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***EQUAL EMPLOYMENT
AFFIRMATIVE ACTION
DRAFT GUIDELINES***

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STATE OF MONTANA
EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION GUIDELINES

REVISED
JANUARY, 1986

STATE PERSONNEL DIVISION
DEPARTMENT OF ADMINISTRATION



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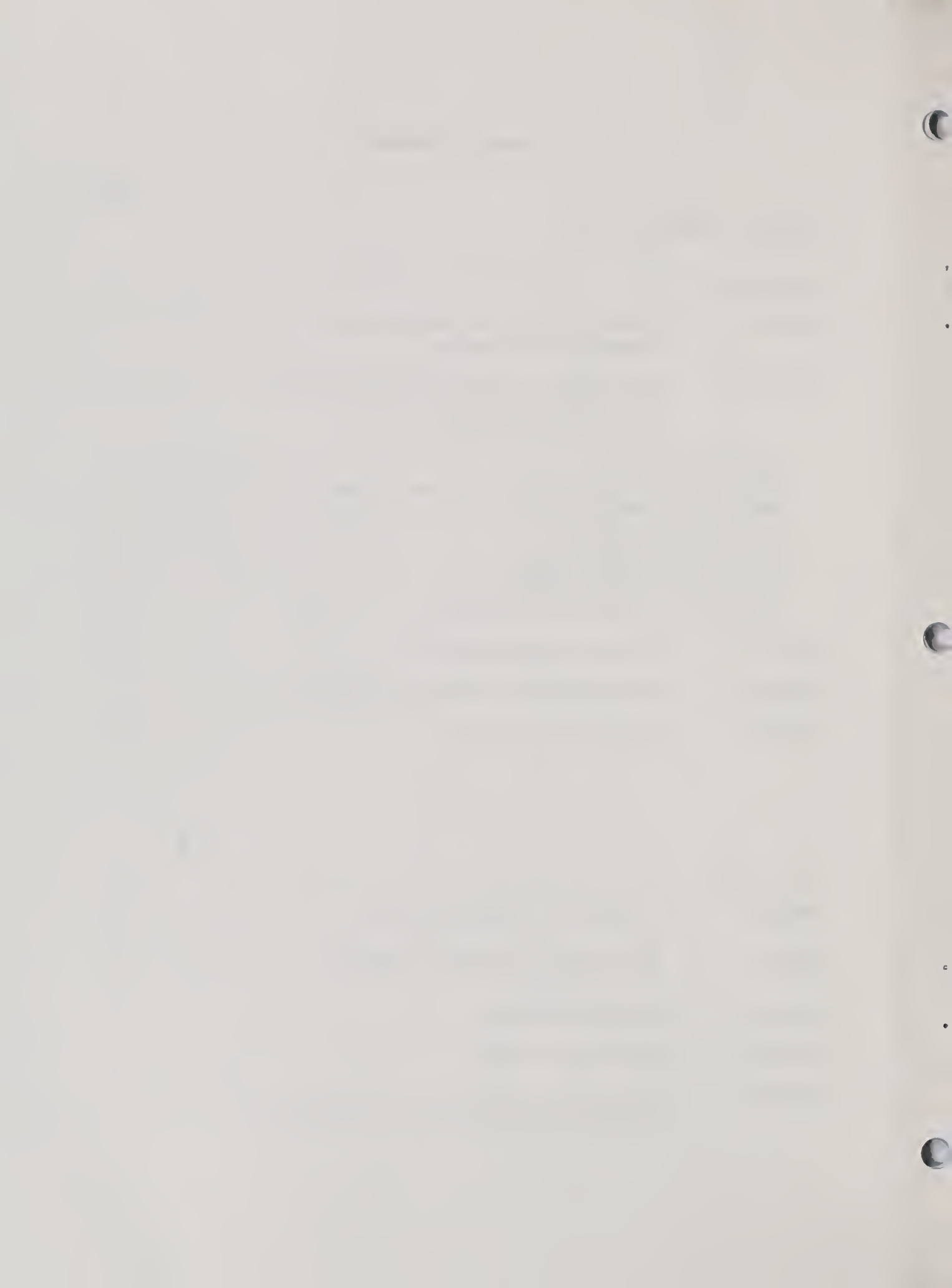
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INTRODUCTION

A. EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION

State and federal law requires that all persons be given equal opportunity to employment regardless of their race, color, religion, sex, national origin, age or the existence of a handicap. Montana law also requires equal opportunity regardless of marital status or political belief.

When equal employment opportunity laws were first enacted, it was generally believed that discrimination took place primarily through conscious, overt actions against individuals. It has been apparent, however, that employment discrimination often results from seemingly neutral employment practices.

The U. S. Supreme Court in Griggs v. Duke Power Company (1971) (401 U.S. 424, 91 S.Ct. 849)* made clear that an employer's lack of discriminatory intent does not make legal any personnel procedures which operate as built-in obstacles to any racial, ethnic, or sex group and are not essential predictors or measures of successful job performance.

The courts rely heavily on statistical evidence as a major indicator of discrimination. For an Equal Employment Opportunity and Affirmative Action (EEO/AA) program to be effective, it is essential to establish appropriate, confidential methods for collecting and using such data.

Without an adequate base of statistical information, an employer cannot deal effectively with EEO problems. Such data are basic to meet legal requirements, to identify specific personnel practices which have unfavorable impact on minorities and women, or which create artificial barriers to the employment or promotion of members of any group. This statistical information is the foundation used to design appropriate affirmative action programs, which is the intent and purpose of the State of Montana Equal Employment Opportunity/Affirmative Action Program.

Affirmative action is a program to provide statutorily required equal opportunity by eliminating unessential and discriminatory barriers to qualified minority, female, and handicapped applicants and employees. It is a program to help people become qualified who need additional assistance as a result of a lifetime of unequal opportunity in many institutions of society.

State and local governments have historically led affirmative action efforts as a matter of public policy. They have sought not only to discharge their legal obligations, but to correct inequities that

*In essence, the court said that an employer could not require a high school diploma or passing an intelligence test when such standards could not be proven job related, particularly when tests were, to a statistically significant degree, discriminating in their adverse impact upon black applicants.

they, along with other segments of society, once helped create and to insure that all groups within the population are represented in their government.

B. PURPOSE OF THE MONTANA EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION GUIDELINES

The Equal Employment Opportunity/Affirmative Action (EEO/AA) guidelines establish minimum standards for the state's equal employment opportunity/affirmative action program in accordance with Governor's Executive Order 24-81 and the state's EEO policy (ARM 2.21.8106 to 2.21.8109). The guidelines comply with changes in equal employment opportunity case law and incorporate new and more effective affirmative action techniques.

The EEO/AA guidelines require each state agency to periodically assess its employment picture, identify areas of minority and female deficiency and develop and implement a corrective affirmative action plan. Additionally these guidelines require affirmative action measures for the disabled.

Since labor force statistics for the disabled are unavailable, numerical deficiencies cannot be identified. Therefore, affirmative action measures for the disabled take the approach of specifying day-to-day practices that should result in maximum employment opportunities.

These guidelines allow employers to take race and sex into consideration in hiring decisions under limited circumstances for corrective purposes. This option was made possible by the U.S. Supreme Court decisions on the Bakke as well as on the Weber cases, and the U.S. Equal Employment Opportunity Commission (EEOC) affirmative action guidelines (also adopted by the Montana Human Rights Commission). Past attempts by employers to voluntarily correct unlawful racial and sexual disparities in their workforce have been hampered by a conflicting requirement to avoid any consideration of race and sex in hiring. Employers were liable for disparities created by unnecessary barriers on the one hand and liable for consciously hiring qualified minorities and women to correct those disparities on the other hand.

Finally, the EEO/AA guidelines concentrate on corrective action (action items) which provide a measured result. This emphasis is consistent with that of federal agencies and with sound management theory. As a management plan, an affirmative action plan is most effectively implemented when it incorporates the basic principles of Management by Objectives (MBO), that is, a clearly-defined, measurable objectives, target dates, and assignment of responsibility.

CHAPTER I
THE DEVELOPMENT AND ADMINISTRATION OF THE STATE'S
EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM

On December 14, 1984, the State of Montana adopted rules which describe the specific areas of responsibility of the Department of Administration in support of agency activities. The rules also describe the minimum requirements with which each state agency must comply to develop, implement and monitor its equal employment opportunity and affirmative action programs. The state EEO rules can be found at ARM 2.21.8106 through 8109 (also known as Policy 3-0605, Montana Operations Manual, Volume III).

ARM 2.21.8108 and 8109, the state of Montana Equal Employment Opportunity rules provide for the following areas of responsibility. Section C describes the State's Human Rights Division and its responsibilities.

A. DEPARTMENT OF ADMINISTRATION'S RESPONSIBILITIES: As provided in ARM 2.21.8108, "(1) The department of administration has the responsibility to administer and implement the state's equal employment opportunity/affirmative action program.

(2) At a minimum, the department shall perform the following functions:

(a) develop EEO/AA standards and guidelines, and administrative systems to support the state EEO/AA program, including standards for approval of agency plans;

(b) provide EEO analyses and the technical assistance needed by executive branch agencies to establish affirmative action programs;

(c) review and approve all agency affirmative action plans for compliance with federal and state law and with the requirements of the state's equal employment opportunity/affirmative action guidelines;

(d) prepare an annual report to the Governor evaluating the progress of affirmative action in state government and recommending, where appropriate, corrective measures to be taken;

(e) provide training to state EEO officers; and

(f) encourage agencies to make a commitment to provide training through upward mobility programs and/or through other available training programs where there is evidence that there have been barriers to employment for those classes of people who have traditionally been denied equal employment opportunity."

B. AGENCY RESPONSIBILITIES: As provided in ARM 2.21.8109 "(1) The department director or head of each agency is responsible for the implementation of the agency's equal employment opportunity/affirmative action program. Agencies covered by this rule are all executive branch departments who report to the Governor, those agencies allocated to the state board of education under 2-15-1511, MCA, and those institutions under the department of institutions listed in 53-1-202, MCA.

(2) The agency head shall appoint an equal employment opportunity officer for the agency who has the authority and resources to develop the agency's program and work with managers to implement the program.

(3) The program at a minimum shall include a policy statement, described in (4) and a plan of corrective measures described in (5).

(4) Each agency shall develop a written equal employment opportunity policy statement for internal and external dissemination. The equal employment opportunity policy shall include, at a minimum, the following elements:

(a) A statement that it is the policy of the agency to provide equal employment opportunity (EEO) to all persons regardless of race, color, religion, creed, sex, national origin, age, handicap, marital status or political belief with the exception of special programs established by law.

(b) A statement that the agency will:

(i) take affirmative action to equalize employment opportunities at all levels of agency operations where there is evidence that there have been barriers to employment for those classes of people who have traditionally been denied equal employment opportunity;

(ii) make a commitment to provide reasonable accommodation to any known disability that may interfere with a disabled applicant's ability to compete in the selection process or a disabled employee's ability to perform the duties of the job.

(c) A statement guaranteeing employee protection against retaliation for lawfully opposing any discriminatory practice, including the filing of an internal grievance, the filing of a union grievance, the initiation of an external administrative or legal proceeding or testifying in or participating in any of the above.

(d) A statement assigning responsibility for coordinating the agency affirmative action program and for attempting to resolve employee EEO complaints to a designated EEO officer and assigning responsibility for implementing the affirmative action program to all agency managers and supervisors.

(e) Agency head's signature and date.

(5) An agency shall establish an affirmative action plan as prescribed by these guidelines (equal employment opportunity/affirmative action guidelines) available from the state personnel division, department of administration, or in another format approved prior to submission by the department of administration which is based on an analysis of current data which identifies problem areas and establishes goals, timetables and action items to correct problem areas.

(6) The agency shall update the plan on a schedule established by the department of administration. The agency should periodically review progress under the plan.

(7) The department of administration may require an agency to provide employment data needed to conduct more central EEO analyses, to complete required EEO reports and/or to conduct special analyses where problem areas have been identified.

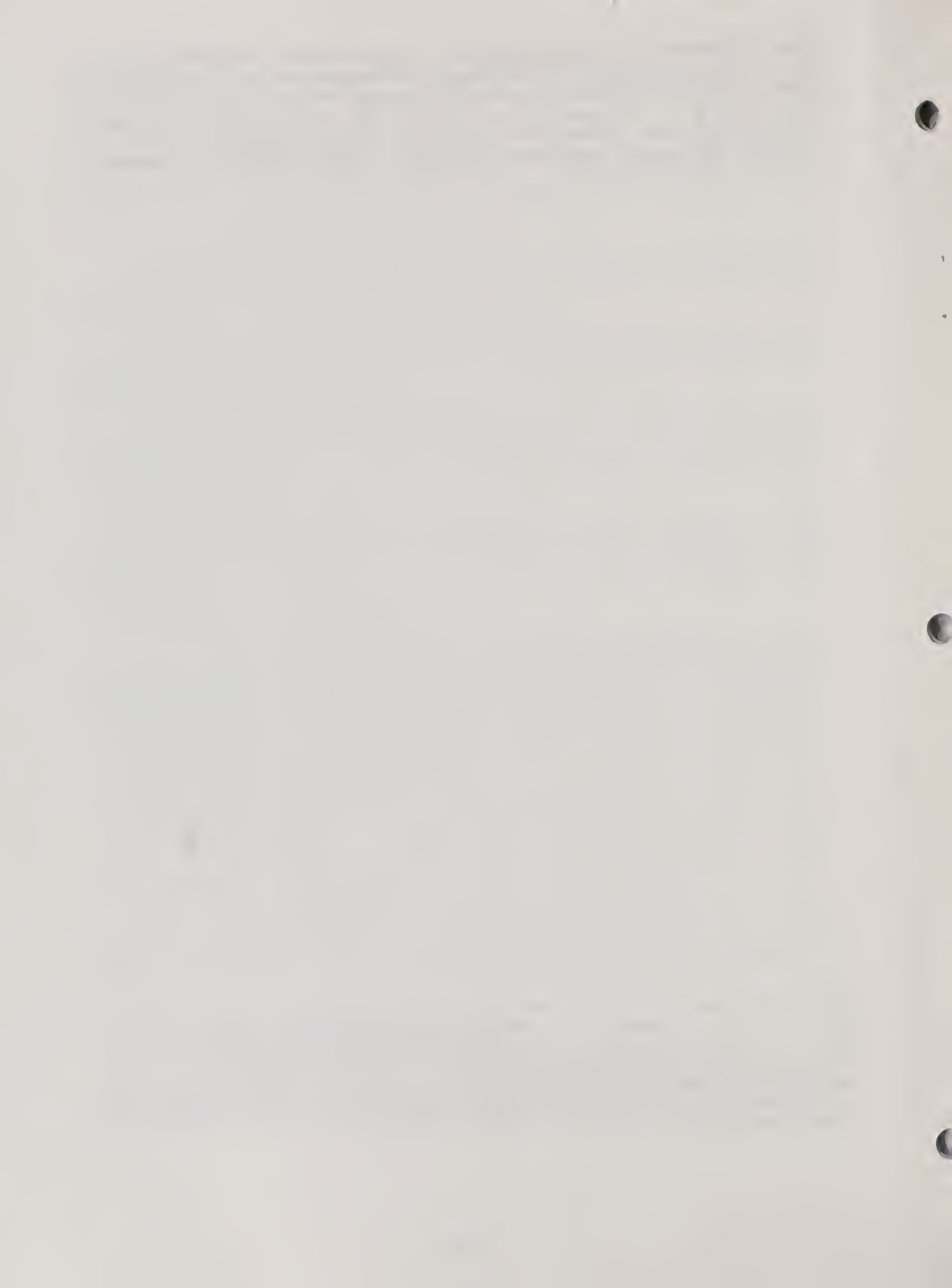
(8) An agency with 10 or fewer employees must develop a policy statement as required in (4), but may be exempted by the department of administration from adopting a specific plan of corrective measures as required in (5)."

C. HUMAN RIGHTS DIVISION RESPONSIBILITY

The Human Rights Division is the staff of the Human Rights Commission for the State of Montana. It enforces the Human Rights Act and the Code of Fair Practices Act. It has authority at all times to review Affirmative Action Plans for effectiveness, either in conjunction with investiga-

tions of complaints of discrimination or separately. The division staff has the responsibility to investigate all complaints of discrimination filed with the Commission against any agency of state government. The Commission is a "706 agency"* for the Equal Employment Opportunity Commission and, as such, investigates complaints of discrimination filed with the Equal Employment Opportunity Commission within the State of Montana.

* "706 Agency" - state and local fair employment practices agency named for Section 706(c) of Title VII of the Civil Rights Act of 1964, which requires aggrieved individuals to submit claims to state or local fair employment practices agencies before they are eligible to present their cases to the federal government's Equal Opportunity Employment Commission. State and local agencies that have the ability to provide the same protections provided by Title VII as would the EEOC are termed 706 agencies. The EEOC maintains a list of the 706 agencies that it formally recognizes.



CHAPTER II
IDENTIFYING DEFICIENCIES
AND
DEVELOPING AN AFFIRMATIVE ACTION PLAN
FOR MINORITY AND FEMALES

Section 1 - Overview

Identifying deficiencies and developing an affirmative action plan to correct deficiencies involves the following major steps for minorities and females. Because there is no availability data for the disabled, federal law requires individual rather than statistical analysis. (See Chapter III, EEO for the Disabled).

A. Analyzing the Utilization/Availability of Minorities/Females.

1. Step 1 - Workforce Analysis

The workforce analysis will be prepared from personnel/payroll/position control (P/P/P) data for each participating agency and reviewed by each agency prior to conducting the utilization and availability analysis. The agency workforce describes each employee of a particular agency by race, sex, age, and handicapped status. Employees are grouped on this report by classification, occupational group, and EEO-4 category. Each agency will review this report within the allotted time frame and identify changes or additions which need to be made or verify that the characteristics are correct for those employees listed.

