



**SUMMARY:**

**Ohio DBE Waiver Request for Heavy Highway Construction and Engineering**

- On April 15, 2016, ODOT Director Jerry Wray submitted a waiver request to Ms. Laura Leffler, Ohio Division Administrator for the Federal Highway Administration.
- Director Wray requests a waiver to implement a race-conscious goal pursuant to Code of Federal Regulations, Title 49, Section 26.15, so that the State of Ohio may create stronger parity and expanded opportunities for small and disadvantaged business enterprises within the heavy highway construction and engineering industries.
- In his letter, Director Wray summarizes the findings of the 2015-16 Ohio Public Authorities Disparity Study and proposes three options for resolving identified disparities. Unlike other current waiver requests, none of the options excludes specific groups from participation in DBE goals, and each option has the potential to reduce recidivism within the DBE community:

**Option 1**

Ohio requests permission to reduce credit towards DBE contract goals for non-underutilized DBE (non-UDBE) firms that is proportionate to the group's over-utilization. Ohio would continue counting underutilized DBE (UDBE) firms at a 1:1 ratio. For example, if a firm is utilized at a rate of 200% based upon availability, then the firm's DBE credit would only count at 50%.

**Option 2**

Ohio requests permission to reduce credit towards DBE goals for non-UDBE firms at a rate that is proportionate to group's over-utilization and apply additional credit toward DBE goals for UDBE firms proportionate to the group's under-utilization. For example, if a firm is utilized at a rate of 50% based upon availability, then the firm's DBE credit would count at 200%, whereas a firm utilized at a rate of 200% based upon availability would count for only 50% DBE credit.

**Option 3**

Ohio requests permission to set racially subdivided goals based on geographic availability. For example, if the availability of African-American firms within the Northeast Ohio region is 30%, ODOT would require 30% of the overall DBE goal to be fulfilled by African-American firms for projects sold in that region.

- Director Wray notes that while certain groups may not feel impacts from an overall statistical disparity, the study revealed substantial quantitative evidence of disparities for minority and woman-owned businesses overall due to the existence of race and gender-based discrimination in the marketplace.
- Director Wray also cautions that should the waiver exclude firms that are shown to be affected by marketplace discrimination, while perhaps being over-utilized to meet DBE goals (i.e. not experiencing a substantial statistical disparity in ODOT contracting), the inevitable result will be an underutilization or statistical disparity of these firms.