019).

Other researchers argue that subsidized transit fares or variable pricing models based on income should be used to increase overall social equity in a community (Bullard et al. 2017).

Some researchers note that transit fare and justice have not been researched as thoroughly as the other transportation equity topics, and existing research remains largely theoretical. The researchers identified only one existing empirical paper that evaluates the spatial and equity implications of various fare structures (Zhou et al. 2019).
Transit Network Design

This section refers to transportation network design, and the ways in which transit routes are determined. However, there is limited research on transit network design as it relates to discrimination and inequality.

There are many ways to design a transit network in a community, each with different equity outcomes. For example, one study presents a set of 69 approaches (and combinations of approaches) to dealing with network design, frequency setting and timetabling (Guihaire and Hao 2008).

Some researchers who have analyzed transit networks use horizontal criteria to divide equity into modal and spatial equity.

- Modal equity includes the travel time between the origin and destination of each mode, where modes are divided into passenger car and transit, and the travel time of each mode is the total travel time from the origin to the destination. Modal equity is achieved when the difference between transit travel time and cars’ travel time is negligible because of the transit network. (Kim et al. 2019; Ferguson et al. 2012).
- Spatial equity is achieved when the difference in modal equity among regions is negligible because priority is given to transit improvements in regions with lower modal equity (Kim et al. 2019).

Some of the literature concerning transit network design place this issue in the larger context of racial discrimination in the built environment. One author explains that the built environment, characterized by the man-made physical features that make it difficult for certain individuals to access certain places, can be used as a mechanism of exclusion. She notes that certain bridges were designed to be low so that buses could not reach certain destinations, and walls, fences and highways separate historically white neighborhoods from historically black ones. Additionally, wealthier communities often decline to be served by public transit, making it difficult for transit-dependent individuals to access their neighborhoods. These built-environment factors act as a form of regulation, often without individuals realizing it (Schindler 2015).

Other studies explore the relationship between race and travel. There is considerable literature on spatial mismatch, where African Americans have worse employment outcomes because of job inaccessibility, have lower rates of residential mobility, and experience housing and labor market discrimination. Studies have found a connection between increasing concentrations of minorities to decreasing accessibility and lower levels of transit service. Although different measures of spatial mismatch exist, researchers argue that using any of these measures alone or highly aggregated is not appropriate, as travel-related behavior varies by group. They argue that planning agencies must spatially distinguish the information derived from their decision-making tools (including travel-demand models) and link this information to race and ethnicity. Research on travel behavior rarely considers race and ethnicity as an explanatory variable, despite the fact that multiple studies have found race and ethnicity have an effect on travel behavior after controlling for income, family structure, land use and accessibility (Karner and Niemeier 2013).
APPENDIX C

Interviews with Transit Agencies

Approach to In-Depth Interviews with Transit Agencies

In-Depth Interviews

The study team prepared an interview guide and a plan for identifying and contacting interviewees. We began conducting in-depth interviews with agency leaders, HR professionals and others with diversity and inclusion responsibilities (regarding procurement, transit customers, community interface, etc.) for a cross-section of large and small public sector transit organizations. We also attempted to include one private ride-share organization but did not receive a response from the contacted individuals. As with our other studies for TRB, comments will be included in the report, but not attributed to specific interviewees. We will use results of these interviews to inform each of the subsequent tasks and to refine a working definition of diversity and inclusion.

Interview Guide

The study team developed an interview guide, which started with background about the study, participation instructions, and notification of recording. Additionally, it asked for background information and included questions about diversity and inclusion programs. The interview guide was approved by the TCRP Research Panel.

The questions included in the interview guide are:

1. What does diversity and inclusion mean to you? How is it defined within your agency?
2. Why is diversity and inclusion important to your organization? Is it more important for specific agency functions? If so, what functions?
3. [If implemented] How is diversity and inclusion put into practice in various functions of your agency? [If not mentioned, ask about personnel, procurement, service provision, public engagement, other.]
4. Which staff positions are responsible for different aspects of diversity and inclusion within the organization? How could these positions receive more support? (What would the “org chart” for different aspects of diversity and inclusion look like?)
5. Briefly describe the history of diversity and inclusion practices within your organization. How long have different practices been in place? What prompted their initiation?
6. What measures are used to gauge success of these practices or initiatives?
7. Are diversity and inclusion measures at your transit agency improving, getting worse or staying the same? Why? [If not mentioned, ask function by function.]
8. Are there gaps in the diversity and inclusion efforts at your agency? If so, are they being addressed? How?
9. As your organization has implemented or refined diversity and inclusion practices, where do you go for advice or other information on best practices? What resources do you tap? What, if anything, would you like to know that isn’t readily available?
10. What should I have asked about that I didn’t?
Interviewee Plan

Interviewees were contacted based on a tiered structure, beginning first with leadership, second with human resource representatives, and third with others having diversity and inclusion responsibilities (regarding procurement, transit customers, community interface and other aspects of operations and governance). An online search resulted in contact information, including email addresses and phone numbers, which were used to reach leadership or their representatives at each of the participating transit agencies. Initial communications were sent via email, which included an attached letter from the Transportation Research Board.

