PERFORMANCE AUDIT
OF THE

# OFFICES OF QUALITY AND REENGINEERING, HUMAN RESOURCES, AND EQUAL OPPORTUNITY

MICHIGAN DEPARTMENT OF TRANSPORTATION

December 2002

59-225-01

Michigan

*Office of the Auditor General*

# REPORT SUMMARY

*Performance Audit*

*Offices of Quality and Reengineering, Human Resources, and Equal Opportunity*

*Michigan Department of Transportation*

**Report Number:**
**59-225-01**

**Released:**
**December 2002**

*The Office of Quality and Reengineering provides guidance and assistance to the Michigan Department of Transportation's (MDOT's) executive leadership in continuously improving MDOT's business practices. The Office of Human Resources is responsible for administering MDOT's payroll and personnel activities. The Office of Equal Opportunity is responsible for monitoring contractors' compliance with anti-discrimination regulations and for ensuring that only eligible firms participate in disadvantaged business programs.*

## Office of Quality and Reengineering (OQR)

***Audit Objective:***
To assess the effectiveness and efficiency of OQR in meeting its mission of advancing MDOT's transformation to a customer-focused, process-oriented organization that is committed to continuous improvement and is adaptive to change.

***Audit Conclusion:***
OQR was effective and efficient in meeting its mission. Our report does not include any reportable conditions related to this objective.

***Noteworthy Accomplishments:***
The American Association of State Highway and Transportation Officials (AASHTO) awarded MDOT the President's Award and two Exemplary Partner Awards in 2001, two Trailblazer Awards in 2000, and one Exemplary Partner Award and two Trailblazer Awards in 1999.

AASHTO, using the Malcom Baldridge National Quality Award criteria, annually recognizes state and federal transportation organizations throughout the country for their team efforts by awarding three levels of achievement: Exemplary Partner, Pathfinder, and Trailblazer. The President's Award is awarded to the Exemplary Partner team that made the greatest positive impact on the overall transportation organization.

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## Office of Human Resources (OHR)

***Audit Objective:***
To assess the effectiveness and efficiency of OHR in meeting its responsibilities in the functions of labor relations, classification and selection, payroll, and disability management.

***Audit Conclusion:***
OHR was reasonably effective and efficient in performing its responsibilities. However, we noted reportable conditions related to conflict-of- interest disclosures, grievances, and Americans with Disabilities Act accommodation requests (Findings 1 through 3).

***Audit Objective:***
To evaluate the management control established by OHR for MDOT's payroll and personnel functions.

***Audit Conclusion:***
OHR's management control over MDOT's payroll and personnel functions was reasonably effective. However, we noted reportable conditions related to leaves of absence, limited-term appointments, and student assistants (Findings 4 through 6).

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**Office of Equal Opportunity (OEO)**

***Audit Objective:***
To assess OEO's efforts to ensure that MDOT is in compliance with federal regulations regarding disadvantaged business enterprises and equal employment opportunity in the work forces of private contractors, subcontractors, and materials suppliers.

***Audit Conclusion:***
OEO's monitoring efforts did ensure that MDOT generally complied with federal regulations. However, we noted reportable conditions related to commercially useful function regulations, disadvantaged business enterprise certification, Title VI compliance, and the equal employment opportunity contract compliance program (Findings 7 through 10).

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***Agency Response:***
Our audit report contains 10 findings and 16 corresponding recommendations. The agency preliminary responses indicated that MDOT agrees with all 16 recommendations and has complied or will comply with them.

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A copy of the full report can be obtained by calling 517.334.8050 or by visiting our Web site at: www.state.mi.us/audgen/

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AUDITOR GENERAL

December 19, 2002

Mr. Barton W. LaBelle, Chairperson
State Transportation Commission
and
Mr. Gregory J. Rosine, Director
Michigan Department of Transportation
Transportation Building
Lansing, Michigan

Dear Mr. LaBelle and Mr. Rosine:

This is our report on the performance audit of the Offices of Quality and Reengineering, Human Resources, and Equal Opportunity, Michigan Department of Transportation.

This report contains our report summary; description of agency; audit objectives, scope, and methodology and agency responses and prior audit follow-up; comments, findings, recommendations, and agency preliminary responses; and a glossary of acronyms and terms.

Our comments, findings, and recommendations are organized by audit objective. The agency preliminary responses were taken from the agency's responses subsequent to our audit fieldwork. The *Michigan Compiled Laws* and administrative procedures require that the audited agency develop a formal response within 60 days after release of the audit report.

We appreciate the courtesy and cooperation extended to us during this audit.

Sincerely,

Thomas H. McTavish, C.P.A.
Auditor General

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## Description of Agency

The Michigan Department of Transportation (MDOT) was organized under Sections 16.450 - 16.458 of the *Michigan Compiled Laws*. MDOT is governed by the State Transportation Commission, which is made up of six members who are appointed by the Governor with the advice and consent of the Senate. The Commission is responsible for establishing policies. MDOT is managed by a director, appointed by the Governor, who is responsible for administering MDOT and implementing the policies established by the Commission. MDOT's objectives are to become customer driven, to deliver products and services to meet the customer's most important needs, to promote employee excellence, and to become a flexible and responsive organization.

