



NONDISCRIMINATION HANDBOOK FOR LOCAL AGENCIES

Introduction:

Recently there has been national attention focused on local agencies and their compliance with nondiscrimination requirements. In fact, you may have seen news stories about agencies losing funding or even being sued for civil rights violations, nationwide and right here in Florida. At Florida Department of Transportation (FDOT) and Federal Highway Administration (FHWA), we are committed to delivering safe, efficient, reliable and equitable transportation systems, including in the Local Agency Program (LAP). Allegations of discrimination impede our mission, damage our agencies' reputations and create distrust and ill will in the communities we are dedicated to serving. This Handbook was developed to assist you to recognize, achieve and demonstrate your agency's compliance through use of the FDOT Sub-Recipient Compliance Assessment Tool (SCAT). The Handbook is also a helpful resource to FDOT staff in ensuring that LAP agencies are qualified to be sub-recipients of FHWA funding, consistent with Title VI of the Civil Rights Act of 1964 and related nondiscrimination authorities.

I. Authority:

You probably know that there are many Civil Rights *project* level requirements in LAP, including FHWA 1273 compliance, Disadvantaged Business Enterprise (DBE) monitoring, Equal Employment Opportunity (EEO) verification, Davis Bacon and Related Acts oversight, and others. What you may not know is that there are also Civil Rights *program* requirements. These are not tied to a particular project, but rather to your agency as a whole and whether it is qualified to receive federal assistance. This means that regardless of how your agency funds activities, *all* must comply with nondiscrimination program requirements. Under 23 CFR 200.9(b)(7), FDOT is responsible for verifying that your agency achieves and maintains substantial compliance for the entire period you are in the LAP program, whether or not you have an active, past or planned project. 23 CFR 200.9(b)(13) also requires FDOT to periodically conduct pre or post grant audits of its LAP agencies to verify this substantial compliance.

II. TITLE VI & RELATED STATUTES NONDISCRIMINATION REQUIREMENTS

Most civil rights program requirements begin with Title VI of the Civil Rights Act of 1964 (Title VI), which forbids federal aid recipients from excluding from participation, denying the benefits of or subjecting to discrimination anyone on the basis of race, color or national origin. While later and related federal and state authorities did not amend Title VI, they did create the same protection for other protected classifications such as gender, age and disability (federal) and religion and family status (state). Other legislation also expanded the scope of Title VI so that nondiscrimination requirements applied to *all program, services and activities* of the recipient, not just the program receiving the federal funds.

(For a full list of nondiscrimination authorities and helpful resources, see Attachment A).

There are some basic requirements for any agency receiving federal funds. This Handbook will cover each cursorily, but remember to contact FDOT or FHWA should you need assistance or would like to receive training.

a. Nondiscrimination Agreement

As a sub-recipient of the Florida Department of Transportation, each local agency in the LAP program is required to sign a Title VI and Related Statutes Nondiscrimination Agreement with the State to assure Title VI and related statutes compliance. The form/agreement is entitled [Title VI and Related Statutes Nondiscrimination Agreement](#) and can be accessed with this link or in **Attachment B** of this Handbook.

The Nondiscrimination Agreement acts as a binding contract and lists all of the Title VI requirements that a local agency agrees to perform in return for receiving FHWA funds from the State, including Title VI Assurances, nondiscrimination policy statement and a discrimination complaint procedure. The Agreement also contains Appendices that must be included in all LAP project bids, contracts, subcontracts and agreements. The local agency is not only responsible for ensuring its own contracting documents have the required insertions, but also that any subcontracts also contain them.

The Title VI and Related Statutes Nondiscrimination Agreement must be signed and uploaded to the Local Agency Program Information Tool (LAPIT) along with the SCAT documents. The current agreement document expires when there is a change in your agency's Chief Executive Officer (CEO), and it must be executed afresh. However, FDOT is awaiting approval of a new FHWA assurance that will require re-execution every three (3) years. We encourage you to work with your FDOT District LAP Representative in ensuring your Agreement is up to date.

b. Nondiscrimination Policy

Local agencies must develop and post for public view a policy that states that it will not discriminate in any program, service or activity on the basis of race, color, national origin, sex, age, disability, religion or family status. While your website is a good

repository for this information, it should not be the only location as not all members of the public have computer access.