In some cases, transit agency leadership referred us to additional contacts within the agencies. After contacting each of the first-tier transit agency interviewees, second tier communications were made with human resource representatives whose contact information was retrieved either via recommendation from leadership (or their representatives), or from an online search. Further contact information was collected from recommendations by agency representatives throughout the interview process.

Final communications were made to remaining third tier interviewees. Where emails did not result in returned communication, calls were made to designated contact persons, or to phone numbers that were found in the online search or provided by first and second tier interviewees.

Qualitative Information from In-Depth Interviews

Interviews Conducted

The study team initially proposed a total of 24 in-depth interviews, eight with agency leadership, eight with HR directors and eight with other staff. Additionally, TCRP requested that Keen Independent contact one private ride-sharing company, Via.

The study was able to complete in-depth interviews and group discussions with 37 interviewees from 13 agencies including transit agencies’ Chief Executive Officers, Chief Operating Officers, General Managers and division and department managers, as well as representatives from Human Relations (HR), Civil Rights, Procurement and other departments including Public Engagement, Learning and Organizational Development, Communications and Change Management. Interviewees provided background information on the state of diversity and inclusion within their agencies.

To encourage open discussion, interviewees were informed that their comments would be reported in aggregate and coded as #I-01, #I-0, etc.

Key themes from these interviews follows.

Defining Diversity and Inclusion

Interviewee responses described diversity and inclusion, both how it relates to them, as well as how it is defined within their agencies.

- “It means that it is accepting of diversity of all types and that I don’t have to assimilate. That I can be myself” [#I-02]
- “When we talk about diversity and inclusion here, we talk about providing a welcoming environment that’s free of judgement and embraces different cultures and ways of life.” [I-07]
- I view diversity and inclusion as, making sure that I’m considerate of including people from different walks of life with different backgrounds.” [#I-09]
- “Inclusion is perhaps more important somehow than diversity.” “You can bring all kinds of different people together, but are they really included? Or are you creating the beginnings of a hostile work environment?” [#I-01]
- “Inclusion is about making sure that people feel like the parts of them that make them different are welcome.” [#I-04]
• “Diversity and inclusion means … recognizing that all people are different and that is a gift to any organization. That we should not only recognize that people are different, but we should look to those differences and appreciate them. We should] create environments… that allow those differences to provide input into decision making, allow those differences to rise to the top in an organization, allow those differences to participate in decisions about what the organization is doing and to generally make a difference because people are different.”[#I-19]

Support Compliance Policies through Culture

Transit agency representatives discussed the evolution of compliance-based diversity initiatives to mission-based over time.

Using Policy as a Tool. Diversity policy is an essential tool designed to hold organizational leaders accountable for inclusive practices, according to interviews at many transit organizations. For most agencies interviewed, diversity went beyond meeting federal requirements.

• “Well certainly employment is [responsible for diversity] because I monitor the numbers to see who’s coming in and what sites they’re utilizing because I don’t want any excuses about hiring a ‘homogeneous group’ into the company when in fact the people that we service are diverse …” [#I-02]
  “Obviously we would hope that people would follow it because it’s the ‘right thing to do’ but if for whatever reason they have difficulty understanding that, there are policies in place that make them comply.” [#I-02]
  “… but then … division heads are responsible for what goes on in their division.” [#I-02]
• “Whether it’s mandated by the federal government or not, we would still approach [diversity] that way and we would still do [diversity initiatives].” [#I-18]

There was recognition among transit agency leadership that much of the diversity efforts are required. For example, “Everybody in the public sector has to do an affirmative action plan.” [#I-22]

Going Beyond Compliance. Although compliance is still an important reason for diversity, many agencies have attempted to build diversity and inclusion into organizational cultures. They say they would promote diversity and inclusion even if there were no requirements. This is one way interviewees described how diversity initiatives have evolved over time.

• “I think if we were the poster child for anything, it’s probably just doing our best to incorporate [diversity and inclusion] as part of our culture and not necessarily calling it out as a separate ‘check box.’” [#I-36]
• “It’s not just that we follow the law but it’s that we recognize that there are differences and we celebrate those and are excited about those.” [#I-04]
• “We also define diversity as different from compliance. ‘Compliance’ are the things that we have to do by law.” [#I-19]
• “We’re trying to look at a more global approach on equity.” [#I-21]
• “We’ve started implementing across the entire agency a different culture and I think that’s made a huge difference ….” [#I-35]
• “When people talked about diversity and inclusion, they were talking in terms of equal employment opportunity … and they were putting people in buckets …. And so we established a strategy that was about awareness … where we communicated to all employees that diversity included all of them, that it was more than compliance, that everyone is to be appreciated for who they are and we encourage them to be who they are and bring their whole selves to work.” [#I-19]
Some agencies described fairly recent evolution from “compliance-driven” diversity efforts to those that support the strategic vision of the organization.