MDOT's Office of Quality and Reengineering (OQR) is responsible for overseeing and directing the activities related to total quality and reengineering efforts. OQR's role is to provide guidance and assistance to MDOT's executive leadership in continuously improving MDOT's business practices. OQR functions as an internal consultant for MDOT's business areas. OQR operates on a project-management basis that includes working with clients to identify needs, translating needs into specific deliverables*, developing a plan to produce contracted deliverables, and then implementing the plan.

OQR had 11 full-time employees as of July 31, 2001, and its expenditures totaled approximately $734,000 for the fiscal year ended September 30, 2000.

The Office of Human Resources (OHR) is part of the Director's Office within MDOT. OHR is responsible for administering MDOT's payroll and personnel activities. OHR's role is to attract, select, and develop a highly qualified work force that can successfully implement the goals* and objectives* of MDOT's business plan. To accomplish its mission*, OHR is organized into three sections. The Administration Section is responsible for providing strategic human resource direction in partnership with MDOT leadership, line management, the Department of Civil Service, and the Office of State Employer for the effective use and development of human resources. The Employee Relations Section is responsible for representing MDOT during primary and secondary negotiations with labor unions; monitoring, interpreting, and implementing the terms and

** See glossary at end of report for definition.*

conditions of employment contained in applicable collective bargaining agreements; hearing employee grievances; representing MDOT on State and/or civil rights complaints; and managing MDOT's disability programs. The Personnel Services Section is responsible for analyzing vacancies and determining appropriate selection actions for the positions based on the functional needs of MDOT; developing programs to attract and recruit a qualified work force; acting as liaison with MDOT employees, supervisors, and managers on payroll transactions; verifying and releasing time and attendance information through the State's Data Collection Distribution System; processing job and non-job related employees and dependent claims; and updating and providing benefits and personnel and employment information for employees and managers.

OHR had 28 full-time employees as of July 31, 2001, and its expenditures totaled approximately $1.9 million for the fiscal year ended September 30, 2000.

The Office of Equal Opportunity (OEO) is responsible for monitoring contractors' compliance with anti-discrimination regulations and for ensuring that only eligible firms participate in disadvantaged business programs. To fulfill its responsibilities, OEO is organized into three sections. The Administration Section is responsible for office management, timekeeping, the budget, training coordination, computer liaison, file maintenance, and Michigan Administrative Information Network (MAIN) process coordination. The Field Services Section is responsible for the disadvantaged business enterprise* (DBE) certification process, the DBE certification review team, external equal employment opportunity contract compliance reviews, appeals process management, complaint investigations, the uniform certification plan, and Title VI plan development and implementation. The Business Services and Development Section is responsible for the DBE directory, DBE workshops and training, the DBE business development program, the DBE education support program, the DBE contract selection team, the DBE good faith effort committee, external Title VI reviews, the on-the-job pilot program, policy and program development, and DBE and on-the-job annual plan development.

OEO had 25.5 full-time employees as of July 31, 2001, and its expenditures totaled approximately $2.0 million for the fiscal year ended September 30, 2000.

** See glossary at end of report for definition.*

## Audit Objectives, Scope, and Methodology and Agency Responses and Prior Audit Follow-Up

Audit Objectives

Our performance audit* of the Offices of Quality and Reengineering (OQR), Human Resources (OHR), and Equal Opportunity (OEO), Michigan Department of Transportation (MDOT), had the following objectives:

1. To assess the effectiveness* and efficiency* of OQR in meeting its mission of advancing MDOT's transformation to a customer-focused, process-oriented organization that is committed to continuous improvement and is adaptive to change.

2. To assess the effectiveness and efficiency of OHR in meeting its responsibilities in the functions of labor relations, classification and selection, payroll, and disability management.

3. To evaluate the management control* established by OHR for MDOT's payroll and personnel functions.

4. To assess OEO's efforts to ensure that MDOT is in compliance with federal regulations regarding disadvantaged business enterprises (DBEs) and equal employment opportunity (EEO) in the work forces of private contractors, subcontractors, and materials suppliers.

Audit Scope

Our audit scope was to examine the program and other records of the Offices of Quality and Reengineering, Human Resources, and Equal Opportunity. Our audit was conducted in accordance with *Government Auditing Standards* issued by the Comptroller General of the United States and, accordingly, included such tests of the records and such other auditing procedures as we considered necessary in the circumstances.

* *See glossary at end of report for definition.*

Audit Methodology

Our audit procedures, conducted from March through September 2001, included examination of OQR's, OHR's, and OEO's records and activities primarily for the period October 1, 1998 through July 31, 2001.

Our methodology included conducting a preliminary survey of OQR's, OHR's, and OEO's operations to gain an understanding of their activities. This included interviewing personnel and identifying performance measures* and performance objectives that the offices use to evaluate their effectiveness and efficiency. Also, we reviewed applicable laws and regulations, management plans, and policies and procedures to gain an understanding of management control related to pertinent functions within the offices.

