TITLE VI:
NONDISCRIMINATION IN THE
FEDERAL-AID PROGRAM

FHWA & TxDOT Title VI Training
Subrecipients & Local Governments

Austin, Texas
August 29, 2019

Mohamed Sulaiman Dumbuya
Resource Center Civil Rights Specialist
Federal Highway Administration
mohamed.dumbuya@dot.gov
Learning Outcomes

• Define Title VI & other nondiscrimination authorities;
• Recognize roles and responsibilities;
• Describe the systematic, multidisciplinary approach;
• Identify Public Involvement rationale;
• Review how to process Title VI Complaints;
• Discuss why Title VI is Important to YOU.
TITLE VI BACKGROUND

- Context
- Purpose & Intent
VIDEO PRESENTATION

Civil Rights Act of 1964
Foundation
Nondiscrimination

(foundations for nondiscrimination)

(click image to play)
WHAT IS TITLE VI ABOUT?

• Preventing *illegal* discrimination
• Assuring *nondiscrimination* in Federally assisted programs and activities.

PUBLIC FUNDS FOR PUBLIC BENEFIT!
WHAT IS THE TITLE VI PURPOSE?

- To ensure public funds are not spent in a manner that encourages, subsidizes, perpetuates, or results in discrimination
WHAT IS THE TITLE VI INTENT?

• To eliminate barriers and conditions that prevent the Title VI Program protected groups and persons from receiving access; participation and benefits from Federally-assisted programs, services and activities.
TITLE VI AUTHORITIES

• Legislative Authorities
THE 1964 CIVIL RIGHTS ACT - Titles

- Title I - Voting Rights
- Title II - Public Accommodation
- Title III - Desegregation of Public Facilities
- Title IV - Desegregation of Public Education
- Title V - Commission on Civil Rights
- **Title VI - Nondiscrimination in Federally Assisted Programs & Activities**
- Title VII - Equal Employment Opportunity
- Title VIII - Registration and Voting Statistics
- Title IX - Intervention & Procedure after Removal in Civil Rights Cases
- Title X - Establishment of Community Relations Service
- Title XI - Miscellaneous
Nondiscrimination & the Federal Aid Program

- Nondiscrimination denotes absence of disparate treatment or impact in Federally-assisted programs and activities.

- Nondiscrimination in the Federal-aid program is governed by:
  - Title VI of the Civil Rights Act of 1964
  - The 1987 Restoration Act and
  - Other Nondiscrimination Authorities
TITLE VI OF THE CRA OF 1964

Essence of the law:

“No person in the United States shall on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance” (42 USC 2000d)
Clarifying Key Elements of Title VI Law – *Class Activity*

1. Who is covered under Title VI?
2. What does “in the United States” mean?
3. What are the prohibitive Title VI bases?
4. Who is a Recipient?
5. What areas of the Recipient’s activities are not part of Title VI coverage?
6. What is Federal Financial Assistance?
THE CIVIL RIGHTS RESTORATION ACT OF 1987

- Direct response to the 1984 Supreme Court decision in the Grove City College vs. Bell case (465 U.S. 555)

- Restored the original intent of Title VI to include all programs and activities of Federal-aid recipients and contractors whether federally funded or not

- Federal agency nondiscrimination requirements limited to just those areas of the recipient’s operation that directly benefited from Federal assistance
WHAT IS FHWA’s NONDISCRIMINATION PROGRAM?

- Current FHWA Title VI Program focus is on the provisions of Title VI of the Civil Rights Act of 1964 - **Race, Color, National Origin**.

- Other Nondiscrimination & **Cross-cutting Authorities** include:
  - The 1970 Uniform Act (42 USC 4601) - **Persons**
  - Section 504 of the 1973 Rehabilitation Act (29 USC 790) – **Disability**
  - The 1973 Federal-aid Highway Act (23 USC 324) - **Sex**
  - The 1975 Age Discrimination Act (42 USC 6101) - **Age**
  - **Executive Order 12898** on Environmental Justice (EJ)
  - **Executive Order 13166** on Limited English Proficiency (LEP)
The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 USC 4601)

- Prohibits unfair and inequitable treatment of persons displaced or whose property will be acquired as a result of Federal and Federal-aid programs & projects
Section 504 of the Rehabilitation Act of 1973
(29 U.S.C. 790)

• “No QUALIFIED HANDICAPPED PERSON shall, solely by reason of his [her] handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity that receives or benefits from Federal financial assistance.”
The 1973 Federal Aid Highway Act (23 U.S.C. 324)

• “No person shall on the grounds of SEX be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal assistance under this title or carried on under this title.”
The 1975 Age Discrimination Act (42 U.S.C. 6101)

• “No person shall on the basis of AGE, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”
Title VI does not prohibit discrimination on the basis of religion; however, discrimination of members of religious groups violates Title VI when discrimination is based on group’s actual or perceived shared ancestry or ethnic attributes rather than its members’ religious practice;

Also, Title VI also prohibits discrimination against an individual based on actual or perceived citizenship or residency in a country whose residents share a dominant religion or distinct religious identity.