2. Step 2 - Identifying Job Groups With an Underutilization of Minorities/Females

Underutilization is defined as having fewer minorities or women in a particular job than would reasonably be expected, according to their availability. Agencies will work with the State Personnel Division to prepare a utilization and availability analysis to identify job groups where underutilization is occurring.

Section 2 of this chapter provides a detailed discussion of the utilization and availability analysis.

B. Identify the Cause or Causes.

For each instance where the minority or female workforce of an agency is lower than the minority or female availability, agencies must identify the causes for the underutilization. Agencies need to determine which of the following problem areas the deficiency relates to.

1. Step 1 - A Recruitment Problem (see Section 4)

Too few minority/female applicants as indicated by the "Recruitment Method Analysis or Recruitment Source" prepared from the P/P/P Applicant Flow System.

2. Step 2 - A Selection Problem (see Section 5)

A disproportionate number of minority/female rejections for vacant positions as indicated by the "Applicant Flow Analysis" prepared from the P/P/P Applicant Flow System.

3. Step 3 - An Upward Mobility Problem (see Section 6)

An inadequate minority/female advancement as indicated by the Applicant Flow Analysis prepared from the P/P/P Applicant Flow System.

4. Step 4 - On-The-Job Treatment (see Section 7)

A disproportionate number of minority/female separations as monitored by agencies in the agency's turnover or separation report.

A detailed description of ways to analyze these problems is provided in Section 2, 3, 4, 5, and 6 of this chapter.

C. Preparing the Affirmative Action Plan.

1. Step 1 - Write Appropriate Action Items.

Where underutilization has been identified for each job group, specific action items must be written addressing the corrective measures that will be taken to work on the problem area. See Section 8 of this chapter for a detailed discussion regarding how to write specific action items.

2. Step 2 - Goal Should Be Set Based On The Expected Outcome Of The Action Items.

For affirmative action purposes numerical goals provide a projected point for agencies to attempt to meet. A goal for affirmative action purposes is like a goal for any other purpose, it is there to provide direction. Agencies need to take their affirmative action goals seriously when considering personnel actions taken and should set reasonable and attainable goals. If an appropriate analysis is done after an EEO problem is identified, the goal which is set should be attained or specific justification for why it was not attained should be documented.

3. Step 3 - Affirmative Action Items for the Handicapped.

Several agency-wide steps must be taken to insure potential handicapped applicants are informed of employment opportunities and given adequate consideration consistent with state and federal law. Chapter III provides a detailed description of handicapped items which need to be addressed in an agency affirmative action plan.

Section 2 - Availability and Utilization Analysis

A. The availability and utilization analyses form the foundation for major portions of the affirmative action plan. The analyses provide an in-depth profile of the agency's current workforce, persons available, and any underutilization.

This section will examine methods used for conducting the following analyses:

- 1. Agency Workforce Analysis
- 2. Recruitment Method Analysis
- 3. Availability Analysis
- 4. Determining Underutilization

1. The "workforce analysis" gives a view of the current workforce and serves as a basis for the utilization analysis. This analysis is a detailed report on the number of employees by racial groups, female employees, handicapped and age 40+ employees in each classification, occupational group and EEO-4 category in the agency.

The analysis also indicates the percentage for women, minorities, disabled and at age 40+ in the occupational group and EEO-4 category level.

STATE OF MONTANA
Department of Administration Personnel Division
EEO Section Agency Workforce Analysis

Agency: 6101 Department of Administration

EEO Category: A Officials and Administrators Occupational Group: 188

Fos	Log	Class	Title	Name	SSN	Sex	Race	Disabled?	40+?
0000	000	188046	Career Exec Assig	Doe, John	000-00-000	M	W	N	Y
22??	001	188046	Career Exec Assig	Carter, Jay	909-09-099	M	W	N	N
11111	005	188047	Caerrr Exec Assig	Smith, Mary	999-99-999	F	W	N	Y

Totals for Occupational Group			Total employees:	3
	Count	%		
Male	2	66.66		
Female	1	33.33		
Minority	0	.00		
Disabled	0	.00		
Age 40 +	2	66.66		

This analysis is computerized and conducted annually from personnel/payroll data supplied by the agency. The agency reviews the analysis identifying the handicapped employees who are not shown on the report and verifying the race, sex and age information. If a correction is necessary on race, sex or age, the agency will make that change by completing a new payroll status form. If a correction is needed for a disabled employee,

the agency will have the employee complete a personnel turnaround document.

2. Recruitment Method Analysis is computerized and conducted annually for each agency from the external/internal vacancy record data supplied by the agency. The data is entered into the P/P/P system on the Position Vacancy Maintenance screen. It shows the Recruitment Method used when a vacancy has occurred.

Report ER001G:

STATE OF MONTANA
Department of Administration Personnel Division
Recruitment Method Analysis

Agency: 6414 MT Youth Treatment Center

EEO-4 Category: A - Officials and Administrators

Recruitment Method

Occupational Group/ Class Title	Total in class	Vac Total	Internal			US		Campus
			Internal	Barg.Unit	Local County	Statewide	Regional	
045 - Psychology								
045003 - Instutnal								
Svc Mgr II	1	2	_____	_____	100	_____	_____	_____
075 - Registered Nurses								
075025 - Nursing	1	2	50	_____	50	_____	_____	_____
Svc.Mgr. I								

The analysis is conducted by classification codes. The agency will review and verify this information. The agency will identify which recruitment method would be used for those classification codes where a vacancy did not occur in order to collect data on how the agency would recruit if a vacancy did occur. This information should be put on the Recruitment Method Analysis (shown above) and returned to the State Personnel Division.

3. The Availability Analysis estimates the percentage of minorities or females in the relevant recruitment areas who have the skills necessary for entry into a specific classification or occupational group in order to determine the number of persons by race and sex available for employment in a classification or occupational group. The availability analysis forms the standard of measurement for determining whether or not minorities and women are underutilized in the workforce and the extent or significance of any underutilization. The availability analysis is not conducted for the disabled because there is no availability data and federal law requires individual rather than statistical analysis.

When conducting availability analysis for women and minorities the Equal Employment Opportunity Commission's (EEOC) Affirmative Action Guidelines (29 CFR 1608.4) * recommends utilizing techniques that are consistent with 41 CFR Part 60-2 issued by the Office of Federal Contract Compliance Programs (OFCCP).

OFCCP requires that the analysis be conducted separately for minorities and females. They list eight factors in the Revised Order 4 to be used in determining availability. They are:

- A. For minorities - 41 CFR 60-2.11(b) (1) (1970)
 1. The minority population of the labor area surrounding the facility.
 2. The size of the majority unemployment force in the labor area surrounding the facility.
 3. The percentage of the minority workforce as compared with the total workforce in the immediate labor area.
 4. The general availability of minorities having requisite skills in the immediate labor area.
 5. The availability of minorities having requisite skills in an area which the employer can reasonably recruit.
 6. The availability of promotable and transferable minorities within the employer's organization.
 7. The existence of training institutions capable of training persons in the requisite skills.
 8. The degree of training which the employer is reasonably able to undertake as a means of making all job classes available to minorities.

* § 1608.4 Establishing affirmative action plans.

An affirmative action plan or program under this section shall contain three elements: a reasonable self analysis; a reasonable basis for concluding action is appropriate; and reasonable action.

(a) Reasonable self analysis. The objective of a self analysis is to determine whether employment practices do, or tend to, exclude, disadvantage, restrict, or result in adverse impact or disparate treatment of previously excluded or restricted groups or leave uncorrected the effects of prior discrimination, and if so, to attempt to determine why. There is no mandatory method of conducting a self analysis. The employer may utilize techniques used in order to comply with Executive Order No. 11246, as amended, and its implementing regulations, including 41 CFR Part 60-2 (known as Revised Order 4), or related orders issued by the Office of Federal Contract Compliance Programs or its authorized agencies, or may use an analysis similar to that required under other Federal, state, or local laws or regulations prohibiting employment discrimination. In conducting a self analysis, the employer, labor organization, or other person subject to Title VII should be concerned with the effect on its employment practices of circumstances which may be the result of discrimination by other persons or institutions. See *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971).

B. For females - 41 CFR 60.2.11(b) (2) (1970)

1. The size of the female unemployment force in the labor area surrounding the facility.
2. The female workforce as a percentage of the total workforce in the immediate labor area.
3. The general availability of women having requisite skills in the immediate labor area.
4. The availability of women having requisite skills in an area in which the employer can reasonably recruit.
5. The availability of women seeking employment in the labor or recruitment area of the employer.
6. The availability of promotable and transferable female employees within the employer's organization.
7. The existence of training institutions capable of training persons in the requisite skills.
8. The degree of training which the employer is reasonably able to undertake as a means of making all job classes available to women.

OFCCP has issued proposed regulations which reduce the above factors to four.

Don't know
use
The proposed four factors are:

1. The percentage of minorities and women in the civilian labor force in the immediate labor area. *(Total Labor Force Representation). *16 up*
2. The percentage of minorities and women with requisite (necessary) skills in the immediate labor area. **(Qualified Labor Force Representation).
3. The percentage of minorities and women with requisite skills in the relevant recruitment area.
4. Percentage of minorities and women among those promotable or transferable within the employer's establishment.

* The minority/female representation of the total labor force is an adequate measure of availability for all relatively unskilled jobs such as mail clerks. Relatively unskilled jobs are jobs requiring no more than basic literacy as provided by a high school education and other knowledges, skills and abilities possessed by most people. Since these jobs can be performed by most people absent employment barriers, an agency can be expected to employ minorities and women for these jobs in numbers consistent with their total labor force availability - approximately 41-48% female, 2-10% minority, according to the immediate recruitment area (county). This factor will be given greater consideration for the relatively unskilled and semi-skilled jobs.

** A total labor force comparison is not an adequate measure of availability for management, professional, technical, and skilled jobs with a disproportionately small, qualified minority/female labor force. Agencies cannot be expected to achieve a 41 to 48% female representation in jobs such as engineering jobs (requiring an engineering degree or experience), when less than 10% of persons with degrees or experience in the field are female. This factor will be given greater consideration for the higher level positions and positions that require specialized skills.

Consideration of the Factors

At a minimum, the four factors listed should be considered by State agencies in determining whether minorities and/or women are underutilized. If an agency determines that one or more of the factors is not relevant to a job group (classification or occupational group), they should justify its exclusion.

The factors should be considered separately for each job group and separately for women and minorities. In computing availability a value weight should be assigned to factors. The method of assigning value weights to the factors will be discussed in detail in this section.

Defining "Immediate Labor Area"

There are no prescriptive limitations or methods for defining immediate labor area.

Generally, an immediate labor area mentioned in Factor 2 describes geographic area from which employees and/or applicants could reasonably commute to the state agency's facility. The immediate labor area should be defined so as to include a reasonable recruiting area. For example, for most higher level positions and positions that require specialized skills a statewide recruiting area would be reasonable. For most lower level/semi-skilled positions a local or county(ies) would be considered a reasonable recruiting area.

The relevant recruitment area mentioned in Factor 3 should be considered as the "reasonable" recruiting area. Factor 3 deals with the availability of minorities and females with requisite skills in an area from which a state agency can reasonably recruit. This differs from Factor 2 which refers to the immediate labor area. Factor 3 will usually be a larger area for positions such as professionals, where recruitment is done statewide, or nationally.

Which Factors Should Be Used

After defining the geographic area to be used for immediate labor area, state agencies need to examine the four factors and determine what degree of consideration should be given for computing availability.

Factor 1 is a good starting point in estimating availability, using the theory that, absent discrimination, the agency's total workforce statistics would reflect the general civilian labor force of minorities and females. The civilian labor force, of course, may be unrealistic for determining availability for higher level jobs or jobs requiring specialized skills, because such an approach tends to inflate availability by assuming that unskilled women and minorities have the skills necessary to perform these jobs adequately. However, for unskilled or minimally skilled job groups, the civilian labor force availability should be given greater consideration when computing final availability.

For higher level jobs, as well as jobs requiring specialized skills, Factors 2 and 3 (which deal with requisite skills) should be given greater consideration when computing final availability. There is a temptation to rely on only Factors 2 and 3, in determining availability for these job groups. However, requisite skills availability data are almost always based on numbers of employed persons* and basing goals on that data could perpetuate the effects of past discrimination and would deflate availability. That is why other factors should always be considered in computing final availability.

Basically, Factor 4 represents individuals who are promotable or transferable into the job group under consideration. This group of employees is commonly referred to as the feeder pool, and the jobs they occupy are called feeder jobs. A feeder job is defined as a job outside the job group under consideration from which employees move into that job group.

For example, if the position of accountant in the accountant and auditor job group is frequently filled by promotions from the position of accounting specialist, the incumbent in the accounting specialist job forms the pool of employees available for promotion into the accountant and auditor job groups. The accounting specialist job is a feeder job for the accountant job and, therefore, for the accountant and auditor job group.

An agency should carefully identify the feeder jobs by analyzing individual job titles within the job group under consideration to determine which of those jobs have feeder jobs (including from outside of the job group) or by analyzing incumbents in the job group under consideration to determine whether they came from other job groups.

Factor 4 is frequently regarded as the most important and most sensitive part of the 4 factor analysis, because this factor focuses on the availability of women and minorities within the agency's own work force. (See work force analysis A-1 under this section). This analysis is central to identifying whether there are women and minorities who should be moving upwards and whether they are moving in numbers proportional to their presence (see Section 6 - Upward Mobility). If properly done, this analysis can yield extremely useful insights about how movement occurs within the agency. Learning about this process can help agencies remove obstacles or bottlenecks that may have been inhibiting movement.

In summary, the steps that should be taken for calculating internal availability of women and minorities are as follows:

1. Identify the feeder jobs for the job group under consideration.

* The requisite skills availability figures are derived from the 1980 census data. The availability figures for each occupational job group was based on the numbers of employed persons at that time. If, for example, a microbiologist female was at that time working as a secretary, the survey considered that person as a secretary and not as a microbiologist.

2. Assignment of a percentage weight to each feeder job based on its relative importance in providing employees to the job group under consideration.
3. Calculation of race/sex composition of each feeder job.
4. Multiplication of percentage weight by the race/sex percentage to obtain the weighted percentage for each feeder job.
5. A combination of weighted percentages for minorities and for women for all feeder jobs to arrive at the final internal availability figures for the job group.

Weighting the Factors for Availability

In determining final availability, it should be decided which factors are most important for each job group in the degree to which other factors are relevant. The importance of each factor is then translated into a value weight. A value weight is a percentage representation of the relative importance of each factor as a source of employees.

For example, if the job group in question is a professional job group of engineers, factor 3 would be the most important factor. The civilian labor force - factor 1 - would not have a great deal of weight in a job group that requires extensive education and experience. Factor 4 may be important if employees have been promoted to engineering positions based on work experience and on the job training.

Once the most important factor is determined, the other factors should be considered. A single factor is seldom the final availability. The combination of all or several of the factors and the value weight placed on each factor determines the final availability.

In assigning value weight to the factors, the State Personnel Division has utilized the standardized value weights method for each external factor* by EEO 4 category.

Factor 1 (external) - Total civilian labor force of the state of Montana based on the U.S. Census data computed by the State Personnel Division.

Factor 2 (external) - Requisite skills in the immediate labor area (counties) based on U.S. Census data, computed by State Personnel Division, information supplied by state agencies in matching their job titles to the appropriate census job titles, and the Recruitment Method Analysis.

Factor 3 (external) - Requisite skills in the relevant recruitment area (state of Montana) based on U.S. Census data computed by State Personnel Division, information supplied by state agencies in matching their job titles to the appropriate census job titles, and the Recruitment Method Analysis.

Factor 4 (internal) - Promotions and transfers based on each agency's workforce analysis and their identification and percentage calculation of women and minorities within the agency.

*State personnel used in utilization analysis**

All three external factors are taken into consideration and a percentage value weight is assigned to each of the factors for the different EFO-4 categories as shown in the table below.

Category	(A) Admin & Officials	(B) Prof.	(C) Tech.	(D) Protective Services	(E) Para Prof.	(F) Clerical	(G) Skilled Craft	(H) Service Mtce.
Factor								
1	5	5	5	5	5	70	5	70
2	30	30	60	50	80	25	25	25
3	65	65	35	45	15	5	70	5
TOTAL	100%	100%	100%	100%	100%	100%	100%	100%

In the Officials/Administrators (Category A), Professionals (Category B) and Skilled Craft (Category G) jobs a heavier percentage value weight is assigned to Factor 3 based on:

- a) the Recruitment Method Analysis which indicates that state agencies recruit statewide for the majority of the jobs in these categories. However, there are a few positions which require regional or national recruitment because there are few or no qualified applicants for those positions in the state.
- b) the U.S. Census Data which shows higher availability figures at the state level for women and minorities for most of the jobs in these categories.

In the Technicians (Category C), Protective Services (Category D), and Paraprofessionals (Category E) jobs a heavier percentage value weight is assigned to Factor 2:

- a) based on the Recruitment Method Analysis which indicates that state agencies recruit locally for the majority of these jobs.
- b) the local area is a reasonable recruitment area for applicants to commute to agency's facility.
- c) in most cases, for jobs in these categories, there is a reasonable representation of women and minorities at the local level. However, in some cases, statewide availability figures for women and minorities in these job categories is higher compared to their local availability. In order to offset such imbalances a reasonable percentage value weight is assigned to Factor 3.

In the Clerical (Category F) and Service and Maintenance (Category H) jobs a heavier percentage value weight is assigned to Factor 1 because the majority of the jobs in these categories do not require requisite skills, like those in the professional category.

