

TITLE VI: NONDISCRIMINATION IN THE FEDERAL-AID PROGRAM



U.S. Department of Transportation
Federal Highway Administration



FHWA & TxDOT Title VI Training Subrecipients & Local Governments

Austin, Texas
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Learning Outcomes

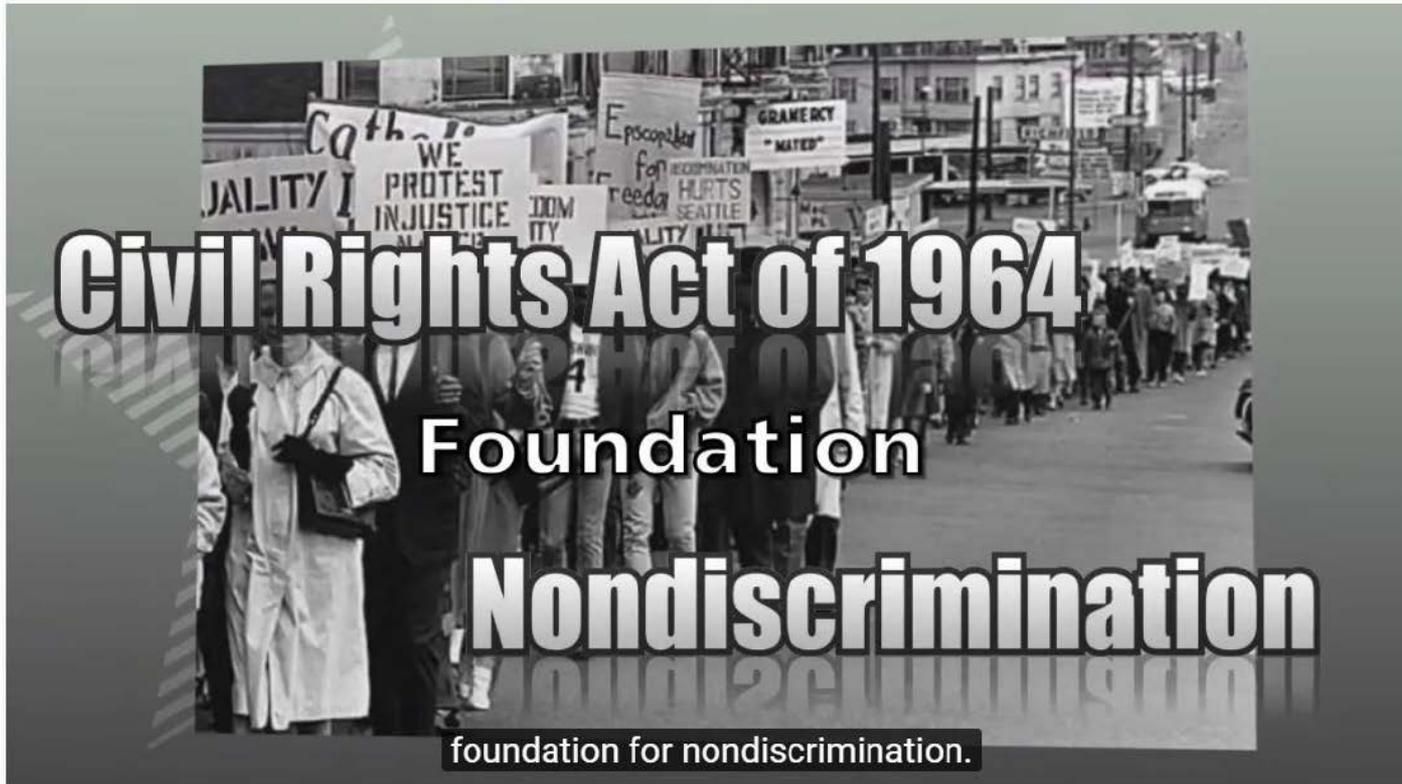
- Define Title VI & other nondiscrimination authorities;
- Recognize roles and responsibilities;
- Describe the systematic, multidisciplinary approach;
- Identify Public Involvement rationale;
- Review how to process Title VI Complaints;
- Discuss why Title VI is Important to YOU.