…DOJ 9/8/10 Letter to DOE Assistant Secretary for Civil Rights, Russlynn Ali regarding Title VI & coverage of Religiously Identified Groups
Title VI & Title VII

- Title VI is concerned with participation, benefits, services, and discrimination arising from implementation of any program or activity involving Federal dollars;
- Title VII deals exclusively with [fair] employment & employment-related issues.
Title VI & Employment

• Employment becomes a Title VI issue when:
  • The **primary purpose** of federal assistance is to provide employment or
  • **Discrimination in employment** leads to discrimination in services or benefits.
Impact of Title VI

• Touchstone for several nondiscrimination authorities;

• Has far-reaching applicability and coverage
  • not limited to any particular program(s);
  • not restricted to a specific issue(s);

• Title VI issues may emerge at any stage of a project with potentially far-reaching consequences.
EXECUTIVE ORDERS

• Executive Authorities
EXECUTIVE ORDER (EO) 12898

- Presidential mandate to address equity and fairness toward low income and minority persons/population;
- Nondiscrimination authority rooted in Title VI;
- Signed by President Clinton on February 11, 1994
E.O. 12898 DIRECTS...

- “Each Federal agency [including recipients (see FHWA Order 6640.23(2)(h))] shall make achieving EJ part of its mission by identifying, and addressing, as appropriate, disproportionately high and adverse human health and environmental effects of its programs, policies, and activities on minority populations and low income populations in the United States, D.C., Puerto Rico and Marina Islands.”
DEFINITION OF EFFECT

• **Adverse**: Totality of significant individual or cumulative human health or environmental effects

• **Disproportionately High**: An effect that:
  • Is predominantly borne by a minority or low income persons/population; or
  • Will be suffered by the minority or low income persons/population...appreciably more severe or greater in magnitude than the adverse effect ... suffered by the non-minority or non-low income persons/population.
Minority & Low Income Populations

- **Minority** - Black, Hispanic, Asian American, American Indian and Alaskan Native

- **Minority Population** - Any readily identifiable groups of minority persons living in geographical proximity, and geographically dispersed/transient persons similarly affected by a proposed Federal program, policy or activity;

- **Low Income** - Person whose household income (Community or group, whose average household income) is at or below US Department of Health & Human Services poverty guidelines.

- **2018:**
  - 25,100 (Continental US + DC)
  - 31,380 (Alaska)
  - 28,870 (Hawaii)

- **2019:**
  - 25,750 (Continental US + DC)
  - 32,190 (Alaska)
  - 29,620 (Hawaii)
E.O. 12898

- Revives and reinforces Title VI (Section 2-2)
- Calls for improved methods in research, data collection, and analysis (Section 3-3(301))
- Triggers a new look at NEPA (Section 3-3(302))
- Encourages participation of impacted persons in all phases of decision-making (Section 5-5)
- Appeals for absence of denial, delay and reduction in benefits to Low Income and Minority persons (#3 of FHWA’s Fundamental EJ Concepts)
EXECUTIVE ORDER (EO) 13166

- Presidential directive to federal agencies to ensure people who are LEP have meaningful access to services;
- Nondiscrimination authority grounded on Title VI;
- Signed by President Clinton on August 11, 2000;
- USDOJ’s LEP Guidance pursuant to EO 12250
  - General principles in development of guidance
  - The four factors paradigm
E.O. 13166 DIRECTS...

- Federal agencies to **examine their services, develop and implement processes** by which LEP persons can meaningfully access those services;
- **Establish guidance** on how recipients can provide meaningful access to LEP persons;
- Prepare a plan with consistent standards and steps to overcome language barriers in the delivery of programs and activities;
- Ensure **stakeholders** have “adequate opportunity to provide input.”
WHO IS AN LEP PERSON?

- Person who does not speak English as primary language and has limited ability to read, speak, write or understand English;
- Failure to provide LEP person services or meaningful access to services [may] constitute national origin discrimination.

(Lau v. Nichols, 1974)
WHAT IS REQUIRED OF RECIPIENTS?