- “I think that the culture in this organization has changed over the last three or four years to a more inclusive culture, and what I can an accountability culture versus an entitlement culture. I think in going around talking to folks, I think we’ve made a lot of progress towards a culture of high morale and accountability and diversity and inclusion … if it’s a compliance issue for everybody to get along, that doesn’t make sense to me.” [#I-10]
- “The diversity measures we had when I started were focused on the affirmative action plan … but that’s not the sole effort that helps to create a culture of diversity and inclusion. Over the last three years, and particularly this last year, we’ve started to define what diversity and inclusion means beyond compliant, beyond baseline. We want our employees to be more connected with our community … to understand that [we] are open to everyone … and then how do we help people understand that they can be whoever they are, as it helps to accomplish our goals.” [#I-22]
- “I think most of our diversity programs have been ‘compliance driven’ … and there’s nothing wrong with that … but I think that your motives are echoed very loudly when it’s just compliance-based versus changing a culture.” [#I-01]

**Defining Equity, Diversity and Inclusion.** Many interviewees emphasized the importance of building a “culture” where diversity is integrated into the overarching mission of the transit agency and other affiliated systems. Comments from transit agency representatives include:

- “I use an equation: Diversity equals equity + inclusion. That’s kind of what diversity, equity and inclusion mean to me. Diversity in the workplace is really a function of equitable action on the part of the organization combined with inclusive behavior on the part of the organization.” [#I-20]
- “We added the lens of equity and we’ve made that a part of our committee’s charter. Equity says it’s more about breaking down some of those barriers that we find whether it’s in different levels of professional development or hiring or really anything. [#I-04]

**Expanding Inclusiveness Initiatives Over Time.** Some transit agency representatives reported on the evolution of how diversity and inclusion has changed at their agencies.

- “In terms of the broad perspective that we have on diversity, sure it is race, gender, national origin and all those things … but it’s much broader than that. It’s culture, it’s different age groups, it’s very broad in terms of how people think and bring all of that into the workplace.” [#I-13]
- “It’s culture, it’s different age groups, it’s very broad in terms of how people think, and bring all of that into the workplace. We have programs around that and work to make sure that folks feel included.” [#I-15]
- “We want to make sure that everyone is celebrated, and everyone feels like they’re welcome here.” [#I-29]

A few interviewees specifically recognized LGBTQ communities as a growing focus at their agencies even when there is still work to do. Comments include:

- “We not only are active LGBTQ employers; we also participate in the [Pride] Parades … those are direct actions that show the community how we are inclusive.” [#I-03]
- “One thing that we’re seeing a lot now is people’s pronoun descriptors …. We have tried to do more outreach at specific events such as the Gay Pride event.” [#I-07]
- “Where I think we have some work to do would be with some of the ‘newer initiatives’ and that is with the LGBTQ community … we’re not there ….” [#I-01]
Learn from Public Perception

Some Transit Agency Representatives Reported on Inclusiveness from the Public’s Perspective. Mirroring the communities served. A number of interviewees reported that to achieve diversity and inclusion within a transit agency, an agency must mirror the diverse communities it serves.

• “We have a very diverse community and … the organization mirroring that diversity is what our goal is.” [#I-03]
• “Our company is reflective of the public that we serve … We do hire diversity throughout the company, that’s our mission that’s our mandate.” [#I-02]
• “We serve the general population of our service area so … [diversity] is overarching in all areas.” [#I-05]
• “If we want to have people work here, they have to see themselves within this institution,” and added, “We also are serving a diverse community, so … they would like to be able to see people that look like themselves providing the service.” #I-02
• “To me, diversity is a reflection of the local marketplace … that our employees are a reflection of the local marketplace in every respect … in terms of ethnicity, gender, race, etc.” [#I-32]
• “In order to serve the community, we need to look and believe and feel like the community we’re serving,” and “that is the best way to make up a workforce … have it representative of the population that you are serving.” [#I-01]
• “From an HR standpoint, we want to make sure that we have a diverse workforce so that we have the best people working in the jobs that we can, and we want to make sure that we also mirror our demographic.” [# I-17]

Sustaining Communities through Transportation. Some transit agency representatives reported on how transportation can connect with and sustain communities of all kinds.

• “It’s an opportunity to provide equal involvement by all individuals involved in transportation, whether it’s sexual orientation, ethnic background, fiscal ability, it’s truly bringing all parties together within the community we serve to provide the … modes of transportation … needed for the commuters to survive.” [#I-23]
• “We’re working through this right now; we’re trying to rebrand the organization and through that process we’re able to see a lot of research that tells us what our riders think of us …. There’s what we as senior managers think and feel about our organization and … then there’s what our rider populations think of us and think about what we do and the decisions that we make … we’re hearing very clearly … that a large segment of our rider population doesn’t feel that we care about them, that we aren’t connecting with them in a way that they feel we’re making decisions that show and demonstrate that we care about them as residents of this county … [our] rider population is … lower income riders and they feel … we don’t treat them fairly or equitably so … being public facing, I think that’s a problem … there’s a huge disconnect here …. It’s really a great point in time for us to ‘self-check and hone in on’ the things internally that we’re doing … that relate to diversity … to inclusion.” [#I-09]

Build Diversity within the Organization

Transit agency representatives commented on how they build diversity within their agencies.