It is important to note that your agencies equal employment opportunity (EEO) or fair housing policy will likely be insufficient. Under Title **VII** of the Civil Rights Act of 1964, as amended, and other employment laws, these policies cover specific areas of agency operation, not all programs, services and activities.

There are many excellent examples of policies around our state, including those of FDOT, all of our state's Metropolitan Planning Organizations (MPOs) and many of the larger municipalities. Contact FDOT or your local MPO for suggestions or take a look at a sample policy, included in **Attachment C** of this Handbook.

c. Nondiscrimination Coordinator

All agencies receiving FHWA funding through FDOT must name a Title VI/Nondiscrimination Coordinator and post Coordinator contact information for public view. In addition, the Coordinator must be a responsible person within the agency who has direct, easy and unimpeded access to the agency's chief executive officer for the purposes of discussing nondiscrimination issues. Both the SCAT and LAPIT also require this person to be named along with contact information. It is important to check your policies against the SCAT/LAPIT to ensure that the appropriate Coordinator is named.

Absent a discrimination complaint, it can be difficult for local agencies to demonstrate that their Nondiscrimination Coordinator has 'easy access' to the CEO. An excellent idea is to annotate the agency organizational chart to show dotted line access from the Coordinator directly to the CEO. This shows that while the Coordinator can have any number of direct reports in daily work duties, for nondiscrimination he or she can report directly to the agency's highest executive.

d. Nondiscrimination Complaint Procedure

As part of your nondiscrimination policy or in a separate document, your agency must have a policy for accepting and processing complaints of discrimination based upon race, color, national origin, sex, age and disability (at a minimum).

Local agencies have the flexibility to develop a procedure that corresponds to the organization's operations with two limitations:

- i. Local agency administrative processing of complaints should be time sensitive, never exceeding more than 90 days.
 - ii. Copies of all nondiscrimination complaints should be provided to the FDOT District Title VI/Nondiscrimination Coordinator. The FDOT Coordinator is an important resource who can assist with investigation and resolution. The Coordinator is also responsible for recording, tracking and reporting complaint status to FDOT Central Office and FHWA. Both FDOT and FHWA serve as 'clearinghouses' for discrimination complaints, forwarding them to the appropriate authorities where necessary.
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As with Nondiscrimination policies, there are many good examples around the state. Again, see **Attachment C** for a combination document that includes the policy, coordinator, procedure and other essential information.

e. Annual Reviews of Nondiscrimination

It is the responsibility of the Nondiscrimination Coordinator to ensure that programs and services are operating in a nondiscriminatory manner. One way the Coordinator should do so is by annual reviews of programs that receive federal funds. Neither FDOT nor FHWA are prescriptive about the nature of an effective review process, just that the Coordinator be able to demonstrate how it ensures nondiscrimination in local agency departments.

f. Nondiscrimination Training

The Nondiscrimination Coordinator should provide or arrange for periodic staff training in nondiscrimination. There are many helpful online resources that can assist, and you are welcome to use any materials developed by FHWA or FDOT. In addition, you may request in-person training from FHWA or FDOT by contacting your District LAP Representative. The Coordinator has flexibility in how, where and what type of nondiscrimination training is needed. Nor is there any prescription on length, format or medium. We encourage you to have fun with your training program, keeping it interesting and informative. The more an agency integrates nondiscrimination with customer service and the agency's culture, the more effective its Civil Rights program.

g. Outside Reviews

Local agencies must be prepared for reviews of its nondiscrimination program by FDOT and FHWA. However, other agencies frequently conduct reviews as well, such as Housing and Urban Development (HUD), Federal Emergency Management Agency (FEMA) and other DOT modal agencies. While there are no guarantees that one size fits all, following FDOT's SCAT and Handbook *greatly* improves your agency's chances of a positive review outcome.