To accomplish our first objective, we reviewed MDOT's business plan and OQR policies. We assessed OQR's effectiveness and efficiency in overseeing and directing activities related to total quality and process improvement within MDOT. We then evaluated OQR's ability to assist MDOT in achieving its mission.

To accomplish our second objective, we reviewed sections of the Department of Civil Service regulations, Family Medical Leave Act, Americans with Disabilities Act, Michigan Workers' Disability Compensation Act, bargaining unit agreements, and MDOT policies. Also, we examined the procedures for processing payroll transactions, including leaves of absence and workers' disability compensation payments.

To accomplish our third objective, we reviewed and evaluated management control for MDOT's payroll and personnel functions. We selected a random sample of employees and conducted audit procedures to verify the propriety and accuracy of payroll records, including reviewing time records and reviewing position documentation. We also evaluated management control related to workers' disability compensation payments.

To accomplish our fourth objective, we reviewed federal regulations, MDOT's EEO compliance plan, and MDOT's policies. We analyzed management control over processing certification applications to ensure that only qualified DBEs were certified. We also reviewed MDOT's procedures for ensuring that contractors hire DBEs and the methods used to determine that DBEs are providing commercially useful functions.

** See glossary at end of report for definition.*

Agency Responses and Prior Audit Follow-Up

Our audit report contains 10 findings and 16 corresponding recommendations. The agency preliminary responses indicated that MDOT agrees with all 16 recommendations and has complied or will comply with them.

The agency preliminary response that follows each recommendation in our report was taken from the agency's written comments and oral discussion subsequent to our audit fieldwork. Section 18.1462 of the *Michigan Compiled Laws* and Department of Management and Budget Administrative Guide procedure 1280.02 require MDOT to develop a formal response to our audit findings and recommendations within 60 days after release of the audit report.

Our prior audit included 17 recommendations, 15 related to OHR and 2 related to OEO. MDOT complied with 3, we rewrote 4 for inclusion in this report and repeated 2 in this report, and 8 were no longer applicable.

# COMMENTS, FINDINGS, RECOMMENDATIONS, AND AGENCY PRELIMINARY RESPONSES

## EFFECTIVENESS AND EFFICIENCY OF THE OFFICE OF QUALITY AND REENGINEERING IN MEETING ITS MISSION

### COMMENT

**Audit Objective:** To assess the effectiveness and efficiency of the Office of Quality Reengineering (OQR) in meeting its mission of advancing the Michigan Department of Transportation's (MDOT's) transformation to a customer-focused, process-oriented organization that is committed to continuous improvement and is adaptive to change.

**Conclusion: We concluded that OQR was effective and efficient in meeting its mission.** Our report does not include any reportable conditions* related to this objective.

**Noteworthy Accomplishments:** The American Association of State Highway and Transportation Officials (AASHTO) annually recognizes state and federal transportation organizations throughout the country for their team efforts by awarding three levels of achievement: Exemplary Partner, Pathfinder, and Trailblazer. In 1999, AASHTO implemented the President's Award for the Exemplary Partner team that made the greatest positive impact on the overall transportation organization. Team performance is judged against the Malcolm Baldridge National Quality Award criteria, which includes leadership, strategic planning, customer focus, information and analysis, human resource management and development, and process management organizational results. MDOT received the President's Award and two Exemplary Partner Awards in 2001, two Trailblazer Awards in 2000, and one Exemplary Partner Award and two Trailblazer Awards in 1999.

* *See glossary at end of report for definition.*

# EFFECTIVENESS AND EFFICIENCY OF THE OFFICE OF HUMAN RESOURCES IN MEETING ITS RESPONSIBILITIES

## COMMENT

**Audit Objective:** To assess the effectiveness and efficiency of the Office of Human Resources (OHR) in meeting its responsibilities in the functions of labor relations, classification and selection, payroll, and disability management.

**Conclusion: We concluded that OHR was reasonably effective and efficient in performing its responsibilities in the functions of labor relations, classification and selection, payroll, and disability management.** However, we noted reportable conditions related to conflict-of-interest disclosures, grievances, and Americans with Disabilities Act accommodation requests (Findings 1 through 3).

## FINDING

### 1. Conflict-of-Interest Disclosures

OHR did not ensure compliance with Civil Service Commission rules requiring conflict-of-interest disclosures for employees performing certain duties.

Section 2-22 of the *Michigan Civil Service Commission Rules* requires that employees who have certain duties file disclosure-of-interest statements. These duties include the purchase or award of contracts, development or approval of specifications for contracts, inspection of third-party work, auditing of financial records, and supervision of employees with any of the listed duties. MDOT's policies require division administrators and district engineers to determine and submit to OHR the positions considered to be subject to disclosure requirements as defined by Civil Service Commission rules.

Division administrators and district engineers did not submit to OHR the positions they considered to be subject to disclosure requirements. With the aid of OHR, we defined group classifications within MDOT that may require disclosure of interest according to MDOT's conflict-of-interest policy. From the group classifications that we identified, we sampled 51 employee positions and found that 29 would require a disclosure-of-interest form. Twenty-four (83%) of the 29 employee files did not contain a disclosure-of-interest form applicable to the position of the employee.

