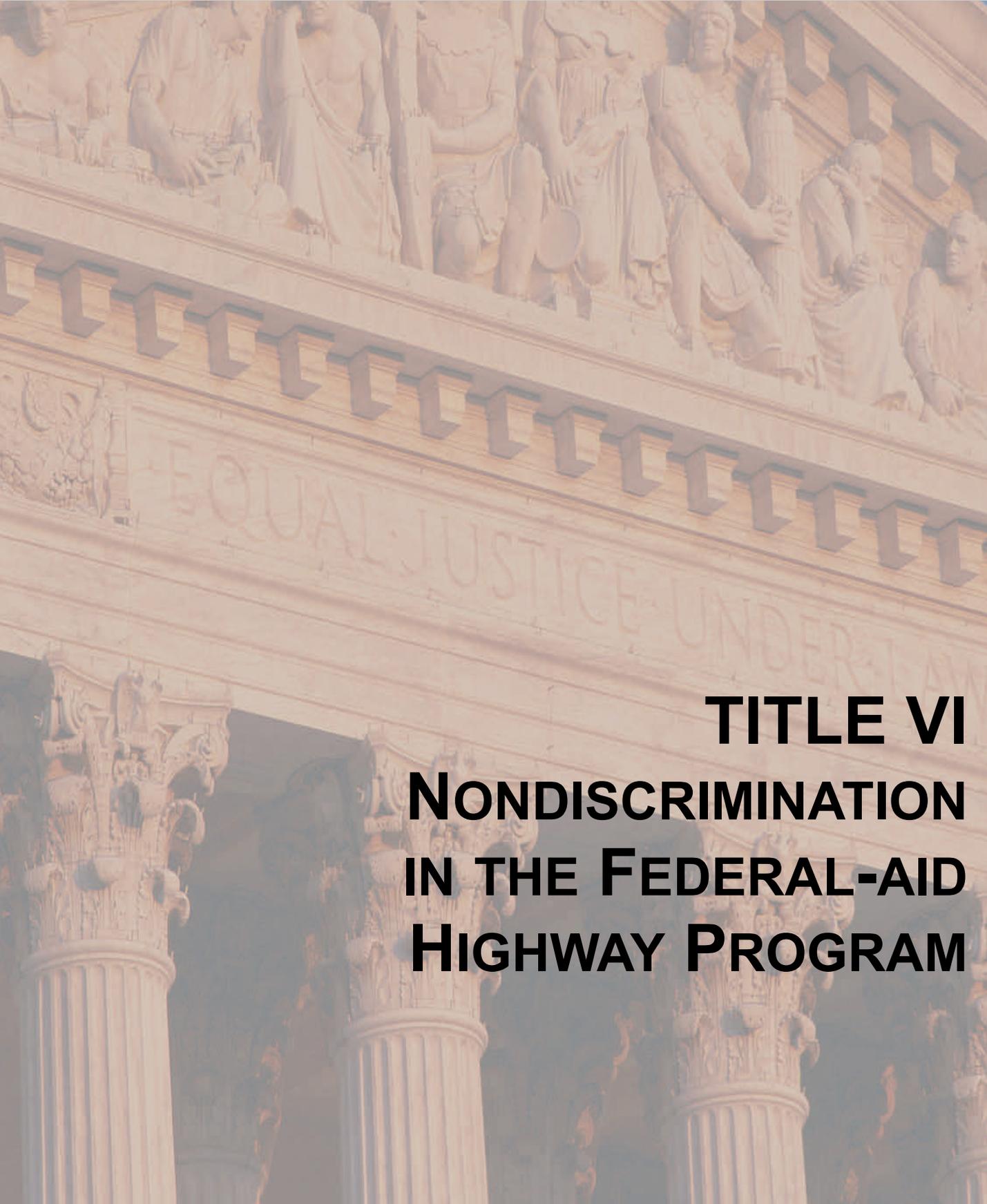


*HANDBOOK*

**TITLE VI**



**TITLE VI  
NONDISCRIMINATION  
IN THE FEDERAL-AID  
HIGHWAY PROGRAM**



# Table of Contents

<b>1</b>	<i>Introduction</i>
<b>2</b>	<i>Technical Assistance Tool</i>
<b>3</b>	<i>Authorities</i>
<b>4</b>	<i>Standard U.S. DOT Assurance</i>
<b>5</b>	<i>Implementation, Compliance &amp; Enforcement Guide</i>
<b>6</b>	<i>Responsibilities &amp; Strategies</i>
<b>7</b>	<i>Considerations in Major Federal-aid Highway Programs</i>
<b>8</b>	<i>Review Guidelines &amp; Q &amp; A</i>



***INTRODUCTION*****Introduction**

**Title VI Affects All of Us.** Each year, Federal Government agencies distribute hundreds of billions of dollars through the federally assisted programs they administer. These programs impact virtually every aspect of American life. The agencies' power to extend Federal financial assistance to any program or activity by way of, for example, a grant, loan, or contract, creates for them a legal obligation to ensure that all persons regardless of their race, color, national origin, sex, age, disability/handicap, or income status are afforded an equal opportunity to benefit from that assistance. Recipients of Federal financial assistance are also obligated to assure nondiscrimination in all their programs and activities. Therefore, they are required to have a comprehensive and proactive Title VI enforcement program to prevent and eliminate discrimination in each of the federally assisted programs they administer.

Nondiscrimination provisions apply to all federally and non-federally assisted programs and activities of Federal-aid recipients, sub-recipients, and contractors, regardless of tier. The provisions prohibit any use of Federal financial assistance to subsidize, promote, or perpetuate discrimination based on race, color, national origin, sex, age, disability/handicap, or income status. Primary recipients are responsible for determining and obtaining compliance by their sub-recipients and contractors.

This Handbook contains a Title VI Technical Assistance Evaluation tool for recipients to assess the implementation, compliance, and enforcement efforts of their nondiscrimination responsibilities. It can also serve as an interactive educational exercise to supplement and enhance recipient training.

Reference to **Title VI** in this handbook includes other civil rights provisions of Federal statutes and related authorities to the extent that they prohibit discrimination in programs and activities receiving Federal financial assistance.



## TECHNICAL ASSISTANCE TOOL

<b>State Transportation Agency (STA) Responsibilities</b>			
<b>A. General:</b>	<b>Yes</b>	<b>No</b>	<b>?</b>
1. Has the STA submitted Title VI nondiscrimination assurances to the Division? ( <i>Considerations:</i> within last 5 yrs, 2yrs, or longer) (23 CFR 200.9(a)(1))			
2. Does the assurance certify that discrimination based on sex is prohibited? (23 CFR 200.9(a)(2))			
3. Does your assurance include Civil Rights provisions of other Federal statutes that prohibit discrimination? (23 CFR 200.5(p))			
4. Does the STA have a Civil Rights unit, e.g., an office or department? ( <i>Considerations:</i> Are the functions of your Civil Rights implementation delegated?) (23 CFR 200.9(b)(1))			
5. Is the CR unit adequately staffed to effectively implement the State's CR requirements? (23 CFR 200.9(b)(2)) ( <i>Considerations:</i> (a) The meaning of "adequate" is relative to each office with regard to overall staff responsibilities. There is no "magic figure" concerning the number of staff assigned implementation responsibilities. (b) Can your staff, in fact, implement the State's Civil Rights requirements vs. simply knowing what is expected of them as staff?)			
6. Has your STA included in its directives, specific discriminatory practices that are prohibited? (49 CFR 21.5(b)) ( <i>Considerations:</i> Do your STA's directives prohibit practices such as, but not limited to: segregation or separate treatment in any part of the program; different standards or requirements for participation; discrimination in any employment resulting from a program?)			
<b>B. Implementation:</b>			
1. Has the STA designated a Title VI Coordinator or Title VI Specialist? (23 CFR 200.9(b)(1))			
2. Does the Coordinator/Specialist have easy access to the Head of the STA? (23 CFR 200.9 (b)(1)) ( <i>Consideration:</i> With regard to "access": Must the coordinator or specialist obtain permission from his/her supervisor or someone else before talking with the Head of the STA?)			
3. Does the Title VI Coordinator/Specialist have the responsibility to monitor Title VI activities and prepare required reports? (23 CFR 200.9(b)(1))			
4. Has the STA provided or coordinated Title VI training? ( <i>Consideration:</i> within 1-3 yrs, attendees (# and disciplines) (23 CFR 200.9(b)(9))			
5. Has the Title VI Coordinator/Specialist submitted a Title VI Implementation Plan to the Division Office for approval? (23 CFR 200.9(b)(11)) ( <i>Consideration:</i> Federal regulations require an updated State Title VI Implementation Plan every year.)			
6. Has the STA developed Title VI information for dissemination to the general public and, where appropriate, in languages other than English? (23 CFR 200.9a(b)(12)) ( <i>Considerations:</i> a -The STA should have a demographic profile of the affected areas to determine this. b - Examples of dissemination vehicles: TV, radio, newspapers, town meetings, flyers, brochures, placement in public areas, etc. )			
7. Has the Title VI Coordinator/Specialist prepared an annual accomplishment report for the past year, and goals for the next year? (23 CFR 200.9(b)(10)) ( <i>Note:</i> There is no need for a separate update if the accomplishment report contains one.)			
8. If your STA has received Federal Assistance through continuing State programs, has it established a Title VI compliance program for itself and its sub-recipients? (23 CFR 200.9(b)(5)(6), &(7)).			

