

TITLE VI PROGRAM TRAINING

**Florida Department of Transportation
(FDOT)**

March 24, 2015



LEARNING OUTCOMES

At the end of this training, participants will be able to:

- Define Title VI-the Law and Title VI- the Program.
- Identify the FHWA Title VI Program authorities and key requirements.
- Recognize roles & responsibilities for the Title VI Program.
- Describe potential Title VI impacts in program areas and mitigation considerations.
- Define data collection activities for the Title VI Program.
- Describe strategies for preventing discrimination.

FHWA MISSION & VISION



FHWA's MISSION

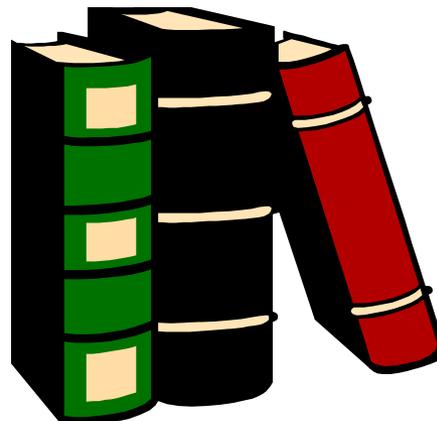
- **Improving Mobility on our Nation's Highways Through **National Leadership**, **Innovation**, & **Program Delivery****
 - Constantly **improve free movement** of traffic, people, goods & services;
 - Continually **provide transportation solutions** beyond highways;
 - **Assuming leadership role** in the delivery of transportation programs and products;
 - **Provide new, cost-effective/efficient technology and ideas**;
 - **Be credible, reliable and trusted stewards**;
 - **Engage in sustained efforts to improve**
 - The viability & vitality of the American & global economy,
 - Our way & quality of life,
 - Our security.

FHWA's VISION

- **The Best Agency & Transportation System in the World**
 - Be the **best agency** in the Federal Government providing the **best service** to the American public;
 - **Safest roads;**
 - **Most excellent pavements & bridges;**
 - **Congestion-free highways;**
 - **Socially and environmentally sensitive;**
 - **Always exploring ways to improve and learn.**

FHWA TITLE VI POLICY

- It is the policy of the FHWA to ensure nondiscrimination in all programs and activities receiving financial assistance from the Federal Highway Administration
(23 CFR 200.7)



TITLE VI

- **What is Title VI?**

THE UNIVERSITY OF TEXAS AT AUSTIN

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

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.

— Title VI of the Civil Rights Act of 1964

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 ésta patrocina sin importar su raza, color, o nacionalidad.

— Título VI del Acta de Derechos Civiles de 1964

If you feel you have been discriminated against in any program because of race, color, or national origin, contact your Title VI coordinator.

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.

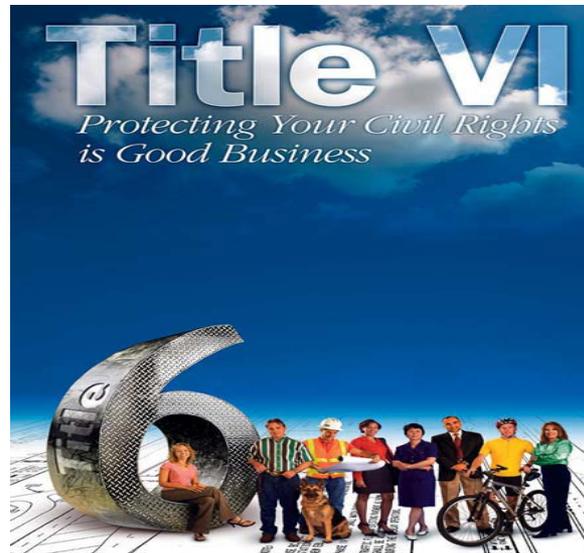
All qualified applicants will receive equal consideration for employment and admission without regard to race, color, national origin, religion, sex, pregnancy, marital status, sexual orientation, gender identity, gender expression, age, physical or mental disability, or covered veteran status. Eligibility and other terms and conditions of employment benefit 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 and Title VII of the Civil Rights Act of 1964, Title III of the Education Amendments for 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 amendments, The University of Texas at Austin affirmatively states 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. Inquiries and charges of violation of Title VI, Title III, and Federal Equity Title III (sex), Section 504 (disability), ADA (disability), Age Discrimination in Employment Act (age), Sexual Orientation, or Nation Status should be directed to the Office of Institutional Equity (OIE) at (512) 471-5849 or equity@utexas.edu. Request for accommodation for disability should be directed to the ADA coordinator at (512) 471-5848.