FDOT and FHWA have neither the time nor resources to review every local agency, every year. Instead, we collect the SCAT document from your agency through the Local Agency Program Information Tool (LAPIT). We then use random or risk based criteria to choose a certain number of SCATs for annual audit. This could include a desk review of your documents, or could extend up to an onsite visit and mandatory training. Regardless, these reviews are meant to *assist* you in achieving voluntary, substantial compliance and are not related to your LAP projects. However, Agencies that refuse to submit required documentation or cooperate with FDOT or FHWA reviews are considered to be willfully noncompliant, a finding that could jeopardize the agency's federal funding.

h. Documentation and Record Keeping

The easiest and most effective manner of demonstrating compliance is through documentation of nondiscrimination policies, procedures, outreach and other similar information. Local agencies may find it useful to keep a nondiscrimination notebook or computer file containing all relevant material. Some examples of important items to maintain are:

- All complaint information, including a tracking log of complainant, date of complaint, basis for complaint and complaint disposition.
- Any events or activities intended to increase participation and solicit feedback from low income and minority communities.
- Updated community characteristics surveys showing the agencies geographic area broken down by socioeconomic factors (race, age, ethnicity, income, etc.).
- Community Impact Assessments that evaluate the enhancements and negative impacts of local agency projects.
- The local agency's nondiscrimination program assurance documents.
- Records of all internal and external Title VI/Nondiscrimination reviews, results and corrective action, if any.
- Lists of staff nondiscrimination training including the date, number of attendees and the training subject.
- Documents showing strong practices, lessons-learned, nontraditional partnerships, etc.

III. Other Nondiscrimination Requirements

By now you should be more familiar with the scope and content of a nondiscrimination program. We hope that you also realize that many of these requirements may already be in place at your agency, but may not be well known or appropriately visible. Now, we are going to discuss other, often more obscure requirements of which you may not be aware. Remember, you may always contact FHWA or FDOT for assistance with these or any other Civil Rights issues.

a. Limited English Proficiency (LEP)

Executive Order 13166, as well as Department of Justice (DOJ) and DOT memoranda require federal agencies and their recipients to take reasonable steps to provide meaningful access to programs and services for those who are Limited English Proficient or LEP. In order to comply, local agencies must develop and post a written LEP plan that included analysis of the following four factors:

1. Number or proportion of LEP persons eligible to be served or likely to be encountered by the program or service;
2. Frequency with which LEP individuals come in contact with the program;
3. Nature and importance of the program, activity, or service provided by the program to people's lives; and the
4. Resources available to the recipient and costs.

The vast geography and diversity of Florida means that no one LEP plan can serve for the entire state. Local agencies must use the four factors in conjunction with their area demographics, public involvement, measures of effectiveness, community partners and resources to determine when and to what extent LEP services are required. Both FHWA and U.S. DOJ have websites that can assist local agencies with plan development. See <http://www.fhwa.dot.gov/civilrights/programs/lep.cfm> or www.lep.gov or see the resource sheet at **Attachment A**.

LEP plans are essentially tools for providing better customer service, obtaining more representative public input and demonstrating Title VI compliance. The Plans should

effectively discuss the four factor analysis and list the steps, activities or other resources the local agency uses to provide meaningful access. LEP plans must be available for public access and comment, and should use plain language. Plans should not be needlessly long, or contain so much background or legal information that it creates a barrier to public understanding.

Though not required by the Executive Order or related Memoranda, local agencies may choose to comply with 'safe harbor' provisions. Safe harbors are affirmative defenses to a finding of noncompliance by demonstrating written translation of all vital documents based on the size of an LEP population. The safe harbor *only* applies to written translation of documents and when all vital documents are translated where there is an LEP language group constituting 5 percent or 1,000 persons, whichever is less.

Given the size and scope of a local agency's vital documents, full translation could be cost prohibitive. Therefore the local agency should carefully consider the wisdom of safe harbor compliance and whether other reasonable steps might better or more effectively provide LEP compliance.