In summary, the availability analysis is conducted annually for each agency from agency workforce data, county and state census data, U.S. Census data and information supplied by the agency. In doing so, agencies should match their job titles to the appropriate census data job titles and identify which county(ies) is their immediate recruitment area. The availability analysis worksheet is shown below.

State of Montana
 Department of Administration Personnel Division
 EEO Section
 Availability Analysis Worksheet

Agency: 5401 Dept. of Highways

EEO-5 Category: A Officials and Administrators

label %

Classification No.	Job Title	Census data Code No.	No. Positions	Female Availability			Minority Availability		
				Total (C.L.F)	Local	State	Total (C.L.F)	Local	State
005019	Engineer								
	Civil Mgr.I	006	2	<u>44</u>	<u>9</u>	<u>5</u>	<u>5</u>	<u>0</u>	<u>3</u>
110005	Admin								
	Legal Div.	110	1	<u>44</u>	<u>13</u>	<u>15</u>	<u>5</u>	<u>0</u>	<u>1</u>
160079	Audit								
	Mgr. I	161	1	<u>44</u>	<u>33</u>	<u>44</u>	<u>5</u>	<u>5</u>	<u>2</u>

The information in the worksheet is entered into the P/P/P system and forms the foundation for the utilization analysis. The information supplied by the agencies is critical in establishing the accuracy in identifying underutilization of women and minorities.

- Once the Workforce Analysis, Recruitment Method Analysis and the Availability Analysis are completed, the next step is to identify any underutilization. Underutilization is defined as having fewer minorities or women in a particular job class, occupational group or EEO-4 Category than would reasonably be expected, compared to their availability. This is done through a Utilization Analysis. The Utilization Analysis is computerized and conducted annually for each agency from Workforce Analysis (personnel/payroll data), Recruitment Method Analysis (internal/external vacancy record data), and the Availability Analysis (census data and information supplied by the agency).

State of Montana
 Department of Administration Personnel Division
 Employee Relations Bureau EEO Section
 Utilization Analysis 6/30/86

Agency:6101 Department of Administration EEO-4 Category: II Service/Maintenance

-----Workforce-----

-----Availability-----

Occ.Group / Class	Job Title No.	Employees			Total Local State (value weights)			Weighted % External Availability	Promotions	Final Avail.
		Total	Female	%	70% female	25% availability	5%			
Janitors										
382003 Custodial Wkr III	333	13	3	23	44	21	32	38		
382004 Custodial Spvr 1	333	1	0	0	44	21	32	38		
382008 Custodial Supt	331	1	0	0	44	0	36	33		
Total for Group Female		15	3	20				38		
Misc. Maintenance										
899001 Mtce Worker I	932	2	0	0	44	8	10	33		
899003 Mtce Worker III	932	5	0	0	44	8	10	33		
899004 Mtce Worker IV	932	2	0	0	44	8	10	33		
Total for Group Female		9	0	0				33		
Warehouse Workers										
922001 Warehouse Wkr. I	936	4	2	50	44	10	15	34		
922002 Warehouse Wkr. II	936	1	0	0	44	10	15	34		
922005 Warehouse Frmn II	931	1	0	0	44	5	10	34		
Total for Group Female		6	2	33				34		
Total for Category Female		32	6	19				33		
Minority			3	9				3		
Total for Agency Female		484	230	48				16		
Minority			11	2				2		

The Utilization Analysis compares the agency's minority and female workforce (utilization) to the minority and female labor force (availability). If utilization is less than availability, underutilization is identified. For example, if in the occupational group for janitors, availability is 38% for females and there are 15 employees, 3 of which are female, then at least 38% of the 15 employees should be female. Since only 3 of the employees are female, females are underutilized in the occupational group by 3.

Example:

Occupational Group - Janitors
EEO-4 Category - Service/Maintenance
Total Employees in Occupational Group - 15
Total Females - 3
Percent Available - 38
 $15 \times .38 = 5.7$
 $6 - 3 = 3$ (females are underutilized by 3)

The above method for determining underutilization is called the straight parity measure. This measure results from a one to one comparison of utilization to availability.

The 38% weighted external availability figure indicate in the example above is computed as follows:

WEIGHTED EXTERNAL AVAILABILITY TABLE

	<u>Value</u>		<u>Female</u>		<u>Product</u>	
	<u>Weighted %</u>		<u>Availability</u>			
Total	70	x	44	=	31	
Local	25	x	21	=	5	
State	5	x	(23)	=	2	
	<u>100</u>					38% is the external availability of females for the Custodial Worker III
Total	70	x	44	=	31	
Local	25	x	21	=	5	
State	5	x	(23)	=	2	
	<u>100</u>					38% is the external female availability for the Custodial Supervisor I
Total	70	x	44	=	31	
Local	25	x	0	=	0	
State	5	x	36	=	2	
	<u>100</u>					33% is the external female availability for the Custodial Superintendent

The next step is to weight the job titles for each product that was produced in the table above as follows:

WEIGHTED JOB TITLES TABLE
(from Utilization Analysis)

<u>Job Titles</u>	<u>Total Employees</u>	<u>(not shown) Weight %</u>		<u>Product</u>		<u>(not shown) Weighted %</u>
Custodial Wkr. III	13	86.66	x	38	=	32.93
Custodial Spvr. I	1	6.66	x	38	=	2.53
Custodial Supt.	<u>1</u>	<u>6.66</u>	x	33	=	<u>2.19</u>
TOTAL for Group	15	99.98				37.65

37.65% is then rounded to 38, and 38% is the Weighted External Availability for females in this Occupational Group.

As shown above, Custodial Worker III should carry more weight than the other two job titles because that class has 13 employees vs. 1 employee in each of the other classes.

The same process is used for each occupational group to arrive at the EEO-4 Category availability figure.

For females, the utilization analysis is conducted and shown at the Job Class Code, Occupational Group, EEO-4 Category and agency level.

For minority, the analysis is conducted but shown at the class, and occupational group level. The final external weighted availability appears at the EEO-4 Category and agency level only because the relatively small minority availability would not permit a meaningful analysis at the Class and Occupational Group level. The Availability Analysis Worksheet does show the assigned availability figures used if conducting the utilization analysis.

Any difference less than availability should be defined as underutilization and should be addressed in the agency Affirmative Action Plan. If underutilization is identified to be one person or more, an annual goal must be projected. (see Section 3 - Goal Setting).

In cases where the identified underutilization in an occupational group is less than one person then that particular job group should be combined with another job group similar in terms of work content, pay and advancement opportunities.

The following sections give step-by-step instructions to identify problems and preparation of an affirmative action plan to correct problem areas.

SECTION 3 - GOAL SETTING

Goals

After availability is completed and underutilization of women and minorities is identified a numerical and percentage hiring goals should be projected for every occupational group (job group) underutilized by one or more persons. The annual goal has two parts - an annual placement rate (APR) expressed as a percentage, and an annual numerical goal based on projected openings.

The annual placement rate is the rate at which minorities and females will be hired into a job group where they are underutilized and is expressed in terms of a percentage. The annual goal, on the other hand, is a numerical goal. In order to establish the annual numerical goal, the number of anticipated hiring opportunities for each job group for the coming year should be projected.

Once the number of hiring opportunities has been projected, multiply that number by the annual placement rate (percent available or higher) for women and minorities. The product is the annual numerical goal.

Example

Using the hypothetical pharmacist group, females occupy 2 positions out of 20 in the job group. Availability for females has been established at 20%. Currently, females comprise 10% of the job group.

An examination of turnovers and promotions during the past year and possible expansions in the coming year, indicate that potentially 6 hiring opportunities will occur during the next year.

If the agency sets the annual placement rate at 20% (percent available) and then multiplies the 20% times the 6 anticipated hiring opportunities, the result is 1.2 or one female for the annual numerical goal.

If, however, the agency sets the APR at 10% (percent available) and then multiplies the ten percent times the 6 anticipated hiring opportunities, the result is 0.6, less than one whole person. Since the utilization analysis indicated females were underutilized by more than one person, an annual goal is required. It is recommended that the figure, 0.6 be rounded up to one whole person.

altered. Job Groups (as identified by the utilization analysis) with fewer minority or female applicants than the external availability shall be targeted for affirmative recruitment measures.

If examination reveals all potential affirmative recruitment procedures are being followed, other explanations for the low number of minority or female applicants should be explored, such as:

- ° The availability figure for minorities or women is inflated;
- ° High employment rates in the immediate area coupled with more successful minority and female recruitment by other employers.

2. Internal Applicant Flow Analysis

The purpose of the Internal Applicant Flow Analysis is to determine if an agency's own minority or female employees are applying for higher level jobs in numbers consistent with their availability. Like the External Applicant Flow Analysis (see example on preceding page), the agency should compare the representation of minorities or women among internal applicants for a job with their representation in the availability pool (all those in lower-level, related classifications who would ordinarily qualify for the job). The agency workforce analysis is used to make this comparison.

3. Other Analysis

In addition to the above, employee/applicant complaints and exit interviews should be reviewed to identify further recruitment problems. Agencies with employee equal opportunity advisory committees should request committee comments on recruitment procedures.

B. Identifying Effective Recruitment Methods and Sources.

1. Recruitment Method.

Agencies should use the information from the P/P/P system, Position Vacancy Maintenance Screen, External Vacancy Record, which shows the recruitment method used (local, statewide, etc) in the past and compare it to the quarterly Applicant Flow Analysis (see Section 3-A) which shows applicants by race, sex, handicap and age. This comparison will identify the recruitment methods used in the past which have the greatest number of minority, female and handicapped applicants.

2. Recruitment Source Analysis.

The purpose of the Recruitment Source Analysis is to identify the recruitment sources (newspaper, job service, etc.) used in the past which attracted the greatest number of minority, female, and handicapped applicants. This data comes from Applicant Survey.

Example:

Screen: AM PP 1024 State of Montana - P/P/P System (1) Date: 5/3/85
Dialog: AMPP 1024 Recruitment Source Analysis Time: 11:15

Agency No : 3401 (2) Position No : 12343 (3) Closing Date: 04 04 85 (4)

- (Cursor)

Class Code : 327641 Administrative II

External Recruitment

	Total	Newspaper/ Journal	Friend/ Employee	Job Service	Community Org.	Other	Fem./Min/ Hcp. Org.
Total	40	15	5	10	2	0	8
Female	30	10	2	8	0	0	10
Indian	6	0	0	2	0	0	4
Hdcp	4	0	0	0	0	0	4
Vet	15	1	2	12	0	0	0
Age/40+	23	5	0	15	2	0	1

C. Affirmative Recruitment Efforts For Minorities and Women.

All recruitment efforts must comply with the Recruitment and Selection Policy ARM 2.21.3701 et seq., (also found at Policy 3-0165, Montana Operations Manual, Volume III.)

The affirmative action plan shall specify action items to increase the number of minority or female applicants for job groups which are targeted by the applicant flow analysis as having too few minority or female applicants.

These should include:

- a. Action items specifying use of any of the recruitment sources listed in Appendix 1 which would increase the number of minority, female or handicapped applicants.
- b. Action items specifying increased use of recruitment methods/sources identified by the Recruitment Method and/or Recruitment Source Analysis which resulted in the largest numbers of minority or female applicants.
- c. Action items for increasing application by minority or female employees within the agency where the Internal Applicant Flow Analysis indicates they are not applying in representative numbers.

- d. Action items specifying some type of personal contact with recruitment sources, where possible. Since personal contact with recruitment sources is usually the most effective affirmative recruitment measure, it should especially be included for all job groups with a severe minority or female applicant deficiency.

Example:

Action Item The EEO Representative contacts, by phone or in person, the Helena Indian Alliance quarterly to discuss the process made by the recruitment source in referral qualified minority applicants.

- e. Action items specifying internal recruitment only should be considered for job groups with a relatively large representation of minorities or women in the internal availability pool as opposed to the external availability pool. Conversely, where the external minority or female availability exceeds the internal availability, open recruitment should be considered.

SECTION 5 - SELECTION

A. Identifying Selection Deficiencies Affecting Minority and Female Applicants.

1. External Applicant Flow Analysis

The purpose of the External Applicant Flow is to determine if the agency's selection rate for minorities or women is less than 4/5th's or 80% of the selection rate for the remaining applicants.

This 4/5th's or 80% rule is a "rule of thumb" used to determine adverse impact, which is defined as a substantially different rate of selection in hiring, promotion or other employment decisions which works to the disadvantage of members of a race, sex or ethnic group. This formula is prescribed by the federal Uniform Selection Guidelines. The rule simply states that the selection rate for minorities or women should be at 4/5th's or 80% compared to the selection rate of the most successful group member, as the example below shows.

This example compares the selection rate for Native American Indian applicants with white applicants.

	<u>White</u>	<u>Indian</u>
Number Applied	100	50
Number Hired	40	15

To find the percent of selection rate for each group:

1. $\frac{40}{100} = 40\%$ is the selection rate for Whites.

2. $\frac{15}{50} = 30\%$ is the selection rate for Native American Indians.

To find the comparative selection rate:

$$\frac{.30}{.40} = 75\% \text{ comparative selection rate.}$$

★ The comparative selection rate which is 75% is less than 80% or 4/5ths rule.

The Applicant Flow Analysis is computerized and conducted quarterly for each agency from the applicant flow data supplied by the agencies. The analysis is run for a position, a classification and occupational groups.

The analysis compares the selection rate for each group (race, sex) with that of the highest group. It also computes 4/5th's or 80% rule. An example of the analysis follows.

Example

Screen: AM PP 1023 State of Montana - P/P/P System (1) Date: 5/3/85
 Dialog: AMPP 1023 Applicant Flow Analysis Time: 11:15

Agency No : 3401 (2) Position No : 12343 (3) Closing Date: 04 04 85 (4)
 - (Cursor)

Class Code : 546341 Payroll Clerk I

Internal Recruitment

.....RACE..... SEX.....

Criteria	Totals	White	Indian	Other	Unkn.	Male	Female	Unkn.
Total	27	20	5	2	0	7	20	0
Hired	1	1	0	0	0	0	1	0
PCT Hired	3.7	5	0	0	0	0	5	0

Selection Rate
 COMP 40% 40%

(4/5th's CALC) (80%)

Criteria	Total	-- Handicap --		-- Age --		
		Yes	No	16-40	40+	Unkn.
Total	27	1	26	15	10	2
Hired	1	1	0	0	1	0
PCT Hired	3.7	100	0	0	10	0

2. Internal Applicant Flow Analysis

The purpose of this analysis is to determine if an agency's own minority or female employees who apply for higher positions are being selected in proportionate numbers.

The internal applicant flow analysis is also computerized and conducted quarterly for each agency from the applicant flow data and the personnel/payroll data supplied by the agencies. The data sources are the payroll status form and the internal applicant log.

The analysis compares the internal selection rate for each group (sex, race) with that of the highest group. It also computes the 4/5th's or 80% rule.

B. Identifying Effective Selection Methods.

Agencies should use the information from the P/P/P system provided on the following screens to identify the selection methods which have included or screened out minorities and females: Applicant Flow

Analysis, External Applicant Maintenance, and Internal/External Applicant for Position. (See Section 4-A.).

If the results of the utilization analysis and applicant flow analysis reveal underutilization of minorities and females in any job group, then the agency should conduct a more detailed analysis using the External Applicant Maintenance "selection criteria" results in order to determine the point at which minorities or females are being adversely affected. The same kind of analysis may also be done for handicapped applicants.

Each step in the selection process should be analyzed for adverse impact by using the "80 percent" rule. Adverse Impact" is defined as a substantially different rate of selection in hiring, promotion or other employment decisions which work to the disadvantage of members of a race, sex or ethnic group. An example is presented in Section 4-A. After identifying the stage(s) of adverse impact, the agency should examine each selection step to determine job-relatedness and validity.

Example: If the step was a written test given to all applicants and minority/female applicants were failing to score as high compared to white males (the point of adverse impact), then the agency should follow the procedures described in the 1978 Uniform Guidelines on Employee Selection Procedures for validating tests. (Copies are available from the State Personnel Division.)

If the test is not validated, the agency must seek an alternative measure, less likely to have adverse impact, to use in place of the unvalidated test.

If the test or other criteria having adverse impact on minorities and females is valid, the agency should determine whether there are any alternative measures available which would have less or no adverse impact.

Wherever there is evidence of adverse impact an agency should examine the particular procedure for validity or seek alternative measures which will lessen or eliminate the adverse impact.

C. Affirmative Selection Efforts For Minorities and Women.

All selection efforts must comply with the Recruitment and Selection Policy, ARM 2.21.3701 et seq., also found at Policy 3-0165, Montana Operations Manual, Volume III and the 1978 federal Uniform Guidelines on Employee Selection Procedures. (Copies are available at the State Personnel Division.)

The affirmative action plan shall specify action items which utilize race/sex conscious measures until underutilization is corrected. These should include:

- a. An action item for insuring that minority/female applicants are given adequate consideration. This might involve a commitment to interview all or at least a representative number of minority/female applicants who meet minimum qualifications.

- b. Minority/female selection goals shall be attainable percentages of all selections. For professional, technical and skilled jobs with a disproportionately small minority/female availability, the goal should be selection in numbers at least equal to the minority/female percentage of the final availability figures shown on the Utilization Analysis.

The same also holds true for unskilled jobs and professional, technical, skilled jobs with a disproportionately large minority/female availability. The goal should be selection in numbers equal to the minority/female percentage of the final availability figure shown on the Utilization Analysis.

In some cases goals may be established for lower-level, "Feeder" positions rather than a higher-level, underutilized position. This procedure may be followed where most openings in the upper-level positions are filled through internal promotion from one or more lower-level positions which themselves have no minorities/women who could be promoted over the next year. In this instance, goals should be established for the lower-level positions from which immediate promotions are made.