<b>C. Procedures:</b>	<b>Yes</b>	<b>No</b>	<b>?</b>
1. Has the STA developed procedures for processing and resolving Title VI complaints received directly by the STA? (23 CFR 200.9(b)(3))			
2. Are the complaints and a copy of the report of investigation forwarded to the Division Office within 60 days of the date the complaint was received by the STA? (23 CFR 200.9(b)(3))			
3. Does the STA have civil rights personnel trained in compliance investigations? (23 CFR 200.9(b)(3)) (Examples: Programs offered by the Graduate School in the U.S. Department of Agriculture; consultants in the areas of complaints and investigations; FHWA training sessions; or other, certified trainers.)			
4. Does the STA have a Title VI log that identifies each Complainant by race, color, sex, or national origin, (23 CFR 200.9(b)(3)), age or disability (23 CFR 200.5(p)(6)); by recipient; nature of complaint; dates the complaint was filed and the investigation completed; disposition; and other pertinent information? (23 CFR 200.9(b)(3))			
5. Does the STA have procedures to collect and analyze statistical data (e.g., race, color, sex, national origin) of participants and beneficiaries of the STA programs (i.e., relocatees, impacted citizens, and affected communities)? (23 CFR 200.9(b)(4))			
6. Has the STA established procedures to identify and eliminate discrimination when found? (23 CFR 200.9(b)(14))			
7. Has your STA used onsite compliance reviews to discover discriminatory practices? (See DOT Order 1000.12; and in general, 23 CFR 200.9)			
8. Has the STA established procedures for promptly resolving deficiencies and reducing to writing the remedial action agreed to be necessary, within 90 days? (23 CFR 200.9(b)(15))			
9. In accordance with the State's signed assurances and regulation guidelines, does the STA take affirmative action to correct deficiencies when found by the FHWA? (23 CFR 200.9(a)(3))			
10. Has the STA established procedures for pre-grant and post-grant approval reviews of State programs and applicants for compliance with Title VI requirements (i.e., highway location, design and relocation, persons seeking contracts with the State)? (23 CFR 200.9(b)(13))			
11. Does your STA take [prompt] action to achieve voluntary compliance as its first objective? (23 CFR 200.11(d))			
12. Does your STA place an emphasis on community outreach and public education to inform funding recipients of the obligations imposed on them by Title VI? (23 CFR 200.9(b)(12))			
13. Are Title VI and related requirements included in the applicable State program directives? (23 CFR 200.9(b)(8))			
<b>D. Program Reviews:</b>	<b>Yes</b>	<b>No</b>	<b>?</b>
1. Has the STA developed a program to conduct Title VI reviews of program areas? (23 CFR 200.9(b)(5))			
2. Has the STA conducted annual Title VI Reviews of its [major] program areas to determine the effectiveness of program area activities at all levels? (23 CFR 200.9(a)(4)(b)(6))			
3. Has the STA conducted Title VI reviews of sub-recipients (i.e., cities, counties, consultants, contractors, colleges, universities, MPOs, and other recipients of Federal-aid highway funds)? (23 CFR 200.9(b)(7))			

***AUTHORITIES***

	<i>Page</i>
Title VI of the Civil Rights Act of 1964	3-3
Selected Nondiscrimination Authorities	3-11
U.S. DOT Title VI Regulations (49 CFR Part 21)	3-17
FHWA Title VI Regulations (23 CFR Part 200)	3-31



**TITLE VI OF THE CIVIL RIGHTS ACT OF 1964****TITLE VI OF THE CIVIL RIGHTS ACT OF 1964****42 U.S.C.****§ 2000d. Prohibition against exclusion from participation in, denial of benefits of, and discrimination under federally assisted programs on ground of race, color, or national origin**

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.

*(Pub. L. 88-352, Title VI, § 601, July 2, 1964, 78 Stat. 252.)*

***HISTORICAL AND STATUTORY NOTES***

*Revision Notes and Legislative Reports 1964 Acts. Senate Report No. 872 and House Report No. 914. see 1964 U.S. Code Cong. and Adm. News, p. 2355.*

***Coordination of Implementation and Enforcement of Provisions***

*For provisions relating to the coordination of implementation and enforcement of the provisions of this subchapter by the Attorney General, see section 1-201 of Ex. Ord. No. 12250, Nov. 2, 1980, 45 F.R. 72995, set out as a note under section 2000d-1 of this title.*

**§ 2000d-1. Federal authority and financial assistance to programs or activities by way of grant, loan, or contract other than contract of insurance or guaranty; rules and regulations; approval by President; compliance with requirements; reports to Congressional committees; effective date of administrative action**

Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 2000d of this Title with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President. Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made and, shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found, or (2) by any other means authorized by law: *Provided, however,* That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report.

*(Pub. L. 88-352, Title VI, § 602, July 2, 1964, 78 Stat. 252.)*

**HISTORICAL AND STATUTORY NOTES**

*Revision Notes and Legislative Reports 1964 Acts. Senate Report No. 872 and House Report No. 914. see 1964 U.S. Code Cong. and Adm. News. p. 2355.*

**Delegation of Functions**

*Function of the President relating to approval of rules, regulations, and orders of general applicability under this section, delegated to the Attorney General. see section 1-101 of Ex. Ord. No. 12250, Nov. 2, 1980, 45 F.R. 72995, set out as a note under this section.*

**Equal Opportunity in Federal Employment**

*Nondiscrimination in government employment and in employment by government contractors and subcontractors. see Ex. Ord. No. 11246, eff. Sept. 24, 1965, 30 F.R. 12319, and Ex. Ord. No. 11478, eff. Aug. 8, 1969, 34 F.R. 12985, set out as notes under section 2000e of this title.*

**§ 2000d-2. Judicial review; administrative procedure provisions**

Any department or agency action taken pursuant to section 2000d-1 of this Title shall be subject to such judicial review as may otherwise be provided by law for similar action taken by such department or agency on other grounds. In the case of action, not otherwise subject to judicial review, terminating or refusing to grant or to continue financial assistance upon a finding of failure to comply with any requirement imposed pursuant to section 2000d-1 of this title, any person aggrieved (including any State or political subdivision thereof and any agency of either) may obtain judicial review of such action in accordance with chapter 7 of Title 5, and such action shall not be deemed committed to non-reviewable agency discretion within the meaning of that chapter.

*(Pub. L. 88-352, Title VI, § 603, July 2, 1964, 78 Stat. 253.)*

**HISTORICAL AND STATUTORY NOTES**

*Revision Notes and Legislative Reports 1964 Acts. Senate Report No. 872 and House Report No. 914. see 1964 U.S. Code Cong. and Adm. News. p. 2355.*

**Codifications**

*"Chapter 7 of Title 5" and "that chapter" were substituted in text for "section 10 of the Administrative Procedure Act" and "that section", respectively, on authority of Pub. L. 89-554, Sec. 7(b), Sept. 6, 1966, 80 Stat. 631, the first section 1 of which enacted Title 5, Government Organization and Employees. Prior to the enactment of Title 5, section 10 of the Administrative Procedure Act was classified to section 1009 of Title 5.*

**§ 2000d-3. Construction of provisions not to authorize administrative action with respect to employment practices except where primary objective of Federal financial assistance is to provide employment**

Nothing contained in this subchapter shall be construed to authorize action under this subchapter by any department or agency with respect to any employment practice of any employer, employment agency, or labor organization except where a primary objective of the Federal financial assistance is to provide employment.

*(Pub. L. 88-352, Title VI, § 604, July 2, 1964, 78 Stat. 253.)*

**HISTORICAL AND STATUTORY NOTES**

*Revision Notes and Legislative Reports 1964 Acts. Senate Report No. 872 and House Report No. 914, see 1964 U.S. Code Cong. and Adm. News. p. 2355.*

**§2000d-4. Federal authority and financial assistance to programs or activities by way of contract of insurance or guaranty**

Nothing in this subchapter shall add to or detract from any existing authority with respect to any program or activity under which Federal financial assistance is extended by way of a contract of insurance or guaranty. (Pub. L. 88-352, Title VI, § 605, July 2, 1964, 78 Stat. 253.)

**HISTORICAL AND STATUTORY NOTES**

**Revision Notes and Legislative Reports 1964 Acts.** Senate Report No. 872 and House Report No. 914, see 1964 U.S. Code Cong. and Adm. News. p. 2355.

**§ 2000d-4a. "Program or activity" and "program" defined**

For the purposes of this subchapter, the term "program or activity" and the term "program" mean all of the operations of -

- (1) (A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or  
(B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;
- (2) (A) a college, university, or other postsecondary institution, or a public system of higher education; or  
(B) a local educational agency (as defined in section 198(a)(10) of the Elementary and Secondary Education Act of 1965), system of vocational education, or other school system;
- (3) (A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship -
  - (i) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or
  - (ii) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or  
(B) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or
- (4) any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3); any part of which is extended Federal financial assistance.  
(Pub. L. 88-352, Title VI, § 606, as added Pub. L. 100-259, Sec. 6, Mar. 22, 1988, 102 Stat. 31.)

**HISTORICAL AND STATUTORY NOTES**

**Revision and Legislative Reports 1988 Acts.** Senate Report No. 100-64, see 1988 U.S. Code Cong. and Adm. News, p. 3

**References in Text**

Section 198(a)(10) of the Elementary and Secondary Education Act of 1965, referred to in par. (2)(B), is section 198 of Pub. L. 89-10, Title I, as added by Pub. L. 95-561, Title I, § 101 (a), Nov. 1, 1978, 92 Stat. 2198, which was classified to section 2854 of Title 20, Education, prior to the complete revision of Pub. L. 89-10 by Pub. L. 100-297, Apr. 28, 1988, 102 Stat. 140. For definitions, see section 2891 of Title 20.