 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, A0400, Suite 4.502
Austin, TX 78712-1641
(512) 471-5849

VIDEO PRESENTATION

- <http://youtu.be/E6Y62kUBzKM>
- Background & Purpose of Title VI



WHAT IS TITLE VI?

- It is a **Federal LAW!**
- It is the Sixth (VI) Title of the Civil Rights Act of 1964
- It provides for **nondiscrimination** in all Federally-assisted programs & activities

TITLE VI PROGRAM PURPOSE

- To ensure **public funds** are not spent in a manner that encourages, subsidizes, perpetuates, or results in discrimination;
- Title VI therefore bars **intentional** (*disparate treatment*) and **unintentional** (*disparate impacts or effects*) discrimination.



TITLE VI PROGRAM **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 PROGRAM AUTHORITIES

- Legislative Authorities

PROGRAM STATUTES

- **Title VI of the Civil Rights Act of 1964**
- The 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, denied the benefits of, or subjected to discrimination under any program or activity receiving Federal financial assistance” (42 USC 2000d)

PROGRAM STATUTES CONTD.

- **The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (The Uniform Act), as amended**
 - **Prohibits unfair and inequitable treatment of persons displaced or property to be acquired as a result of Federal-aid programs & projects (42 USC 4601)**

PROGRAM STATUTES CONTD.

- **Section 504 of 1973 Rehabilitation Act**
 - “No **QUALIFIED HANDICAPPED PERSON** shall, solely by reason of his 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.” (**29 U.S.C. 790**)

PROGRAM STATUTES CONTD.

- **The 1973 Federal Aid Highway Act**
 - “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.” (**23 U.S.C. 324**)

PROGRAM STATUTES CONTD.

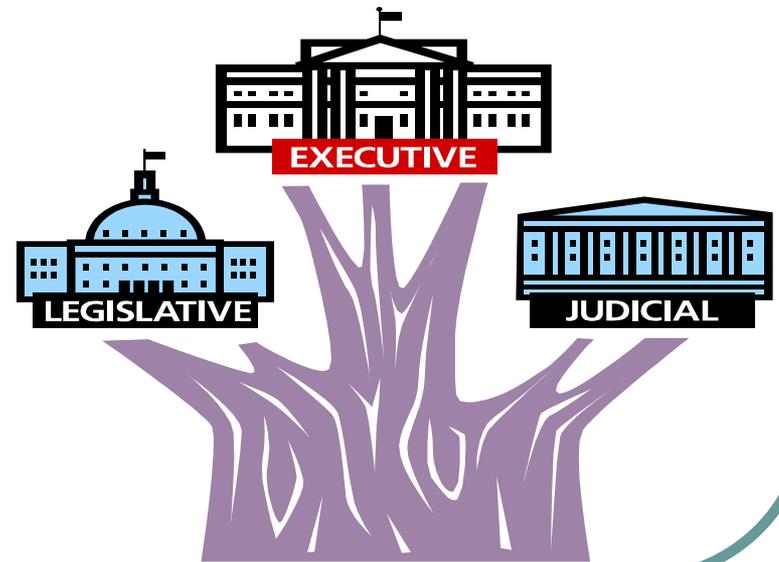
- **The 1975 Age Discrimination Act**
 - “No person shall on the basis of **AGE**, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”
(**42 U.S.C. 6101**)

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



TITLE VI THE LAW V. TITLE VI THE PROGRAM

Title VI of Civil Rights Act 1964 Coverage	FHWA Title VI Program Coverage
RACE	RACE
COLOR	COLOR
NATIONAL ORIGIN (LEP)	NATIONAL ORIGIN (LEP)
	HANDICAP/DISABILITY
	SEX
	AGE
	LOW INCOME & MINORITY

IN EFFECT, FHWA TITLE VI PROGRAM IS...

- System of requirements developed to assure nondiscrimination in programs and activities receiving Federal financial assistance on the basis of:
 - Race
 - Color
 - National Origin (*Including Limited English Proficiency (LEP)*)
 - Sex
 - Age
 - Disability
 - Low Income Status

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

TITLE VI COMPLIANCE

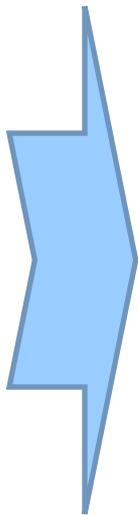
- COMPLIANCE



- Compliance with Title VI is a satisfactory condition when a recipient [or subrecipient] has effectively implemented all of the Title VI requirements or can demonstrate that every good faith effort toward achieving this end has been made (23 CFR 200.5(d)).