- c. Action items specifying race/sex conscious measures for reaching the selection goals.

These should allow for conscious selection of minority/female applicants from among qualified applicants who meet minimum qualifications. For entry level positions the selection need not necessarily be from the "best qualified" group. Since selection procedures for most state positions have not been professionally developed or validated, there is no assurance they can accurately distinguish best qualified applicants from qualified applicants. Where selection procedures cannot be demonstrated to accurately make this distinction, race/sex should be considered for all applicants with essential educational and/or experience requirements or their equivalent.

For promotional positions race/sex should only be considered for the top equally-qualified applicants. This restriction is recommended for two reasons: 1) employees have more recognized job rights than external applicants and affirmative action measures which adversely impact the rights of a relatively small, identifiable group of non-minority employees should be avoided; 2) much more performance information is available on employees than external applicants, permitting more accurate assessments.

Where goals have been established for lower-level, "Feeder" positions, action items may specify race/sex conscious measures for them instead of the higher-level positions.

- d. An action item committing the agency to conduct a detailed applicant flow analysis to identify the selection criteria responsible for disproportionate minority/female rejections.

The detailed applicant flow analysis first compares the minority/female percentage among original applicants with the minority/female percentage of those who have passed each stage of the selection process to determine which stage, if any, disqualified disproportionate numbers of minority/female applicants.

For example if an agency has four selection stages for a job: (1) an applicant screen to identify those who meet the selection criteria for interview; (2) the interview to better identify the two or three candidates who most closely match optimal criteria; (3) a reference check to verify the information provided; and (4) a final selection. Each of the above four selection stages should be analyzed to identify where adverse impact is occurring.

SECTION 6 - UPWARD MOBILITY

A. Definition.

An effective upward mobility program may be a viable option in overcoming underutilization of affected classes in higher level positions in an agency. The first step is to have a clear definition of upward mobility and what it entails. The United States Civil Service Commission's definition of an upward mobility program best describes what it means. According to the United States Civil Service Commission, an upward mobility is defined as

... a systematic management effort that focuses personnel policy and practice on the development and implementation of specific career opportunities for lower-level employees who are in positions or occupational series which do not enable them to realize their full work potential.

The above definition points to the fact that upward mobility will not always happen by itself. Rather, a systematic management effort which is a strong commitment on the part of management is needed at every personnel management level for upward mobility to work. It must begin with an effort from management which is carefully planned and systematically implemented. This concept should seek to maximize career opportunities. Sometimes, the only thing needed is to make lower-level employees aware of career opportunities which already exist. More often than not, trainee positions need to be created and the elimination of unrealistic job qualifications which could be met through on-the-job training, rather than through formal education, could be developed for career opportunities.

B. Objectives.

There are at least two objectives for an upward mobility program for public employees: 1) establishment of an effective system of career development for lower-level employees within the agency, and 2) assistance in meeting EEO/AA goals through a more efficient utilization of existing personnel. Dr. Francine Hall, assistant professor of management science, in an article proposing upward mobility programs, describes this need as follows:

Work force stability has recently emerged as one aspect of a recessionary economy that is causing new EEO problems for personnel administrators. Their attempts to implement goals and timetables during such a period are complicated by two factors. First, their companies are not increasing the number of positions in many job categories. In fact, they may be cutting back and laying off. Secondly, people themselves are less likely to voluntarily resign. With a lack of expansion and low turnover rates, the work force stabilizes. The result is a situation in which an organization's path to compliance is not through recruitment and selection. Faced with a stable work force, companies increasingly realize that their best chances for compliance lie with more effective utilization of women and minorities currently employed.

C. Benefits.

Upward mobility opportunities result in employee job satisfaction which may be one of the greatest benefits for an agency. As employees become more aware of opportunities for advancement, development, and utilization of their potential and skills, lower rates of absenteeism and turnover may be expected, increasing employee effectiveness. With lower turnover rates, an upward mobility program can increase the retention rates of women and minorities due to upward or lateral movements within the agency. This will free more entry level positions for women and minorities with few technical skills. This will help an agency meet EEO/AA goals.

Complaints and grievances may decrease as supervisors' "consideration" of the lower-level employees increase. Employee motivation may rise as employees perceive the agency's concern for their career development and increasing opportunities for advancement. A more pleasant working atmosphere could as well develop as more positive communication takes place between supervisors and employees.

More affirmative action plans will be found in compliance with federal and state laws and guidelines, and more successful recruitment and selection will occur as potential employees become aware of the existence of successful upward mobility programs.

Upward Mobility opportunities must be available to all employees in a non-discriminatory manner.

D. The following are measures agencies may use to form action items to create and/or ensure upward mobility. These can correct the typical problem of overutilization of minority/female/handicapped employees in lower-level positions and underutilization in higher-level positions.

1. Hold periodic counseling sessions to determine the career interest of lower-level employees and evaluate the knowledges, skills, and abilities of those interested in advancing their careers.

Agencies may use this information to form a skills bank for use as higher-level positions become available. Employees, who may be qualified for these positions, may be notified by supervisors and encouraged to apply.

2. When openings occur and employees who seem to qualify do not apply, counsel with them to determine why.

3. Create opportunities for lateral transfers to positions which may have more career advancement possibilities.

4. Restructure positions to become bridge positions. By adding more responsibilities to lower-level positions, bridge positions may be created.

5. Provide training to managers and supervisors on the importance of upward mobility and career development. It is imperative to have the understanding and endorsement of managers and supervisors in an agency's upward mobility program. They need to have training in

employee evaluation, career counseling, and job structuring for an upward mobility program to be effective.

6. Provide a training program or self-study program for employees who wish to apply for underutilized, higher-level positions for which they currently lack the knowledges, skills, and abilities.
7. Target positions in job groups for upward mobility. Work toward getting females or minorities into entry-level positions within the group. An example would be to develop a training assignment in an entry-level position to allow an otherwise unqualified person to meet the minimum qualifications to move up in the job occupation series.

SECTION 7 - ON-THE-JOB TREATMENT

- A. As with upward mobility, on-the-job treatment can be an excellent tool for agencies to meet requirements for EEO/AA. Various on-the-job personnel practices can have an adverse impact on minorities, women, and the handicapped, and may be both unlawfully discriminatory and sources of underutilization. The better treatment which is given to current employees, the longer they will remain with the agency and the better chance the agency may have to include them in an upward mobility program.
- B. The following are some general measures which may be used to correct and/or avoid the disparities which could arise:
1. Compare position descriptions with duties actually performed to determine if positions traditionally filled by women are appropriately described.
 2. Encourage minority/female/handicapped employees to apply for internal positions if they might meet the qualifications, or provide them with the necessary training that would enable them to meet the qualifications.
 3. Conduct exit interviews by the agency EEO officer to determine why minorities/females/handicapped employees are leaving. These interviews should be documented in enough detail to identify corrective measures.
 4. Review disciplinary actions by the agency EEO officer such as suspension, termination, or down-grading of minority, female, and handicapped employees before they are taken. This should be done to insure they are not discriminatory or perceived to be.
 5. Allow flexible hours or job sharing which could be beneficial for persons with personal commitments or medical problems.
 6. Provide adequate training and supervision to all probationary employees including minority/female/handicapped employees, to insure retention at the completion of their probationary period.

SECTION 8 - PREPARING THE AFFIRMATIVE ACTION PLAN

- A. The affirmative action plan is a plan whereby an agency attempts to achieve equal employment opportunity. The plan need not be elaborate, lengthy or glossy. It should be designed as a management work plan rather than a public relations document. It shall identify minority/female employment deficiencies, possible causes of the deficiencies, the actions to be taken and by whom, in order to correct them.

Through such reports as the Utilization Analysis, Applicant Flow Analysis, and Recruitment Source Analysis, an agency can identify such barriers to employment for minorities/females as recruitment, selection, upward mobility and on-the-job treatment.

- B. The agency affirmative action plan shall at a minimum contain the following elements:

1. A copy of the agency EEO policy, signed by the Agency Head.
2. A description of underutilized job groups, as identified by the utilization analysis, and their location in the agency. An agency organization chart should be included. This should include all occupational groups and EEO-4 categories with underutilization.
3. An analysis of whether the cause appears to be:
 - a. A recruitment problem: too few minority/female applicants;
 - b. A selection problem: disproportionate rejection rates of minority/female applicants;
 - c. An upward mobility problem: inability of minorities and women at lower grades to advance into higher level jobs; or
 - d. A turnover problem: disproportionate rate of separations by minority/female employees created in part by disparities in on-the-job treatment.
 - e. Including any other causes.
4. Specific action items for correcting identified problems resulting in minority or female underutilization in each underutilized job group including race/sex conscious procedures where appropriate.

Action items shall be statements of specific actions for correcting each identified problem, the person responsible and the target date.

- a. Action items should be in the following general form:

Job Group - Truck Driver

Problem: Female applicants are being disqualified in disproportionate numbers because they lack experience.

<u>Action Item</u>	<u>Responsible Person</u>	<u>Target Date</u>
Waive the experience requirement and reach selection goal by hiring female applicants who can demonstrate (1) the ability to lift required weight and (2) have a chauffeur's license.	Division Administrator	1-15-86

Statements calling for analyses to identify the problem should be avoided. Analyses should be conducted in advance of developing the action items unless extensive analysis is required as in the case of the detailed applicant flow analysis.

General statements such as "Efforts will be made to insure that all managers have adequate training in upward mobility programs" should also be avoided. The statement should specify what will be done to insure this outcome. For example, the action item might specify that "all division administrators shall attend at least one training session on upward mobility during the year."

5. Selection Goals for each of the underutilized job groups. These should be realistic percentage goals based on the availability of minorities and women in the qualified labor force. (see Section 4 - Selection.)
6. Action items for insuring that potential handicapped applicants are informed of agency jobs and adequately considered. (See Chapter III-EEO for the Handicapped.)
7. Action items for exploring avenues for expanding recruitment of minorities/females when experiencing recruitment difficulties of minorities/females in underutilized positions. (See Section 3 - Recruitment.)
8. Action items specifying the distribution of the EEO policy to employees and applicants and distribution of the affirmative action plan or relevant portions to managers responsible for its implementation.
9. Action items specifying procedures for at least a semi-annual review of the program to identify deficiencies in plan implementation and deficiencies in the plan itself. (See Chapter IV - Reviewing the Affirmative Action Plan.)

CHAPTER III
EQUAL EMPLOYMENT OPPORTUNITY
FOR THE HANDICAPPED

A. Definition of a Handicapped Person.

The Rehabilitation Act of 1973 defines a handicapped person as anyone who:

1. Has a physical or mental impairment which substantially limits one or more of the major life activities.*
2. Has a record of such impairment.**
3. Is regarded as having such an impairment.***

The State of Montana is committed to EEO for all individuals regardless of mental or physical impairment.

B. Employment Preference.

Beyond equal employment for all persons, disabled veterans and handicapped persons are afforded an employment preference (10-30-301, MCA). This requires employers to hire disabled veterans and handicapped persons with "substantially equal qualifications" over other applicants. It is the responsibility of the applicant to supply verification of such preference, while it is the responsibility of the employer to notify applicants when this information is required to be submitted.

C. Reasonable Accommodation.

Reasonable accommodation must be considered when handicapped applicants are being considered for employment. Employers should discuss accommodations with the applicant, EEO officer and Handicapped Employment Coordinator. In most instances, the employer will find disabled persons need no accommodations and minimal assistance in other cases. (See Appendix 2 for a discussion of reasonable accommodations.)

1. Form A (see Appendix 5 for a sample) is a good tool devised for use by hiring authorities when considering persons with disabilities for employment. This form is designed to

* Life activities - may be considered to include communication, ambulation, self care, socialization, education, vocational training, employment, transportation, adaption to housing, etc.

** Record of such an impairment - an individual who may be completely recovered from a previous physical or mental impairment. The attitudes of employers, supervisors and co-workers may result in an individual having difficulty securing, retaining or advancing in employment. Heart attack and cancer victims and mentally restored persons often fall in this category. Persons who have been misclassified as mentally retarded or mentally restored may also be included in this category.

*** Regarded as having such an impairment - those who are perceived as having a handicap, whether or not an impairment exists, but who may have problems securing, retaining or advancing in employment because of attitudes of employers or supervisors.

coordinate information regarding job accommodations between hiring authority, agency personnel officer, the handicapped employment coordinator, and the disabled applicant. The personnel officer should supply the hiring authority with a Form A for each disabled applicant.

2. Applicants are given the opportunity to identify a handicap may exist by completing the applicant survey (page 5 of State of Montana application form). This information is voluntary and refusal to provide this information does not result in any adverse action toward the applicant. However, it is not the agency's responsibility to search for the existence of a handicap.

D. Information obtained from handicapped individuals should be kept confidential, except that:

1. Supervisors may be notified concerning accommodations and work duties.
2. First aid and safety personnel should be informed if there is a chance emergency treatment may be required.
3. Government officials and affirmative action personnel shall be notified when investigating or assuring compliance with the agency affirmative action plan.

Because of limited numbers of handicapped persons applying for positions, an agency's affirmative action plan must address each person individually. When accommodations are being considered, remember to ask the applicant for ideas. That person may already have the needed items to make the position accessible. Other sources of information would be the agency EEO officer, Vocational Rehabilitation, Department of Social and Rehabilitation Services, the EEO/Handicapped Employment Coordinator, State Personnel Division of the Department of Administration and Job Accommodation Network (JAN). (See Appendix 2, E.)

E. Affirmative Action steps for the handicapped.

Affirmative action measures for the handicapped cannot be restricted to job groups with an underutilization of handicapped employees. There are no available handicapped labor force statistics permitting the identification of such job groups. Also, employers are under a legal obligation to reasonably accommodate the specific needs of handicapped applicants and employees for all jobs (as well as provide preference under some circumstances). Consequently, several agency-wide steps must be taken to insure that potential handicapped applicants are informed of employment opportunities and given adequate consideration consistent with state and federal laws as follows:

Affirmative Action Steps for the Handicapped

- Step 1 - Establish action items to assure adequate recruitment.
- Step 2 - Establish action items and monitoring procedures to assure adequate consideration of handicapped applicants.

Step 3 - Determine if handicapped employees are being promoted at same rate as similarly situated employees and establish corrective action items.

Step 4 - Determine if handicapped employees are being treated fairly on the job and establish corrective action items, if needed.

F. Writing affirmative action items for the Handicapped.

Affirmative Action items for the handicapped should be written in the same format as all other affirmative action items. Agencies should include a brief analysis of the problem or need, state the measurable action item with an indication of the person responsible for the action, and state the target date.

An analysis should be conducted by agencies for each area listed below. If the agency analysis indicates there is a problem, then appropriate handicapped action items must be written to deal with the identified problem. Following each area listed below are examples of problem analysis and action items relating to the identified problem.

1. Recruitment.

Agencies should review their recruitment practices prior to writing handicapped affirmative action items and make recommendations to more effectively get job notices to potential handicapped applicants. An analysis of handicapped recruiting procedures and action items to improve these recruiting procedures must be included in each agency's affirmative action plan. (see Appendix 1 - Handicapped Recruitment Source.)

Example:

Analysis has identified the need to attract more qualified handicapped applicants for agency vacancies. Review of the distribution procedures for vacancy announcements shows that announcements for job openings are not consistently being referred to groups having knowledge of available handicapped applicants.

Action Item:

Send all job announcements to Vocational Rehabilitation Section of SRS, Handicapped Employment Coordinator, and Handicapped Organizations listed in EEO/AA Guidelines.

Target Date:

Beginning July 1, 1986 (Specific Date)

Person Responsible:

Personnel Officer

Action Item:

Contact handicapped referral sources by phone or visit to develop effective handicapped referral system. Compile list of effective handicapped referral sources for agency use.

Target Date:

List compiled by October 1, 1986 (Specific Date)

Person Responsible:

Personnel Officer

Action Item:

Revise all entry level position descriptions used when writing vacancy announcements to insure the essential job duties are reflected.

Target Date:

December 31, 1986

Person Responsible:

Supervisors in cooperation with personnel officer.

2. Selection.

Agencies should review their selection practices and revise them to assure that all considerations required by state and federal statutes are made when assessing handicapped applicants. It is necessary that agencies establish affirmative measures to assure that all handicapped applicants are adequately considered and hired when possible.

Example:

Analysis identifies the agency currently has no standard procedures for assuring that handicapped applicants are adequately considered, provided accommodation, and given preference as required by statute. Also, there is no documentation of what considerations were made when assessing handicapped applicants.

Action Item:

Send Handicapped Applicant Selection Guide - Form A (PD-26) to hiring official for every handicapped applicant.

Target Date:

July 1, 1986 (Specific Date)

Person Responsible:

Personnel clerk and EEO officer in cooperation with hiring officials.

Action Item:

Interview all handicapped applicants who meet minimum qualifications and those who do not meet minimum qualifications because of handicapped related deficiency.

Target Date:

All future openings with handicapped applicant in pool.

Person Responsible:

Hiring official in cooperation with personnel/EEO officer.

Action Item:

Hiring official will consult with agency EEO officer, state Handicapped Employment Coordinator, or the Vocational Rehabilitation Section of SRS for suggestions on reasonable accommodations that would allow adequate performance before any rejections are made due to handicapped related deficiencies.

Target Date:

All future openings with a handicapped applicant in applicant pool.

Person Responsible:

Hiring official in cooperation with personnel/EEO officer.

Action Item:

Give employment preference to all handicapped applicants over any substantially equally qualified non-handicapped applicant.

Target Date:

All future openings with a handicapped applicant in applicant pool.

Person Responsible:

Hiring official in cooperation with personnel/EEO officer.

Action Item:

Explain the normal physical and mental requirements of the job to all handicapped applicants and inquire if and how the applicant would perform these requirements and what accommodations would be needed.