TITLE VI BACKGROUND

- ❖ Context
- ❖ Purpose & Intent



VIDEO PRESENTATION



(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 UNIVERSITY OF TEXAS AT AUSTIN

YOUR RIGHTS UNDER
TITLE VI OF THE
CIVIL RIGHTS ACT OF 1964

| | |
|---|---|
| <p>The University of Texas at Austin provides equal opportunity in all programs that receive federal assistance. Facilities, programs, and services sponsored by The University of Texas are available to all eligible persons regardless of race, color, or national origin.</p> <p style="text-align: center;">— Title VI of the Civil Rights Act of 1964</p> <p>If you feel you have been discriminated against in any program because of race, color, or national origin, contact your Title VI coordinator.</p> | <p>La Universidad de Texas en Austin ofrece igualdad de oportunidades en todos los programas que reciben asistencia federal. Cualquier persona elegible por La Universidad de Texas tiene derecho a las instalaciones, los programas y servicios que esta patrocina sin importar su raza, color, o nacionalidad.</p> <p style="text-align: center;">— Título VI del Acta de Derechos Civiles de 1964</p> <p>Si usted siente que ha sido discriminado en cualquier programa debido a su raza, color, o nacionalidad, póngase en contacto con su coordinador de Título VI.</p> |
|---|---|

All qualified applicants will receive equal consideration for employment and admission without regard to race, color, cultural origin, religion, sex, pregnancy, marital status, sexual orientation, gender identity, gender expression, age, physical or mental disability, or covered veteran status. Faculty and other terms and conditions of employment benefits at The University of Texas at Austin are governed by federal and state laws and regulations, and this non-discrimination statement is intended to be consistent with those laws and regulations. In accordance with the requirements of Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Equal Pay Act of 1963, the Age Discrimination in Employment Act of 1967 and all other applicable laws and regulations, The University of Texas at Austin affirms that it does not discriminate on the basis of race, color, national origin, sex, or disability in its education programs and activities, and this policy extends to employment by the university, including post-graduate and students of The U-System, color, and national origin. Title IX laws, Section 504 regulations, and disability, Age Discrimination in Employment Act laws, Sexual Orientation or Gender Identity should be directed to the Office of Institutional Equity (OIE) at (512) 475-1849 or oei@utmsi.utexas.edu. Request for accommodation for disability should be directed to the ADA Coordinator at (512) 475-2826.



THE UNIVERSITY OF TEXAS AT AUSTIN
OFFICE OF INSTITUTIONAL EQUITY

The University of Texas at Austin
 Title VI Coordinator Office of Institutional Equity
 301 E. 27th Street, J6405, Suite 4-502
 Austin, TX 78712-0445
 (512) 475-2826

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

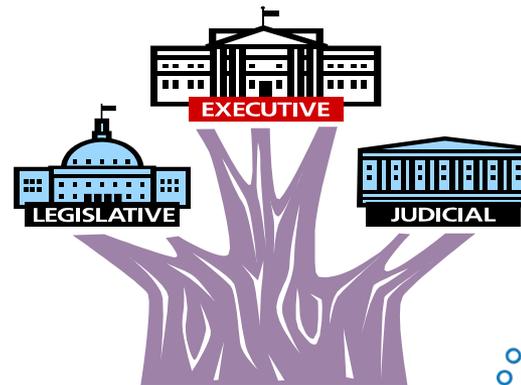
- Essence of the law:
 - “No person in the United States shall on the ground of **race**, **color**, or **national origin** be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance” (42 USC 2000d)

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.**”



Religion & Title VI

- 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

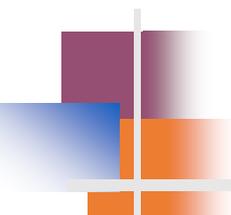
- **Identification** of volume and location of LEPs and LEP Communities
- **Language assistance** measures:
 - Types of languages services available
 - How to respond to LEP callers and in person
 - How to respond to written communication
 - Types of documents/information to translate
- **Staff** – Knowledge 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.**

Subrecipients & Title VI Responsibilities

- 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)



Subrecipients & Title VI Responsibilities Contd.