**Abortion Neutrality**

*This section not to be construed to force or require any individual or hospital or any other institution, program, or activity receiving Federal funds to perform or pay for an abortion, see section 8 of Pub. L. 100-259, set out as a note under section 1688 of Title 20, Education.*

**Exclusion from Coverage**

*This section not to be construed to extend application of Civil Rights Act of 1964 [42 U.S.C. 2000a et seq.] to ultimate beneficiaries of Federal financial assistance excluded from coverage Be Sore Mar. 22, 1988, see section 7 of Pub. L. 100-259, set out as a Construction note under section 1687 of Title 20, Education.*

**§ 2000d-5. Prohibited deferral of action on applications by local educational agencies seeking Federal funds for alleged noncompliance with Civil Rights Act**

The Secretary of Education shall not defer action or order action deferred on any application by a local educational agency for funds authorized to be appropriated by this Act, by the Elementary and Secondary Education Act of 1965 [20 U.S.C. 2701 et seq.], by the Act of September 30, 1950 (Public Law 874, Eighty-first Congress) [20 U.S.C. 236 et seq.], by the Act of September 23, 1950 (Public Law 815, Eighty-first Congress) [20 U.S.C. 631 et seq.], or by the Cooperative Research Act [20 U.S.C. § 331 et seq.], on the basis of alleged noncompliance with the provisions of this subchapter for more than sixty days after notice is given to such local agency of such deferral unless such local agency is given the opportunity for a hearing as provided in section 2000d-1 of this title, such hearing to be held within sixty days of such notice, unless the time for such hearing is extended by mutual consent of such local agency and the Secretary, and such deferral shall not continue for more than thirty days after the close of any such hearing unless there has been an express finding on the record of such hearing that such local educational agency has failed to comply with the provisions of this subchapter: *Provided*, That, for the purpose of determining whether a local educational agency is in compliance with this subchapter, compliance by such agency with a final order or judgment of a Federal court for the desegregation of the school or school system operated by such agency shall be deemed to be compliance with this subchapter, insofar as the matters covered in the order or judgment are concerned.

*(Pub. L. 89-750, Title I, § 182, Nov. 3, 1966, 80 Stat. 1209; Pub. L. 90-247, Title I, § 12, Jan. 2, 1968, 81 Stat. 787; Pub. L. 96-88, Title III, § 301(a)(1), Title V, § 507, Oct. 17, 1979, 93 Stat. 677, 692.)*

**HISTORICAL AND STATUTORY NOTES**

*Revision Notes and Legislative Reports 1966 Acts. House Report No. 1814, see 1966 U.S. Code Cong. and Adm. News. p. 3844.*

*1968 Acts. Senate Report No. 726 and Conference Report No. 1049, see 1967 U. S. Code Cong. and Adm. News. p. 2730*

*1979 Acts. Senate Report No. 96-49 and House Conference Report No. 96-459, see 1979 U.S. Code Cong. and Adm. News, p. 1514.*

**Reference in Text**

*This Act, referred to in text, is Pub. L. 89-750, Nov. 3, 1966, 80 Stat. 1191, as amended, known as the Elementary and Secondary Education Amendments of 1966. For complete classification of that Act to the Code, see Short Title of 1966 Amendment note set out under section 2701 of Title 20, Education, and Tables.*

*The Elementary and Secondary Education Act of 1965, referred to in text, is Pub. L. 89-10, Apr. 11, 1965, 79 Stat. 27, as amended generally by Pub. L. 100-297,*

*Apr. 28, 1988, 102 Stat. 140, which is classified generally to chapter 47 (Sec. 2701 et seq.) of Title 20. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of Title 20 and Tables.*

*The Act of September 30, 1950, referred to in text, is act Sept. 30, 1950, c. 1124, 64 Stat. 1100, as amended, popularly known as the Educational Agencies Financial Aid Act, which is classified generally to chapter 13 (Sec. 236 et seq.) of Title 20. For complete classification of this Act to the Code, see Short Title note set out under section 236 of Title 20 and Tables.*

*The Act of September 23, 1950, referred to in text, is act Sept. 23, 1950, c. 995, as amended generally by Act Aug. 12, 1958, Pub. L. 85-620, Title I, 72 Stat. 548, which is classified generally to chapter 19 (Sec. 631 et seq.) of Title 20. For complete classification of this Act to the Code, see Tables.*

*The Cooperative Research Act, referred to in text, is Act July 26, 1954, c. 576, 68 Stat. 533, which was classified generally to chapter 15 (Sec. 331 et seq.) of Title 20, and terminated on July 1, 1975, under provisions of section 402(c)(1) of Pub. L. 93-380, Title IV, Aug. 21, 1974, 88 Stat. 544. For complete classification of this Act to the Code, see Tables.*

#### **Codification**

*Section was enacted as part of the Elementary and Secondary Education Amendments of 1966, Pub. L. 89-750, and not as part of Pub. L. 88-352 July 2, 1964, 78 Stat. 252, known as the Civil Rights Act of 1964, Title VI of which enacted this subchapter.*

#### **Amendments**

*1968 Amendments Pub. L. 90-247 added to the proviso to this section.*

#### **Effective Dates**

*1966 Acts. Pub. L. 89-750. § 191 provided that: "The provisions of this Title [enacting this section and sections 241m, 871 to 880, and 886 of Title 20, Education, amending sections 241b, 241c, 241e, 241f, 241g, 241h, 241j, 241k, 241l, 244, 331a, 332a, 332b, 821, 822, 823, 841, 842, 843, 844, 861, 862, 863, 864, 883, and 884 of Title 20, repealing section 241d of Title 20, and enacting provisions set out as notes under sections 241a, 241b, and 241c of Title 20] shall be effective with respect to fiscal years beginning after June 30, 1966, except as specifically provided otherwise."*

#### **Transfer of Functions**

*"Secretary of Education" and "Secretary" were substituted for "Commissioner of Education" and "Commissioner," pursuant to sections 301(a)(1) and 507 of Pub. L. 96-88, which are classified to sections 3441(a)(1) and 3507 of Title 20, Education, and which transferred all functions of Commissioner of Education of Department of Health, Education, and Welfare, to Secretary of Education.*

### **§ 2000d-6. Policy of United States as to application of nondiscrimination provisions in schools of local educational agencies**

(a) Declaration of uniform policy - it is the policy of the United States that guidelines and criteria established pursuant to Title VI of the Civil Rights Act of 1964 [42 U.S.C. § 2000d et seq.] and section 182 of the Elementary and Secondary Education Amendments of 1966 [42 U.S.C. § 2000d-5] dealing with conditions of segregation by race, whether de jure or de facto, in the schools of the local educational agencies of any State shall be applied uniformly in all regions of the United States whatever the origin or cause of such segregation.

(b) Nature of uniformity - such uniformity refers to one policy applied uniformly to de jure segregation wherever found and such other policy as may be provided pursuant to law applied uniformly to de facto segregation wherever found.

(c) Prohibition of construction for diminution of obligation for enforcement or compliance with nondiscrimination requirements.

Nothing in this section shall be construed to diminish the obligation of responsible officials to enforce or comply with such guidelines and criteria in order to eliminate discrimination in federally assisted programs and activities as required by Title VI of the Civil Rights Act of 1964 [42 U.S.C. § 2000d et seq.].

(d) Additional funds - it is the sense of the Congress that the Department of Justice and the Secretary of Education should request such additional funds as may be necessary to apply the policy set forth in this section throughout the United States.

*(Pub. L. 91-230, § 2, Apr. 13, 1970, 84 Stat. 121; Pub. L. 96-88, Title III, § 301, Title V, § 507, Oct. 17, 1979, 93 Stat. 677, 692.)*

#### **HISTORICAL AND STATUTORY NOTES**

*Revision Notes and Legislative Reports 1970 Acts. Senate Report No. 91-634 and Conference Report No. 91-937, see 1970 U.S. Code Cong. and Adm. News. p. 2768.*

*1979 Acts. Senate Report No. 96-49 and House Conference Report No. 96-459. see 1979 U.S. Code Cong. and Adm. News. p. 1514.*

#### **Reference in Text**

*The Civil Rights Act of 1964, referred to in subsecs. (a) and (c), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Civil Rights Act of 1964 is classified generally to this subchapter (Sec. 2000d et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this Title and Tables.*

*Section 182 of the Elementary and Secondary Education Amendments of 1966 referred to in subsec. (a) is classified to section 2000d-5 of this title.*

#### **Codifications**

*Section was enacted as part of the Elementary and Secondary Education Amendments of 1969, Pub. L. 91-230 and not as part of Pub. L. 88-352, July 2, 1964, 78 Stat. 252 known as the Civil Rights Act of 1964, Title VI of which enacted this subchapter.*

#### **Transfer of Functions**

*"Secretary of Education" was substituted for "Department of Health, Education, and Welfare" in subsec. (d) pursuant to sections 301 and 507 of Pub. L. 96-88, which are classified to sections 3441 and 3507 of Title 20, Education, and which transferred functions and offices (relating to education) of the Department and Secretary of Health, Education, and Welfare to Secretary of Education.*

### **§ 2000d-7. Civil rights remedies equalization**

#### **(a) General provision**

(1) A State shall not be immune under the Eleventh Amendment of the Constitution of the United States from suit in Federal court for a violation of section 504 of the Rehabilitation Act of 1973 [29 U.S.C.A. § 794], Title IX of the Education Amendments of 1972 [20 U.S.C.A. §1681 et seq.], the Age Discrimination Act of 1975 [42 U.S.C.A. § 6101 et seq.], Title VI of the Civil Rights Act of 1964 [42 U.S.C.A. § 2000d et seq.], or the provisions of any other Federal statute prohibiting discrimination by recipients of Federal financial assistance.

(2) In a suit against a State for a violation of a statute referred to in paragraph (1), remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in the suit against any public or private entity other than a State.

(b) Effective date

The provisions of subsection (a) of this section shall take effect with respect to violations that occur in whole or in part after October 21, 1986.