Target Date:

All future openings with handicapped applicant in applicant pool.

Person Responsible:

Hiring official in cooperation with personnel/EEO officer.

Action Item:

Make any reasonable accommodation which would allow for adequate job performance by a handicapped applicant or employee.

Target Date:

Next available opening where reasonable accommodations can be made.

Person Responsible:

Hiring official in cooperation with personnel/EEO officer.

3. Upward Mobility.

Agencies should review their upward mobility practices and make recommendations to assure that handicapped employees are being promoted at the same rate as similarly situated employees.

Example:

Analysis has determined that handicapped employees are not being promoted at a rate consistent with similarly situated employees. Agency review shows that handicapped employees are not being counseled regarding promotion possibilities and are not being advised of job restructuring possibilities.

Action Item:

Hold discussion with handicapped employee during performance appraisal counseling session regarding the following items:

- a. barriers to the handicapped employee's mobility because of handicap.
- b. advise handicapped employees that job restructuring possibilities are available for promotional positions if the handicapped employee can perform most of the essential job duties.
- c. advise handicapped employees of agency policy regarding reasonable accommodation and job restructuring.

Target Date:

Next performance appraisal counseling session.

Person Responsible:

Supervisor in cooperation with personnel/EEO officer.

Action Item:

Evaluate the knowledges, skills, and abilities of handicapped employees, and create Handicapped Employee Skills Bank.

Target Date:

January 1, 1986 (Specific Date)

Person Responsible:

Supervisor in cooperation with personnel/EEO officer.

Action Item:

Provide in-house and outside training for nearly qualified handicapped employees.

Target Date:

January 1, 1986 (Specific Date)

Person Responsible:

Supervisor in cooperation with personnel/EEO/Training Officer.

Action Item:

Restructure lower level position held by handicapped person to become a bridge position. Thus, when future vacancy occurs at a higher level classification handicapped person qualifies for the higher level position.

Target Date:

January 1, 1986 (Specific Date)

Person Responsible:

Supervisor in cooperation with personnel/EEO officer.

4. On-the-Job Treatment.

Agencies should review their personnel related practices to assure that on-the-job treatment of handicapped employees is consistent with on-the-job treatment of other agency employees. Disparities in treatment could occur in any of the following personnel related areas: promotions, merit step increases, grade increases, collective bargaining agreements, disciplinary actions, demotions, transfers, selection for training, career planning, reduction-in-force, performance appraisals, and separations/terminations. Each personnel related area listed above should be reviewed and action items written when a problem area is identified. Since there are a number of personnel related areas to review, only one area will be used for example purposes.

Example:

Analysis has identified that handicapped employees separate at a rate greater than non-handicapped employees. Review of agency records shows that the agency does not have documentation of separation reasons.

Action Item:

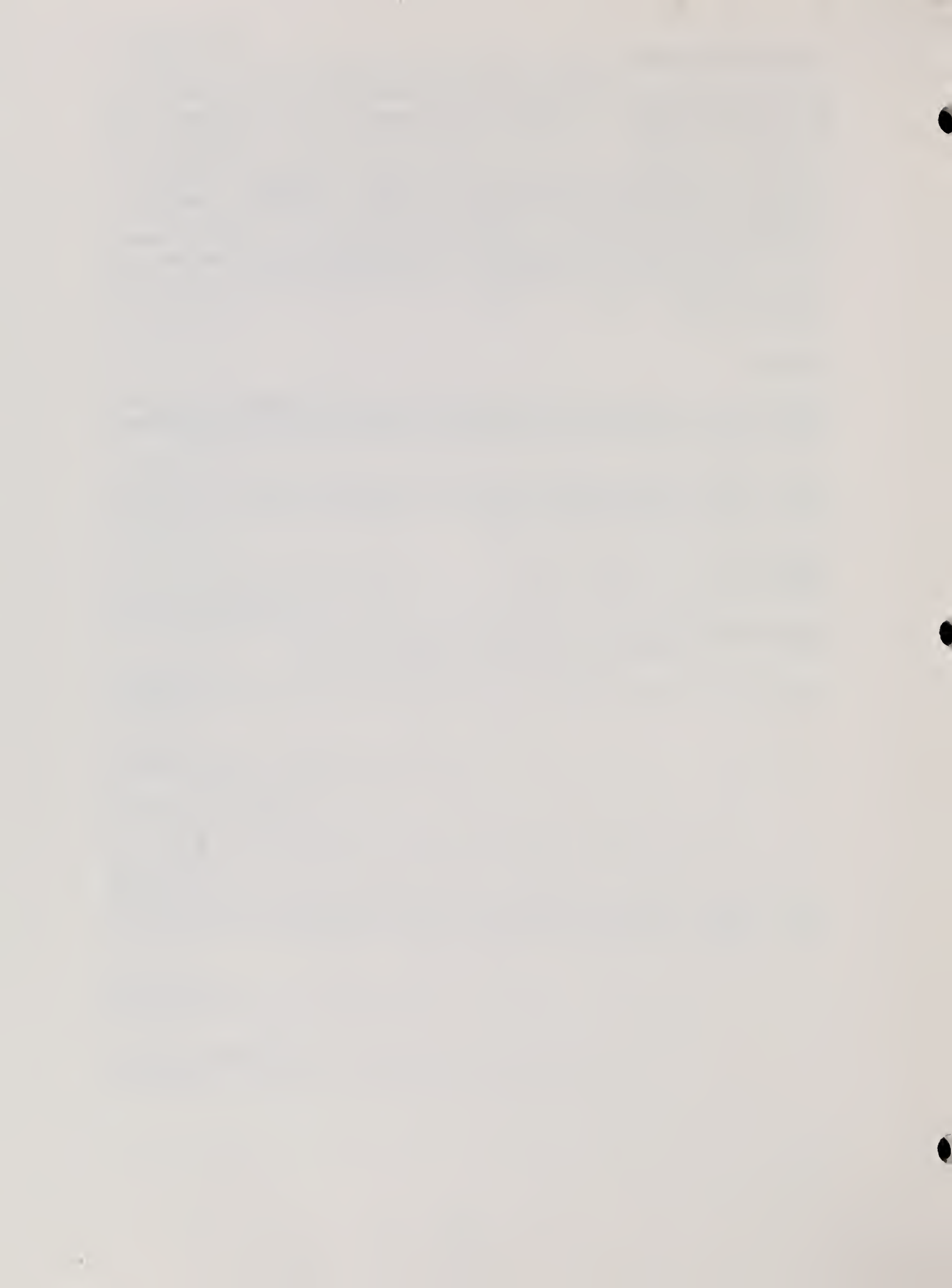
Adopt an exit interviewing process to determine reasons for high handicapped employee turnover rate.

Target Date:

January 1, 1986 (Specific Date)

Person Responsible:

Supervisor in cooperation with personnel/EEO officer.



CHAPTER IV
REVIEWING THE AFFIRMATIVE ACTION PLAN

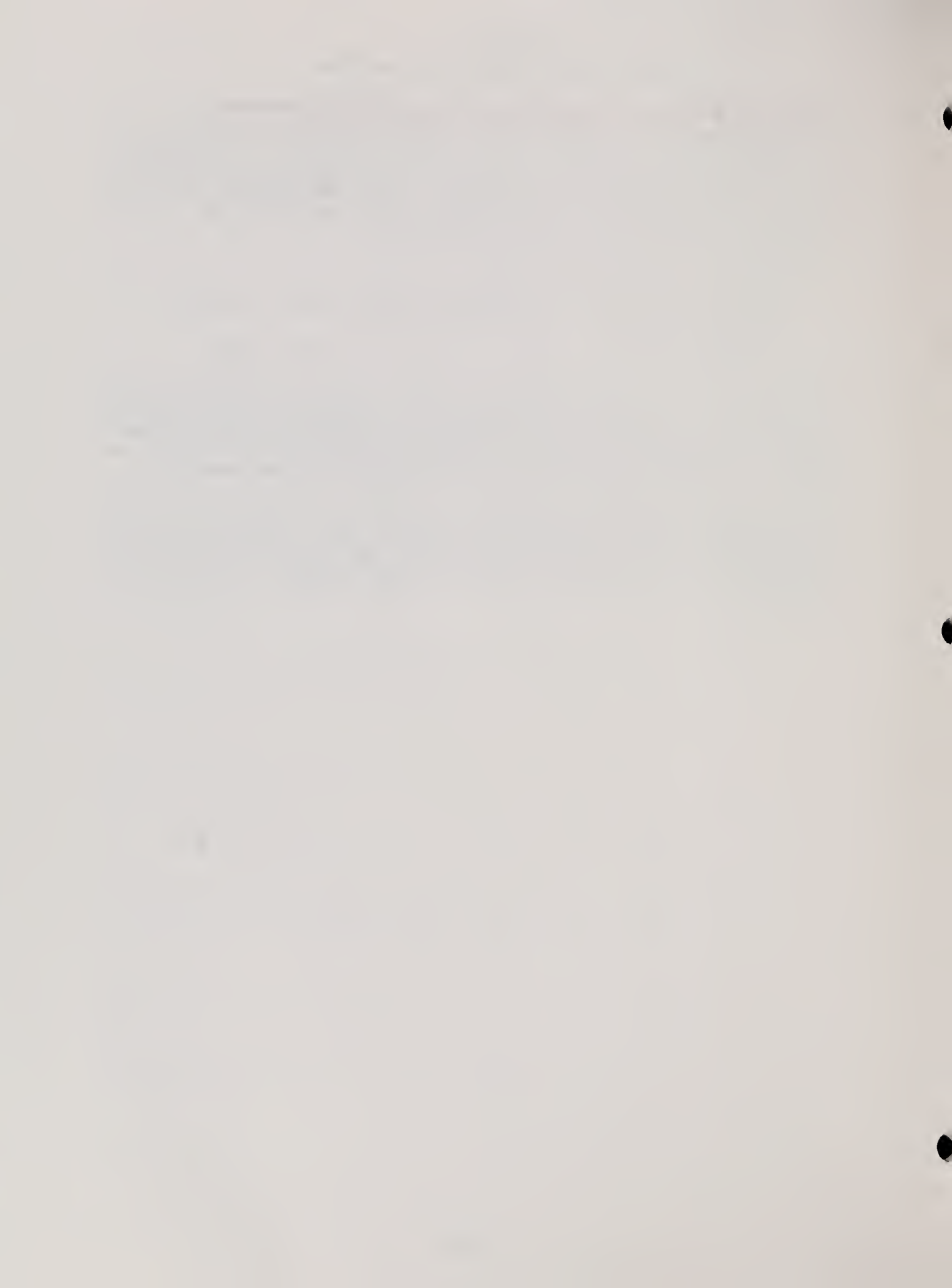
- A. Agency affirmative action plans must be reviewed periodically.
Once the affirmative action plan has been developed and approved by the EEO section, State Personnel Division, the Plan must be periodically reviewed. Ideally, the EEO Program should be monitored on an on-going basis. The program must be reviewed at least semi-annually with line managers to determine problem areas in the implementation of the program or deficiencies in the program itself.

The objective of this review is to:

1. Insure action items are being implemented.
2. Provide management with information on the success of prior action items.
3. Provide information on which to base future action items.

The EEO Section, State Personnel Division, will provide agencies with an employee inventory semi-annually and applicant flow analysis quarterly or upon request to aid agencies in determining problem areas. This will provide information on race/sex/handicap by EEO categories and will help agencies to determine deficiencies and improvements.

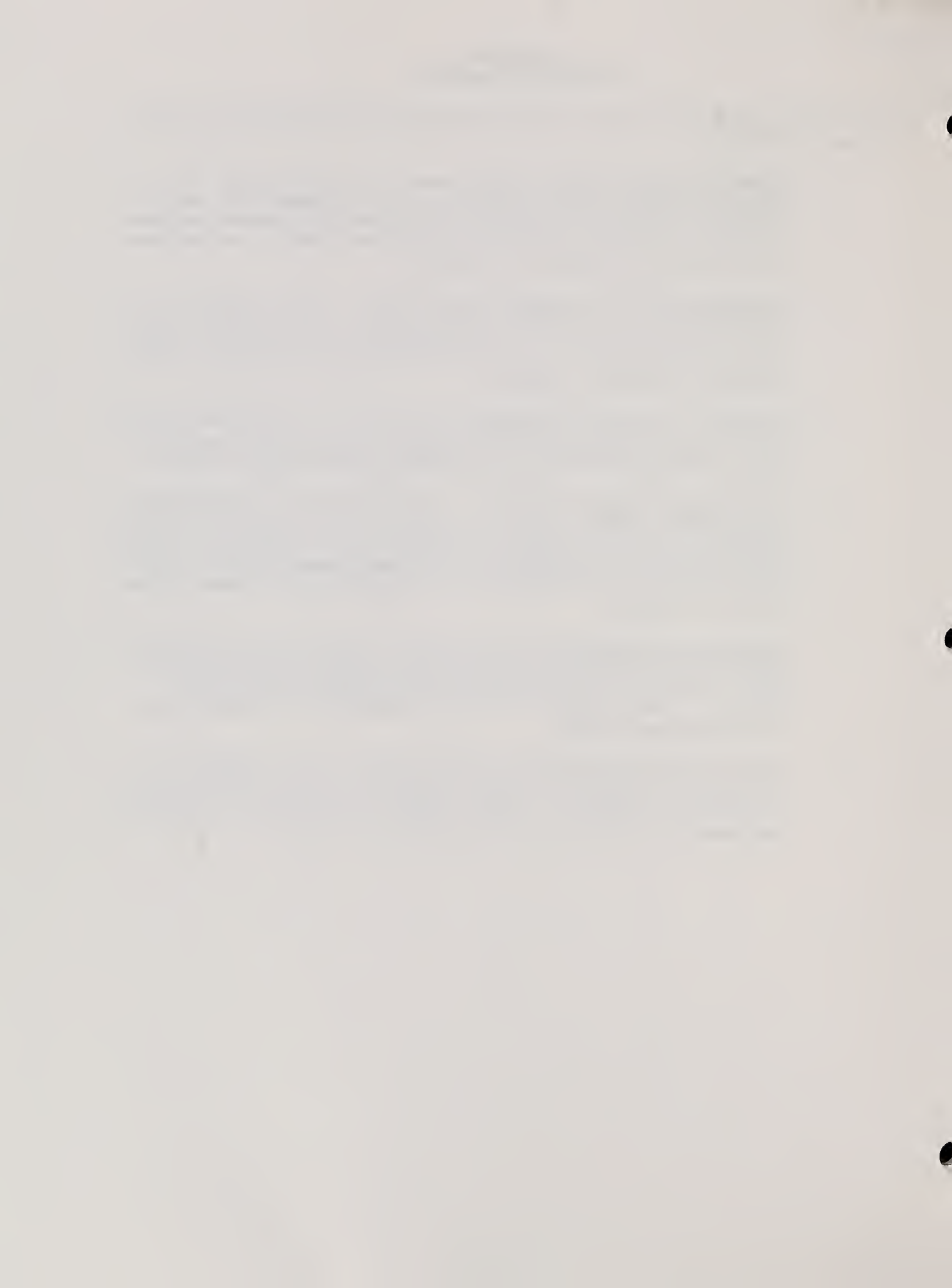
Annually, agencies shall update their bi-annual affirmative action plan to include continued deficiencies, action items to correct them and development of new goals and timetables. The updated plan shall be submitted to the EEO Section, State Personnel Division, for review and approval.



CHAPTER V
REPORTS AND ANALYSES

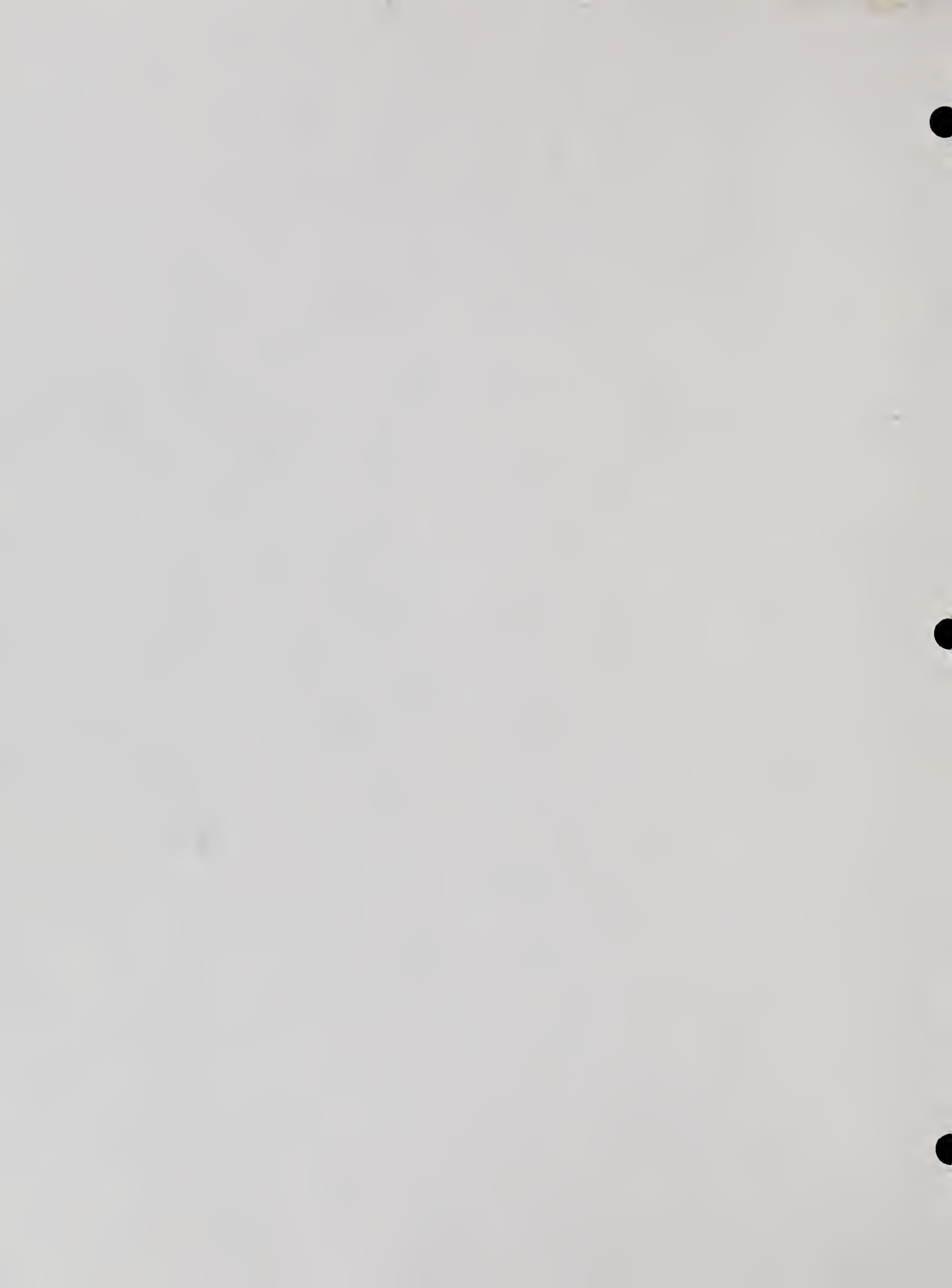
The following lists the reports and analyses which are provided by the State Personnel Division.