- Perform Self-Assessment to determine which personnel interact with members of the public;
- Identify LEP Populations State-wide using US Census data (American Community Survey data available annually), www.census.gov/acs/www/
- Conduct Four Factor Analysis
- Develop Language Access Plan
ASSESSMENT FACTORS

- **Demography** – Number and/or proportion of LEPs served and languages spoken in service area
- **Frequency** - Rate of contact with service or program
- **Importance** – Nature and importance of program/service to peoples lives (transportation)
- **Resources** – Available resources, including Language assistance services (limited or wide-ranging)
LEP PLAN OF ACTION

- **Identification** of volume and location of LEPs and LEP Communities
- **Language assistance** measures:
  - Types of languages services available
  - How to respond to LEP callers and in person
  - How to respond to written communication
  - Types of documents/information to translate
- **Staff** – Knowledge of policy and procedures; linguistic diversity and sophistication; cultural sensitivity and communication skills; training and experience
- **Outreach** measures - Notification methods on special language assistance
- **Monitoring and Evaluation of Efforts**
FHWA’s TITLE VI PROGRAM

• Assures nondiscrimination on the ground of race, color, national origin;

• Discrimination related to disability/handicap, sex, age, minority or income status in programs or activities receiving Federal-aid financial assistance are addressed under their respective nondiscrimination laws and authorities.
Nondiscrimination Authorities

- Promote fairness and equity in Federally assisted programs and activities;
- Based on the fundamental principle that all human beings are created equal;
- Rooted in the constitutional guarantee that all human beings are entitled to equal protection of the laws;
- Address involvement of impacted persons in the decision-making process.
DOT STANDARD ASSURANCES & NONDISCRIMINATION PROVISIONS

• DOT 1050.2A
DOT 1050.2A

• Obligate recipients to:
  • Comply with Title VI & Other Nondiscrimination Provisions
  • Include Title VI Provisions in its contracts
ELEMENTS OF DOT 1050.2A

- Appendix A - All Contracts
- Appendix A(5)(a & b) - provides for sanctions for noncompliance with nondiscrimination provisions of contract
- Appendix B - Deeds Transferring U. S. Property
- Appendix C - Transfer of real property acquired or improved under activity, facility or program
- Appendix D - Construction, use of or access to real property acquired under activity, facility or program
- Appendix E – Pertinent Nondiscrimination Authorities
IMPLEMENTING REGULATIONS

- USDOT Regulations (49 CFR Part 21)
- FHWA Regulations (23 CFR Part 200)
USDOT TITLE VI REGULATIONS

• Issued June 18, 1970
• Provides examples of specific prohibited discriminatory actions;
• Requires recipients’ execution of Title VI Assurances as condition of Federal aid;
• Includes procedures for effecting compliance.
FHWA TITLE VI REGULATIONS

- Issued December 10, 1976
- Requires assurances
- State Transportation Agency (STA) to institute corrective action to address deficiencies found by FHWA within 90 days
- Identifies specific actions & activities to assure compliance
ROLE OF STATE DOT
PRIMARY RESPONSIBILITY

• The primary responsibility for the implementation of the Title VI Program lies with the STA (23 USC 302);
• Effective & efficient implementation is a collaborative effort at all levels;
• Program managers must be knowledgeable and sensitive.
Subrecipients & Title VI

- The FHWA Regulations do not explicitly provide requirements for subrecipients;

- As Recipients, however, subrecipients are required by 49 CFR 21 and DOT Order 1050.2A to do certain things to assure nondiscrimination in programs and activities receiving Federal financial assistance and to guarantee compliance;

- Stewardship, monitoring and oversight of subrecipients’ program is usually the responsibility of the principal or primary recipient.
1) Signed Assurances

- "every [award of, or] application for Federal financial assistance shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to the [award or] application, contain or be accompanied by an assurance that the program will be conducted or the facility operated in compliance with all requirements imposed…" (49 CFR 21.7)
Failure or refusal to furnish required assurance is grounds for the termination, refusal to grant or continue Federal financial assistance.

“If an applicant fails or refuses to furnish an assurance required under § 21.7 or otherwise fails or refuses to comply with a requirement imposed by or pursuant to this section, Federal financial assistance may be refused…” (49 CFR 21.13(b)&(c))
2) Methods of Administration

“The Recipient shall provide for such methods of administration … to give reasonable guarantee that it, other recipients, sub-grantees, contractors, subcontractors, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Act, the Regulations and this assurance” (USDOT Assurance #9); see also 49 CFR 21.7(b).
Methods of Administration:  

- **Methods of Administration** connote procedures, policies, actions and mechanisms to provide reasonable guarantee for Title VI compliance;
- Efforts to prevent discrimination must address, but not be limited to:
  - **program's impact** upon access, benefits, participation,
  - treatment, services, contracting opportunities,
  - training opportunities, investigation of complaints,
  - allocation of funds, prioritization of projects and
  - the **functions** of planning, project development, design, right-of-way acquisition, construction, research, etc.
Methods of Administration Contd.

Acceptable methods of administration

- Data collection procedures and methods (49 CFR 21.9(b) & 23 CFR 200.9(b)(4))
- Program to assess (review) and periodically report on status of Title VI compliance (23 CFR 200.9(b)(5)(6) & (7))
- Public outreach and education procedures (49 CFR 21.9(d))
- Training program for subrecipients’ staff (23 CFR 200.9(b)(9))
- Procedures for processing complaints (23 CFR 200.9(b)(3))
- Procedures for identifying and addressing Title VI issues (23 CFR 200.9(b)(11))
- Detailed plans for bringing discriminatory programs into compliance (49 CFR 21.13 & 23 CFR 200.11)
Title VI Contract Provisions

- Procedures to ensure Title VI contract provisions are included in all Federally-funded contracts regardless of tier (Appendix A & E of USDOT Order 1050.2A)
  - Nondiscrimination in selection and retention of subcontractors; procurement of materials and leases of equipments
  - Nondiscrimination in notification of Title VI obligation to each potential subcontractor or supplier
DATA COLLECTION
Data Collection Process

- Describe how SHA collects data, what data is collected, and how data is to be analyzed.