*(Pub. L. 99-506, Title X, § 1003, Oct. 21, 1986, 100 Stat. 1845.)*

**HISTORICAL AND STATUTORY NOTES**

*Revision Notes and Legislative Reports 1986 Acts. House Report No. 99-571. House Conference Report No. 99-955 and Statement by President see 1986 U.S. Code Cong. and Adm. News, p. 3471*

**Reference in Text**

*The Education Amendments of 1972, referred to in subsec. (a)(1), is Pub. L. 92-318, June 23, 1972, 86 Stat. 235, as amended. Title IX of the Education Amendments of 1972 is classified principally to chapter 38 (section 1681 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title of 1972 Amendment note set out under section 1001 of Title 20 and Tables.*

*The Age Discrimination Act of 1975, referred to in subsec. (a)(1), is Pub. L. 94-135, Nov. 28, 1975, 89 Stat. 728, as amended, which is classified generally to chapter 76 (Sec. 6101 et seq.) of this Title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this Title and Tables.*

*The Civil Rights Act of 1964, referred to in subsec. (a)(1), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Civil Rights Act of 1964 is classified generally to this subchapter (section 2000d et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this Title and Tables.*

**Codifications**

*Section was enacted as part of the Rehabilitation Act Amendments of 1986, Pub. L. 99-506, and not as part of Pub. L. 88-352, July 2, 1964. 78 Stat. 252, known as the Civil Rights Act of 1964, Title VI of which enacted this subchapter.*



## ***SELECTED NONDISCRIMINATION AUTHORITIES***

### **NONDISCRIMINATION STATUTES**

- **Title VI of the 1964 Civil Rights Act**, 42 U.S.C. 2000, provides in section 601 that:  
  
“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.” (PROHIBITS DISCRIMINATION IN IMPACTS, SERVICES, AND BENEFITS OF, ACCESS TO, PARTICIPATION IN, AND TREATMENT UNDER A FEDERAL-AID RECIPIENT’S PROGRAMS OR ACTIVITIES)
- **The Age Discrimination Act of 1975**, as amended 42 U.S.C. 6101, provides:  
  
“No person in the United States 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.” (PROHIBITS DISCRIMINATION BASED ON AGE)
- **The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970**, 42 U.S.C. 4601, provides:  
  
“For the fair and equitable treatment of persons displaced as direct result of programs or projects undertaken by a Federal agency or with Federal financial assistance.” (PROVIDES FOR FAIR TREATMENT OF PERSONS DISPLACED BY FEDERAL AND FEDERAL-AID PROGRAMS AND PROJECTS)
- **The Federal-aid Highway Act**, 49 U.S.C. 306  
  
Outlines the responsibilities of the U.S. Department of Transportation and, at (c) outlines the Secretary’s authority to decide whether a recipient has not complied with applicable Civil Rights statutes or regulations, requires the Secretary to provide notice of the violation, and requires necessary action to ensure compliance.
- **The 1973 Federal-aid Highway Act**, 23 U.S.C 324, provides:  
  
“No person shall on the ground 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.” (PROHIBITS DISCRIMINATION ON THE BASIS OF SEX)
- **The Civil Rights Restoration Act of 1987**, P.L. 100-209, provides:  
  
Clarification of the original intent of Congress in Title VI of the 1964 Civil Rights Act, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973. (RESTORES THE BROAD, INSTITUTION-WIDE SCOPE AND COVERAGE OF THE NON-DISCRIMINATION STATUTES TO INCLUDE ALL PROGRAMS AND ACTIVITIES OF FEDERAL-AID RECIPIENTS, SUB-RECIPIENTS AND CONTRACTORS, WHETHER SUCH PROGRAMS AND ACTIVITIES ARE FEDERALLY ASSISTED OR NOT)
- **The Uniform Relocation Act Amendments of 1987**, P.L 101-246, provides:  
  
“For fair, uniform, and equitable treatment of all affected persons; ...(and) minimizing the adverse impact of displacement...(to maintain)...the economic and social well-being of communities; and...to establish a lead

agency and allow for State certification and implementation.” (UPDATED THE 1970 ACT AND CLARIFIED THE INTENT OF CONGRESS IN PROGRAMS AND PROJECTS WHICH CAUSE DISPLACEMENT)

- **The Americans with Disabilities Act**, P.L. 101-336, provides:

“No qualified individual with a disability shall, by reason of such disability, be excluded from the participation in, be denied benefits of, or be subjected to discrimination by a department, agency, special purpose district, or other instrumentality of a State or a local government.” (PROVIDED ENFORCEABLE STANDARDS TO ADDRESS DISCRIMINATION AGAINST PEOPLE WITH DISABILITIES)

- **The Civil Rights Act of 1991**, in part, amended Section 1981 of 42 U.S.C. by adding two new sections that provided:

“(b) For the purposes of this section, the term ‘make and enforce contracts’ includes the making, performance, modification, and termination of contracts and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.

(c) The rights protected by this section are protected against impairment by non-governmental discrimination and impairment under color of State law.”

- **Title VIII of the 1968 Civil Rights Act**, 42 U.S.C. 3601, provides that:

“(l) It shall be unlawful...to refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny a dwelling to any person because of race, color, religion or national origin.” (PROHIBITS DISCRIMINATION IN THE SALE OR RENTAL OF HOUSING – HUD is the primary interest agency, but FHWA and States under Title VI are responsible for preventing discrimination in the function of Right-of-Way)

- **The National Environmental Policy Act of 1969**, 42 U.S.C. 4321

Requires the consideration of alternatives, including the “no-build” alternative, consideration of social, environmental and economic impacts, public involvement, and use of a systematic interdisciplinary approach at each decisionmaking stage of Federal-aid project development.

- **Title IX of the Education Amendments of 1972**

Makes financial assistance available to institutions of higher education to: (1) strengthen, improve and, where necessary, expand the quality of graduate and professional programs leading to an advanced degree; (2) establish, strengthen, and improve programs designed to prepare graduate and professional students for public service; and (3) assist in strengthening undergraduate programs of instruction in certain instances.

- **Section 504 of the Rehabilitation Act of 1973**, 29 U.S.C. 790, provides that:

“(N)o 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.” (PROHIBITS DISCRIMINATION BASED ON PHYSICAL OR MENTAL HANDICAP)

### **NONDISCRIMINATION EXECUTIVE ORDERS**

- **E.O. 12250** - DOJ Leadership and Coordination of Nondiscrimination Laws
- **E.O. 12259** - HUD Leadership and Coordination of Federal Fair Housing Programs
- **E.O. 12292** - Amended E.O. 12259, in part and addressed leadership and coordination in Federal Fair Housing Programs. It affirmatively furthers fair housing in all Federal programs and activities relating to housing and urban development throughout the United States.
- **E.O. 12898** - Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations
- **E.O. 13160** - nondiscrimination on the basis of race, sex, color, national origin, disability, religion, age, sexual orientation, and status as a parent in federally conducted education and training programs
- **E.O. 13166** - August 11, 2000- requires Federal agencies and their recipients to improve access to federally sponsored programs for persons with limited English proficiency
- **E.O. 13175** – Consultation and Coordination with Indian Tribal Governments

### **NONDISCRIMINATION REGULATIONS**

- **23 CFR Part 200** - FHWA's Title VI Program Implementation and Review Procedures
- **23 CFR Part 420.121(h)** - the part of FHWA's planning regulations that specify the applicability of Title VI of the 1964 Civil Rights Restoration Act of 1987 to FHWA funded planning and research activities
- **23 CFR Part 450** - FHWA's and FTA's Statewide and Metropolitan Planning Regulations
- **23 CFR Part 450.316(b) (2) & (3)** - requires the metropolitan planning process to be consistent with Title VI of the 1964 Civil Rights Act and the recipient's Title VI Assurances
- **23 CFR Part 633, Subpart A** - specifies required contract provisions to be included in all Federal-aid construction contracts, including Title VI and other provisions included in Form FHWA 1273
- **23 CFR Part 633, Subpart B, Appendix A** - specifies the types of contracts to which Title VI of the 1964 Civil Rights Act applies
- **23 CFR Part 771.105(f)** - FHWA Policy on Title VI - expands on 23 CFR 200.7 and names categories covered with wording similar to Title VI of the Civil Rights Act of 1964 - race, color, national origin, age, sex, handicap
- **28 CFR Part 35** - the Department of Justice's regulations governing Nondiscrimination on the basis of disability in State and local government services
- **28 CFR Part 41** – requires the Department of Justice to coordinate the implementation of Section 504 of the Rehabilitation Act (Provides guidelines for determining discretionary practices)
- **28 CFR Part 42, Subpart C** - DOJ's regulation implementing Title VI of the Civil Rights Act of 1964

- **28 CFR Part 42.200, Subpart D** - "Nondiscrimination in Federally-assisted Programs - Implementation of Section 815 (c)(1) of the Justice System Improvement Act of 1979" – Also implements Executive Order 12138
- **28 CFR Part 50.3** - DOJ's Guidelines for the enforcement of Title VI, Civil Rights Act of 1964
- **49 CFR Part 21** - DOT's Implementing Regulations of Title VI of the Civil Rights Act of 1964
- **49 CFR Part 24** - DOT's regulation implementing the Uniform Relocation and Real Property Acquisition Act for Federal and federally assisted programs requiring compliance with Nondiscrimination Statutes and Executive Orders
- **49 CFR Part 25** - DOT's implementation of Title IX of the Education Amendments Act of 1972
- **49 CFR Part 26** - Participation by Disadvantaged Business Enterprises in DOT Financial Assistance Programs
- **49 CFR Part 27** - DOT's regulation implementing Section 504 of the Rehabilitation Act of 1973 as amended
- **49 CFR Part 28** - Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Transportation
- **49 CFR Part 37** - Transportation Services for Individuals with Disabilities, implementing the transportation and related provisions of Title II and III of the ADA