ACTIONS IN THE EVENT OF NONCOMPLIANCE

- Actions



- Found in noncompliance;
- **Voluntary or Informal Compliance Sought First**
- **Suspension or termination of Federal financial assistance;**
- **Refusal to grant or continue federal financial assistance;**
- Any other means authorized by law
 - Refer to DOJ to enforce Federal law, assurance or contractual obligation
 - Utilize applicable proceedings under state or local law (**49 CFR 21.13**)

ROLES & RESPONSIBILITIES

- State Transportation Agencies (STAs)
- Subrecipients, including LPAs
- FHWA Division Offices

PRIMARY RESPONSIBILITY

- The primary responsibility for the implementation of the Title VI Program lies with the STA;
- Effective & efficient implementation is a collaborative effort at all levels; and
- Program managers must be knowledgeable and sensitive.

STATE ROLES & RESPONSIBILITIES

● **ROLES**

- Develop procedures, implement and monitor program;
- Title VI Specialist the hub of program;
- Head of STA is held responsible for implementation of Title VI requirements (23 CFR 200.9(a)(3)).

STATE REQUIREMENTS & RESPONSIBILITIES

- **REQUIREMENTS & RESPONSIBILITIES**

- **Signed Assurance**
- Adequately Staffed **Civil Rights Unit**
- Title VI Program **Coordinator** & Title VI **Specialist/Manager**
- **Implementation Plan**
- **Training Program**
- **Develop Procedures**
 - Complaint investigations, reviews & monitoring process
 - Deficiency resolution; data collection and analysis; Outreach/Public Involvement
- **Conduct Reviews**
 - Programs & special emphasis areas
 - Subrecipients & State program directives
 - Pre-award & post-award/grant applications

SUBRECIPIENTS (LPAs) ROLES & RESPONSIBILITIES

- **ROLE**

- Develop program
- Implement program requirements and monitor
- Title VI Manager/Specialist responsible for the program
- Head of Agency ultimately responsible

SUBRECIPIENTS (LPAs) REQUIREMENTS & RESPONSIBILITIES

- **REQUIREMENTS & RESPONSIBILITIES**

- **Signed Assurance**
- Title VI Program **Specialist/Manager**
- **Implementation Plan or Agreement**
- **Training Program**
- **Develop Procedures**
 - Complaint investigations, reviews & monitoring process
 - Deficiency resolution; data collection and analysis; Outreach/Public Involvement
- **Conduct Reviews**
 - Programs & special emphasis areas
 - Subrecipients & State program directives
 - Pre-award & post-award/grant applications

FHWA DIVISION ROLES & RESPONSIBILITIES

- **ROLE**

- Interpreting Title VI/Nondiscrimination laws, regulations, and other authorities;
- Determine STA compliance through reviews and investigations;
- Assist the State in program implementation;
- Provide feedback to HCR; training, and technical assistance and guidance to recipients & stakeholders.

FHWA DIVISION ROLES & RESPONSIBILITIES

- **RESPONSIBILITIES**

- Review and approve STA's Implementation Plan; Work plan & Accomplishment Report;
- Determine compliance through compliance reviews;
- Direct State program with assistance from Division program area Specialists, HCR, Resource Center, and OCC;
- Conduct program reviews to determine program implementation;
- Process complaints of discrimination;
- Conduct investigations of external complaints in coordination with HCR;
- Provide or coordinate training, information and technical assistance to Division Office program area personnel, State Title VI Specialists and other stakeholders.

Implementation Plans

- **What** – Implementation Plans are the STAs process document outlining their Title VI program.
- **When** – Every year by **October 1** the Implementation Plan should be submitted to FHWA for approval or disapproval.
- **Why** – To ensure compliance with Title VI of the Civil Rights Act of 1964, and to give STA employees, members of the general public, and the FHWA a consistent and easy to understand “roadmap” of the STAs Title VI program.
- **Who** – Every STA is responsible for submitting a Title VI Implementation Plan to the FHWA.

TITLE VI & PROGRAM AREAS

- **Multidisciplinary Approach**
- **Group Exercise**
- **Reporting Out**
- **Discussion and Summary**

THE MULTIDISCIPLINARY APPROACH

- Traditional vs. Multidisciplinary

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.