Finally, like all nondiscrimination programs and plans, LEP Plans are living documents that must change to reflect changing communities and their needs. As such, the local agency should review its LEP Plan annually to ensure that its four factor analysis remains accurate and that the Plan is effective. As for other requirements, there are great examples of these plans around the state. For a basic combination document, see the template attached in **Attachment C**.

b. Environmental Justice (EJ)

Executive Order 12898, first issued in 1994, was reaffirmed by the White House in 2011. Subsequently, a consortium of federal agencies, including U.S. DOT, participated in a working group to revise and update EJ guidance for its modal agencies and for recipients of federal assistance, including sub-recipients in local agency funding programs. The result was the **U.S. DOT Order on EJ, 5610.2(a)** (May 2012) and **FHWA Order on EJ, 6640.23A** (May 2012). The goals of EJ remain constant:

- To avoid, minimize, or mitigate disproportionately high and adverse human health and environmental effects, including social and economic effects, on minority populations and low-income populations.
- To ensure the full and fair participation by all potentially affected communities in the transportation decision making process.
- To prevent the denial of, reduction in, or significant delay in the receipt of benefits by minority and low-income populations.

EJ for local agencies includes two primary responsibilities:

1. **Outreach**: Local agencies must ensure and document early, continuous and meaningful opportunities for involvement by minority and low income communities.
 2. **Data Collection and Analysis**: Local agencies must scrutinize demographic data to ensure that LAP activities will not have disproportionately high or adverse impacts on underserved communities and, where impacts are unavoidable, that documented steps are taken to avoid, minimize or mitigate impacts.
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To implement these efforts, the local agency's planning and public works departments should use all reasonable and available means at their disposal to better understand the demographics and needs of the communities within their areas. Sources of information may include but not be limited to Census and/or American Community Survey data; information collected and maintained by school, emergency and social service providers; religious, community or charitable organizations; planning and/or community development committees and boards; homeowners and civic groups; surveys, blogs and other social media sources.

The agency may find it helpful to create a Community Characteristics Inventory (CCI) to both better identify underserved communities and potential partner organizations that may serve or have more information about the community. Once complete, the local agency can then use the CCI to analyze transportation projects, listing the benefits and impacts of its plans on the underserved communities, and assessing whether or not they are disproportionately high or adverse.

As with all nondiscrimination programs and activities, local agencies should annually examine their EJ strategy for effectiveness, including ensuring that it captures significant changes in the area's minority and low income populations. More information on EJ compliance may be found in the Nondiscrimination Authority and Resource List in **Attachment A**.

IV. Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973

Local agency programs and services may not exclude from participation in, deny the benefits of or subject to discrimination anyone on the basis of a disability. Moreover, the local agency has the responsibility of providing reasonable accommodation to those with disabilities who require special services to access information or activities. The following are requirements of all government entities, including sub-recipients:

- a) **Assurances – 49 C.F.R. 27.9** requires all federal aid recipients to complete a nondiscrimination assurance stating that programs and activities will be conducted in compliance with ADA. Great news, if your agency has executed the FDOT Nondiscrimination Agreement (which specifically includes disability), it need not sign a separate ADA Assurance. See Appendix A.
 - b) **Nondiscrimination policies and complaint procedures – 49 C.F.R. 27.13** requires federal aid recipients to develop a nondiscrimination policy and complaint filing/process procedure for disability. Recipients must also name a responsible person to coordinate disability nondiscrimination activities. Once again, if your agency has a comprehensive complaint policy and procedure that includes disability, and has named a Title VI/Nondiscrimination Coordinator, then it need not develop separate policies and procedures wholly for disability.
 - c) **Notice – 49 C.F.R. 27.15(b)** require all publications or other general information for public distribution to contain a notification statement that the recipient does not discriminate in admission or access to, or treatment or
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employment in, its programs and services. Recipients must also provide upon request reasonable accommodation for access to programs and services for those with disabilities. FDOT has developed a sample comprehensive statement that can be easily used all public documents, stating that:

XXXXXXXXXX does not discriminate on the basis of race, color, national origin, sex, age, religion, disability and family status. Those with questions or concerns about nondiscrimination, those requiring special assistance under the Americans with Disabilities Act (ADA), or those requiring language assistance (free of charge) should contact [enter Title VI/Nondiscrimination Coordinator or Public Information Office] at (XXX) XXX-XXXX or coordinator@anyLAP.org.