#### **NONDISCRIMINATION DIRECTIVES & GUIDANCE**

- **DOT ORDER 1000.12** - Implementation of the DOT Title VI Program
- **DOT ORDER 1050.2** - Standard Title VI Assurances
- **DOT ORDER 5610.2** - USDOT Order on Environmental Justice
- **FHWA ORDER 4710.1** - Right-of-Way Title VI Review Program
- **FHWA ORDER 4710.2** - Civil Rights Compliance Reviews of Location Procedures
- **FHWA ORDER 4720.6** - Impacts of the Civil Rights Restoration Act of 1987 on FHWA Programs September 2, 1992
- **FHWA ORDER 6640.23** - Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (See also DOT Order 5610.2 on Environmental Justice)
- **Joint FHWA/FTA Memo dated October 7, 1999** (published in the Federal Register May 19, 2000) - providing guidance on implementing Title VI in Metropolitan and Statewide Planning
- **DOT Policy Guidance Document dated December 14, 2005** – Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficient (LEP) persons, - Federal Register Vol. 70 No. 239 (DOT's initial LEP guidance regarding recipients' obligation was released on January 22, 2001)
- **DOJ Policy Guidance Document dated October 26, 2001** - Memo re: E.O. 13166, Improving Access to Services for persons with Limited English Proficiency

- **DOJ Policy Guidance Document dated January 11, 2002** - Memo re: E.O. 13166, Improving Access to Services for persons with Limited English Proficiency
- **DOJ Policy Guidance Document dated January 18, 2002** - Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons
- **DOJ Policy Guidance Document dated April 18, 2002** - Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons – Federal Register Vol. 67, No 75

### **NONDISCRIMINATION MANUALS & REPORT**

**DOJ's Title VI Legal Manual** (<http://www.usdoj.gov/crt/cor/cord/vimanual.pdf>).

**DOJ's Investigation Procedures Manual for the Investigation and Resolution of Complaints Alleging Violations of Title VI and Other Nondiscrimination Statutes**  
(<http://www.usdoj.gov/crt/cor/Pubs/manuals/complain.pdf>)

**Federal Title VI Enforcement to Federally-assisted Programs**, June 1996 Report of the U.S. Commission on Civil Rights



***U.S. DOT TITLE VI REGULATIONS (49 CFR Part 21)*****PART 21 -- NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OF THE DEPARTMENT OF TRANSPORTATION -- EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964****Sec.**

- [21.1](#) Purpose.
- [21.3](#) Application of this part.
- [21.5](#) Discrimination prohibited.
- [21.7](#) Assurances required.
- [21.9](#) Compliance information.
- [21.11](#) Conduct of investigations.
- [21.13](#) Procedure for effecting compliance.
- [21.15](#) Hearings.
- [21.17](#) Decisions and notices.
- [21.19](#) Judicial review.
- [21.21](#) Effect on other regulations, forms, and instructions.
- [21.23](#) Definitions.

Appendix A to Part 21 -- Activities to Which This Part Applies

Appendix B to Part 21 -- Activities to Which This Part Applies When a Primary Objective of the Federal Financial Assistance is to Provide Employment

Appendix C to Part 21 -- Application of Part 21 to Certain Federal Financial Assistance of the Department of Transportation

**Authority:** Sec. 602, 42 U.S.C. 2000d-1.

**Source:** 35 FR 10080, June 18, 1970, unless otherwise noted.

**§ 21.1 Purpose.**

The purpose of this part is to effectuate the provisions of Title VI of the Civil Rights Act of 1964 (hereafter referred to as the Act) to the end that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Transportation.

**§ 21.3 Application of this part.**

- a. This part applies to any program for which Federal financial assistance is authorized under a law administered by the Department, including the Federally assisted programs and activities listed in Appendix A to this part. It also applies to money paid, property transferred, or other Federal financial assistance extended under any such program after the effective date of this part pursuant to an application approved before that effective date. This part does not apply to:
  - 1. Any Federal financial assistance by way of insurance or guaranty contracts;
  - 2. Money paid, property transferred, or other assistance extended under any such program before the effective date of this part, except where such assistance was subject to the Title VI regulations of any agency whose responsibilities are now exercised by this Department;
  - 3. Any assistance to any individual who is the ultimate beneficiary under any such program; or
  - 4. Any employment practice, under any such program, of any employer, employment agency, or labor organization, except to the extent described in §21.5(c).

The fact that a program or activity is not listed in appendix A to this part shall not mean, if Title VI of the Act is otherwise applicable, that such program is not covered. Other programs under statutes now in force or hereinafter enacted may be added to appendix A to this part.

- b. In any program receiving Federal financial assistance in the form, or for the acquisition, of real property or an interest in real property, to the extent that rights to space on, over, or under any such property are included as part of the program receiving that assistance, the nondiscrimination requirement of this part shall extend to any facility located wholly or in part in that space.

#### **§21.5 Discrimination prohibited.**

- a. *General.* No person in the United States shall, on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program to which this part applies.
- b. *Specific discriminatory actions prohibited:*
  - 1. A recipient under any program to which this part applies may not, directly or through contractual or other arrangements, on the grounds of race, color, or national origin:
    - i. Deny a person any service, financial aid, or other benefit provided under the program;
    - ii. Provide any service, financial aid, or other benefit to a person which is different, or is provided in a different manner, from that provided to others under the program;
    - iii. Subject a person to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;
    - iv. Restrict a person in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;
    - v. Treat a person differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership, or other requirement or condition which persons must meet in order to be provided any service, financial aid, or other benefit provided under the program;
    - vi. Deny a person an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program; or
    - vii. Deny a person the opportunity to participate as a member of a planning, advisory, or similar body which is an integral part of the program.
  - 2. A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of person to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of persons to be afforded an opportunity to participate in any such program; may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, or national origin.
  - 3. In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding persons from, denying them the benefits of, or subjecting them to discrimination under any program to which this regulation applies, on the grounds of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this part.
  - 4. As used in this section the services, financial aid, or other benefits provided under a program receiving Federal financial assistance include any service, financial aid, or other benefit provided in or through a facility provided with the aid of Federal financial assistance.
  - 5. The enumeration of specific forms of prohibited discrimination in this paragraph does not limit the generality of the prohibition in paragraph (a) of this section.
  - 6. Examples demonstrating the application of the provisions of this section to certain programs of the Department of Transportation are contained in appendix C of this part.
  - 7. This part does not prohibit the consideration of race, color, or national origin if the purpose and

effect are to remove or overcome the consequences of practices or impediments which have restricted the availability of, or participation in, the program or activity receiving Federal financial assistance, on the grounds of race, color, or national origin. Where prior discriminatory practice or usage tends, on the grounds of race, color, or national origin to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this part applies, the applicant or recipient must take affirmative action to remove or overcome the effects of the prior discriminatory practice or usage. Even in the absence of prior discriminatory practice or usage, a recipient in administering a program or activity to which this part applies, is expected to take affirmative action to assure that no person is excluded from participation in or denied the benefits of the program or activity on the grounds of race, color, or national origin.

c. *Employment practices:*

1. Where a primary objective of a program of Federal financial assistance to which this part applies is to provide employment, a recipient or other party subject to this part shall not, directly or through contractual or other arrangements, subject a person to discrimination on the ground of race, color, or national origin in its employment practices under such program (including recruitment or recruitment advertising, hiring, firing, upgrading, promotion, demotion, transfer, layoff, termination, rates of pay or other forms of compensation or benefits, selection for training or apprenticeship, use of facilities, and treatment of employees). Such recipient shall take affirmative action to insure that applicants are employed, and employees are treated during employment, without regard to their race, color, or national origin. The requirements applicable to construction employment under any such program shall be those specified in or pursuant to Part III of Executive Order 11246 or any Executive order which supersedes it.
2. Federal financial assistance to programs under laws funded or administered by the Department which have as a primary objective the providing of employment include those set forth in Appendix B to this part.
3. Where a primary objective of the Federal financial assistance is not to provide employment, but discrimination on the grounds of race, color, or national origin in the employment practices of the recipient or other persons subject to the regulation tends, on the grounds of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program to which this regulation applies, the provisions of paragraph (c)(1) of this section shall apply to the employment practices of the recipient or other persons subject to the regulation, to the extent necessary to assure equality of opportunity to, and nondiscriminatory treatment of, beneficiaries.

- d. A recipient may not make a selection of a site or location of a facility if the purpose of that selection, or its effect when made, is to exclude individuals from participation in, to deny them the benefits of, or to subject them to, discrimination under any program or activity to which this rule applies, on the grounds of race, color, or national origin; or if the purpose is to, or its effect when made will, substantially impair the accomplishment of the objectives of this part.

**§ 21.7 Assurances required.**

a. *General.*

1. Every application for Federal financial assistance to carry out a program to which this part applies, except a program to which paragraph (b) of this section applies, and every application for Federal financial assistance to provide a facility shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to the application, contain or be accompanied by, an assurance that the program will be conducted or the facility operated in compliance with all requirements imposed by or pursuant to this part. Every program of Federal financial assistance shall require the submission of such an assurance. In the case where the Federal financial assistance is to provide or is in the form of personal property, or real property or interest therein or structures thereon, the assurance shall obligate the recipient, or, in the case of a subsequent transfer, the transferee, for the period during which the property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for as long

as the recipient retains ownership or possession of the property, whichever is longer. In all other cases the assurance shall obligate the recipient for the period during which Federal financial assistance is extended to the program. In the case where the assistance is sought for the construction of a facility or part of a facility, the assurance shall in any event extend to the entire facility and to facilities operated in connection therewith. The Secretary shall specify the form of the foregoing assurances for each program, and the extent to which like assurances will be required of sub-grantees, contractors and subcontractors, transferees, successors in interest, and other participants in the program. Any such assurance shall include provisions which give the United States a right to seek its judicial enforcement.