- **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))



Subrecipients & Title VI Responsibilities Cont'd.

- 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))

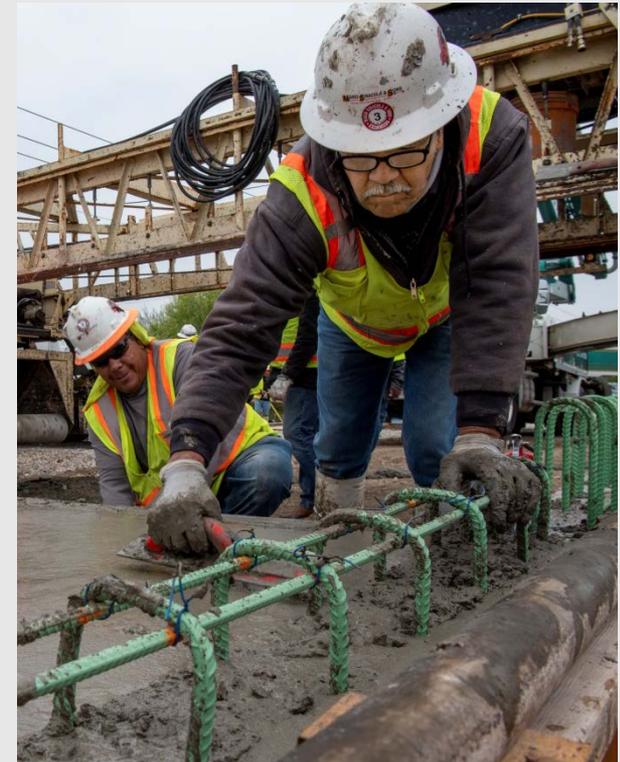
Training

- 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 2019

Title VI/Nondiscrimination Plan

Civil Rights Division

November 8, 2018

■ 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 Poster

Size: 11" X 17"



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 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

Complaint Information

TxDOT's Policy Statement →



Title VI

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www.txdot.gov

← Front

Size: 4" X 9"

Back →

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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



Title VI/Nondiscrimination Technical Assistance Guide for Subrecipients

Office of Civil Rights

October 5, 2015

Technical Assistance Tool for Subrecipients

LET'S GET STARTED



TEXAS DEPARTMENT OF TRANSPORTATION

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 Assurances?
 Yes No
a. Provide a link to the agency's Title VI Policy Statement and Title VI Assurances (Note: A template will be created for the LPA's use)

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 a link to the Title VI Plan. (Note: A basic Title VI plan template will be created for the LPA's use)

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:
b. Does the 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

5. Does your agency have an external discrimination complaint handling and processing procedure?
 Yes No
a. If so, provide a link to the external discrimination complaint handling protocols

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

7. How does your agency ensure that Limited English Proficient (LEP) individuals have access to the agency's programs and services? (Requirements are described under the four factor analysis in Executive Order 13166. Additional resources are found at www.lep.gov)
 Completed Language Assistance Plan
 Contract services for interpretation and translation
 Focused LEP outreach during planning & construction
 Identified bilingual employees

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?
 Maintaining a Public Participation Plan
 Targeted community engagement
 Committees or advisory groups
 Other. Please explain:

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

10. How does your agency advise the public of Title VI/Nondiscrimination policies and procedures? Note: Electronic placement on a website alone is not enough.
 Agency Web Page
 Social Media
 Displayed in Public Building
 Public Meetings & Outreach
 Accessible Publications
 Other. Please specify:

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

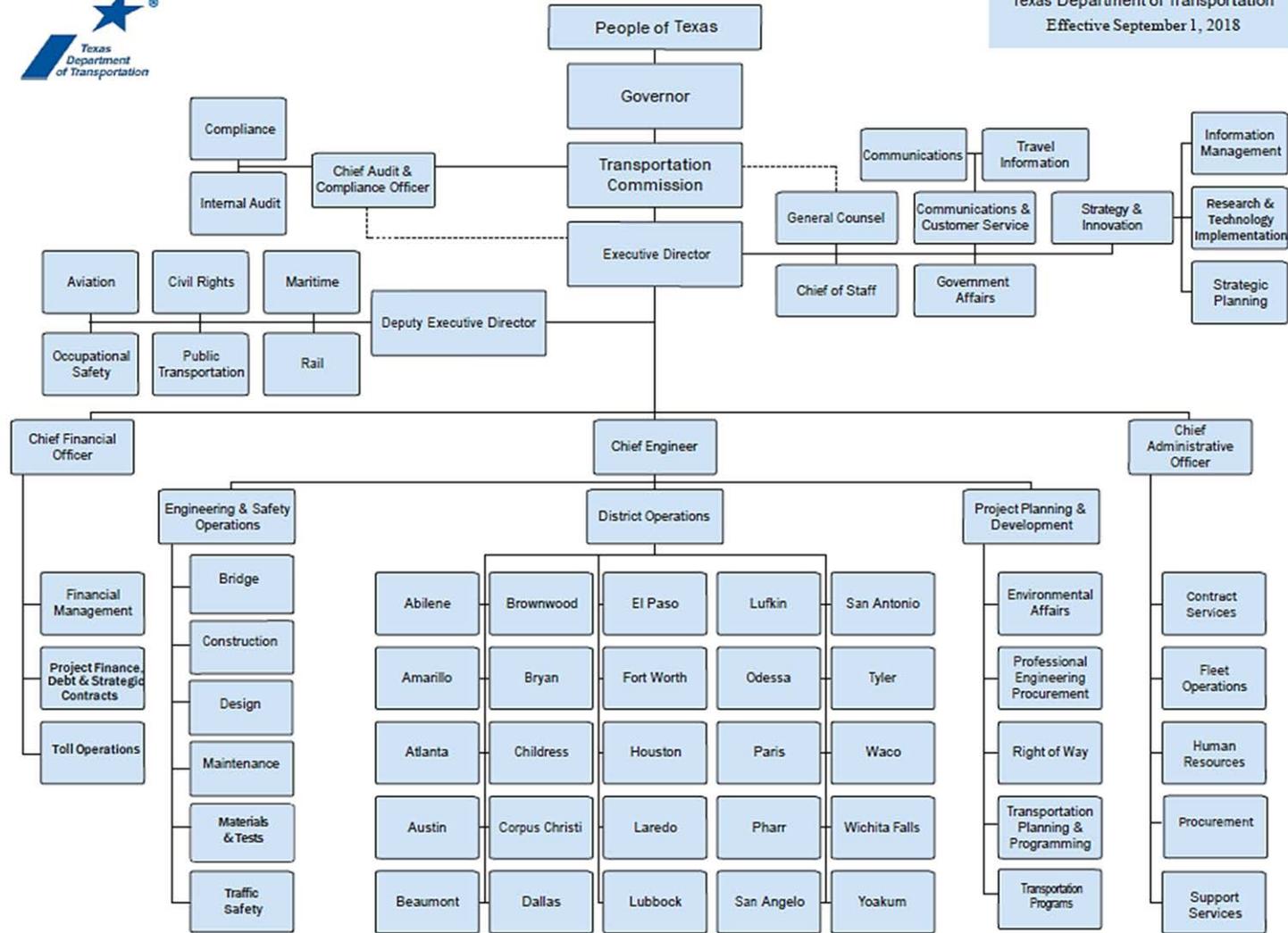
Title VI Coordinator

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

Title VI Coordinator



Texas Department of Transportation
Effective September 1, 2018



Title VI Compliance Assessment Tool

Question #4

Title VI Complaints

4.) Does your agency have an external discrimination complaint handling and processing procedure?