Leadership and Management. For some, diversity starts at the top. However, at leadership and management levels, diverse groups may be underrepresented in some transit agencies. Comments include the following:

• “From the very, very top, all the way down to right at the bottom.” [#I-33]
“I would say first of all that diversity and inclusion from a transit standpoint in my mind means making sure that the leadership in the organization is reflective of the population that we serve as best we can … all levels of leadership are also charged with the same thing [referencing consistency in diversity messaging and delivery].” [#I-10]

“And I think that that emanates from the ‘top down.’ When people see a diverse senior leadership team, then they begin to think, you know, diversity is valued here.” [#I-10]

“Ultimately the ‘bus stops here’ as the VP of HR but there’s a responsibility for diversity and inclusion all the way down to our supervisors and leads and dispatch and so we all kind of work together.” [#I-17]

“The diversity-and-inclusion ‘hat’ is worn across the board from all executive levels … and then of course it’s practiced all the way down to the frontline supervisors … we’re working with our employees.” [#I-23]

“[HR] wants to be really clear that just because someone does something different or believes something different [it] cannot be [perceived as] a negative thing … all levels of leadership are also charged with the same thing.” [#I-01]

“I don’t think our management reflects the diversity of our community and I think that’s an area that we have put more emphasis on …. In our management staff, I believe that there are a lot of white people and older people, our average age is like 54, we have a very tenured staff ….” [#I-07]

“If you saw a picture of our chief level positions you would identify that they all look pretty similar.” [#I-01]

**Workforce Recruitment.** A few transit agency representatives reported on workforce recruitment as well as the importance of having diversity advocates among HR staff. For some, “nepotism” is a barrier to increasing diversity. Another reported that recruitment should focus on who “brings the best package to the table.” These comments include:

“We’ve specifically targeted our residents to show that [the agency] is a place where we recognize diversity and where we specifically are making it a priority to build a workforce that reflects our community.” [#I-03]

“I want to be able to get the diverse population we serve and keep that momentum throughout all the ranks of our agency …. I would charge my entire HR and training department as true advocates of diversity and inclusion because at every level of hiring, training, promotion and termination they have to really understand not only the bare minimum requirements of the law but [that] they have to understand the direction of [the agency].” [#I-01]

“One of the things that we did just recently do this past year is we looked at our nepotism and realized that it was kind of hurting us in [our recruitment efforts], especially in our transit operator ranks, because we have so many families that work here, and then they’re sort of in the know and then their families know when to apply.” [#I-07]

“If you saw a picture of our chief level positions, you would identify that they all look pretty similar. So, on the surface it may appear that there is not a strong diversity effort. I have sat on the interview panels, as we have had an exceptionally diverse group of people applying for and interviewing for the positions that we were filling as the chief level positions and what we were definitely looking for is the best fit, as well as buying into the culture here. So again, it would appear that diversity is not on the forefront, but it really is. It looks to be a particular way, and I think there then becomes this effort to … [dictate that] the next chief position has to be a minority or a male or ‘a this or a that’ instead of focusing on who is going to bring the very best package to the table to best impact the entire agency.” [#I-01]

**Emphasizing Equitable Advancement.** Some transit representatives pointed out the importance of fairness in advancement, others emphasized advancement from within. For instance:

“… [diversity means] creating opportunities … for growth and development for all employees at every level …. I want to have a plan … for somebody to grow into a leadership role ….” [#I-01]
“I’m the first African American to hold a seat of COO … and I believe [one other in leadership] … is the first minority woman to own that seat so when you’re looking at it from an executive level, there is movement in that regard in that area. So, trying to promote from within is a big focus ….” [#I-23]

**Diversity Training.** Although many reported staff training on diversity, some transit agency representatives spoke about the challenge of reaching all employees.

- “Many of our employees … they’re in bus depots, they’re in train yards, they’re now on the ground under the tracks, and not everyone has access to a computer, and so we need to figure out how we make sure that all employees have access to all information and that they are able to participate in the things that many of the employees participate in.” [#I-19]
- “We do [training] much better with our administrative employees, folks that are in the offices. We do have issues with our operators so we have [500+] operators and there’s just no way we can take them all of their work to do it, but we do try to at least provide some paid time and go to our computer lab to do the required trainings. I can’t guarantee it gets done every year.” [#I-07]

[After funding losses in 2000 – 2008 we are replacing past initiatives with] online tools and in-person training.” [#I-07]

**Encourage Diversity in Decision-Making**

Interviewees identified “diversity of thought” as a defining characteristic of diversity and inclusion, as well as an important contribution to decision-making. For example:

- “We also understand that with diversity is diversity of thought.” [#I-06]
- “Diversity is not only identifying people who look different, came from different backgrounds, and came from different communities … it’s also diversity in thought.” [#I-01]
- “… and we are making sure that we are including everyone, respecting everyone, trusting everyone, and that we involve others to make decisions and help make decisions within the organization.” [#I-35]
- “Not only does it mean we attract and bring those people into the organization but that they have a voice and that their opinion is valued, and it is included in our decision making and how we run the organization. So, it’s not just okay we bring them in, but how are they valued in terms of their contribution to the organization.” [#I-15]
- “When we do projects, we try to make sure that we have a wide array of thoughts because anytime that we’re trying to make decisions for the organization we need to make sure we have as broad of spectrum as possible.” [#I-04]
- “An organization is stronger when you have a diverse set of experiences and a diverse set of thought leadership; that’s really how you solve complicated and complex problems.” [#I-20]
  “I have a ‘2 x 2 matrix’ that I use to explain [diversity]. And it comes down to diversity of thought and diversity of experience.” “That’s the benefit of diversity for a large organization: When you have that many employees across multiple business units … having diverse experience and diverse thought really makes your organization stronger and puts better problem-solving teams together.” [#I-20]
- “Create environments … that allow … differences to provide input into decision-making … allow those differences to rise to the top in an organization, allow those differences to participate in decisions about what the organization is doing.” [#I-19]

**Ensure a Level Playing Field in Transit Procurements**

Many transit agency representatives reported on the need to be inclusive in transit procurement opportunities including expanding minority business pipelines and opening up opportunities for small subcontractors to prime some jobs. Comments include:

- “… considering the diverse populations that we serve; they should also be reflected in the projects and our projects should be looked at through that lens as well.” [#I-10]
• “We want to make sure that what we do from a contracting side is equitable, that there are no barriers that could prohibit woman- and minority-owned companies to participate in our contracting activities, that there’s a level playing field, and that what we do in terms of how our dollars are spent reflect the business community.” [#I-18]
• “We weren’t meeting the goals that were established by the authority and so we started reaching out into the community growing our small business diversity minority line.” [#I-12]
• “We hear from diverse businesses, ‘What is our ladder for growth? We want to participate in your contracts, it’s great to be a sub, but what I would like to do is grow my business with you … have the opportunity to bid this work as a prime.’” [#I-20]
• “[To level the playing field] we’re working on finalizing dashboards that will give a ‘360-degree view’ of a construction project that will tell us [those] contributions to our equity programs … relative to all of the other projects and programs that we have.” [#I-20]
• “[To ensure a level playing field] I am in the process of writing up the best practices for our DBE program … I’m compiling … documented best practices for the good faith efforts, for prompt payments, for commercially useful function verification, for setting goals ….” [#I-08]

Measure Success Across Divisions and Departments

Transit agency representatives reported on how they measure the outcomes of diversity and inclusion initiatives across departments.

Take the Pulse. One transit agency relied on taking the “pulse” of the agency to gage effectiveness of diversity and inclusion initiatives. “For us it’s organic; I take the ‘pulse’ of the organization.” Another said, “… everybody has a role in ensuring we maintain diversity here …” [#I-23, #I-20]

Consider Employee Complaints. Others used the number of employee complaints as a metric.
• “The number of complaints that are filed within employee relations would be a good indicator as to whether or not things are working.” [#I-02]
• “Whenever we did our initial brainstorm [regarding metrics for success], people wanted to use these compliance factors, like let’s see if we decrease the number of complaints ….” [#I-01]

Measure Compliance. Some relied on EEO compliance and other factors.
• “We have placement goals that are part of our EEO program, so we have just hard metrics around what are our categories that we’re setting placement goals and what are the positions and what are the goals for underrepresented minorities and/or women. One of the things that I am initiating is a formal audit of our hiring and our organizations job tracks.” [#I-20]
• “We measure it at the EEO level for occupational codes but also at the level of management … [we measure at the executive director level] how many women are there … we haven’t really had a lot of measures other than we look at how we’re recruiting and people participating in the program and we have a measure that we use in our employee engagement survey for measuring how well we’re doing in our efforts ….” [#I-04]
• “From a compliance perspective, there is a council for economic inclusion survey that we have done over the years.” [#I-22]
Track Information Across Departments. Some tracked information across departments drawing from federal guidance and best practices benchmarks, employee data and surveys, transit-user questionnaires, public input and other information collection and analysis. Some examples follow:

- “What we are starting to take a look at is an ‘employee engagement meter’ … what we call a ‘net promoter score,’ increase in different areas of engagement … driven by … diversity and inclusion efforts. We’ve done a number of different surveys over the past few years and we’ve asked questions to gauge the level of engagement an employee has; we know a lot of our diversity and inclusion work has helped to shape these. [#I-22]

  This year we are looking at a number of employee engagement efforts, a lot of which will be centered around social sustainability. We’ve been tracking surveys from 2015-2018 to gauge how the employee attitudes and opinions shift. We are analyzing with the net promoter score format … hoping to see that net promoter score increase by 5 percent.” [#I-22]

- “We are measuring our employee pool … for race and gender diversity and we even break it down to different areas of the agency. And we have a DBE goal so right now we are trying to reestablish some different DBE goals … tracking both subs and primes for DBE’s. They track any Title VI complaints of course. We do keep an eye on how many people that they are not approving for paratransit.” [#I-07]