SHA must collect Title VI Program-related data on an on-going basis. Data collected should be directly related to specific processes in a Program Areas.

Example: SHA Right-of-Way may not discriminate against eligible persons in making relocation payments and in providing relocation advisory assistance (49 CFR Part 21, Appendix C to Part 21(a)(2)(ii)). SHA’s Plan describes how it collects data on race, color, national origin for relocates and other beneficiaries and review for potential disparate impacts. (23 CFR 200.9(b)(4))
Training

• Describe how and when members of the SHA Civil Rights staff, Title VI liaisons, and other employees within the agency will be trained on Title VI Program requirements and responsibilities.

• For subrecipients and stakeholders, include procedures as to how and when training will be conducted. (23 CFR 200.9(b)(9))
TITLE VI PROGRAM

Protecting your civil rights is good business
Title VI Program at TxDOT

1.) Title VI/Nondiscrimination Plan
2.) Components of Title VI Program
3.) TxDOT’s Role in Assisting LPAs
4.) Review Title VI/Nondiscrimination Technical Assistance Questions
5.) Self-Certification Process
6.) Questions
FY 19 Title VI/Nondiscrimination Plan

- **FY 19 Plan:**
  - Introduction Section Pgs. 3-5
  - Policy & Assurances Pgs. 6-7
  - Organization and Staffing Pg. 8
  - Subrecipient Review Procedures Pgs. 19-21
  - Data Collection Pgs. 22-24
  - Complaint Procedures Pg. 26
  - LEP & Public Inv. Pgs. 35-39
  - Attachments Pgs. 43-65
Title VI Complaints

- Complaint Procedures
  - In Writing
  - Within 180 days
  - May be filed by a representative

- Form 2193
  - TxDOT Website

- Complaint Processing:
  - Acknowledge Receipt
  - Inform the Complainant
  - Advise the Complainant
    - Title VI Brochure

- Complaint Investigation :
  - Report of Findings to FHWA
  - Complaint Database
# LEP Program at TxDOT

## Quarterly Monitoring Report

### FY 2019 LEP Data

<table>
<thead>
<tr>
<th>LEP</th>
<th>1st Quarter (due Jan. 5)</th>
<th>2nd Quarter (due April 5)</th>
<th>3rd Quarter (due July 5)</th>
<th>4th Quarter (due Oct. 5)</th>
</tr>
</thead>
</table>
Title VI

Protecting your civil rights is good business

It is our policy to ensure that no person in the United States of America shall on the grounds of race, color, national origin, sex, age or disability be excluded from the participation in, be denied the benefits of, or otherwise be subjected to discrimination under any of our programs and activities.

The Department assures full compliance with Title VI of the Civil Rights Act of 1964, the Civil Rights Restoration Act of 1987 and related statutes and regulations in all programs and activities.

Any person who believes they have been subjected to unlawful discriminatory practices under Title VI has the right to file a formal complaint. Any such complaint must be filed in writing or in person with the Texas Department of Transportation, Civil Rights Division within 180 days following the date of the alleged discriminatory action.

Contact Us:
Civil Rights Division
125 East 11th Street
Austin, Texas 78701-2483
(512) 438-4700
CivilRights@TDOT.texas.gov

www.txdot.gov
Title VI

Protecting your civil rights is good business

It is our policy to ensure that no person in the United States of America shall on the grounds of race, color, national origin, sex, age or disability be excluded from the participation in, be denied the benefits of, or otherwise be subjected to discrimination under any of our programs and activities.

www.txdot.gov

The Department assures full compliance with Title VI of the Civil Rights Acts of 1964, the Civil Rights Restoration Act of 1987 and related statutes and regulations in all programs and activities.

Any person who believes they have been subjected to unlawful discriminatory practices under Title VI has the right to file a formal complaint. Any such complaint must be filed in writing or in person with the Texas Department of Transportation, Civil Rights Division within 180 days following the date of the alleged discriminatory action.

Contact Us:
Civil Rights Division
125 East 11th Street
Austin, Texas 78701-2483
(512) 416-4700
CivilRights@TxDOT.gov

www.txdot.gov
Role of TxDOT Assisting LPAs

- **External Technical Assistance**
  - Subrecipients of Federal Funds
    - Cities, Counties, MPOs, etc.