COORDINATION WITH PROGRAM AREAS

- **Establish working relationships** with other discipline specialists;
- **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.....

TRADITIONAL vs 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 Disciple 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

FEDERAL-AID PROGRAM AREAS

- Planning
- Project Development/NEPA Documentation
- Right-of-Way
- Construction
- Research
- *Safety*
- *Maintenance*

GROUP EXERCISE

- **Select**
 - A Scribe
 - A Presenter
 - Facilitator and Timekeeper
- **Carefully review your assigned program area, and as a group:**
 - Identify program's key consideration(s);
 - Potential impacts or issues; and
 - Strategies/activities to mitigate/address impacts or issues.
- **Present Information**

The Planning Process

- Metropolitan and state plans are required by law
- Transportation plan & Transportation Improvement Plan/State Transportation Improvement Plan
- Must consider other modes
- FHWA & FTA input
- Proactive public involvement
- Financial plan - Fiscally constrained
- Consider environmental effects
- No less than 20 years on state & Metropolitan Planning Organization plans
- Ongoing activity

Planning Plans & Projects

- The planning process should be the genesis of projects
- Federally funded projects in metropolitan areas must be in plans
- Focus is **mobility**, **access** & **community goals**

Planning & Public Involvement

- Public involvement (PI) required at the planning stage to forestall future problems
- PI is performance not process oriented
- Communication must be a two-way street
- Public concerns and views considered in decision making
- Plans tailored to fit local conditions
- Ensure involvement of transportation disadvantaged

Planning & Title VI Issues

- Is there effective public involvement and participation process?
 - Recognition of specific and prominent community issues and circumstances
 - Availability of mechanisms for eliciting and soliciting minority involvement
 - Availability of and accessibility to information
 - Multiple mechanisms for involving public
 - Accessibility of process

NEPA Project Development

- Phase that continues where project planning ends
- Consideration of alternatives & examination of social, economic and environmental (SEE) effects
- States perform analysis and prepare NEPA documentation with FHWA assistance
- Open and collaborative
- Decision making based on public interest
- Degree of analysis based on potential impacts

NEPA & Title VI Issues

- Is public involvement adequate?
 - Early and continuous
 - Appropriate community outreach
 - Feedback to community during the process
 - Accommodate community input

NEPA & Title VI Issues

- Are public hearing requirements satisfied?
 - Informal vs. Formal
 - Open forum public hearing format

NEPA & Title VI Issues

- Is there equitable mitigation of SEE impacts?
 - Sequencing of mitigation
 - Identify in categorical exclusion, environmental assessment, environmental impact statement
 - Commitments in categorical exclusion, finding of no significant impact, record of decision are binding

Right-Of-Way (ROW)

- **Appraisal/Appraisal Review**
 - Provides basis for payment
 - Estimate of fair market value, an opinion
 - Fee appraisers may be used
 - All appraisals must be reviewed

Negotiation

- Sensitive - involves direct contact with public
- Agency required to make prompt written offer for full amount believed to be just compensation

Acquisition

- Agency is required to make every effort to acquire property by negotiation
- Coercion is strictly prohibited
- Condemnation proceedings available if agreement not reached

Relocation Assistance & Payments

- **Written notices:**
 - General information on relocation program
 - Notice of relocation eligibility
 - 90 days notice
 - Relocation services
 - Replacement dwelling prior to displacement
 - Replacement housing payments
 - Moving and related expenses

Construction

- Plan preparation, specifications & estimates
- Letter of authorization to proceed;
- Advertising for bids
- Contract awards
- Subcontract approvals
- Monitoring of work
- Implementation of mitigation measures
- Final inspection and acceptance

Construction & Title VI Issues

- Incorporation of contract provisions
- Monitoring/inspection of work by State
- Impact mitigation:
 - Safety through construction zones
 - Noise and air impacts
 - Employment and contracting goals

Construction & Title VI Issues

- **Assessment of sanctions:**
 - Liquidated damages
 - Withholding payment
 - Suspension/termination of contract
 - Decertification

Research

- Proposal/problem statement solicitation
- Selection of researcher
- Outreach

Research & Title VI Issues

- Practice competitive contracting
- Refrain from using the same
 - Individual Researcher
 - School
 - Discipline
 - Department
- Include/involve minority institutes of higher education (MIHEs)
- Encourage & promote collaborative work

STRATEGIES TO PREVENT DISCRIMINATION

- Minimum Considerations
- Strategies

MINIMUM CONSIDERATIONS

- Minimum Considerations 
- Be proactive!!
- At a minimum:
 - Provide training;
 - Technical assistance;
 - Public education;
 - Community Outreach;
 - Data collection & analysis

STRATEGIES

- Full employment of systematic multidisciplinary approach;
- Frequent Title VI/Nondiscrimination training;
- Regular/periodic TEAM meetings;
- Periodic reviews and evaluations;
- Develop public involvement strategies according to situation at hand;

STRATEGIES CONTD.