Discrimination Complaints

Mall 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
- II. Nondiscrimination
- III. Nons segregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization

and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

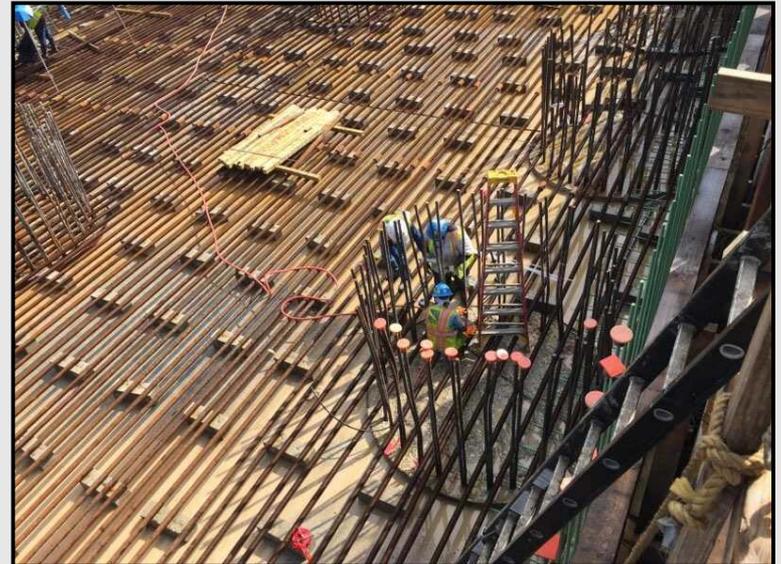
The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. **Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth

1

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Title VI/Nondiscrimination Technical Assistance Guide for Subrecipients



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?

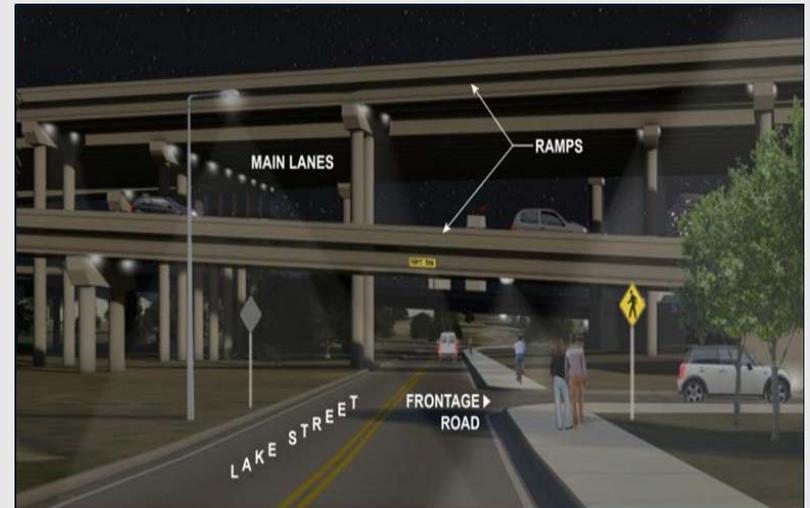
Title VI Compliance Assessment Tool

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?