2. In the case where Federal financial assistance is provided in the form of a transfer of real property, structures, or improvements thereon, or interest therein, from the Federal Government, the instrument effecting or recording the transfer shall contain a covenant running with the land assuring non-discrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. Where no transfer of property or interest therein from the Federal Government is involved, but property is acquired or improved under a program of Federal financial assistance, the recipient shall agree to include such covenant in any subsequent transfer of such property. When the property is obtained from the Federal Government, such covenant may also include a condition coupled with a right to be reserved by the Department to revert Title to the property in the event of a breach of the covenant where, in the discretion of the Secretary, such a condition and right of reverter is appropriate to the program under which the real property is obtained and to the nature of the grant and the grantee. In such event if a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on such property for the purposes for which the property was transferred, the Secretary may agree, upon request of the transferee and if necessary to accomplish such financing, and upon such conditions as he deems appropriate, to subordinate such right of reversion to the lien of such mortgage or other encumbrance.

- b. *Continuing State programs.* Every application by a State or a State agency to carry out a program involving continuing Federal financial assistance to which this part applies (including the programs listed in appendix A to this part) shall as a condition to its approval and the extension of any Federal financial assistance pursuant to the application: (1) Contain or be accompanied by a statement that the program is (or, in the case of a new program, will be) conducted in compliance with all requirements imposed by or pursuant to this part, and (2) provide or be accompanied by provision for such methods of administration for the program as are found by the Secretary to give reasonable guarantee that the applicant and all recipients of Federal financial assistance under such program will comply with all requirements imposed by or pursuant to this part.

#### **§21.9 Compliance information.**

- a. *Cooperation and assistance.* The Secretary shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with this part and shall provide assistance and guidance to recipients to help them comply voluntarily with this part.
- b. *Compliance reports.* 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 with this part. 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 under this part. 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.

- c. *Access to sources of information.* Each recipient shall permit access by the Secretary during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. Where any information required of a recipient is in the exclusive possession of any other agency, institution, or person and this agency, institution, or person fails or refuses to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.
- 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.

**§21.11 Conduct of investigations.**

- a. *Periodic compliance reviews.* The Secretary shall from time to time review the practices of recipients to determine whether they are complying with this part.
- b. *Complaints.* Any person who believes himself or any specific class of persons to be subjected to discrimination prohibited by this part may by himself or by a representative file with the Secretary a written complaint. A complaint must be filed not later than 180 days after the date of the alleged discrimination, unless the time for filing is extended by the Secretary.
- c. *Investigations.* The Secretary will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation will include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this part.
- d. *Resolution of matters.*
  - 1. If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this part, the Secretary will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in §21.13.
  - 2. If an investigation does not warrant action pursuant to paragraph (d)(1) of this section the Secretary will so inform the recipient and the complainant, if any, in writing.
- e. *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of the Act or this part, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or judicial proceeding arising there under.

[35 FR 10080, June 18, 1970, as amended by Amdt. 72-2, 38 FR 17997, July 1973]

**§ 21.13 Procedure for effecting compliance.**

- a. *General.* If there appears to be a failure or threatened failure to comply with this part, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law. Such other means may include, but are not limited to: (1) A reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking, and (2) any applicable proceeding under State or local law.

- b. *Noncompliance with §21.7.* 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 that section, Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. The Department shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under such paragraph. However, subject to §21.21, the Department shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an application approved prior to the effective date of this part.
- c. *Termination of or refusal to grant or to continue Federal financial assistance.* No order suspending, terminating, or refusing to grant or continue Federal financial assistance shall become effective until:
  - 1. The Secretary has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means;
  - 2. There has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this part;
  - 3. The action has been approved by the Secretary pursuant to §21.17(e); and
  - 4. The expiration of 30 days after the Secretary has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action.

Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

- d. *Other means authorized by law.* No action to effect compliance with Title VI of the Act by any other means authorized by law shall be taken by this Department until:
  - 1. The Secretary has determined that compliance cannot be secured by voluntary means;
  - 2. The recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance; and
  - 3. The expiration of at least 10 days from the mailing of such notice to the recipient or other person. During this period of at least 10 days, additional efforts shall be made to persuade the recipient or other person to comply with the regulation and to take such corrective action as may be appropriate.

#### **§ 21.15 Hearings.**

- a. *Opportunity for hearing.* Whenever an opportunity for a hearing is required by §21.13(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either: (1) Fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request of the Secretary that the matter be scheduled for hearing or (2) advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing under this paragraph or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under section 602 of the Act and §21.13(c) and consent to the making of a decision on the basis of such information as is available.
- b. *Time and place of hearing.* Hearings shall be held at the offices of the Department in Washington, D.C., at a time fixed by the Secretary unless he determines that the convenience of the applicant or recipient or of the Department requires that another place be selected. Hearings shall be held before the Secretary, or at his discretion, before a hearing examiner appointed in accordance with section 3105 of Title 5,

United States Code, or detailed under section 3344 of Title 5, United States Code.

- c. *Right to counsel.* In all proceedings under this section, the applicant or recipient and the Department shall have the right to be represented by counsel.
  
- d. *Procedures, evidence, and record.*
  - 1. The hearing, decision, and any administrative review thereof shall be conducted in conformity with sections 554 through 557 of Title 5, United States Code, and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the Department and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.
  - 2. Technical rules of evidence do not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.
  
- e. *Consolidated or joint hearings.* In cases in which the same or related facts are asserted to constitute noncompliance with this part with respect to two or more programs to which this part applies, or non-compliance with this part and the regulations of one or more other Federal departments or agencies issued under Title VI of the Act, the Secretary may, by agreement with such other departments or agencies, where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules or procedures not inconsistent with this part. Final decisions in such cases, insofar as this regulation is concerned, shall be made in accordance with §21.17.

## § 21.17 Decisions and notices.

- a. *Procedure on decisions by hearing examiner.* If the hearing is held by a hearing examiner, the hearing examiner shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the Secretary for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient. Where the initial decision is made by the hearing examiner the applicant or recipient may, within 30 days after the mailing of such notice of initial decision, file with the Secretary his exceptions to the initial decision, with his reasons therefore. In the absence of exceptions, the Secretary may, on his own motion, within 45 days after the initial decision, serve on the applicant or recipient a notice that he will review the decision. Upon the filing of such exceptions or of notice of review, the Secretary shall review the initial decision and issue his own decision thereon including the reasons therefore. In the absence of either exceptions or a notice of review the initial decision shall, subject to paragraph (e) of this section, constitute the final decision of the Secretary.
- b. *Decisions on record or review by the Secretary.* Whenever a record is certified to the Secretary for decision or he reviews the decision of a hearing examiner pursuant to paragraph (a) of this section, or whenever the Secretary conducts the hearing, the applicant or recipient shall be given reasonable opportunity to file with him briefs or other written statements of its contentions, and a written copy of the final decision of the Secretary shall be sent to the applicant or recipient and to the complainant, if any.
- c. *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to §21.15, a decision shall be made by the Secretary on the record and a written copy of such decision shall be sent to the applicant or recipient, and to the complainant, if any.
- d. *Rulings required.* Each decision of a hearing examiner or the Secretary shall set forth his ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this part with which it is found that the applicant or recipient has failed to comply.
- e. *Approval by Secretary.* Any final decision by an official of the Department, other than the Secretary personally, which provides for the suspension or termination of, or the refusal to grant or continue Federal financial assistance, or the imposition of any other sanction available under this part or the Act, shall promptly be transmitted to the Secretary personally, who may approve such decision, may vacate it, or remit or mitigate any sanction imposed.
- f. *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, under the program involved, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this part, including provisions designed to assure that no Federal financial assistance will thereafter be extended under such programs to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to this part, or to have otherwise failed to comply with this part, unless and until it corrects its noncompliance and satisfies the Secretary that it will fully comply with this part.
- g. *Post termination proceedings.*
  1. An applicant or recipient adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this part and provides reasonable assurance that it will fully comply with this part.
  2. Any applicant or recipient adversely affected by an order entered pursuant to paragraph (f) of this section may at any time request the Secretary to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of paragraph (g)(1) of this section. If the Secretary determines that those requirements have been satisfied, he shall restore such eligibility.

3. If the Secretary denies any such request, the applicant or recipient may submit a request for a hearing in writing, specifying who it believes such official to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record in accordance with rules or procedures issued by the Secretary. The applicant or recipient will be restored to such eligibility if it proves at such a hearing that it satisfied the requirements of paragraph (g)(1) of this section.

While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (f) of this section shall remain in effect.

#### **§ 21.19 Judicial review.**

Action taken pursuant to section 602 of the Act is subject to judicial review as provided in section 603 of the Act.

#### **§ 21.21 Effect on other regulations, forms, and instructions.**

- a. *Effect on other regulations.* All regulations, orders, or like directions issued before the effective date of this part by any officer of the Department which impose requirements designed to prohibit any discrimination against individuals on the grounds of race, color, or national origin under any program to which this part applies, and which authorize the suspension or termination of or refusal to grant or to continue Federal financial assistance to any applicant for a recipient of such assistance under such program for failure to comply with such requirements, are hereby superseded to the extent that such discrimination is prohibited by this part, except that nothing in this part may be considered to relieve any person of any obligation assumed or imposed under any such superseded regulation, order, instruction, or like direction before the effective date of this part. Nothing in this part, however, supersedes any of the following (including future amendments thereof): (1) Executive Order 11246 (3 CFR, 1965 Supp., p. 167) and regulations issued thereunder or (2) any other orders, regulations, or instructions, insofar as such orders, regulations, or instructions prohibit discrimination on the ground of race, color, or national origin in any program or situation to which this part is inapplicable, or prohibit discrimination on any other ground.
- b. *Forms and instructions.* The Secretary shall issue and promptly make available to all interested persons forms and detailed instructions and procedures for effectuating this part as applied to programs to which this part applies and for which he is responsible.
- c. *Supervision and coordination.* The Secretary may from time to time assign to officials of the Department, or to officials of other departments or agencies of the Government with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of Title VI of the Act and this part (other than responsibility for final decision as provided in §21.17), including the achievement of effective coordination and maximum uniformity within the Department and within the Executive Branch of the Government in the application of Title VI and this part to similar programs and in similar situations. Any action taken, determination made or requirement imposed by an official of another department or agency acting pursuant to an assignment of responsibility under this paragraph shall have the same effect as though such action had been taken by the Secretary of this Department.