## RECOMMENDATION

We recommend that OHR ensure compliance with Civil Service Commission rules requiring conflict-of-interest disclosures for employees performing certain duties.

## AGENCY PRELIMINARY RESPONSE

OHR agrees with the recommendation and informed us that it has complied. OHR informed us that it implemented a new policy on October 1, 2001 to require conflict-of-interest disclosures in accordance with Civil Service Commission rules.

## FINDING

**2. Grievances**

OHR did not always process its responses to grievances within the time frames mandated by Department of Civil Service (DCS) regulations and bargaining unit contracts. Also, OHR had not implemented a process to periodically analyze employee grievances filed against MDOT and provide written reports of the analysis to affected MDOT management.

DCS regulation 2.04 and bargaining unit contracts document the steps and time frames that must be followed when a grievance reaches the third step in the process. The regulation requires that the director of a department or designated representative hold any conferences necessary and issue a written decision within 20 workdays from the date of filing at the third step. The bargaining unit contracts require a written response at the third step between 15 to 30 weekdays after the filing or after the conference, if one is held. Our review of OHR's response time to grievances at the third step disclosed that 130 (57%) of 230 responses were issued an average of 17 days beyond the required response dates.

OHR informed us that it generally shared grievance information with MDOT programs on an annual basis. However, this process had not been formalized in the OHR policies to provide guidance on how OHR should develop the analysis, how it should interpret the results, and the corrective action that should be taken in response to the results obtained.

Our prior audit noted that OHR did not utilize trend analysis to help detect patterns in issues that resulted in grievances. In response to that audit report, MDOT stated that, with the implementation of the Human Resources Management Network

(HRMN), which was expected by October 1, 1998, an automated system would easily be able to accommodate the collection, storage, and retrieval of all information concerning grievances. HRMN was implemented in March 2001, but the module that relates to grievances has not been implemented.

## RECOMMENDATIONS

We recommend that OHR process its responses to grievances within the time frames mandated by DCS regulations and bargaining unit contracts.

We also recommend that OHR implement a process to periodically analyze employee grievances filed against MDOT and provide written reports of the analysis to affected MDOT management.

## AGENCY PRELIMINARY RESPONSE

OHR agrees with the recommendations and informed us that it will comply by October 1, 2002. OHR plans to develop a system that will identify those grievances nearing the due date. OHR also plans to implement a process to periodically analyze employee grievances filed against MDOT and provide written reports of the analysis to affected MDOT management.

## FINDING

### 3. Americans with Disabilities Act (ADA) Accommodation Requests

OHR did not process ADA accommodation requests within the time frames mandated by DCS regulations. Also, OHR did not initiate evaluations of accommodations granted to determine whether the accommodations met the needs of the employee as mandated by DCS regulations. In addition, OHR did not always obtain all of the documentation and signatures required for the processing of ADA accommodation requests.

DCS regulation 1.04 lists the steps that a department must follow when an employee requests reasonable accommodations under the terms of ADA. The procedures require the department to provide the employee an initial written response within 10 workdays and a final decision within 45 workdays of receipt of a completed request. If accommodations are granted, the reasonable accommodation coordinator shall initiate an evaluation of the accommodation 30 workdays from the accommodation implementation. The regulations require use of

the reasonable accommodation request form (CS-1668), the reasonable accommodation response form (CS-1669), and the evaluation form (CS-1670) while processing an accommodation request. The immediate supervisor, employee, and reasonable accommodation coordinator must sign these forms to provide evidence of approval or denial and the date of the request.

Our review of all 12 of the requests received from October 1998 through April 2001 disclosed:

a. Three (25%) of the 12 requests did not contain initial responses that were prepared within 10 workdays. OHR took an average of 87 workdays to complete the initial responses for these 3 requests.

b. Three (25%) of the 12 requests did not contain a final decision date within 45 workdays of the receipt of the original request. OHR took an average of 108 workdays to complete the final decisions for these 3 requests.

c. Nine (75%) of the 12 requests for accommodations were granted. However, none of the 9 contained evidence that OHR evaluated the accommodation after implementation. As a result, OHR did not ensure that each accommodation was effective and satisfied the employee.

d. Eight (67%) of the 12 requests required approvals from MDOT. Seven (88%) of the 8 requests contained responses that were missing either the supervisor's or the reasonable accommodation coordinator's approval.

e. For 10 (83%) of the 12 requests, OHR did not obtain the employee's signature on the CS-1669, which documents whether the employee agrees with OHR's response.

Our prior audit also found that OHR did not process ADA accommodation requests within time frames mandated by DCS and that it did not perform the evaluations. MDOT stated that it would comply by September 1, 1995 by beginning a 30-day follow-up evaluation of each accommodation.

## RECOMMENDATIONS

WE AGAIN RECOMMEND THAT OHR PROCESS ADA ACCOMMODATION REQUESTS WITHIN TIME FRAMES MANDATED BY DCS REGULATIONS.