- “If we are conceiving of a service improvement or major corridor strategy or a budgetary item, our public involvement plan that’s required by both our own policies as well as other guidelines, requires to conduct extensive outreach both in terms of in person outreach in the community as well as outreach to community-based organizations who then act as force multipliers for us to engage, especially with those challenging to reach populations; we metric our outreach based upon the composition of the respondents by demography and by race, and are constantly benchmarking that, not only against our system averages but also against the baseline demography of the region. We are trying to make sure at all points in time that our feedback is not only extensive but also representative of the communities that we serve. [#I-16]

  It should also be noted that when we conduct our bus and rail censuses, which is unlike some other transit properties which simply use census information or ACS information to best gauge the demography of both their ridership profile and baseline profile, we actually conduct in-person intercept surveys every three years and we gather anywhere between 60,000 and 70,000 individual intercept surveys, so we can best understand our widening community and we engage in additional effort in communities that are traditionally hard to survey … limited English proficient, we have over 15 languages that are spoken here as primary home languages in the [specified] area, as well as those that are minority or low-income communities in vulnerable geographies..” [#I-16]

- “We are constantly comparing ourselves to industry standards, from a best practices perspective regarding … recruitment, reaching out to different communities to attract the best talent that we can possibly find and focus on inclusiveness as well as process ….“ [#I-11]

  “Whenever we change any policies, and even something as simple as a fare increase, we conduct an in-depth analysis to ensure that certain communities are not adversely impacted.” [#I-11]
Evaluating Outreach Efforts. Some transit agency representatives discussed how they evaluate the effectiveness of community outreach, job fairs and partnerships, for instance.

- “We metric our outreach based upon the composition of the respondents by demography and by race and are constantly benchmarking against our system but also against the baseline demography of the region.” [#I-16]
- “… I constantly am asking my team, let’s think ‘outside the box,’ how can we be better at this, how can we better engage with people as the needs of the people we serve change.” [#I-20]
- “One of the areas that is an area of emphasis for me is community-based outreach, what I’ve learned in my career here is that if we aren’t constantly in contact with the community, then we start to lose that connection …. We average an outreach meeting every ten days or twelve days … that was just us participating in or hosting it ourselves, we go out in the community and we partner with other agencies to collaboratively work to develop job fairs to participate in job fairs, we were the sponsor of a contractors expo … where we bring in contractors and other agencies, we constantly are trying to partner with the other transit agency partners in the regions and other agencies through the business outreach committee and other groups we work with to try to increase and include small businesses in our participation.” [#I-20]
- “One of the main things we measure in those meetings is what we call our ‘pass-through rate,’ so when we go out and connect with someone in the community, do they take an affirmative step to try to work with us or to engage with us beyond the outreach meeting. And then from the contracting side, what is their success rate.” [#I-20]

Identify Gaps

Many transit agency representatives reported gaps in delivery of diversity and inclusion initiatives. Examples follow:

- “[A gap in] funding sometimes is an issue ….” [#I-13]
- “All agencies in the transit industry would have some gaps and specifically, for us … there are certain jobs historically that have been dominated by men. A classic example would be maintenance. So, the answer to the question is there [are] more men that are doing mechanical work than woman so to the extent that that’s a common theme in the industry then ‘yeah I would have those issues.’ We obviously can’t produce them if they don’t exist … we set up a relationship with … trade schools so that we can try to the best of our ability and also the military to try to see if we can get woman that can do those jobs. But … everyone is vying for the same thing … so those individuals get the valuable training here and then they wind up going someplace else.” [#I-02]
- “We do enough inclusive activities, I don't think we do a good enough job yet in making our community, our service area communities, feel that their voice is heard, that we are listening to them, I don’t think that we’re creating enough opportunity for them to do that. That’s something that we are tackling this year. We’re going out and probably doing more outreach across our service area ….” [#I-09]
- “I know from an HR standpoint the gap that we have is that … we’ve gone too long without training … we’re going to start rolling out [training] annually, it’s just not something that we've done on an annual basis previously.” [#I-17]
Pursue and Share Internal and External Resources

A number of transit agency representatives spoke of shared resources or looking to outside sources to augment diversity and inclusion initiatives.