1. Agency Workforce Analysis (semi-annually): This analysis is a detailed report on the numbers and percentages of minority employees by racial group, female employees, handicapped employees and age-40-and-over employees in each classification, occupational group and EEO-4 category in the agency.
2. Recruitment Method Analysis (annually): This analysis is a detailed report on the Recruitment Method used when vacancies occur (local, statewide) and is conducted by classification. Where no data is available due to lack of turnover, the agency will be expected to provide estimates.
3. Availability Analysis Worksheet (annually): This worksheet is used to record appropriate labor force data to each job title. Current census data is used for assigning availability figures.
4. Utilization Analysis (annually): This analysis is a comparison of the agency's actual number of minorities and females with the number the agency could be expected to have based on their availability for employment, if no employment barriers exist. This analysis will help agencies pin point job groups where action items are required.
5. Applicant Flow Analysis (semi-annually): This report provides the agency with an analysis of hires vs. applicants using the 4/5ths rule to identify areas of apparent discrimination in hiring practices. This report will be run by position, classification and occupational group.
6. Recruitment Source Analysis (semi-annually): This analysis is to identify the recruitment sources used in the past which attracted the greatest number of females, minorities, and the handicapped applicants. This data comes from Applicant Survey.



APPENDICES

1. Recruitment/Referral Sources
2. Guide for Implementing Reasonable Accommodation
3. Legal Foundations
4. Glossary of Terms
5. Sample "Handicapped/Disability Selection Guide - Form A"



APPENDIX 1

LOCAL JOB SERVICE OFFICES

All offices offer placement services with specialists in veteran outreach, handicapped services, older worker, youth services, statewide and nationwide position advertising.

Anaconda Job Service
307 East Park 1018
Anaconda, Montana 59711

Great Falls Job Service*
7th Street S.
Great Falls, Montana 59405

Billings East Job Service*
624 N. 24th Street
Billings, Montana 59101

Hamilton Job Service
333 Main Street
P. O. Box 73
Hamilton, Montana 59840

Billings West Job Service
1425 Broadwater Avenue, Suite E
Billings, Montana 59102

Havre Job Service
416 First Street
Havre, Montana 59501

Bozeman Job Service*
121 N. Wilson
Bozeman, Montana 59715

Helena Job Service
715 Front Street
Helena, Montana 59601

Butte Job Service*
206 W. Granite
P. O. Box 309
Butte, Montana 59701

Kalispell Job Service*
427 First Avenue E
Kalispell, Montana 59901

Cut Bank Job Service
513 East Main Street
Cut Bank, Montana 59427

Lewistown Job Service
324 W. Broadway
Lewistown, Montana 59457

Dillon Job Service
126 S. Montana Street
Dillon, Montana 59725

Libby Job Service
314 California Avenue
Libby, Montana 59923

Glasgow Job Service
238 Second Avenue S.
Glasgow, Montana 59230

Livingston Job Service
228 South Main
P. O. Box 1199
Livingston, Montana 59047

Glendive Job Service
211 S. Kendrick
Glendive, Montana 59330

Miles City Job Service
12 North 10th Street
P. O. Box 1786
Miles City, Montana 59301

* Staffed by special disabled veteran outreach program recruiter.

Local Job Service Offices (continued)

Miles City Job Service
Branch Office
P. O. Box 455
Colstrip, Montana 59323

Missoula Job Service*
539 S. Third Street W.
P. O. Box 5027
Missoula, Montana 59806

Polson Job Service
417 Main Street
P. O. Box 970
Polson, Montana 59860

Shelby Job Service
402 First Street S.
Shelby, Montana 59474

Sidney Job Service
120 South Central
Sidney, Montana 59270

Thompson Falls Job Service
608 Main Street
P. O. Box 669
Thompson Falls, Montana 59873

Wolf Point Job Service
200 Highway 2 East
Wolf Point, Montana 59201

EMPLOYMENT SECURITY DIVISION SPECIAL FUNCTIONS

Native American Talent Bank
Mr. George Henkel, Coordinator

Handicap Program Specialist
Mr. Bob Miller

Disabled Veteran Outreach Program
Or Veteran Employment Representative
Barron Brown

Teacher Placement Officer

Nationwide/Statewide Recruitment
Mr. A. Jack Egge

All Functions: Employment Security Division
P. O. Box 1728
Helena, Montana 59601

* Staffed by special disabled veteran outreach program recruiter.

JOB SERVICE PROGRAM OFFICES

Butte Job Service Program Office
(WIN/JTPA)*
105 South Idaho Street
Butte, Montana 59701

Browning WIN Center
Box 837
Browning, Montana 59417

Glasgow WIN Center
Glasgow AFB
Box 4696
Glasgow, Montana 59231

Helena Job Service Program Office
(WIN/JTPA)
529 North Warren
Helena, Montana 59601

Job Service & Training Division
Joanne Sullivan
P. O. Box 1721
Helena, Montana 59624

Kalispell Program Office
(WIN/JTPA)
P. O. Box 1395
Kalispell, Montana 59901

Billings Job Service Program Office
(WIN/JTPA)
1425 Broadwater Avenue, Suite E
Billings, Montana 59102

Great Falls Job Service Program Office
(WIN/JTPA)
1018 7th Street S.
Great Falls, Montana 59405

Missoula Job Service Program Office
(WIN/JTPA)
600 Kensington
P. O. Box 4986
Missoula, Montana 59801

* W.I.N. - Work Incentive Program - job training programs for recipients of aid to dependent children grants.

* JTPA - (Job Training Partnership Act) - job training (on-the-job and/or classroom) targeted to women, minorities, handicapped, economically disadvantaged persons.

VOCATIONAL-TECHNICAL CENTERS

Billings Vo-Tech Center
Glenn Burgess, Director
3803 Central Avenue
Billings, Montana 59102

Butte Vo-Tech Center
H. J. Freebourn, Director
404 South Wyoming
Butte, Montana 59701

Great Falls Vo-Tech Center
Loren Frazier, Director
James Peretti, Placement Officer
2100 16th Avenue South
Great Falls, Montana 59405

Helena Vo-Tech Center
Dr. Alex Capdeville, Director
1115 Roberts Street
Helena, Montana 59601

Missoula, Vo-Tech Center
T. E. Downey, Director
909 South Avenue West
Missoula, Montana 59801

COLLEGES AND JUNIOR COLLEGES

Mrs. Toby Helmbrecht
Placement Supervisor
Cowan Hall
Room 210
Northern Montana College
Havre, Montana 59501

Director of Placement
Mr. Mike Gallagher
Teacher Placement
Rocky Mountain College
1511 Poly Drive
Billings, Montana 59102

Jean C. Dimich, Coordinator
Career Planning & Placement
Rocky Mountain College
1511 Poly Drive
Billings, Montana 59102

Mr. C. Thomas Messick, Director
Career Placement & Planning Office
Montana State University
Bozeman, Montana 59715

Dr. Larry Hannah
Placement and Career Planning
Eastern Montana College
Billings, Montana 59101

Dr. Don Hjelmseth, Director
Career Planning & Placement Services
University of Montana
The Lodge, Room 148
Missoula, Montana 59801

Ralph Kroon, Director
Placement Services
Western Montana College
Dillon, Montana 59725

V. J. Beneventi, Director
Placement, Testing, & Counseling
Carroll College
Helena, Montana 59601

Women's Resource Center
Lydia Vizcaya, Coordinator
University Center
University of Montana
Missoula, Montana 59801

Flathead Valley Community College
P. O. Box 1174
Kalispell, Montana 59901

Admissions Office
Dawson Community College
Box 421
Glendive, Montana 59330

Northern Montana College
c/o Placement Bureau
Havre, Montana 59501

College of Great Falls
1301 20th Street
Great Falls, Montana 59405

Dr. Slower, President
Miles City Community College
2715 Dickenson
Miles City, Montana 59301

Placement Director
Gustav Stolz, Jr.
Montana College of Mineral
Sciences and Technology
Butte, Montana 59701

INDIAN COMMUNITY COLLEGES

Fort Peck Community College
Robert Dumont, Jr.
Poplar, Montana 59255

Ms. Carol Juneau, President
Blackfeet Indian Community College
Browning, Montana 59417

Little Bighorn College
Avis Three Irons
P. O. Box 370
Crow Agency, Montana 59022

Mr. Joe McDonald, President
Salish-Kootenai Community College
Round Butte Road
Pablo, Montana 59855

Dull Knife Memorial College
Don Bishop
Dean of Students
Lame Deer, Montana 59042

COLLEGE-AFFILIATED GROUPS

Women's Resource Center
Lydia Vizcaya, Coordinator
University Center
University of Montana
Missoula, Montana 59801

Native American Studies
Henrietta Whiteman, Director
730 Fddy Avenue
University of Montana
Missoula, Montana 59801

Black Student Union
1010 Arthur
University of Montana
Missoula, Montana 59801

Adult Student Services and
Focus on Women
Scottie Giebink, Director
Montana State University
Bozeman, Montana 59715

Robert Peregoy
Center for Native American Studies
Montana State University
Wilson Hall 2-152
Bozeman, Montana 59715

Indian Counselor
Pamela Phillips
Northern Montana College
Havre, Montana 59501

Phyllis Waldenbing
Indian Studies Program
Rocky Mountain College
Billings, Montana 59102

Carroll College
Indian Studies Program
Helena, Montana 59601

Bob Wright
College of Great Falls
Great Falls, Montana 59405

Eastern Montana College
Ms. Lavonne French
Director of Indian Career Services
Billings, Montana 59102

Ms. Sue Hart
Director, Women's Studies and
Services
Eastern Montana College
Billings, Montana 59102

E.M.C. Hispanic Club
c/o Dean of Students
Eastern Montana College
Billings, Montana 59102

George Shryock
Special Services Counselor
Flathead Valley Community College
Kalispell, Montana 59901

Women's Resource Center
15 Hamilton Hall
Montana State University
Bozeman, Montana 59717

Bob Frazier, Coordinator
Disabled Student Services
Student Union Building
Montana State University
Bozeman, Montana 59717

Dr. Don Hjelmseth
Career Services
Room 148, Lodge
University of Montana
Missoula, Montana 59812

Mary Ann Powers
Handicapped Student Union
Room 148, The Lodge
University of Montana
Missoula, Montana 59812

URBAN INDIAN ALLIANCES

Carolyn Crisler
Anaconda Indian Alliance
209 East Park
Anaconda, Montana 59711

Madeline Colliflower, Director
Billings American Indian Council
Billings Indian Center
3516 Montana
Billings, Montana 59101

Naomi Langton
North American Indian Alliance
41 E. Wodman
Butte, Montana 59701

Ron Belcourt
Hi-Line Indian Alliance
Post Office Building
3rd Street and 3rd Avenue
Havre, Montana 59501

Bob Sinclair
Helena Indian Alliance
436 North Jackson
Helena, Montana 59601

James Parker Shield
Native American Center, Inc.
Box 2612
700 10th Street South
Great Falls, Montana 59401

Ed Lamere, Director
Great Falls Indian Alliance
Great Falls Indian Education Ctr.
125 Commercial
Great Falls, Montana 59401

Robert Van Gunten
Qua Qui Corporation
401 West Railroad
Missoula, Montana 59801

Ernie Bighorn, Director
Indian Development and
Educational Alliance
Box 726
Miles City, Montana 59301

North American Indian League
Jay Hackley, Director
P. O. Box 7
Deer Lodge, Montana 59722

Montana United Indian Assoc.
George Henkel, Jr., Director
P. O. Box 5988
Helena, Montana 59601

Susan Tatsey
Native American Society
508 Toole Avenue
Missoula, Montana 59802

INDIAN RESERVATIONS

Rocky Boy Reservation
Business Committee of Chippewa-Cree Tribe
Rocky Boy Route
Box Elder, Montana 59521

Flathead Reservation
Confederated Salish and Kootenai Tribe
Tribal Business Office
P. O. Box 278
Pablo, Montana 59855

Blackfeet Reservation
Blackfeet Tribal Business Council
P. O. Box 850
Browning, Montana 59417

Crow Reservation
Crow Tribe of Montana
P. O. Box 170
Crow Agency, Montana 59022

Fort Belknap
Fort Belknap Community Council
Fort Belknap Agency
P. O. Box 249
Harlem, Montana 59526

Northern Cheyenne
Employment and Training Program
P. O. Box 153
Lame Deer, Montana 59043

Fort Peck Reservation
Assiniboine and Sioux Tribes of the
Fort Peck Indian Reservation
P. O. Box 1027
Poplar, Montana 59255

Chippewa Cree Tribe
Rocky Boy Route #544
Box Elder, Montana 59521

HANDICAPPED RECRUITMENT SOURCES

Mr. Robert Sexton
Vocational Counseling Section
U.S. Veterans Administration
Fort Harrison, Montana 59636

Mr. William Camp
Disabled American Veterans
Fort Harrison, Montana 59636

Mr. Tony Cummings
American Legion
Pioneer Memorial Building
Helena, Montana 59601

Mr. Art Tyler
Veterans of Foreign Wars
Fort Harrison, Montana 59636

Mr. Gary Lewis
Chief Veteran Service Officer
Fort Harrison, Montana 59636

*

Rehabilitative Services Division
SRS Building, 111 Sanders
Helena, Montana 59601

Mr. Gordon Jackson
Eastern Montana Industries
Box 636
Miles City, Montana 59301

Dain Christianson
Milk River, Inc.
501 1st Avenue North
Glasgow, Montana 59230

Richland Opportunities
Girard Route, Box 5172
Sidney, Montana 59270

Sidney Sheltered Workshop
P. O. Box 645
Sidney, Montana 59270

Glen-Wood, Inc.
202 1st Avenue East
Plentywood, Montana 59254

Connie Green
Big Sandy Activities
Box 7
Big Sandy, Montana 59520

Jalene Kennerly
Blackfoot D.D. Program
Box 247
Browning, Montana 59417

Jim McGarry
P. T. Activities, Inc.
P. O. Box 1413
Conrad, Montana 59426

Art Anderson
Cut Bank D.D. Corporation
Box 681
Cut Bank, Montana 59427

Ted Horras
Easter Seal Adult Training Center
4400 Central Avenue
Great Falls, Montana 59405

Pat Lockwood
Blaine County Activities
P. O. Box 457
Harlem, Montana 59526

Gary Nimick
Havre Day Activity Center
P. O. Box 1847
Havre, Montana 59501

Gail Neal
Billings Sheltered Workshop
200 South 24th Street
Billings, Montana 59101

* Will mail job announcements out to handicapped organizations.