- **Status reports to FHWA**
  - Metrics in the 2019 Title VI Plan
  - Accomplishment Report due October 1st
Technical Assistance Tool for Subrecipients

LET’S GET STARTED

Title VI Compliance Assessment Tool

1. Agency Information
   - Organization Name:
   - Contact:
   - Email:
   - Phone:

2. Does your Agency have a signed Title VI Policy Statement and Title VI Assurance?
   - Yes
   - No
   a. Provide link to the agency’s Title VI Policy Statement and Title VI Assurance: (Note: A template will be created for the TMA subv)

3. Do you have a current Title VI/Nondiscrimination Plan?
   - Yes
   - No
   a. Is the plan available online to the general public?
   - Yes
   - No
   b. Provide link to the Title VI Plan: (Note: A best practice plan template will be created for the TMA subv)

4. Does your Agency have a Title VI Coordinator?
   - Yes
   - No
   a. Provide contact information for the Title VI Coordinator: (name, address, phone number, email):
      - Name:
      - Agency:
      - Department:
      - Address:
      - City:
      - State:
      - Zip Code:
      - Phone:
      - Email:

5. Does your Agency’s Title VI/Nondiscrimination Plan provide an organizational chart that includes the agency’s Title VI Coordinator and a description of their responsibilities?
   - Yes
   - No

6. Does your agency include Title VI contract provisions in solicitations, contracts, and awards?
   - Yes
   - No

7. How do your agency ensure that Limited English Proficient (LEP) individuals have access to the agency’s programs and services? (Requirements are described under the four-part analysis in Executive Order 13166. Additional resources can be found at www.kag.org)
   - Complaint Language Assistance Plan
   - Contract services, interpretation and translation
   - Prompt UI/Program during planning & construction
   - Identification of all programs

8. What outreach efforts does your Agency utilize to solicit input from minority populations within your jurisdictional boundaries in order to ensure nondiscrimination in its public participation process?
   - Mandatory Public Participation Plan
   - Targeted community engagement
   - Complainant assistance goals
   - Other:

9. Requests of federal funds are required to collect and analyze demographic data to ensure nondiscrimination and equity for nepotism in programs, services, and activities. Identify the data collection source for analyzing demographic data in the areas within your jurisdictional boundaries:
   - Census
   - American Community Survey
   - Department of Education
   - Community Development Block Grant
   - Other Sources: Please identify:

10. How do your agency publicize Title VI/Nondiscrimination policies and procedures? (Note: Electronic placement on a website is not enough)
    - Agency Website
    - Social Media
    - Placed in a Public Building
    - Public Meetings & Outreach
    - Accessible Publications
    - Other: Please specify:

Submit  Clear
Title VI Compliance Assessment Tool

Question #1

*Title VI/Nondiscrimination Policy Statement & Assurances*

1.) Does your organization have a signed Title VI Policy Statement and Title VI Assurances?
Title VI Compliance Assessment Tool

Question #2

Title VI/Nondiscrimination Plan

2.) Does your agency have a Title VI/Nondiscrimination Plan?
Title VI Compliance Assessment Tool

Question #3

Title VI Coordinator

3.) Does your agency have a Title VI Coordinator?
Title VI Coordinator
Title VI Compliance Assessment Tool

Question #4

Title VI Complaints

4.) Does your agency have an external discrimination complaint handling and processing procedure?
Title VI and ADA Complaint Form

Mail the signed form to Texas Department of Transportation, Civil Rights Division, 125 East 11th Street, Austin, Texas 78701 or fax to 512-486-5539.

Last Name ______________________ First Name ______________________
Mailing Address: ____________________________________________________
City: ______________________ State: __________________ Zip Code: __________
Phone Number: ______________________ Alternative Phone Number: __________
Email: ______________________

Please indicate the basis of your complaint:
☐ Race ☐ National Origin
☐ Color ☐ Disability

Date and place of alleged discriminatory action(s). Please include the earliest date of discrimination and the most recent date of discrimination.

How were you discriminated against? Describe the nature of the action, decision, or conditions of the alleged discrimination. Explain as clearly as possible what happened and why you believe your protected status (basis) was a factor in the discrimination. Include how other persons were treated differently from you. (Attach additional pages, if necessary).

The law prohibits intimidation or retaliation against anyone because he/she has either taken action, or participated in action, to secure rights protected by these laws. If you feel that you have been retaliated against, separate from the discrimination alleged above, please explain the circumstances below. Explain what action you took which you believe was the cause for the alleged retaliation.

Names of individuals responsible for the discriminatory action(s):


Title VI Compliance Assessment Tool

Question #5

Title VI Contract Language Requirements

5.) Does your agency include Title VI contract provisions in solicitations, contracts and awards?
Solicitations and RFPs

Attachment D
Form FHWA-1273

FHWA-1273 – Revised May 1, 2012

REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each contract and must be in all subcontract and in lower tier subcontract contracts (excluding subcontractors for design, construction, and design-build contracts). The contractor or subcontractor must insert this form in each contract and further require its inclusion in all lower tier subcontract contracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

II. NONDISCRIMINATION

The provisions of this section must not be applicable to all Federal-aid construction contracts and to all related construction subcontracts of $10,000 or more. The provisions of 33 CFR Part 230 are not applicable to local governments, including state and local governmental agencies, including municipalities, counties, and other entities, or to any other entity that is not a private corporation and that is not a public corporation.