WE ALSO AGAIN RECOMMEND THAT OHR INITIATE EVALUATIONS OF ACCOMMODATIONS GRANTED TO DETERMINE WHETHER THE ACCOMMODATIONS MET THE NEEDS OF THE EMPLOYEE AS MANDATED BY DCS REGULATIONS.

We further recommend that OHR obtain all of the documentation and signatures required for the processing of ADA accommodation requests.

## AGENCY PRELIMINARY RESPONSE

OHR agrees with the recommendations and informed us that it will comply. OHR informed us that it will develop a business and audit process by January 1, 2003 that ensures timely processing and compliance with the documentation, notification, and evaluation requirements for responding to requests for reasonable accommodations.

# OHR'S MANAGEMENT CONTROL OVER PAYROLL AND PERSONNEL FUNCTIONS

## COMMENT

**Audit Objective:** To evaluate the management control established by OHR for MDOT's payroll and personnel functions.

**Conclusion: We concluded that OHR's management control over MDOT's payroll and personnel functions was reasonably effective.** However, we noted reportable conditions related to leaves of absence, limited-term appointments, and student assistants (Findings 4 through 6).

## FINDING

### 4. Leaves of Absence

OHR did not always follow established procedures when processing leaves of absence to ensure that proper documentation supported the actions taken by OHR.

Also, OHR did not update its leave-of-absence processing procedures to reflect the implementation of HRMN in March 2001.

OHR processed requests for medical, Family Medical Leave Act (FMLA), and waived rights leaves of absence during our audit period. Depending on the type of leave requested, OHR's procedures for these types of leave of absence may include completion of a leave-of-absence application, medical documentation from the physician to support the reason for the leave request, a written medical statement supporting the employee's return to work, and a written explanation of the employee's rights.

We reviewed 13 medical, 16 FMLA, and 6 waived rights leaves of absence. Our review of these leaves of absence disclosed:

a. Four (31%) of the 13 medical leaves of absence did not contain a leave of absence application, 1 (8%) did not contain a physician's statement supporting the reason for leave, and 3 (23%) did not contain a physician's statement for the employee's return to work.

b. Two (13%) of the 16 FMLA leaves of absence did not contain a physician's statement supporting the reason for leave, and 7 (44%) did not contain a physician's statement for the employee's return to work.

Failure to obtain the required documentation to support the granting of a leave of absence could result in a leave of absence being issued when an employee is not eligible for the leave.

The processing of payroll and personnel functions is different in HRMN than in its predecessor system, the Personnel-Payroll Information System for Michigan. The procedures currently used by MDOT pertain to the processing of leaves of absence on the predecessor system and do not provide the guidance necessary to process a leave of absence on HRMN.

## RECOMMENDATIONS

We recommend that OHR follow established procedures when processing leaves of absence to ensure that proper documentation supports the actions taken by OHR.

We also recommend that OHR update its leave-of-absence processing procedures to reflect the implementation of HRMN.

## AGENCY PRELIMINARY RESPONSE

OHR agrees with the recommendations. OHR informed us that it has been in compliance with the first recommendation of this finding since August 2001. It also informed us it will update procedures to reflect the implementation of HRMN by January 1, 2003.

## FINDING

### 5. Limited-Term Appointments

OHR did not ensure compliance with DCS regulations requiring DCS to approve an extension of a limited-term appointment after the expiration of a two-year term.

DCS regulation 3.07 states that limited-term appointments automatically expire at the end of a fixed term, unless terminated earlier by the appointing authority. A limited-term appointment cannot exceed two years from the date of appointment unless approved for extension by DCS. Limited-term appointments may be full-time or part-time positions.

As of July 2001, 247 employees held limited-term appointments with MDOT. We reviewed 30 of the 247 and identified 14 (47%) employees in limited-term appointments who continued their employment beyond two years from the date of their appointment. OHR's files did not contain evidence that DCS approved extensions for these appointments. OHR informed us that it does not have a procedure in place to monitor the expiration of limited-term appointments and for obtaining extensions from DCS.

The lack of a procedure to monitor MDOT's limited-term appointments' expiration dates resulted in employees continuing employment in appointments that had expired.

## RECOMMENDATION

We recommend that OHR ensure compliance with DCS regulations requiring DCS to approve an extension of a limited-term appointment after the expiration of a two-year term.

## AGENCY PRELIMINARY RESPONSE

OHR agrees with the recommendation and informed us that it will comply. OHR informed us that it will monitor, on a quarterly basis, limited-term appointments to ensure compliance. OHR also informed us that it submitted a request to DCS to extend appointments that have expired or are over two years in duration.

## FINDING

**6. Student Assistants**

OHR did not always verify that a student assistant applicant was enrolled in an educational institution before hiring the applicant as required by DCS regulations. Also, OHR did not monitor individuals in student assistant positions to ensure that they maintained continual enrollment in an educational institution during their employment with MDOT.

DCS regulation 3.02 indicates that it is the appointing authority's responsibility to verify that the applicant is a student in good standing with an educational institution during the process of hiring an individual for a student assistant position. In addition, students must provide proof to the appointing authority of their enrollment and updated information whenever changes to their educational status occur. Student assistants must be continually enrolled in and attending a high school, vocational school, or post-secondary educational institution, but summer attendance is not required. Proof of enrollment must be recorded with the DCS student program application form (CS-424).