- “We read just about every publication and conduct our own research through all available means, through our association APTA and various other organizations.” [#I-11]
- “My counterparts [at other transit agencies and certification agencies] … opportunity to reach out to them during the meetings and also just informally if I have questions and things like that; I’ll just share things informally by phone and so that’s a resource as well … there are plenty of agencies that do or have similar programs both on the private and public sector sides so we use each other as resources, bounce things off of each other.” [#I-18]
- “We talk frequently with folks at [specified transit agency] and over time we’ve learned how they go about doing different things, different policies, engage the community … [we] point to them … that’s helpful.” [#I-09]
- “[We] belong to a talent development [association] which is a workforce development group … [we have] a networking connection with the chair of their diversity and inclusion council so we’ve ‘found people.’ I think that we’ve done it informally trying to find different groups that we can participate with and get information from.” [#I-04]
- “We have various nonprofit organizations that we work with, we have woman organizations, we have ex-offender organizations, we have facilitators in our leadership academy that stress these issues, we have a quarterly leadership forum where we bring in all of the leaders in the organization to include people in our leadership academy … we bring in guest speakers around the topic of diversity and inclusion and all those things and so, we’re constantly reinforcing the message of inclusion and I think that you have to do that constantly because people will lose track of the importance of the issue.” [#I-10]
- “I think participating in American Public Transportation Authority (APTA) … and trying to be leaders on subgroups of diversity and inclusion council on APTA. I think being active in our community ….” [#I-03]
- “The community colleges and four-year colleges. We have a good relationship with [specified] university. We have … partnership, they’re like a link to the [local] chamber of commerce. We also link to the [regional] diversity center. We have a link to the transportation learning center which helps us with national outreach for developing training curriculums as it relates to transit training. There’s a really good healthy base as it stands now.” [#I-22]

Remove Barriers that Inhibit Success

Some transit agency representatives reported that diversity and inclusion initiatives can lose traction or be conflicting, or that some diversity and inclusion programs often have the reverse effect. Others identified common institutional barriers that inhibit success. Examples follow:

- “We’re constantly reinforcing the message of inclusion and I think that you have to do that constantly because people will lose track of the importance of the issue.” [#I-10]
  “We are … at the beginning stages. I would love to see succession planning that follows people in all different roles. This is where it starts to become a gray area … I find it truly challenging to have a great program … as we’re saying, ‘Okay we’re going to look at the Latino community or we’re going to look at the Asian community or we’re going to focus on the woman.’ I really want it to be about the people and whatever it is that they’re bringing to the table and how to grow the individuals.” [#I-01]
  “Now I also have a responsibility as the EEO officer to ensure that I am truly being diverse and so I find that to be challenging …. it sometimes feels conflicting.” [#I-01]
• “There are competing needs in the organization … and what I don’t want is for the equity and the diversity needs to be lost in the ‘noise’ of everything a large organization has going on.” [#I-20]
“One of the concerns you often hear in terms of equity and inclusion is, there maybe are unintended results of facially neutral policies, so an artificial glass ceiling for example … is there one in your organization and if so, how do you get at that. And how you get at that … is by collecting your data and then running statistical significance testing to see if any issues you identify or any challenges you identify are anecdotal and/or due to chance or if there is some significance to it so that we can respond to them proactively, which is a new process for our organization that we’ve initiated in the last few months. Pay equity, diversity around hiring, etc.” [#I-20]

• What a lot of people don’t realize is that there are a lot of institutional barriers in place and so being aware of what those are … so thinking about hiring people … and if you have a minimum qualification that requires an associate’s degree or a bachelor’s degree, actually looking at that body of work and deciding, is that appropriate, or is that just something that we’ve had in place forever.” [#I-04]
And then for some of the testing, not all groups do testing well, and so trying to make sure that you’re looking at those barriers and saying, ‘Are those still filling a need, is there something else we can do.’ I think that’s where a lot of organizations should be looking because we recognize different celebrations throughout the year and that brings a lot of inclusion and people ‘feel good’ but you need to do more than that. You have to do the hard stuff, which is figuring out what kinds of institutional things you have in place that are preventing people from getting promoted, preventing people from getting hired.” [#I-04]
APPENDIX D

Online Survey (First Draft)
The Transportation Cooperative Research Program (TCRP) has retained Keen Independent Research to develop the Resource Guide for Improving Diversity and Inclusion Programs for the Public Transportation Industry. TCRP is managed by the Transportation Research Board (TRB), a division of the National Academy of Sciences, Engineering and Medicine (see attached).

Keen Independent is an economic and policy research firm with offices in Phoenix and Denver (www.keenindependent.com). We have completed previous research studies for TRB.

If you have questions regarding this survey, please contact TRB at: xx

Survey Approach

We are asking representatives of transit agencies of all sizes as well as private sector transportation organizations throughout the county to respond to this 10- to 20-minute survey.

Your input will be a valuable contribution as we create a resource guide to help transit agencies across the Country promote diversity and inclusion in the public transportation industry.

This survey has two sets of questions regarding:

A. Organizational scan; and

B. Diversity and inclusion initiatives.
A. Organizational Scan

1. Please check the kind of organization you represent.
   - Transit agency
   - Other: ______________________

2. Which staff positions are responsible for diversity and inclusion in the organization?
   (check all that apply)
   - Senior leadership (CEO, General Manager, other senior leadership)
   - Human resources (HR) director/manager
   - Procurement, contracting, DBE Program director/manager
   - Civil rights, equity assurance, other director/manager
   - Title VI/ADA director/manager
   - Legal (attorney/director/manager)
   - Other: ______________________

3. When you think about diversity and inclusion in your organization, do you perceive it as being mostly compliance-based, mostly culture-based or equally compliance- and culture-based?
   - Mostly compliance-based
   - Mostly culture-based
   - Equally compliance- and culture-based
   - Other: ______________________