The contractor and all subcontractors must comply with the requirements of the Equal Opportunity Act in 41 CFR 60-4.1 and, for all construction contracts exceeding $10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

The U.S. Department of Labor has the authority to determine whether a contractor has complied with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60 and 29 CFR 2606-2607. The contractor must certify that the contractor has complied with Executive Order 11246 and the policies of the Secretary of Labor, including 41 CFR 60, 29 CFR 2606-2607, and the Federal Contractor's Standard Form 424, Compliance with Executive Order 11246 and the policies of the Secretary of Labor, including 41 CFR 60, 29 CFR 2606-2607, and the Federal Contractor's Standard Form 424.

The following provisions are adopted from 23 CFR 230, Appendix D, with appropriate revisions to conform to the U.S. Department of Labor (USDOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal opportunity (EO) requirements must not be incorporated into the contract and to take affirmative action to assure equal opportunity as set forth.
Title VI Compliance Assessment Tool

Question #6

Title VI Requirements Under E.O. 13166

6.) How does your agency ensure that Limited English Proficient (LEP) individuals have access to the agency’s programs and services?
LEP Accommodations

LIMITED
ENGLISH
PROFICIENCY

LANGUAGE
assistance PLAN

Texas Department of Transportation
Title VI Compliance Assessment Tool

Question #7

Nondiscrimination in the Public Participation Process

7.) What outreach efforts does your Agency utilize to solicit input from minority populations within your jurisdictional boundaries in order to ensure nondiscrimination in its public participation process?
Title VI Compliance Assessment Tool

Question #8

Ensuring Nondiscrimination Through Demographic Data Analysis

8.) Identify the data collection sources for analyzing demographic data in the areas within your jurisdictional boundaries.
Demographic Data
Title VI Compliance Assessment Tool

Question #9

Advising the Public of Your Title VI Program

9.) How does your agency advise the public of Title VI/Nondiscrimination policies and procedures?
Self-Assessment Process

1. AGENCY GOES TO CIV WEBSITE AND FILLS OUT SUBRECIPIENT SELF-ASSESSMENT TOOL

2. DEPENDING ON THE OUTCOME OF ANSWERS, THE SUBRECIPIENT IS MEETING REQUIREMENTS OR REQUIRE ADDITIONAL TECHNICAL ASSISTANCE FROM TxDOT CIV TEAM

3. CIV CONTACTS SUBRECIPIENT TO PROVIDE GUIDANCE AND DOCUMENTATION TEMPLATES, NECESSARY FOR TITLE VI COMPLIANCE

   - SUBRECIPIENT COMPLETES TEMPLATES & ACQUIRES NECESSARY SIGNATURES
   - TxDOT WILL PERFORM SITE VISITS BASED ON SELF CERTIFICATION OF TITLE VI

   - SUBRECIPIENT RETAKES SELF-ASSESSMENT TOOL AND CIV FOLLOWS UP
   - CERTIFICATION GOOD FOR 3 YEARS

CIV TEAM
Questions?

- My cell number is (361)739-6960
- Email: Christopher.Amy@txdot.gov ; OR Debra.Medellin@txdot.gov

Thank You
Sociology vs Law

- The Title VI Program is about social interaction or behavior rather than strict adherence to the law.
- Discrimination is a social construct;
- The law is not the end; it is a means to the end of nondiscrimination.
- The law is meant to regulate social behavior to safeguard peaceful coexistence, equality and justness.
ANALYZING TITLE VI DATA FOR DISPARATE IMPACT

AN EXAMPLE
Disparate Impact Analysis:

- **Practical Significance Test** – When the rate of selection or impact for one group is less than 4/5 or 80% than that of the highest group’s rate, then disparate impact is inferred.
Hypothetical Example

An African American DBE Design Consultant approaches the Director of KDOT Office of Civil Rights and complains that since his firm was placed on the “on call” list a year ago, he is yet to receive a contract.
1. Collect Data and Information
   - Collect and Review On Call list of selectees for the past year with demographic information
   - Review “on call“ policies and procedures

2. Analyze
   - Conduct Practical Significance Test for Disparate Impact

3. Discover Findings and act appropriately
Step 1

Step 1: Record the number of applicants and selectees and their respective Races. Calculate the rate of representation for each group by dividing the number of persons selected from a group by the number of applicants from that group.