Our review of the files of 13 individuals employed as student assistants by MDOT as of the pay period ended July 7, 2001 disclosed:

a. Five (38%) of the 13 student assistant files did not contain evidence of enrollment in an educational institution at the time of hiring.

b. Twelve (92%) of the 13 student assistant files did not contain evidence that OHR verified the continuation of enrollment for the students. The dates of hire for these student assistants ranged from January 1999 to October 2000.

Not obtaining verification of an individual's enrollment in an educational institution at the time of hiring and the lack of periodic monitoring could result in MDOT employing an individual who is ineligible for a student assistant position.

## RECOMMENDATIONS

We recommend that OHR verify that a student assistant applicant is enrolled in an educational institution before hiring the applicant as required by DCS regulations.

We also recommend that OHR monitor individuals in student assistant positions to ensure that they maintain continual enrollment in an educational institution during their employment with MDOT.

## AGENCY PRELIMINARY RESPONSE

OHR agrees with the recommendations and informed us that it will comply.

# OFFICE OF EQUAL OPPORTUNITY'S COMPLIANCE WITH FEDERAL REGULATIONS

## COMMENT

**Audit Objective:** To assess the Office of Equal Opportunity's (OEO's) efforts to ensure that MDOT is in compliance with federal regulations regarding disadvantaged business enterprises (DBEs) and equal employment opportunity (EEO) in the work forces of private contractors, subcontractors, and materials suppliers.

**Conclusion: We concluded that OEO's monitoring efforts did ensure that MDOT generally complied with federal regulations.** However, we noted reportable conditions related to commercially useful function regulations, DBE certification, Title VI compliance, and the EEO contract compliance program (Findings 7 through 10).

## FINDING

**7. Commercially Useful Function (CUF) Regulations**

OEO needs to improve its monitoring of contract performance by DBEs to ensure compliance with federal CUF regulations. Also, OEO did not ensure accurate reporting of CUF violations to the Federal Highway Administration (FHWA).

DBEs are required to comply with CUF regulations when working on U.S. Department of Transportation-assisted contracts. In order for a DBE to comply with CUF regulations, it must perform, manage, and supervise the work involved; order, install, and pay for the materials and supplies used in executing the contract; and be paid for the work it performed. Failure to comply with the CUF regulations can result in the removal of DBE work classifications, the removal of a firm's eligibility to participate as a DBE, and inaccurate reporting of DBE participation to the FHWA. In addition, prime contractors may also be subject to sanctions if their DBE subcontractors are found to be in noncompliance with CUF regulations.

Title 49, Part 26.37(b) of the *Code of Federal Regulations* (*CFR)* requires MDOT to have a DBE program that includes a monitoring and enforcement mechanism to verify that the work committed to DBEs at the time of the contract award is actually performed by the DBEs. OEO's DBE Program procedures state that it will conduct field monitoring of prime contractors to ensure that DBEs working under the contract comply with the federal CUF regulations. In addition, OEO conducts CUF investigations that result from complaints or from concerns noted by on-site project office inspectors and engineers. OEO provides FHWA quarterly reports on DBE participation and money paid to DBEs under federal contracts.

DBEs obtained 1,336 contracts and subcontracts totaling $275.6 million during our audit period. OEO conducted 3 investigations and 4 field monitoring reviews during our audit period. Two of the investigations were conducted as a result of complaints, and the third was conducted because of negative results that were noted from one of the field monitoring reviews. The combination of the investigations and field monitoring reviews resulted in OEO reviewing $7.7 million (3%) of the $275.6 million during our audit period. Our review disclosed:

a. Two (67%) of the 3 investigations contained highly probable violations of CUF regulations, but OEO did not follow up to determine whether these were actual violations, which were required to be reported to the FHWA. In addition, in 1 of the investigations, the project office engineers noted the potential CUF violation but did not inform OEO.

b. OEO did not obtain adequate documentation supporting DBE compliance with CUF regulations in 2 (50%) of the 4 field monitoring reviews.

Improved monitoring efforts would help ensure that DBEs comply with CUF requirements and that OEO is accurately reporting participation of DBEs in federally assisted contracts to the FHWA.

## RECOMMENDATIONS

We recommend that OEO improve its monitoring of contract performance by DBEs to ensure compliance with federal CUF regulations.

We also recommend that OEO ensure accurate reporting of CUF violations to the FHWA.

## AGENCY PRELIMINARY RESPONSE

OEO agrees with the recommendations and informed us that it will comply. OEO informed us that it is currently developing more detailed investigatory procedures to strengthen and improve its monitoring of contract performance by DBEs to ensure compliance with federal regulations. OEO plans to complete the procedures by April 1, 2003. OEO also informed us that it completed the investigations noted in the finding and the FHWA was notified where violations were found.

## FINDING

### 8. DBE Certification

OEO should improve its DBE certification and review process to ensure that only eligible firms participate in the DBE Program.