- Create an atmosphere of trust and respect;
- Empower the Community by listening, and providing prompt response to inquiries;
- Establish a two-way free and frank line of communication with the public;
- Maintain proper statistical, income and demographic data; and
- **Document, Document, Document.**

REVIEW OBJECTIVES

- Measure effectiveness of Title VI program;
- Determine the extent to which recipients (e.g. designees, liaisons), subrecipients, LPAs, contractors, understand and comply with Title VI requirements;
- Identify problems, concerns, challenges, trends, patterns, promising practices & success stories;
- Present opportunity to provide technical assistance and training.

RENEWED INTEREST

- DOJ MEMOS

- March 4, 2009 Memo to Agency Senior ARRA Officials and Civil Rights Directors for Federally Assisted programs
- July 10, 2009 Memo to Federal Agency Directors & General Counsels
- August 19, 2010 Memo to Federal Funding Agency Civil Rights Directors
- September 8, 2010 Correspondence to DOE's Assistant Secretary For Civil Rights
- September 27, 2010 memo to Heads of Departments and Agencies Providing FFA

FHWA ASSOCIATE ADMINISTRATOR FOR CIVIL RIGHTS MEMO

- The Title VI Program Oversight Emphasis Memo

- Issued on May 27, 2010 Memo to DAs & DFSs
- Emphasized the critical importance of
 - **STAs complying with all nondiscrimination laws and regulations, and**
 - **Division Offices have oversight and enforcement responsibilities**

OTHER EFFORTS TO STRENGTHEN TITLE VI IMPLEMENTATION

- The new USDOT Title VI Assurances & Nondiscrimination Provisions (DOT 1050.2A).
- Updating Regulations and revising guidance documents
- Endorse a Multidisciplinary Approach to Title VI Program Implementation.
- Increase in training, technical assistance, webinars, and the development of e-learning tools to facilitate understanding of requirements and effect effective implementation of Title VI Program.
- Focus on tangible and measurable results rather than routine processes.

TITLE VI PROGRAM & DATA COLLECTION

- Definition
- Why collect data?
- Data sources to be should be utilized
- Data to be collected
- Uses of data collected

DATA COLLECTION

- Term used to describe the process of preparing and collecting data
- Data includes
 - Information
 - Statistics
 - Facts
 - Figures
 - Numbers
 - Records

WHY COLLECT DATA?

- **REGULATORY REQUIREMENT**

23 CFR 200.9(b)(4)

Develop Procedures For Data Collection

- “Develop procedures for the collection of statistical data (race, color, sex, **age, disability**, and national origin) of participants in, and beneficiaries of State highway programs, i.e., relocatees, impacted citizens and affected communities.”

WHY COLLECT DATA CONTD.

- **49 CFR 21.9(b)**

Assure Compliance

- “Each recipient shall keep such records and submit to the Secretary timely, complete, and accurate compliance reports at such times, and in such form and containing such information, as the Secretary may determine to be necessary to enable him **to ascertain whether the recipient has complied or is complying** In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations”

Determine if FHWA Financial Assistance is Reaching Communities and Populations

- “In general recipients should have available for the Secretary racial and ethnic data showing the extent to which members of minority groups are beneficiaries of programs receiving Federal financial assistance.”

WHY COLLECT DATA CONTD.

- **49 CFR 21.9(d)**

Information to Beneficiaries and Participants

- “Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the **provisions** of this part and its **applicability** to the program under which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the Secretary finds necessary to **apprise** such persons of the **protections against discrimination** assured them by the Act and this part.”

- **23 CFR 200.9(b)(12)**

- “Develop Title VI information for dissemination to the general public and, where appropriate, in languages other than English.”

WHY COLLECT DATA CONTD.