<table>
<thead>
<tr>
<th>Race</th>
<th># of Applicants</th>
<th># of Selectees</th>
<th>% Selected</th>
</tr>
</thead>
<tbody>
<tr>
<td>Asian American</td>
<td>50</td>
<td>40</td>
<td>80%</td>
</tr>
<tr>
<td>African American</td>
<td>50</td>
<td>10</td>
<td>20%</td>
</tr>
</tbody>
</table>
Step 2: Determine which group is experiencing the most advantageous rate:

<table>
<thead>
<tr>
<th>Group</th>
<th>Value 1</th>
<th>Value 2</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Asian American</td>
<td>50</td>
<td>40</td>
<td>80%</td>
</tr>
<tr>
<td>African American</td>
<td>50</td>
<td>10</td>
<td>20%</td>
</tr>
</tbody>
</table>
Step 3

Step 3: Calculate **impact ratio** by comparing representation rate for each group with that of the most favored group. If a group’s rate of representation is less than 80% of the most favored group, the group is disparately impacted.

Impact Ratio: \( \frac{.20}{.80} \times 100 = 25\% \)

25\% < 80\% = Disparate Impact
DEFINING PUBLIC INVOLVEMENT
What is Public Involvement?

- Open process by which interested and affected individuals or entities are consulted and included in the decision-making process.
Public Involvement Contd.

- Open **process** by which the rights of stakeholders to **be informed**, **provide input** and **receive responses**, are met through a full opportunity to be involved.
Public Involvement Levels

- **Information Dissemination** (Timely and Relevant)
- **Consultation** (Honest and Open Exchange)
- “Stakeholder” Participation (Collaborative Engagement)
- “Kumbaya” Moment
Why Public Involvement?

- Inform stakeholders and obtain buy-in
- Avoid disruption of projects and litigation
- Platform to voice & receive community views/concerns & offer suggestions
- Ability to influence decision-making
- Opportunity to consider a variety of viewpoints
- Gain knowledge about community
- Dialogue between technocrats and stakeholders – consensus building
- Reduce, prevent and or mitigate conflict
- Promote a sense of community and ownership
- Increase public confidence and trust
- Foster accountability and transparency
- Makes for compromise, cooperation & collaboration
In effect...

- Public involvement requires the development and execution of processes and procedures to elicit and solicit public participation and involvement, as well as educate the public of their rights and obligations in the decision-making process.
DISCRIMINATION COMPLAINTS

• What is a Complaint?
  • FHWA Memo
  • Protected Classes
What is a Complaint?

- An **allegation** of wrongdoing for which attention, resolution, redress or any other corrective action may be sought;
- Formal or informal, written or unwritten
- Usually a violation of certain law, provision, statute, regulation, policy, Executive Order, etc.
FHWA Processing of Title VI Complaint Memo

Memorandum

Subject: INFORMATION ONLY: Processing of Title VI Complaints

Date: JUN 13 2018

From: Nichole McWhorter
Title VI Program Team Leader

To: Division Administrators
Civil Rights Specialists

The purpose of this Memorandum is to provide guidance to the Division Offices for processing complaints filed under Title VI of the Civil Rights Act of 1964 (Title VI). The information outlined below explains in detail the actions to be taken by the Division Office when processing Title VI complaints. This memorandum rescinds the Title VI portion of the memorandum dated March 23, 2006, titled: Processing Complaints filed under the Americans with Disabilities Act of 1990 and Title VI of the Civil Rights Act of 1964.

Title VI Complaints

1. State DOTs are to forward all Title VI complaints to the Division Office. If a sub-recipient receives a complaint, it must forward it to the State DOT, and the State DOT will forward the complaint to the Division Office.

2. All Title VI complaints received by the Division Office are to be forwarded to HCR for processing and potential investigation.

3. HCR will provide the Division Office a notification Memorandum for all Title VI complaints filed against the State DOT in the respective State.

4. All complaints filed under Title VI against State DOTs are investigated by HCR.

5. If HCR determines a Title VI complaint against a sub-recipient can be investigated by a State DOT, HCR may delegate the task of investigating the complaint to the State DOT. The State DOT will conduct the investigation and forward the Report of Investigation to HCR for review and final disposition.

6. The disposition of all Title VI complaints will be undertaken by HCR, through either (1) informal resolution or (2) issuance of a Letter of Finding of compliance or noncompliance with Title VI. A copy of the Letter of Finding will be sent to the Division Office.