Public Participation



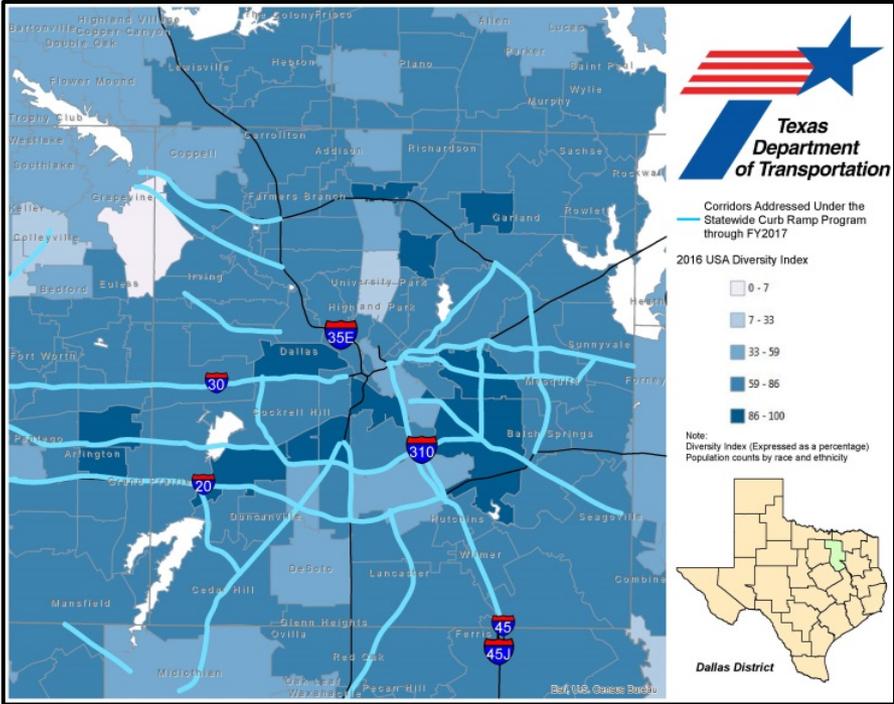
Title VI Compliance Assessment Tool

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



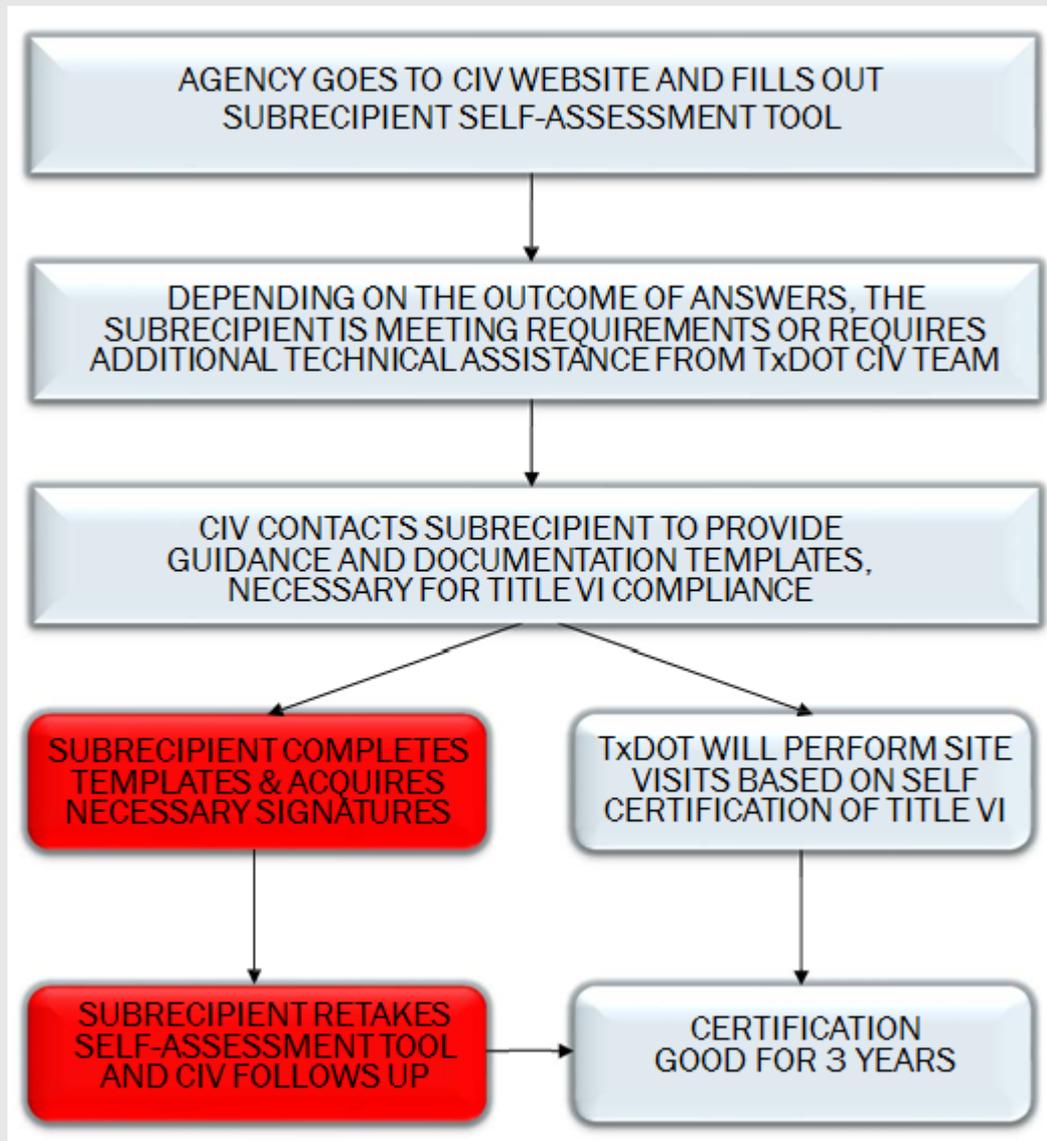
Title VI Compliance Assessment Tool

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



CIV TEAM

Title VI for Subrecipients



- 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

Disparate Impact Analysis:

- Practical Significance Test – When the rate of selection or impact for one group is less than $\frac{4}{5}$ 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.



Data Collection & Analysis

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.

| Race | # of Applicants | # of Selectees | % Selected |
|------------------|-----------------|----------------|------------|
| Asian American | 50 | 40 | 80% |
| African American | 50 | 10 | 20% |

Step 2

Step 2: Determine which group is experiencing the most advantageous rate:

| Asian American | 50 | 40 | 80% |
|------------------|----|----|-----|
| African American | 50 | 10 | 20% |