4. Have you seen any diversity and inclusion initiatives in your transit agency change since the early 2000s?
   - Yes
   - No
   - Don’t know

5. Are diversity and inclusion measures at your organization improving, getting worse or staying the same?
   - Improving
   - Getting worse
   - Staying the same
   - Don’t know
6. Are there any gaps in diversity and inclusion practices in your organization regarding employment?
   □ Yes
   □ No
   □ Don’t know

7. [If yes to Q6] What are the gaps and how is your organization filling those gaps?
   [Open-ended, limit response to 50 characters]

8. Are there any gaps in diversity and inclusion practices in your organization regarding procurement, contracting, DBE Program?
   □ Yes
   □ No
   □ Don’t know

9. [If yes to Q8] What are the gaps and how is your organization filling those gaps?
   [Open-ended, limit response to 50 characters]

10. Are there any gaps in diversity and inclusion practices in your organization regarding board development?
    □ Yes
    □ No
    □ Don’t know

11. [If yes to Q10] What are the gaps and how is your organization filling those gaps?
    [Open-ended, limit response to 50 characters]

12. Are there any gaps in diversity and inclusion practices in other areas in your organization?
    □ Yes
    □ No
    □ Don’t know

13. [If yes to Q12] What are the gaps and how is your organization filling those gaps?
    [Open-ended, limit response to 50 characters]

14. Has your organization ever retired any diversity and inclusion initiatives because they were ineffective or had a negative effect?
    □ Yes
    □ No
    □ Don’t know

15. [If yes to Q14] Please explain [Open-ended, limit response to 50 characters]
16. Beyond regulatory information sources, what resources have you tapped when seeking ways to improve diversity and inclusion practices at your organization? (check all that apply)

☐ Transportation Research Board e-newsletters
☐ Transportation Research Board peer-reviewed publications, other TRB periodicals
☐ Conference sessions/trainings/workshops
☐ Industry associations/alliances (e.g., APTA, CTAA, NAPTA, regional transit associations/alliances such as CALACT)
☐ Colleagues at other public sector transit agencies
☐ Private sector partners
☐ Academic resources (e.g., community colleges, colleges, universities)
☐ eLearning sources
☐ Other: __________________________
B. Diversity and Inclusion Initiatives

17. Review the following list of diversity and inclusion initiatives regarding employee recruitment. (check all that are being applied by your organization)

- [ ] Diverse interview panels
- [ ] Workforce utilization analysis
- [ ] Targeted recruitment
- [ ] Job placement opportunities for individuals with disabilities
- [ ] Performance evaluations include EEO policy goals and objectives
- [ ] Monitoring of interview/selection process
- [ ] Other: ______________________

18. Review the following list of diversity and inclusion initiatives regarding current employees. (check all that are being applied by your organization)

- [ ] Civil Rights/EEO Training
- [ ] Diversity Employee Resource Group (ERG)
- [ ] Diversity awareness workshops/training
- [ ] Diversity and inclusion committee
- [ ] Facilities for all gender identities
- [ ] Diverse cultural celebrations for employees
- [ ] Recognition of diverse holidays/discretionary holidays
- [ ] Other: ______________________

19. Review the following list of diversity and inclusion initiatives regarding procurement, contracting, DBE Program. (check all that are being applied by your organization)

- [ ] DBE training seminars/workshops
- [ ] Technical assistance programs
- [ ] Networking events
- [ ] Mentor-Protege Program
- [ ] DBE and SBE initiatives for non-federally funded contracts
- [ ] Unbundling of contracts
- [ ] Prompt payment policies
- [ ] Small business preferences/set-asides
- [ ] Capital, bonding and insurance assistance
- [ ] Notifying DBEs regarding solicitation opportunities
- [ ] Other: ______________________
20. Review the following list of diversity and inclusion initiatives regarding **customer service**. (check all that are being applied by your organization)

- □ Posting of Title VI policy
- □ Incorporating diversity in advertising policy
- □ Language assistance
- □ Notice of Civil Rights posted in multiple languages
- □ Passenger survey of customer needs
- □ Minority representation on boards, councils, and committees
- □ Other: ____________________________

21. Review the following list of diversity and inclusion initiatives regarding **community service and environmental justice**. (check all that are being applied by your organization)

- □ Development of a public participation plan
- □ Bus stop and street guidelines incorporate equity
- □ Outreach to disadvantaged communities for public events
- □ Language interpreters provided for project meetings
- □ Community Relations Department
- □ Community-focused cultural activities/events
- □ Support of LGBTQ in community programs
- □ Other: ____________________________

22. From your perspective, what are some of the most innovative diversity and inclusion initiatives, if any? [Open-ended, limit response to 50 characters]

23. From your perspective, what are some of the failures of diversity and inclusion initiatives, if any? [Open-ended, limit response to 50 characters]

24. What are some of the barriers to implementing diversity initiatives, if any? [Open-ended, limit response to 50 characters]

Name: _______________________________________________________

Title: _______________________________________________________

Agency/organization: ___________________________________________

Thank you for your assistance!
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