Any questions related to this memorandum should be directed to Ms. Nichole McWhorter at 202-366-1595 or Nichole.mcwhorter@dot.gov.
Bases Covered by Nondiscrimination Statutes in Federally Assisted Programs & Activities

- **Race**
- **Color**
- **National Origin**
- **Sex**
- **Age**
- **Disability/Handicap**

Title VI OF CIVIL RIGHTS ACT OF 1964

1973 FEDERAL AID HIGHWAY ACT

1975 AGE DISCRIMINATION ACT

SECTION 504 OF 1973 REHABILITATION ACT
THE SYSTEMATIC MULTIDISCIPLINARY APPROACH

• Traditional v. Multidisciplinary
• Multidisciplinary Process
MEMO

- Strategies to implement Title VI Program have traditionally focused on achieving compliance through compliance reviews;
- **Compliance approach is less effective** in most cases
  - Limits compliance to areas in noncompliance
  - Noncompliance discovered too late for remedy
  - May lead to adversarial situations
- **Multidisciplinary (TEAM) approach** goes beyond compliance to include intent of the laws.
## TRADITIONAL v. MULTIDISCIPLINARY APPROACH

<table>
<thead>
<tr>
<th>Traditional Approach</th>
<th>Multidisciplinary Approach</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>(After the Fact) Reviews</td>
<td>Preventive and proactive</td>
<td>A variety of disciplines working together to develop a strategic approach to prevent Title VI issues</td>
</tr>
<tr>
<td>Compliance-laden &amp; Rigid Review &gt; Deficiencies &gt; Recommendations &gt; Response &gt; Follow up</td>
<td>Beyond compliance</td>
<td>Multidisciplinary Approach lends itself to flexibility and opportunity to make adjustments as necessary</td>
</tr>
<tr>
<td>Reactive – To Regulations, etc.</td>
<td>Proactive and holistic</td>
<td>Looks at the program as a whole – strengths, areas to improve; ongoing assessments and adjustments in a team context</td>
</tr>
<tr>
<td>Intra-disciplinary – Single Disciple or Office</td>
<td>[Inter]Multidisciplinary involving diverse disciplines</td>
<td>Diverse perspective results in sound program better serves the transportation needs of the public</td>
</tr>
<tr>
<td>May not reduce recipient’s vulnerability</td>
<td>Reduces vulnerability by stressing inclusion of all affected by program to greatest extent</td>
<td>If correctly implemented, will demonstrate recipient’s proactive attempt at meeting spirit of the law</td>
</tr>
<tr>
<td>Contributes little of nothing to preventing project delays/disruptions</td>
<td>If properly implemented, may reduce/eliminate delays, disruption or cancellations</td>
<td>MDA most likely to anticipate and address issues before they rise to level of formal action</td>
</tr>
</tbody>
</table>
THE SYSTEMATIC MULTIDISCIPLINARY PROCESS

- Secure Chief Administrative Officer’s (CAO) support and that of discipline lead;
- Create a Team involving every program office including CAO or representative;
  - Team meets and establish objective(s);
  - Identify issue/area of vulnerability or need;
  - Analyze issue;
  - Prepare plan of action;
MULTIDISCIPLINARY PROCESS CONTINUED

- Formulate strategies & implement the plan;
- Establish roles and responsibilities;
- Assess plan from time to time and make adjustments;
- Meet periodically;
- Maintain awareness;
- Evaluate progress/course of action/results.
ESSENCE OF THE MULTIDISCIPLINARY APPROACH

- “Great achievements are not born from a single vision but a combination of many distinctive viewpoints. Diversity challenges assumptions, opens minds and unlocks our potential to solve effectively any problem we may face.”

- Anonymous
COORDINATION WITH PROGRAM AREAS

- Establish working relationships with other disciplines;
- Establish a system that would allow Title VI Specialist to review and or provide input in activities related to planning and public involvement, environmental impacts, ROW acquisition and related activities, bidding, contracts and awards, DBE & goals, nondiscrimination complaints....
TITLE VI PROGRAM SUMMARY

- Not a threat…
- Beyond a bureaucratic exercise
TITLE VI IS NOT A THREAT

• It is an opportunity
  • To give serious attention to the effects of transportation decisions on the people and communities
  • To redeem ourselves of oversights regarding past and lingering disparate actions towards “disadvantaged” persons, groups, communities and businesses
BEYOND A BUREAUCRATIC EXERCISE: WHY TITLE VI IS IMPORTANT TO YOU?

- Constitutional & Statutory requirement
- Our Professional & Fiduciary responsibility
- Business and Economic necessity
- Civic duty
- Moral & Ethical imperative - THE GOLDEN RULE
- In short, IT IS THE RIGHT THING TO DO!
EPILOGUE
“We should not pretend to understand the world only by the *intellect*; we apprehend it just as much by *feeling*. Therefore the judgment of the intellect is, at best, only the half of truth, and must, if it is honest, also come to an understanding of its inadequacy.”

----------------------------- C. J. Jung
WORDS OF INSPIRATION

• Until the philosophy which holds one race superior & another inferior is finally and permanently discredited and abandoned;
• Until there are no longer first class and second class citizens of any nation;
• Until the color of a man’s [woman’s] skin is of no more significant than the color of his [her] eyes;
• Until basic human rights are equally guaranteed to all without regard to race, [color, national origin, sex, age, disability];
• Until that day, the dream of lasting peace, world citizenship, and the rule of international morality, will remain a fleeting illusion to be pursued but never attained.

-----The late Emperor Haile Selassie 1, California, 2/28/68
The Nondiscrimination Formula

\[ SJ + FF = N \]