Handicapped Recruitment Sources (continued)

Charles Super
Regional Services for the Disabled
P. O. Box 31253
Billings, Montana 59103

Edna Noenning
Special Skills Training Area
Billings Workshop, Inc.
200 South 24th Street
Billings, Montana 59101

Bill Crivello
Flathead Industries
305 3rd Avenue East
Kalispell, Montana 59901

James Tackes
Lincoln County Sheltered Workshop
101 Mineral Avenue
Libby, Montana 59923

Laura Cork
MDDCHC
500 East Alder
Missoula, Montana 59801

Kathy Flynn
Opportunity Workshop
1005 Marshall
Missoula, Montana 59801

George Weber
Special Citizens Center
330 Main Street, S.W.
Ronan, Montana 59864

Mary Ann Powers
Handicapped Student Union
148 Lodge
University of Montana
Missoula, Montana 59812

Zana Smith
Montana Independent Living Project
1215 8th Avenue
Helena, Montana 59601

Barbara Hardy
Career Development Association
4400 Central Avenue
Great Falls, Montana 59401

Herb Keating
REACH, Inc.
434 E. Bryant Street, Unit D
Bozeman, Montana 59715

Bob Kissell
Butte Sheltered Workshop
207 S. Montana
Butte, Montana 59701

Gary Leonardson
Chance, Inc.
514 South Pacific
Dillon, Montana 59725

Bill Murray
Helena Industries
1325 Helena Avenue
Helena, Montana 59601

Robert W. Visscher
Counterpoint, Inc.
Box 968
Livingston, Montana 59047

Mr. John Filz
Ravalli Services Corp.
Box 287
Hamilton, Montana 59840

Brian Lang
AWARE, Inc.
P. O. Box 78
Anaconda, Montana 59711

Cindi Fonda-Dabney
Eagle Mount
P. O. Box 3118
Bozeman, Montana 59772

Joyce Kalmes
SUMMIT--Independent Living Center
3115 Clark Street
Missoula, Montana 59801

Janet Van Dyke
Vocational Services
Missoula Community Rehabilitation Ctr.
Suite 2A, Professional Village
Missoula, Montana 59801

Handicapped Recruitment Sources (continued)

Bob Frazier, Coordinator
Disabled Student Services
Student Union Building
Montana State University
Bozeman, Montana 59717

Montana Association for the Deaf
Edward G. Van Teghem, President
5309 7th Avenue South
Great Falls, Montana 59405

Joe Vasek, President
Coalition for Disabled
142 Prickett
Billings, Montana 59102

Montana Association for
Retarded Citizens
Ed Wilkinson, President
Drawer 519
Boulder, Montana 59632

Butte Epileptic Association
Denise Kagie, President
2034 Locust
Butte, Montana 59701

Arthritis Foundation
(Midland Chapter)
Dorothy Hye, Secretary
100 24th St. W.
Billings, Montana 59101

Montana Diabetes Association
Stanlee Dull, Field Representative
128 13th Avenue South
Great Falls, Montana 59405

Montana Heart Association
510 First Avenue North, #4
Great Falls, Montana 59401

Montana School for Deaf and Blind
3911 Central Avenue
Great Falls, Montana 59401

Cerebral Palsy Association
H. P. Brown
2733 Fern Drive
Great Falls, Montana 59404

Arthur V. Dreiling
Little Bitterroot Special Services
Co.
Box 189
Plains, Montana 59859

Brian Holtslag
Career Exploration & Development
305 3rd Avenue, East
Kalispell, Montana 59901

Pattie Berg
Rural Employment Opportunities, Inc.
25 S. Ewing, Room 500A
P. O. Box 831
Helena, Montana 59624-0831

Barbara Stephen
Vocational Resources, Inc.
Power Block Building, Suite 4-0
6th & Last Chance Gulch
Helena, Montana 59601

Judy Johnson
The Computer School
44 South Park
Helena, Montana 59601

OTHER RECRUITMENT SOURCES

HELENA AREA

Helena Women's Center
146 East 6th Avenue
Helena, Montana 59601

Helena Friendship Center
1503 Gallatin
Helena, Montana 59601

Montana Senior Citizens Association
P. O. Box 423
Helena, Montana 59624

Human Resources Development Institute
AFL-CIO
Box 1176
Helena, Montana 59601

North American Indian League
Montana State Prison
c/o P. O. Box 1176
Helena, Montana 59601

Rural Employment Opportunities, Inc.
25 S. Ewing, Room 500A
P. O. Box 831
Helena, Montana 59824-0831

Vocational Resources, Inc.
Power Block Building, Suite 4-0
6th & Last Chance Gulch
Helena, Montana 59601

The Computer School
44 South Park
Helena, Montana 59601

Check your telephone directory
for local offices of:

- Montana Migrant Council
- Human Resource Development
 Councils
- Sheltered Workshops
- Women's Centers
- Senior Citizen Organizations

OTHER RECRUITMENT SOURCES
STATEWIDE

Women in Transition YWCA
1130 West Broadway
Missoula, Montana 59801

Career Training Institute
17½ South Last Chance Gulch
Helena, Montana 59601

Job Placement Officer
Montana State Prison
Box 7
Deer Lodge, Montana 59722

Montana School for Deaf and Blind
3911 Central Avenue
Great Falls, Montana 59401

Montana Migrant Council
17 N. 31st St.
Billings, Montana 59103

Trapper Creek Job Corps
Darby Montana
(Specializes in Vietnamese and
Laotian education)

Kicking Horse Job Corps Center
Ronan, Montana
(All Indian enrollees)

Anaconda Civilian
Conservation Corps
Anaconda, Montana 59711

Women in Transition YWCA
Room 206, Montana Building
503 1st Avenue North
Great Falls, Montana 59401

YWCA Women's Center
909 Wyoming Avenue
Billings, Montana 59102

Vocational Resources, Inc.
Liberty Center, Exec. Suite 305
#9 Third Street North
Great Falls, Montana 59401

Other Recruitment Sources Statewide (continued)

Vocational Resources, Inc.
1024 South Avenue W, Suite 1B
Missoula, Montana 59801

Women in Transition
P. O. Box 1375
Bozeman, MT 59715

Vocational Resources, Inc.
1643 Lewis, Suite 5
Billings, Montana 59102

Anaconda Civilian Conservation Ctr.
1407 Foster Creek Road
Anaconda, MT 59711

APPENDIX 2

GUIDE FOR IMPLEMENTING REASONABLE ACCOMMODATION

A. REASONABLE ACCOMMODATION - - WHAT IS IT?

Reasonable accommodation is just what the words suggest -- a logical adjustment made to a job and/or the work environment that enables a qualified disabled person to perform the essential duties of that position.

Although the concept of "reasonable accommodation" for employment of the disabled is a recent area of concern, accommodations in general are nothing new in an employment situation.

Every time an employer purchases new equipment or functional office furniture, allows flexible working hours, establishes coffee breaks, or does anything that creates a more efficient or productive work place, an accommodation has been provided.

The need for reasonable accommodation can only be determined on a case-by-case basis, taking into consideration the applicant or employee, his/her specific disability and existing limitations, the essential functions of the particular job, the work environment, and the ability to justify the proposed accommodation. In all cases, the applicant or employee should be consulted before an accommodation is provided because what may have been successful for one disabled individual may not be appropriate for another. Also, in many cases, the person may have made adjustments to his/her disability so that an accommodation is not necessary or desired.

The value and nature of a particular accommodation may be clarified by considering the following questions:

- Is the accommodation necessary for satisfactory performance of the essential functions of the position?
- What effect will the accommodation have on the agency's operations and on the employee's performance?
- To what extent does the accommodation compensate for the disabled person's limitations?
- Will the accommodation give the disabled person the opportunity to function or compete on a more equal basis with co-workers?
- Are there other alternatives that would accomplish the same purpose?

B. HOW TO DETERMINE WHAT ACCOMMODATIONS ARE NEEDED?

Studies have shown that 95% of disabled workers do not require any physical accommodations and the modifications for the remaining five percent are minor. By following three steps, the employer should be able to determine what accommodations are needed. The steps are:

- 1) Establishing the essential qualifications for the job;
- 2) Determining whether a particular candidate is suitable for the job; and
- 3) Identifying what specific accommodations, if any, are required for the person selected.

To establish the job qualifications, the job must first be clearly defined by analyzing it into component tasks. Determine the physical demands these tasks place on the worker and the working conditions in which the job is performed.

Once the requirements for a job have been identified it is possible to determine the qualifications a person must have in order to do the job, i.e., what knowledge, skills and physical capacities are needed to perform the tasks, meet the physical requirements and withstand the working conditions to an acceptable degree.

Job qualifications should be truly job related. For instance a position description should not specify that the employee must lift 100 pounds if the heaviest weight to be lifted on the job is 50 pounds. In general employers tend to overestimate physical demands.

When a handicapped person is considered for a job it is essential to make a fair and accurate assessment of his or her qualifications. The focus should be on the persons capabilities rather than on limitations. Limitations should be considered only to the extent that they prevent the person from performing the essential duties of the job and from tolerating the working conditions that prevail.

Once an objective assessment has been made, the person's capabilities are compared to the job qualifications. It is important to concentrate on the extent to which the person is able to meet the job's physical requirements, not on the condition that has resulted in the impairment.

Once a handicapped person has been hired or promoted to a new position, it is necessary, if accommodations are called for, to determine what specific measures must be implemented. The best source of guidance is the handicapped person.

C. HOW REASONABLE ACCOMMODATION CAN BE PROVIDED.

The types of actions that can be taken in connection with the provision of reasonable accommodation are as varied as the needs of the individuals involved, the type of position in question and the ingenuity of the employing agency. Reasonable accommodations may include but should not be limited to the following:

1) Access.

Accessibility to the employer is a basic form of accommodation. This category encompasses the physical layout and design of the worksite.

Employers should first be certain that handicapped persons can apply for a job. Is there a reserved handicapped parking space?

Is there a level or ramped entrance? Is the personnel office accessible? Are the accessible entrances clearly marked so that an applicant will know where to enter?

Employers do not have to make the entire workplace accessible--only those areas used by disabled employees. Handicapped workers should have access to the building where they work, access to the specific work area inside the building, the restrooms and the cafeteria. Access should also be provided to other areas that are used to perform the specific job (conference rooms, laboratories, etc.).

Questions concerning facility access should be directed to the State Handicapped Coordinator or Rehabilitative Services Division of S.R.S.

2. Modifying Work Sites.

In many cases, changes in the work environment may enable disabled persons to perform their job duties more effectively. Alterations can be as simple as:

- Rearranging files or shelves for accessibility to wheelchair occupants.
- Placing braille labels or tactile cues on shelves so that blind employees can identify contents.
- Widening access areas between fixtures to allow room for wheelchairs.
- Installing touch-tone telephones for those who cannot dial.
- Providing a speaker phone or an extension arm or gooseneck to hold a phone receiver.
- Installing telecommunication devices or telephone amplifiers for hearing impaired persons.

Disabled employees requiring reasonable job accommodations are usually the best resource available when evaluating possible job site modifications. These employees may have firsthand knowledge of specialized equipment, adaptive devices, or adjustments to the work site which may assist them in their job performance.

3. Restructuring Jobs

Job restructuring is one of the principal means by which qualified disabled workers can be accommodated. Whether it is called job modification, adaptation, redesign, restructuring, tailoring or engineering, the idea is to identify those functions that make a job incompatible with a worker's disability and, if possible, to eliminate those functions so that the capabilities of the person may be used to their best advantage. Job restruc-

turing does not eliminate the essential functions of the job. Rather, any changes made are those which enable the disabled person to perform these essential functions. This sometimes involves changing job content by isolating and eliminating nonessential functions through reassignment. Often, however, job modification is a matter of altering the method of task accomplishment.

The supervisor should obtain information from the disabled person and then initiate a careful job analysis to determine the exact demands of the position to be restructured. The supervisors and persons who currently perform the job or who have performed the job in the past should be included in the analysis process to accurately identify the essential and nonessential functions of the position.

Example: A mobility impaired clerical employee is assigned to a receptionist-typist position. A secondary function of this position is to duplicate office documents. The duplicating function could be assigned to another clerk in the unit because the disabled employee has limited ability to lift books and heavy items. In exchange, the receptionist-typist could be assigned additional typing.

4. Providing Assistive Devices.

Through advanced technology, numerous assistive devices are valuable to disabled individuals. While such devices alone cannot assure successful job performance, they often enable disabled persons to perform tasks they would not otherwise be able to do and may increase the independence, quantity, quality or efficiency of their work.

Before purchasing any special equipment, the disabled employee should be consulted as to what is needed and/or desired. In many cases, the disabled person will have adapted to his/her disability in such a manner that special equipment is not necessary.

As a general rule, agencies are authorized to purchase equipment if it is determined that the use of the equipment is necessary in transacting the official business of the agency. This purchased equipment should be job related and not of a personal nature (i.e., eyeglasses, hearing aids, etc.). In determining whether the purchase of a device should be authorized, consideration should be given to how well the employee can perform the job without the equipment and whether the primary benefit would be better job performance by the employee.

5. Readers and Interpreters.

- a) Many employers have found that the best way of providing reading assistance to blind employees is to have other employees provide this service as needed. In most cases, this amounts to a relatively small fraction of an employee's workday. Generally, a reader will be assigned to provide reading assistance to a specific employee. For this reason, the blind employee should be involved in the selection process.

- b) Although some situations require a high degree of interpreting skills which most employees would not be expected to possess, much day-to-day communication can be accomplished by employees who have learned basis sign language. Employers would, however, have to make provisions for a qualified interpreter for conferences, training courses and meetings where a high degree of interpreting skill is needed. Qualified interpreters can be secured by contacting the State Handicapped Employment Coordinator or the Montana School for the Deaf and Blind in Great Falls. The fees charged vary according to the function and the length of time needed.

6. Work Schedule Modifications.

State agencies have authority through the State Alternate Work Schedules Policy (3-0220) to adopt a policy to implement a system of alternate work schedules in their agency. Agency policies should be consistent with the State Alternate Work Schedules Policy, other applicable state policies/rules, and labor agreements.

Example: An employee experienced a stroke which resulted in a significant speech impairment. Once the employee was medically released to return to work, there was still a need for speech improvement which was determined to be job related. The local community college provided a speech improvement course specifically designed for individuals recovering from strokes. The course was available at minimal expense and offered only during working hours. The employee was granted leave to attend the class three days per week for one semester.

7. Retraining and Reassignment.

Agencies should make efforts to continue to use state employees who become temporarily or permanently partially disabled because of an on-the-job or off-the-job injury or illness.

Employees who are unable to perform the essential functions of their current position because of a disabling condition should not be encouraged to separate from State service until alternatives for retention have been explored.

Two alternatives an agency should consider before separating an employee from state service are:

a) Retraining.

Agencies should give serious consideration to retraining disabled employees for positions for which they have the basic qualifications and capabilities. Although an initial expense is involved in retraining, the result will justify the expenditure if the employee and the position are matched carefully beforehand.

b) Reassignment.

The employee's work experience and education may indicate that he or she can perform satisfactorily in another position. Reassignment need not necessarily be limited to positions for the same level. The possibility that the employee would be willing to accept reassignment to a lower level position with less strenuous physical or mental demands is not to be overlooked.

D. CRITERIA FOR EVALUATING UNDUE HARDSHIP.

State and Federal laws and regulations require agencies to make reasonable accommodation to the known physical and/or mental limitations of an otherwise qualified disabled applicant or employee unless the agency can clearly demonstrate that the accommodation would impose an undue hardship on the operation of its program. These determinations must be made on an individual case-by-case basis. There are several criteria to be considered in determining undue hardship. These factors include:

1. The overall size of the agency with respect to the number of employees, number and type of facilities, and size of budget.

Comment: Generally, State agencies are of such size and diversity that they can accommodate qualified disabled employees. However, in some locations, some agencies may have limited staff and resources to carry out their functions. In these cases, it may be an undue hardship to accommodate some qualified disabled individuals. However, this will not remove the obligation for these agencies to interview and select other qualified disabled individuals who can perform the essential functions of the available jobs.

The number and type of facilities should have little effect on the employment of most disabled persons.

2. The type of operation including the composition and structure of the agency's work force.

Comment: Most, if not all operations of agencies within State government require a diverse work force composed of a wide range of job classifications. In addition, most operations are conducted in several different geographical locations. These factors permit most agencies sufficient flexibility to provide employment for qualified disabled individuals.

If an agency claims undue hardship based on the composition and structure of its work force, it must clearly document that available alternatives have been explored to accommodate qualified disabled applicants or employees.

3. The nature and cost of the accommodation needed.

Comment: In every case of undue hardship, cost is the final factor to be considered. Prior to purchasing any equipment or adaptive devices, all alternatives should be explored to deter-

mine if the reasonable accommodation proposed is the most efficient and cost effective for both the employee and the agency.

E. JOB ACCOMMODATION NETWORK (JAN)

The President's Committee on Employment of the Handicapped has implemented a data base containing specific information on how individual tasks may be performed by persons with disabilities. JAN enables employers to obtain and share this information on accommodations, free of charge.

JAN's toll free number is 1-800-JAN-PCEH. A Human Factors Engineer will be on line to clarify concerns and needs for the accommodation. The computer will then be asked to give information on the facts, the functional requirements of the specific jobs, the functional limitations of the worker, environmental factors and other pertinent business operations information. This information will be relayed over the phone and also may be sent to the employer, if needed. The name, address and phone number of the company representative who can be reached for further information will also be provided. All JAN asks for this service is a commitment to include the employer in their data base to provide help to future callers.

F. SUMMARY

We hope this guide has provided you with useful information on the methods for providing reasonable accommodation. We encourage and solicit suggestions and comments which will improve the content and procedures included in this guide.

Please contact the Handicapped Employment Coordinator in the State Personnel Division for further assistance or information.

APPENDIX 3

LEGAL FOUNDATIONS

The history of Equal Employment Opportunity law in the United States is a long one. It includes Constitutional provisions, statutes, executive orders, and rules and regulations which prohibit employment discrimination on the basis of race, religion, sex, national origin, age, physical or mental handicap. Additionally, there have been implementing guidelines promulgated and significant interpretative judicial decisions rendered.

The following is a selected list of relevant citations with brief summaries:

FEDERAL

CONSTITUTION

Article XIII

Prohibition of slavery and involuntary servitude. Source of Congressional legislative authority for civil rights statutes.

Article XIV

Prohibition against state deprivation of life, liberty or property without due process of law or state denial of equal protection of the laws. Source of Congressional legislative authority as well as basis for leading judicial cases in the area of civil rights.

STATUTES AND EXECUTIVE ORDER

United States Codes

42 (USC) Section 1981 (Derived from Civil Rights Act of 1866 and 1870)

"All persons shall have equal rights to make contracts, sue, enjoy full and equal benefit of all laws as those enjoyed by white citizens, and shall be subject to like punishment, penalties, taxes and licenses and to no other." Allegations of discrimination based on physically identifiable characteristics are required for an action under 1981.

42 (USC) Section 1983 (Derived from Civil Rights Act of 1871)

Creates the right to sue (for damages), any person who acts under color of state law, ordinance, regulation or custom to deprive one of any rights, privileges or immunities secured by the Constitution and laws.