#### **§ 21.23 Definitions.**

Unless the context requires otherwise, as used in this part:

- a. *Applicant* means a person who submits an application, request, or plan required to be approved by the Secretary, or by a primary recipient, as a condition to eligibility for Federal financial assistance, and "application" means such an application, request, or plan.
- b. *Facility* includes all or any part of structures, equipment, or other real or personal property or interests therein, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration or acquisition of facilities.

- c. *Federal financial assistance* includes:
  - 1. Grants and loans of Federal funds;
  - 2. The grant or donation of Federal property and interests in property;
  - 3. The detail of Federal personnel;
  - 4. The sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient; and
  - 5. Any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.
  
- d. *Primary recipient* means any recipient that is authorized or required to extend Federal financial assistance to another recipient for the purpose of carrying out a program.
  
- e. *Program* includes any program, project, or activity for the provision of services, financial aid, or other benefits to individuals (including education or training, health, welfare, rehabilitation, housing, or other services, whether provided through employees of the recipient of Federal financial assistance or provided by others through contracts or other arrangements with the recipient, and including work opportunities), or for the provision of facilities for furnishing services, financial aid or other benefits to individuals. The services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any services, financial aid, or other benefits provided with the aid of Federal financial assistance or with the aid of any non-Federal funds, property, or other resources required to be expended or made available for the program to meet matching requirements or other conditions which must be met in order to receive the Federal financial assistance, and to include any services, financial aid or other benefits provided in or through a facility provided with the aid of Federal financial assistance or such non-Federal resources.
  
- f. *Recipient* may mean any State, territory, possession, the District of Columbia, or Puerto Rico, or any political subdivision thereof, or instrumentality thereof, any public or private agency, institution, or organization, or other entity, or any individual, in any State, territory, possession, the District of Columbia, or Puerto Rico, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assignee, or transferee thereof, but such term does not include any ultimate beneficiary under any such program.
  
- g. *Secretary* means the Secretary of Transportation or, except in §21.17 (e), any person to whom he has delegated his authority in the matter concerned.

### **Appendix A to Part 21 -- Activities to which This Part Applies**

1. Use of grants made in connection with Federal-aid highway systems (23 U.S.C. 101 *et seq.*).
2. Use of grants made in connection with the Highway Safety Act of 1966 (23 U.S.C. 401 *et seq.*).
3. Use of grants in connection with the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1391-1409, 1421-1425).
4. Lease of real property and the grant of permits, licenses, easements and rights-of-way covering real property under control of the Coast Guard (14 U.S.C. 93 (n) and (o)).
5. Utilization of Coast Guard personnel and facilities by any State, territory, possession, or political subdivision thereof (14 U.S.C. 141(a)).
6. Use of Coast Guard personnel for duty in connection with maritime instruction and training by the States, territories, and Puerto Rico (14 U.S.C. 148).
7. Use of obsolete and other Coast Guard material by sea scout service of Boy Scouts of America, any incorporated unit of the Coast Guard auxiliary, and public body or private organization not organized for profit (14 U.S.C. 641(a)).
8. U.S. Coast Guard Auxiliary Program (14 U.S.C. 821-832).
9. Use of grants for the support of basic scientific research by nonprofit institutions of higher education and nonprofit organizations whose primary purpose is conduct of scientific research (42 U.S.C. 1891).
10. Use of grants made in connection with the Federal-aid Airport Program (secs. 1-15 and 17-20 of the Federal Airport Act, 49 U.S.C. 1101-1114, 1116-1120).
11. Use of U.S. land acquired for public airports under:
  - a. Section 16 of the Federal Airport Act, 49 U.S.C. 1115; and
  - b. Surplus Property Act (sec. 13(g) of the Surplus Property Act of 1944, 50 U.S.C. App. 1622(g), and sec. 3 of the Act of Oct. 1, 1949, 50 U.S.C. App. 1622b).
12. Activities carried out in connection with the Aviation Education Program of the Federal Aviation Administration under sections 305, 311, and 313(a) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1346, 1352, and 1354(a)).
13. Use of grants and loans made in connection with Urban Mass Transportation Capital Facilities Grant and Loan Program -- Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1602).
14. Use of grants made in connection with Urban Mass Transportation Research and Demonstration Grant Program -- Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1605).
15. Use of grants made in connection with Urban Mass Transportation Technical Studies Grant Program -- Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1607a).
16. Use of grants made in connection with Urban Mass Transportation Managerial Training Grant Program -- Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1607b).
17. Use of grants made in connection with Urban Mass Transportation Grants for Research and Training Programs in Institutions of Higher Learning -- Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1607c).
18. Use of grants made in connection with the High Speed Ground Transportation Act, as amended (49 U.S.C. 631-642).

### **Appendix B to Part 21 -- Activities to which this part applies when a Primary Objective of the Federal Financial Assistance is to provide employment**

1. Appalachia Regional Development Act of 1965 (40 U.S.C. App. 1 *et seq.*).

**Appendix C to Part 21 -- Application of Part 21 to certain Federal Financial Assistance  
of the Department of Transportation**

**NONDISCRIMINATION ON FEDERALLY ASSISTED PROJECTS**

a. *Examples.* The following examples, without being exhaustive, illustrate the application of the nondiscrimination provisions of this part on projects receiving Federal financial assistance under the programs of certain Department of Transportation operating administrations:

1. *Federal Aviation Administration.*

- i. The airport sponsor or any of his lessees, concessionaires, or contractors may not differentiate between members of the public because of race, color, or national origin in furnishing, or admitting to, waiting rooms, passenger holding areas, aircraft tie-down areas, restaurant facilities, restrooms, or facilities operated under the compatible land use concept.
- ii. The airport sponsor and any of his lessees, concessionaires, or contractors must offer to all members of the public the same degree and type of service without regard to race, color, or national origin. This rule applies to fixed base operators, restaurants, snack bars, gift shops, ticket counters, baggage handlers, car rental agencies, limousines and taxis franchised by the airport sponsor, insurance underwriters, and other businesses catering to the public at the airport.
- iii. An aircraft operator may not be required to park his aircraft at a location that is less protected, or less accessible from the terminal facilities, than locations offered to others, because of his race, color, or national origin.
- iv. The pilot of an aircraft may not be required to help more extensively in fueling operations, and may not be offered less incidental service (such as windshield wiping), than other pilots, because of his race, color, or national origin.
- v. No pilot or crewmember eligible for access to a pilot's lounge or to unofficial communication facilities such as a UNICOM frequency may be restricted in that access because of his race, color, or national origin.
- vi. Access to facilities maintained at the airport by air carriers or commercial operators for holders of first-class transportation tickets or frequent users of the carrier's or operator's services may not be restricted on the basis of race, color, or national origin.
- vii. Passengers and crewmembers seeking ground transportation from the airport may not be assigned to different vehicles, or delayed or embarrassed in assignment to vehicles, by the airport sponsor or his lessees, concessionaires, or contractors, because of race, color, or national origin.
- viii. Where there are two or more sites having equal potential to serve the aeronautical needs of the area, the airport sponsor shall select the site least likely to adversely affect existing communities. Such site selection shall not be made on the basis of race, color, or national origin.
- ix. Employment at obligated airports, including employment by tenants and concessionaires shall be available to all regardless of race, creed, color, sex, or national origin. The sponsor shall coordinate his airport plan with his local transit authority and the Urban Mass Transportation Administration to assure public transportation, convenient to the disadvantaged areas of nearby communities to enhance employment opportunities for the disadvantaged and minority population.
- x. The sponsor shall assure that the minority business community in his area is advised of the opportunities offered by airport concessions, and that bids are solicited from such qualified minority firms, and awards made without regard to race, color, or national origin.

2. *Federal Highway Administration.*

- i. The State, acting through its highway department, may not discriminate in its selection and retention of contractors, including without limitation, those whose services are retained for, or incidental to, construction, planning, research, highway safety, engineering, property management, and fee contracts and other commitments with person for services and expenses incidental to the acquisition of right-of-way.
- ii. The State may not discriminate against eligible persons in making relocation payments and in providing relocation advisory assistance where relocation is necessitated by highway right-of-way acquisitions.
- iii. Federal-aid contractors may not discriminate in their selection and retention of first-tier subcontractors, and first-tier subcontractors may not discriminate in their selection and retention of second-tier subcontractors, who participate in Federal-aid highway construction, acquisition of right-of-way and related projects, including those who supply materials and lease equipment.
- iv. The State may not discriminate against the traveling public and business users of the Federally assisted highway in their access to and use of the facilities and services provided for public accommodations (such as eating, sleeping, rest, recreation, and vehicle servicing) constructed on, over or under the right-of-way of such highways.
- v. Neither the State, any other persons subject to this part, nor its contractors and subcontractors may discriminate in their employment practices in connection with highway construction projects or other projects assisted by the Federal Highway Administration. The State shall not locate or design a highway in such a manner as to require, on the basis of race, color, or national origin, the relocation of any persons. The State shall not locate, design, or construct a highway in such a manner as to deny reason able access to, and use thereof, to any persons on the basis of race, color, or national origin.