- d) **Transition Planning** – Local agencies that have control over existing sidewalks or roadways must conduct self-evaluations of their facilities (including pedestrian rights of way) to determine accessibility. If the agency has more than fifty (50) employees, they must also develop a transition plan that details noncompliant features, the method that will be used to remediate them, the time for doing so, and the person responsible for ensuring compliance. Neither FDOT nor FWWA have authority to determine compliant accessibility plans under **28 C.F.R. 35.105** or **28 C.F.R. 35.150(d)**, rather that the local agency has a plan for providing access in all programs, including the agency's facilities. If you find that your agency does not have an updated transition plan, then you may want to contact FHWA or FDOT for tips on getting started. Both FHWA and FDOT are always researching methods of compliance and are happy to share with our locals. Other information on transition planning may be found at <http://www.ada.gov/smtown.htm> and https://www.fhwa.dot.gov/civilrights/programs/ada_sect504qa.cfm .
- e) **Alteration vs. Maintenance** – There is a great deal of confusion among local agencies regarding what roadway activities trigger the need for accessibility features. Fortunately, DOT and DOJ have recently responded to this confusion by providing fairly straightforward guidance, found at <http://www.ada.gov/doj-fhwa-ta.htm> . It is very important that your planning, design and public works staff read and understand the Memorandum, as complaints and noncompliance findings are a common occurrence statewide.

In short, however, all new construction, including that of pedestrian features, must be constructed in accordance with the ADA Standards <http://www.access-board.gov/guidelines-and-standards/transportation/facilities/ada-standards-for-transportation-facilities> .

Resurfacing activities that include milling or any treatment beyond a single thin overlay, trigger the need for Standards-compliant curb ramps and detectable warnings *at a minimum*. Note, this is not exclusive to LAP projects. All local agency projects must comply with Title II of ADA, regardless of funding. Thus, local agencies cannot avoid ADA requirements by rejecting federal funds or use of other funding sources.

Local agencies that use the FDOT design standards need not be concerned with the ADA Standards, in that FDOT meets or exceeds existing standards in all categories. For more information on the ADA/504 requirements, either for programs or projects, visit <http://www.dot.state.fl.us/projectmanagementoffice/ADA/> or contact the FDOT ADA/504 Statewide Coordinator, Dean Perkins, at dean.perkins@dot.state.fl.us.

V. Disadvantaged Business Enterprise (DBE) Program

49 C.F.R. Part 26 establishes the federal guidelines for participation of Disadvantaged Business Enterprises (DBEs) in U.S. Department of Transportation funded contracts. There are two key points:

- As a recipient of federal funds through FDOT, local agencies *must* participate in this program.
- FHWA funding provided to local agencies through FDOT are subject to FDOT's DBE Program Plan and its overall approved goal. No alternative DBE plan may be used for FHWA funds without express approval from FDOT and FHWA.

Per **49 C.F.R. 26.51(f)**, where State Transportation Agencies achieve their overall goals through race neutral means for two consecutive years, they must continue a race neutral program until they can no longer achieve the approved goal. Since 2000, FDOT has operated an entirely race neutral DBE program in that it achieves DBE goals through the normal competitive bid process. This means that local agencies must ensure that their procurement and contracting documents carefully follow FDOT's specifications and that they do not specify a project goal or contract sanctions for failing to meet DBE availability. For more information on FDOT's Triennial DBE Goal and Approved Program Plan, visit:

http://www.dot.state.fl.us/equalopportunityoffice/DBEProgram/DBE_Program_Plan9.13.pdf

FDOT is strongly supportive of the DBE program and allocates substantial resources to supporting the program and providing assistance to agencies and contractors to better comply. Please encourage your agency to seek out and use disadvantaged and other small businesses, though only through the FDOT approved program for LAP projects. For more information, please contact your District LAP Representative or FDOT. FDOT's Equal Opportunity Office DBE website has relevant information at <http://www.dot.state.fl.us/equalopportunityoffice/>.

Under **49 C.F.R. 26.13**, local agencies are required to have a signed policy statement expressing their commitment to DBE participation. For an example, see the comprehensive template in **Attachment D**. The same federal regulation at **49 C.F.R. 26.13(b)** requires that each contract that the local agency signs with a contractor, consultant and/or subs include the following assurance:

"The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The

contractor shall carry out applicable requirements of [49 C.F.R. Part 26](#) in the award and administration of USDOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.”