42 (USC) Section 1985 (3) (Derived from Civil Rights Act of 1871)

Creates the right to sue for damages where two or more persons conspire to prevent an officer from performing his duties, obstruct justice or intimidate a party, witness or juror, or deprive persons of rights and privileges under the law.

Title VI of the Civil Rights Act of 1964

Prohibits discrimination on the basis of race, color or national origin in federally assisted programs, i.e., programs receiving grants, loans or contracts, with exception of contracts of insurance or guaranty.

Title VII of the Civil Rights Act of 1964, found at 42 (USC) Section 2000(e) as amended.

Title VII prohibits employment discrimination on the basis of race, color, religion, sex, or national origin in the following areas: hiring, discharge, compensation, terms, conditions or privileges of employment or classification of employees or applicants for employment.

The prohibitions referenced above may not apply where religion, sex or national origin is a "bona-fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise" (BFOQ). Judicial findings of a BFOQ are exceedingly rare: a need for male actors or female actresses is one of the few.

Employers (including state agencies), labor organizations and employment agencies are covered by Title VII. A successful plaintiff can recover back pay, costs and attorneys' fees. Punitive damages are not available.

Equal Pay Act of 1963, found at 29 (USC) Section 206

Amendment to the Fair Labor Standards Act of 1938 which prohibits the payment of lower wages on the basis of sex where jobs requiring equal skill, effort and responsibility are performed by employees of both sexes. Exceptions to this requirement of "equal pay for equal work" are where unequal payments are made pursuant to a seniority system, a merit system, a system where earnings are based on quantity or quality of production, or a differential based on factors other than sex. An employer may not lower wages in order to comply with this act. A successful Equal Pay Act plaintiff can obtain: an order raising wages; back pay differential for up to two years, (three years for willful violations) costs, and attorneys' fees.

Title IX of the Education Amendments of 1972

Prohibits discrimination in educational institutions against students or others on the basis of sex.

Executive Order 11246, as amended

Executive Order 11246 prohibits discrimination on the basis of race, color, religion, sex or national origins by federal contractors. Further, affirmative action with regard to employment, recruitment, compensation, and selection for training is required. The penalty for violations of the Executive Order is cancellation, termination or suspension of the contract, as well as future ineligibility for further federal contracts. These provisions apply to subcontractors as well.

Age Discrimination in Employment Act, found at 29 (USC) Section 621, et seq.

This statute prohibits discrimination in employment on the basis of a person's age which is over 40, but less than 70. (Please note that the Montana Human Rights Act prohibits discrimination against any age group.) Age may constitute a BFOQ for certain jobs. There also are exceptions made for compliance with terms of a bona fide seniority system or employee benefit plan where there is no subterfuge to evade the purposes of the statute.

State agencies are employers within the meaning of the Act. Claims may be made for hire, reinstatement, back pay, benefits, liquidated damages, attorneys' fees and court costs.

Rehabilitation Act of 1973, found at 29 (USC) Sections 793 and 794 (known as sections 503 and 504).

Section 503 prohibits discrimination on the basis of handicap by federal contractors and further requires affirmative action. Section 504 prohibits discrimination on the basis of handicap in the areas of employment program accessibility and education (preschool through secondary) by recipients of federal funds. The U.S. Department of Health and Human Services has promulgated regulations for 504 effective since June, 1977.

The definition of a handicapped person is fairly broad, encompassing both physical and mental impairment which substantially limits one or more major life activities (such as walking, seeing, working, caring for oneself), as well as those who are regarded by others as having such an impairment or those who have had a history of physical or mental impairment.

State agencies which are recipients of federal funds must be concerned with employment practices and program accessibility, the latter includes physical barriers. The former requires employers to make "reasonable accommodation" for a person's handicap unless it would cause "undue hardship." There is little case law in this area; therefore the meaning of these terms has not been fully determined.

STATE

CONSTITUTION

Declaration of Rights, Article II, Section 4.

Individual Dignity. "The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws. Neither the state nor any person, firm, corporation, or institution shall discriminate against any person in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas."

STATUTES

Montana Human Rights Act, Title 49 MCA.

This act applies to all Montana employers (including the state), and prohibits discrimination against a person in employment or in a term, condition or privilege of employment because of his race, creed, religion, marital status, color, or national origin or because of age, physical or mental handicap, or sex when the reasonable demands of the position do not require an age, physical or mental handicap or sex distinction. Further, the state may not discriminate in any services, goods, facilities, advantages or privileges.

Chapter 3, Governmental Code of Fair Practices

Prohibits discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap and national origin by the State and local governments in employment, provision of state services, job placement services, licensing, educational programs, counseling and vocational guidance programs, and distribution of State funds. Nondiscrimination provisions are required in governmental contracts. State or local government permission of public accommodation discrimination is prohibited.

Executive Order No. 24-81

Provides for the Department of Administration to:

"Implement and maintain an Equal Employment Opportunity Program for all state government employees. Specifically, the Department shall provide such regulations, standards, and other guidelines as may be necessary to implement and maintain an effective equal employment opportunity program throughout the state government. The program objectives shall be to eliminate discrimination in personnel salaries and procedures, job structuring and classification, hiring, firing, promoting and training."

Administrative Rules of Montana (ARM 2.21.8106 to 2.21.8109)

This rule (also known as Policy 3-0605, Montana Operation Manual, Volume III) provides for specific areas of EEO/AA responsibility of the Department of Administration as well as describing the minimum requirements with which each state agency must comply to develop, implement and monitor its equal employment opportunity and affirmative action programs.

APPENDIX 4

GLOSSARY OF TERMS

Action Item - A statement in an affirmative action plan specifying precisely what action will be taken to solve an identified problem or meet an identified need, the individual responsible and the time in which the action will be taken.

Affected Class - A group of people with a common characteristic such as race or sex who currently suffer employment discrimination or suffer the continuing effects of past discrimination. The term generally refers to women and minority group members, as well as to the handicapped.

Affirmative Action Job Order - An order sent to Job Service by an agency to seek qualified minority/female applicants for a vacant position identified as underutilized by race and/or sex in the agency's affirmative action plan. Requesting an affirmative action job order does not mean Job Service refers only minority/female applicants.

Criteria for an agency to use an affirmative action job order includes:

1. Government contractor (50 or more employees or contract(s) of \$50,000 or more).
2. Rehabilitation Act (government contractors with contract(s) of \$2,500 or more).
3. Vietnam-Era Veterans Readjustment Assistance Act (government contractors with contract(s) of \$10,000 or more).
4. A court order resulting from a decision finding discrimination.
5. A conciliation agreement as authorized by Title VII of the Civil Rights Act.
6. Provisions of federal, state or local fair employment practices law.
7. An Affirmative Action Plan adopted pursuant to Equal Employment Opportunity Commission's (EEOC) guidelines.

Affirmative Action Plan - A result-oriented management plan with specific goals, timetables and assigned responsibilities for correcting deficiencies in the employment of minorities and women and for assuring that potential handicapped applicants are informed of job opportunities and are adequately considered.

Agency - For purposes of these guidelines the term agency(ies) refers to the executive branch of state government. These include: the Office of the Governor; Office of the Secretary of State; State Auditor's Office; Superintendent of Public Instruction's Office; Department of Justice; Department of Public Service Regulation; Montana State Library; Montana Historical Society; Department of Fish, Wildlife and Parks; Department of Health and Environmental Sciences; Department of Highways; Department of State Lands; Department of Livestock; Department of Natural Resources and

Conservation; the Department of Revenue; Department of Administration; Department of Agriculture; Department of Institutions; Department of Commerce; Department of Labor and Industry; Department of Military Affairs; and Department of Social and Rehabilitation Service.

Agency Head - The highest ranking elected or appointed official having the final authority to act for the agency on any matter relating to the operation of the agency.

American Indian/Alaskan Native Racial/Ethnic Group - A person having origins in any of the original people of North America, who maintains cultural identification through tribal affiliation or community recognition.

Applicant Flow Analysis - An analysis of whether or not minority and female applicants are applying for jobs in representative numbers, whether those who apply are selected in representative numbers, and if not, what part of the selection process is responsible.

Asian/Pacific Islander Racial/Ethnic Group - A person having origins in any of the original people of the far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands. This area includes, for example, China, India, Japan, Korea, the Philippines and Samoa.

Availability - The minority/female/handicapped percentage of all persons with the required education, training, and experience needed by an agency for a particular job or job group who are in a specified area of recruitment.

Black Racial/Ethnic Group - A person having origins on one of the black racial groups of Africa.

Bona Fide Occupational Qualification - A job requirement which, although normally unlawfully discriminatory, is lawful because it can be shown to be essential to the safe and efficient performance of the job. This would include essential requirements for a particular sex, physical or mental condition, age range, national origin or religion. Requirements for a particular sex can rarely be shown to be essential; racial requirements are never essential.

Bridge Position - A training position created between lower-level positions which were previously dead-end positions and higher level positions to allow for upward mobility.

Classification - Positions which have been grouped together based on similarity in kind or subject matter of work, level of difficulty and responsibility, and work requirements (e.g., similar knowledge, skill, and ability requirements). The positions in a classification are sufficiently similar in duties and requirements so that the same title may be used to describe all positions, and the positions can be treated alike for recruitment, selection, compensation and other personnel purposes. (Example: Clerk I; Personnel Specialist II.)

Disparate Impact - Results of a neutral, equally-applied employment practice which are more unfavorable for applicants or employees of one race or sex than for others. A practice (such as requiring a high school diploma) which has a disparate impact (disqualifies disproportionate

numbers of minority/female applicants) is unlawfully discriminatory unless it can be shown to serve an essential business purpose (i.e., produce better performing employees).

EEO-4 Category - One of eight (8) occupational categories reported on the Federally-required annual EEO-4 report. These eight categories are: officials and administrators; professionals; technicians; protective service workers; paraprofessionals; office and clerical; skilled craft workers; service-maintenance. Each category is reported by race, sex, and salary range.

Handicap - For purposes of these guidelines, a handicap is a physical or mental condition which limits a major activity such as walking, caring for oneself, seeing, hearing, speaking, learning or breathing which limits ability to find and hold employment.

Hispanic - A person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race.

Job, Job Group - Generic terms used to apply to individual positions, classifications, occupational groups, EEO-4 categories and to the group of all jobs in the agency.

Job Qualifications -

- A. Minimum Job Qualifications - Specified pass/fail hiring criteria which distinguish applicants who can likely perform the duties of the position acceptably from those who can likely not perform the duties of the position acceptably.
- B. Optimal Job Qualifications - Hiring criteria above minimum criteria which distinguish applicants who can likely perform at an optimal level from those who can likely not perform at that level.

Minority - A segment of the population which differs from others in racial or national origin characteristics and which suffers from discrimination. This generally and in these guidelines includes: blacks, Hispanics, Asians/Pacific Islanders and American Indians/Alaskan Natives.

Occupational Group - A grouping of classifications based on similarity of work. Whereas a classification is identified with a particular level or grade, an occupational group involves an entire area of work, without regard to level. (Examples: accountants; chemical engineers.)

Race/Sex Conscious Selection Procedures - Procedures which take race and sex into consideration along with qualifications in determining what applicants will advance through the selection process and be finally selected. These procedures may be used lawfully when they are established as temporary measures to correct demonstrable underutilization, provided they do not present an absolute bar to the employment or advancement of persons of other races or the other sex.

Reasonable Accommodation - An employer obligation to modify facilities to insure accessibility of handicapped persons or provide special equipment, modify existing equipment, or restructure a job to permit an otherwise qualified handicapped applicant or employee to hold employment, except

where the accommodation needed would be too costly or substantially reduce the safe and efficient operation of the agency.

Underutilization - Employment situations in which there are significantly fewer persons of a particular group (i.e., women or minorities) serving at a particular level or holding a particular kind of position than might be expected when compared to their availability.

Uniform Selection Guidelines - Guidelines adopted in 1978 by the Equal Employment Opportunity Commission, Civil Service Commission, U.S. Department of Labor, and the U.S. Department of Justice for implementing uniform employee selection procedures which insure that unlawful discrimination in employment practices does not occur.

White Racial/Ethnic Group - A person having origins in any of the original peoples of Europe, North Africa, or the Middle East.

Handicapped/Disability Selection Guide - Form A

(This form is to be completed by the hiring authority for all disabled and handicapped applicants.)

Classification Title: _____ Agency: _____
 Location: _____ Position No. _____
 Name of Applicant: _____
 Type of Handicap: _____

I. PRELIMINARY ASSESSMENT:

A. Has the applicant successfully completed the following requirements as specified on the vacancy announcement? If no, specify deficiency:

	Yes	No	NA	If no, specify deficiency:	Is deficiency handicap/disability related?	
					Yes	No
1. Education/Experience						
2. Written Examination						
3. Structured Interview						
4. Past Work Performance						
5. Other						
B. Was applicant interviewed?						
C. Is selection of applicant anticipated?						

II. ACCOMMODATION OF HANDICAP/DISABILITY-RELATED DEFICIENCIES: For all handicap/disability-related deficiencies listed above, indicate all possible accommodations which might help applicant overcome the deficiencies. Include all those suggested by the applicant or agency EEO Officer. Indicate if the accommodations can reasonably be made.

D. Accommodations	E. Was accommodation suggested by applicant?		F. Can accommodation reasonably be made? If no, indicate reason		
	Yes	No	Yes	No	Reason:

Complete only for preference-certified persons.

U.S. Citizen. _____ Date Montana Residency Established. _____ Applicant has been certified by: SRS _____ VA _____

III. HANDICAPPED PREFERENCE: Preference requires U.S. Citizenship, continuous residence in the state for at least one year prior to application for employment and certification by the Department of SRS or the V.A. Disabled veterans must have 30% or more disability and have served on active duty. Application of preference requires the vacancy be an initial hire, that the person timely claim the preference and provide the required documentation. Preference then must be granted to eligible persons when they are substantially equally qualified as any other applicants. Handicapped persons or disabled veterans must be hired over any other applicants with substantially equal qualifications.

G. Is the disabled applicant as substantially equally qualified as other applicants? Yes _____ No _____

H. If no, state job-related reasons (be as specific as possible):

IV. SELECTION RESULTS:

I. Was the applicant offered the position? Yes _____ No _____

J. Was the applicant hired? Yes _____ No _____ Starting date: _____

K. Accommodations provided, if any? _____

L. Completed by _____ Date: _____
 Title: _____

INSTRUCTIONS

Applicants certified for handicapped/disability preference.

The hiring authority must complete the entire form.

Handicapped applicants not certified for preference.

Sections I, II and IV must be completed by the hiring authority.

This form is designed to assist hiring authorities in making the considerations required by state and federal statute when assessing handicapped or disabled applicants. Once completed, it serves as documentation that the required considerations were made. It should be completed for all handicapped or disabled applicants and forwarded to the agency EEO/Personnel Officer for retention in accordance with ARM 2.21.3726 (Documentation in the Recruitment and Selection Policy).

SECTION I. PRELIMINARY ASSESSMENT

- A. Indicate if the applicant possesses the requirements as indicated on the vacancy announcement, (e.g., required experience, education, passing scores on exams, weight lifting capabilities, etc.) that have been determined to be essential for successful job performance. If not, specify the deficiency in terms of the requirements the applicant lacks. Indicate whether the deficiency is handicap-related (does the handicap contribute to the deficiency?).
- B. Indicate if you have interviewed the applicant. If not, specify the the desired qualifications, (qualities, characteristics, knowledges, skills, abilities, etc.) which the applicant lacks and which are responsible for the preliminary decision not to interview. Indicate whether the deficiency is handicap or disability-related.
- C. Indicate if you plan to offer the applicant the position. If not, specify the desired qualifications, (qualities, characteristics, knowledges, skills, abilities, etc.) which the person you anticipate selecting possesses, but the handicapped or disabled applicant lacks. Indicate whether the deficiency is handicap-related.

SECTION II. ACCOMMODATION OF HANDICAP/DISABILITY-RELATED DEFICIENCIES

Complete this section only if you identified a handicap or disability-related deficiency in Section I. Explain the duties of the position to the applicant and inquire if any accommodations are required

- D. List all possible accommodations which could be expected to at least assist the applicant to overcome any deficiency indicated in Section I. Include all those suggested by the applicant, as well as those identified by you or the agency EEO Officer.
- E. Identify the accommodations suggested by the applicant.
- F. Determine and indicate if each listed accommodation could reasonably be made and if not, briefly state the reason. Reasonable accommodations are defined as those which could be made without undue cost or disruption. As a general rule, employers are expected to make the work site accessible, modify equipment where needed, and do some minor job restructuring to eliminate one or two minor job duties that the handicapped applicant could not perform.

Example: Someone with a minor back condition applies for a clerk position and one of the job requirements includes some manual labor such as loading or unloading 5- to 10-lb. boxes approximately 10% of the time. If through job restructuring an employer could rearrange job duties and eliminate the manual labor requirement from that particular job with limited cost or hardship to the employer, this would constitute a reasonable accommodation. The employer would be obligated by law to make reasonable accommodation if it would enable the otherwise qualified handicapped or disabled applicant to perform the remaining essential job duties.

SECTION III. HANDICAPPED PREFERENCE

- G. Indicate if the applicant is as substantially equally qualified as other applicants by checking yes or no.
- H. If no was marked in Item G, list specific, job-related reasons for not hiring the handicapped or disabled applicant.

SECTION IV. SELECTION RESULTS

- I. Indicate if the applicant was offered the position.
- J. Indicate if the applicant was hired; and, if so, the starting date.
- K. List any accommodations provided.
- L. Indicate the date and name and title of person completing the Form A.

Complete this section after the position has been filled and return promptly to the agency Personnel Officer. If you have any questions regarding the completion of Form A, please call your agency Personnel Officer or the Handicapped Employment Coordinator (444-3886).