- In the event of litigation or complaint....
- Monitor performance of nondiscrimination program
- Provide basis for decision or decision-making
- Maintain adequate **documentation...**
- **Data must be accurate, timely, current, sufficient and complete to be useful**

DATA SOURCES TO BE UTILIZED

- Census
 - Good starting point
 - Susceptible to change
 - Should not be the only source
- State Education Departments
 - School districts
- Community-based Organizations
- American Community Survey
- Community Leaders
- Geographic Information Systems (GIS)
- Local [data collecting] Agencies
- Planning Organizations

DATA TO BE COLLECTED

US DOJ DIRECTIVE (28 CFR 42.406(b))

- Manner in which services are provided by program;
- Population eligible to be served based on race, color, national origin...
- Data regarding covered employment, including use or planned use of bilingual employees to work with beneficiaries unable to speak or understand English;
- Location of existing or proposed facilities and information regarding whether the location will have the effect of denying access because of...
- Present or proposed membership, by race, color, national origin..., in any planning or advisory body that is an integral part of the program;
- Where relocation is involved, the requirements and steps used or proposed to guard against unnecessary impact on persons on the basis of race, color or national origin...

ADDITIONAL DATA TO BE COLLECTED *(FHWA)*

- Demographic profile of communities;
- Owners of property [to be] taken, and persons or businesses to be relocated or adversely affected by race, color, national origin...;
- Lawsuits filed (including status) against applicant or recipient alleging discrimination based on protected class;
- Statements on compliance reviews;
- Complaints - How processed and or determined;
- Training & technical assistance provided & attendance records.

USES OF DATA CONTD.

- Identify:
 - Strategies and options to address impacts
 - Strategies to disseminate information
 - Ways of avoiding disparate treatment and impact
 - Alternatives to modes and locations and types of facilities (transit, light rail, van and carpooling, HOV lanes, etc.)
 - Priorities for investments
 - Sources for financing investments

STRATEGIES TO PREVENT DISCRIMINATION

- Minimum Considerations
- Strategies

MINIMUM CONSIDERATIONS

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- 
- Be proactive!!
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- Document, Document, Document.

OPEN FLOOR

- Questions
- Comments



EXECUTIVE ORDERS

- Environmental Justice
- Limited English Proficiency

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.

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**)

EO 12898 Continued

- Advocates for **continuous, conscious** and **conscientious** efforts to avoid, minimize, or mitigate disproportionate and adverse impacts on EJ targeted persons/population;
- Is not a [new] law;
 - Presidential mandate to Federal departments and agencies on addressing environmental injustice/discrimination
 - Has no enforcement authority in court
- Does not create a new requirement;
 - **Calls for the enforcement of existing nondiscrimination laws such as Title VI**

EJ Responsibilities

- **Have adequate methods** or mechanisms to research, collect, and analyze data;
- **Give consideration to data** in the project development process;
- **Use available data** in the transportation decision-making process; and
- **Demonstrate good faith effort (GFE)** to ensure disproportionate and adverse impacts on EJ populations are prevented, minimized, reduced or mitigated.

EJ Responsibilities

- Ensure identified **populations** are **duly notified** and have reasonable access to public involvement opportunities and information in all phases of the project;
- Ensure and **explore** innovative and proactive **ways of improving relationships** with stakeholders;
- Provide **technical assistance** and guidance on EJ issues and activities.

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**

ADDITIONAL RESOURCES

● RESOURCES

- Federal-aid Essentials For Local Public Agencies <http://www.fhwa.dot.gov/federal-aidessentials/catmod.cfm?category=civilrig>
- USDOJ Title VI Manual, <http://www.justice.gov/crt/about/cor/coord/vimannual.pdf>
- Federal Title VI Enforcement to Ensure Nondiscrimination in Federally Assisted Programs, June 1996 – A Report of the U.S. Commission on Civil Rights <http://catalog.hathitrust.org/Record/003102564>
- FHWA Title VI Nondiscrimination in the Federal-aid Highway Program Desk Reference, FHWA-HCR-07-0001

OPEN FLOOR

- Questions
- Concerns
- Comments
- Suggestions



Points of Contact



Carey Shepherd
Civil Rights Program Coordinator
FHWA Florida Division
carey.shepherd@dot.gov
850-553-2206



U.S. Department
of Transportation
**Federal Highway
Administration**

Sandy Talbert-Jackson
FHWA Resource Center Civil Rights Specialist
sandy.talbert-jackson@dot.gov
410-962-0116

Mohamed Sulaiman Dumbuya
FHWA Resource Center Title VI Specialist
mohamed.dumbuya@dot.gov
804-775-3339