Federal regulation 49 *CFR* 26 requires MDOT to establish a DBE program. As a condition of federal financial assistance from the U.S. Department of Transportation, MDOT signed an assurance that it will comply with federal regulation 49 *CFR* 26. MDOT's DBE Program procedures state that in order to operate as DBEs, firms must be certified by OEO every 3 years and annually must submit affidavits to OEO stating that there have been no changes in their eligibility status. OEO receives DBE applications, checks them for completeness, and enters them into an intake database. OEO uses the intake database to track the status of DBE applications. Information included in the database includes the receipt date of the application, the firm name and address, the final action and final action date, and other information. Once the application is complete, OEO then

conducts an on-site review and determines whether the applicant meets the eligibility standards.

Our analysis of the DBE certification and review process disclosed:

a. Four (24%) of 17 files that we sampled from OEO's intake database of 500 reviewed firms during our audit period lacked documentation required for determining eligibility. One (6%) of the files did not contain a renewal application that was required for recertification and 2 (12%) of the files contained renewal applications that were provided up to 11 months after the original certification expired. In all 3 instances, the firms remained on the list of certified DBEs after their original certifications had expired. Documentation in 1 (6%) of the files indicated that the firm submitted a renewal application, but OEO did not conduct a review of the firm as required by the DBE Program procedures. Federal regulation 49 *CFR* 26.83(a) requires recipients to ensure that only firms certified as eligible DBEs participate in the program.

b. OEO did not obtain annual affidavits declaring an unchanged DBE status from 70 (89%) of 79 firms and 33 (63%) of 52 firms in fiscal years 2000-01 and 1999-2000, respectively. Federal regulation 49 *CFR* 26.83(j) states that DBEs must provide an affidavit to the recipient every year on the anniversary of its certification. OEO should have taken measures to revoke the eligibility of these firms under federal regulation 49 *CFR* 26.109(c) or have taken proactive measures to prevent the violation.

c. Twenty-seven (30%) of 90 firms did not receive the required on-site reviews when certified or recertified in fiscal years 2000-01 and 1999-2000. Section F of the DBE Program procedures states that on-site visits are conducted at all firms seeking first-time certification, as well as renewal applicants.

d. OEO's intake database did not always agree with the DBE directory and the DBE files. We compared information contained in the intake database to information in the DBE directory and DBE files and noted that the database contained outdated, incomplete, and inaccurate information for 35 (7%) of 500 DBE records.

Maintaining current, complete, and accurate information in the intake database, and effectively using the database as a management tool, should help ensure that only eligible firms participate in the DBE Program.

## RECOMMENDATION

We recommend that OEO improve its DBE certification and review process to ensure that only eligible firms participate in the DBE Program.

## AGENCY PRELIMINARY RESPONSE

OEO agrees with the recommendation and informed us that it will comply. OEO informed us that by November 1, 2002 it plans to update and maintain the intake database, establish a procedure to request affidavits from firms 60 days prior to their anniversary, review its files to ensure that records have been properly filed, create and maintain an accurate list of active and purged files, and change its program procedures to more accurately reflect the on-site requirements in federal regulation 49 *CFR* 26.83(a). OEO also informed us that it will revise the DBE Program procedures by October 4, 2003.

## FINDING

### 9. Title VI Compliance

OEO had not developed program policies and procedures to help ensure compliance with Title VI and related regulations.

Title VI of the Civil Rights Act of 1964 protects individuals from discrimination on the basis of their race, color, or national origin in programs that receive federal assistance. Federal regulation 23 *CFR* 200 provides requirements and guidelines for state highway agencies to implement the Title VI Program requirements. MDOT is responsible for establishing a civil rights unit and designating a specialist who is responsible for initiating and monitoring Title VI activities and preparing required reports. MDOT assigned these responsibilities to the Field Services Section of OEO.

Our review of MDOT's administration of the Title VI regulations in Title 23 of the *CFR* and related regulations disclosed:

a. OEO had not developed procedures for the collection of statistical data on participants in, and beneficiaries of, State highway programs, as required by federal regulation 23 *CFR* 200.9(b)(4).

b. OEO did not conduct Title VI reviews of cities, counties, consultant contractors, suppliers, universities, colleges, planning agencies, and other recipients of federal aid highway funds, as required by federal regulation 23 *CFR* 200.9(b)(7).

c. OEO did not perform reviews of State program directives in coordination with State program officials, as required by federal regulation 23 *CFR* 200.9(b)(8).

d. OEO did not coordinate efforts with State program area officials to conduct annual reviews of all pertinent program areas to determine the effectiveness of program areas at all levels, as required by federal regulation 23 *CFR* 200.9(a)(4).

e. OEO did not coordinate its environmental justice efforts with MDOT's Title VI efforts to help ensure that programs, policies, and other activities do not have a disproportionate or adverse effect on minority or low income populations. Federal Executive Order 12898 on environmental justice states that no people, including racial, ethnic, or socioeconomic groups, should bear a disproportionate share of negative environmental consequences. Because the nondiscrimination requirements of Title VI extend to all program activities of state departments of transportation and their respective subrecipients and contractors, the concepts of environmental justice apply to all state transportation projects, including those that do not receive federal funds.