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: $(.20 / .80) (x 100) = 25\%$
 $25\% < 80\% = \text{Disparate Impact}$

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?

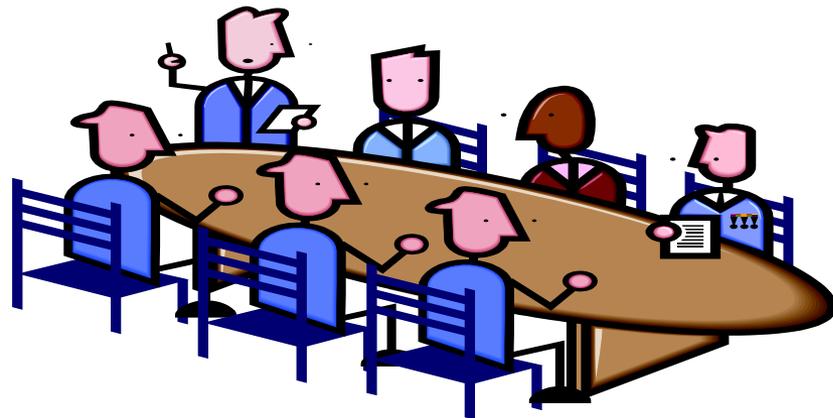
- Inform stakeholders and obtain buy-in
- Avoid disruption of projects and litigation
- Platform to voice & receive community views/concerns & offer suggestions
- Ability to influence decision-making
- Opportunity to consider a variety of viewpoints
- Gain knowledge about community
- Dialogue between 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**

• **Kudos** →



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 *NM*
Title VI Program Team Leader

In Reply Refer To: HCR – 20

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 22, 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

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

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





WORDS OF WISDOM

- “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

- $SJ + FF = N$