MDOT's failure to establish the previously mentioned practices impedes its ability to ensure compliance with Title VI and related regulations.

## RECOMMENDATION

We recommend that OEO develop program policies and procedures to help ensure compliance with Title VI and related regulations.

## AGENCY PRELIMINARY RESPONSE

OEO agrees with the recommendation and informed us that it will comply. OEO informed us that it is in the process of updating the MDOT Title VI Plan to help ensure compliance with Title VI and related regulations. OEO plans to submit the updated plan to the FHWA for review on October 1, 2002. OEO also informed us that MDOT has established an interdisciplinary team to work with the Title VI specialist to carry out procedures compliant with federal regulation 23 *CFR* 200.9.

## FINDING

**10. EEO Contract Compliance Program**

OEO should improve procedures for selecting contractors for EEO reviews.

OEO's annual EEO plan that is submitted to the FHWA for approval states that MDOT has the responsibility to ensure that federal aid construction contractors meet EEO and affirmative action requirements. Federal regulation 23 *CFR* 230 provides criteria for selecting contractors for compliance reviews. Upon completion of the compliance reviews, OEO provides the contractors with a report of deficiencies. The contractors then have the opportunity to submit a corrective action plan or be issued a show cause notice* for noncompliance.

We reviewed the results of OEO's compliance reviews and found that there was a high occurrence of compliance issues noted that required corrective action by the contractors. For fiscal years 2000-01, 1999-2000, and 1998-99, OEO scheduled or completed 13, 4, and 15 EEO compliance reviews, respectively. We reviewed 13 of 26 compliance reviews that had been completed at the time of our audit. We found that 2 (15%) of the 13 reviews required a show cause notice from OEO for noncompliance by the contractors and 12 (92%) of the 13 reviews contained compliance deficiencies for which OEO required a corrective action plan from the contractor. Failure to submit these corrective action plans would result in noncompliance by the contractor. In addition, OEO reported deficiencies other than those requiring corrective action in 11 (85%) of the 13 reviews.

* *See glossary at end of report for definition.*

Although the contractors corrected the preceding deficiencies, the results indicate that there is a higher risk that contractors that did not receive compliance reviews did not comply with the EEO federal regulations. To ensure that the contractors are maintaining compliance with the EEO regulations, OEO should improve procedures for selecting contractors for review.

## RECOMMENDATION

We recommend that OEO improve procedures for selecting contractors for EEO reviews.

## AGENCY PRELIMINARY RESPONSE

OEO agrees with the recommendation and informed us that it will comply. OEO stated that even though there were no adverse procedural findings addressing the process used for reviews conducted, it plans to increase the effectiveness of reviews conducted and to achieve the highest potential impact for employment for minority and women. OEO also informed us that it will concentrate reviews in areas where demographically diverse populations and large dollar value projects are active, beginning October 1, 2002.

## Glossary of Acronyms and Terms

| | |
|---|---|
| **AASHTO** | American Association of State Highway and Transportation Officials. |
| **ADA** | Americans with Disabilities Act. |
| ***CFR*** | *Code of Federal Regulations.* |
| **CUF** | commercially useful function. |
| **DCS** | Department of Civil Service. |
| **deliverable** | A good or service that can or will be delivered as part of an agreement or contract. |
| **disadvantaged business enterprise (DBE)** | A for-profit small business concern: (1) that is at least 51% owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51% of the stock is owned by one or more such individuals; and (2) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it. |
| **EEO** | equal employment opportunity. |
| **effectiveness** | Program success in achieving mission and goals. |
| **efficiency** | Achieving the most outputs and outcomes practical with the minimum amount of resources. |
| **FHWA** | Federal Highway Administration. |
| **FMLA** | Family Medical Leave Act. |

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|---|---|
| **goals** | The agency's intended outcomes or impacts for a program to accomplish its mission. |
| **HRMN** | Human Resources Management Network. |
| **management control** | The plan of organization, methods, and procedures adopted by management to provide reasonable assurance that goals are met; resources are used in compliance with laws and regulations; valid and reliable data is obtained and reported; and resources are safeguarded against waste, loss, and misuse. |
| **MDOT** | Michigan Department of Transportation. |
| **mission** | The agency's main purpose or the reason that the agency was established. |
| **objectives** | Specific outcomes that a program seeks to achieve its goals. |
| **OEO** | Office of Equal Opportunity. |
| **OHR** | Office of Human Resources. |
| **OQR** | Office of Quality and Reengineering. |
| **performance audit** | An economy and efficiency audit or a program audit that is designed to provide an independent assessment of the performance of a governmental entity, program, activity, or function to improve public accountability and to facilitate decision making by parties responsible for overseeing or initiating corrective action. |
| **performance measures** | Information of a quantitative or qualitative nature used to assess achievement of goals and/or objectives. |

**reportable condition** A matter that, in the auditor's judgment, represents either an opportunity for improvement or a significant deficiency in management's ability to operate a program in an effective and efficient manner.

**show cause notice** A notice issued to contractors by MDOT for failure to submit a corrective action plan for equal employment opportunity deficiencies noted during MDOT's compliance reviews.