3. *Urban Mass Transportation Administration.*

- i. Any person who is, or seeks to be, a patron of any public vehicle which is operated as a part of, or in conjunction with, a project shall be given the same access, seating, and other treatment with regard to the use of such vehicle as other persons without regard to their race, color, or national origin.
- ii. No person who is, or seeks to be, an employee of the project sponsor or lessees, concessionaires, contractors, licensees, or any organization furnishing public transportation service as a part of, or in conjunction with, the project shall be treated less favorably than any other employee or applicant with regard to hiring, dismissal, advancement, wages, or any other conditions and benefits of employment, on the basis of race, color, or national origin.
- iii. No person or group of persons shall be discriminated against with regard to the routing, scheduling, or quality of service of transportation service furnished as a part of the project on the basis of race, color, or national origin. Frequency of service, age and quality of vehicles assigned to routes, quality of stations serving different routes, and location of routes may not be determined on the basis of race, color, or national origin.
- iv. The location of projects requiring land acquisition and the displacement of persons from their residences and businesses may not be determined on the basis of race, color, or national origin.

b. *Obligations of the airport operator --*

1. *Tenants, contractors, and concessionaires.* Each airport operator shall require each tenant, contractor, and concessionaire who provides any activity, service, or facility at the airport under lease, contract with, or franchise from the airport, to covenant in a form specified by the Administrator, Federal Aviation Administration, that he will comply with the nondiscrimination requirements of this part.

2. *Notification of beneficiaries.* The airport operator shall: (i) Make a copy of this part available at his office for inspection during normal working hours by any person asking for it, and (ii) conspicuously display a sign, or signs, furnished by the FAA, in the main public area or areas of the airport, stating that discrimination based on race, color, or national origin is prohibited on the airport.
3. *Reports.* Each airport owner subject to this part shall, within 15 days after he receives it, forward to the Area Manager of the FAA Area in which the airport is located a copy of each written complaint charging discrimination because of race, color, or national origin by any person subject to this part, together with a statement describing all actions taken to resolve the matter, and the results thereof. Each airport operator shall submit to the area manager of the FAA area in which the airport is located a report for the preceding year on the date and in a form prescribed by the Federal Aviation Administrator.

[35 FR 10080, June 18, 1970, as amended by Amdt. 21-1, 38 FR 5875, Mar. 5, 1973; Amdt. 21-3, 40 FR 14318, Mar. 31, 1975]

23 CFR  
SUBCHAPTER C—CIVIL RIGHTS  
PART 200 - TITLE VI PROGRAM AND RELATED STATUTES –  
IMPLEMENTATION AND REVIEW PROCEDURES

Sec.

200.1 Purpose.

200.3 Application of this part.

200.5 Definitions.

200.7 FHWA Title VI Policy.

200.9 State highway agency responsibilities.

200.11 Procedures for processing Title VI reviews.

200.13 Certification acceptance.

**AUTHORITY:** Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d to 2000d - 4; Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601- 3619; 42 U.S.C. 4601 to 4655; 23 U.S.C. 109(h); 23 U.S.C. 324.

**SOURCE:** 41 FR 53982, Dec. 10, 1976, unless otherwise noted.

**§ 200.1 Purpose.**

To provide guidelines for: (a) Implementing the Federal Highway Administration (FHWA) Title VI compliance program under Title VI of the Civil Rights Act of 1964 and related civil rights laws and regulations, and (b) Conducting Title VI program compliance reviews relative to the Federal aid highway program.

**§ 200.3 Application of this part.**

The provisions of this part are applicable to all elements of FHWA and provide requirements and guidelines for State highway agencies to implement the Title VI Program requirements. The related civil rights laws and regulations are listed under § 200.5(p) of this part. Title VI requirements for 23 U.S.C. 402 will be covered under a joint FHWA/NHTSA agreement.

**§ 200.5 Definitions.**

The following definitions shall apply for the purpose of this part:

- (a) *Affirmative action.* A good faith effort to eliminate past and present discrimination in all federally assisted programs, and to ensure future nondiscriminatory practices.
- (b) *Beneficiary.* Any person or group of persons (other than States) entitled to receive benefits, directly or indirectly, from any Federally assisted program, i.e., relocatees, impacted citizens, communities, etc.
- (c) *Citizen participation.* An open process in which the rights of the community to be informed, to provide comments to the Government and to receive a response from the Government are met through a full opportunity to be involved and to express needs and goals.
- (d) *Compliance.* That satisfactory condition existing when a recipient has effectively implemented all of the Title VI requirements or can demonstrate that every good faith effort toward achieving this end has been made.
- (e) *Deficiency status.* The interim period during which the recipient State has been notified of deficiencies, has not voluntarily complied with Title VI Program guidelines, but has not been declared in noncompliance by the Secretary of Transportation.

- (f) *Discrimination*. That act (or action) whether intentional or unintentional, through which a person in the United States, solely because of race, color, religion, sex, or national origin, has been otherwise subjected to unequal treatment under any program or activity receiving financial assistance from the Federal Highway Administration under Title 23 U.S.C.
- (g) *Facility*. Includes all, or any part of, structures, equipment or other real or personal property, or interests therein, and *the provision of facilities* includes the construction, expansion, renovation, remodeling, alternation or acquisition of facilities.
- (h) *Federal assistance*. Includes:
  - (1) Grants and loans of Federal funds,
  - (2) The grant or donation of Federal property and interests in property,
  - (3) The detail of Federal personnel,
  - (4) The sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient, and
  - (5) Any Federal agreement, arrangement, or other contract which has, as one of its purposes, the provision of assistance.
- (i) *Noncompliance*. A recipient has failed to meet prescribed requirements and has shown an apparent lack of good faith effort in implementing all of the Title VI requirements.
- (j) *Persons*. Where designation of persons by race, color, or national origin is required, the following designations ordinarily may be used: "White not of Hispanic origin", "Black not of Hispanic origin", "Hispanic", "Asian or Pacific Islander", "American Indian or Alaskan Native." Additional subcategories based on national origin or primary language spoken may be used, where appropriate, on either a national or a regional basis.
- (k) *Program*. Includes any highway, project, or activity for the provision of services, financial aid, or other benefits to individuals. This includes education or training, work opportunities, health, welfare, rehabilitation, housing, or other services, whether provided directly by the recipient of Federal financial assistance or provided by others through contracts or other arrangements with the recipient.
- (l) *State highway agency*. That department, commission, board, or official of any State charged by its laws with the responsibility for highway construction. The term *State* would be considered equivalent to *State highway agency* if the context so implies.
- (m) *Program area officials*. The officials in FHWA who are responsible for carrying out technical program responsibilities.
- (n) *Recipient*. Any State, territory, possession, the District of Columbia, Puerto Rico, or any political subdivision, or instrumentality thereof, or any public or private agency, institution, or organization, or other entity, or any individual, in any State, territory, possession, the District of Columbia, or Puerto Rico, to whom Federal assistance is extended, either directly or through another recipient, for any program. Recipient includes any successor, assignee, or transferee thereof. The term *recipient* does not include any ultimate beneficiary under any such program.
- (o) *Secretary*. The Secretary of Transportation as set forth in 49 CFR 21.17(g)(3) or the Federal Highway Administrator to whom the Secretary has delegated his authority in specific cases.
- (p) *Title VI Program*. The system of requirements developed to implement Title VI of the Civil Rights Act of 1964. References in this part to Title VI requirements and regulations shall not be limited to only Title VI of the Civil Rights Act of 1964. Where appropriate, this term also refers to the civil rights provisions of other

Federal statutes to the extent that they prohibit discrimination on the grounds of race, color, sex, or national origin in programs receiving Federal financial assistance of the type subject to Title VI itself. These Federal statutes are:

- (1) Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d–d4 (49 CFR part 21; the standard DOT Title VI assurances signed by each State pursuant to DOT Order 1050.2; Executive Order 11764; 28 CFR 50.3);
- (2) Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601–4655) (49 CFR part 25; Pub. L. 91–646);
- (3) Title VIII of the Civil Rights Act of 1968, amended 1974 (42 U.S.C. 3601– 3619);
- (4) 23 U.S.C. 109(h);
- (5) 23 U.S.C. 324;
- (6) Subsequent Federal-Aid Highway Acts and related statutes.

**§ 200.7 FHWA Title VI policy.**

It is the policy of the FHWA to ensure compliance with Title VI of the Civil Rights Act of 1964; 49 CFR part 21; and related statutes and regulations.

**§ 200.9 State highway agency responsibilities.**

- (a) State assurances in accordance with Title VI of the Civil Rights Act of 1964.
  - (1) Title 49, CFR part 21 (Department of Transportation Regulations for the implementation of Title VI of the Civil Rights Act of 1964) requires assurances from States that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits or, or be otherwise subjected to discrimination under any program or activity for which the recipient receives Federal assistance from the Department of Transportation, including the Federal Highway Administration.
  - (2) Section 162a of the Federal-Aid Highway Act of 1973 (section 324, Title 23 U.S.C.) requires that there be no discrimination on the ground of sex. The FHWA considers all assurances heretofore received to have been amended to include a prohibition against discrimination on the ground of sex. These assurances were signed by the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, and American Samoa. The State highway agency shall submit a certification to the FHWA indicating that the requirements of section 162a of the Federal- Aid Highway Act of 1973 have been added to its assurances.
  - (3) The State highway agency shall take affirmative action to correct any deficiencies found by the FHWA within a reasonable time period, not to exceed 90 days, in order to implement Title VI compliance in accordance with State signed assurances and required guidelines. The head of the State highway agency shall be held responsible for implementing Title VI requirements.
  - (4) The State program area officials and Title VI Specialist shall conduct annual reviews of all pertinent program areas to determine the effectiveness of program area activities at all levels.
- (b) *State actions.*
  - (1) Establish a civil rights unit and designate a coordinator who has a responsible position in the organization and easy access to the head of the State highway agency. This unit shall contain a Title VI Equal Employment Opportunity Coordinator or a Title VI Specialist, who shall be responsible for initiating and monitoring Title VI activities and preparing required reports.

- (2) Adequately staff the civil rights unit to effectively implement the State civil rights requirements.
- (3) Develop procedures for prompt processing and disposition of Title VI and Title VIII complaints received directly by the State and not by FHWA. Complaints shall be investigated by State civil rights personnel trained in compliance investigations. Identify each complainant by race, color, sex, or national origin; the recipient; the nature of the complaint; the dates the complaint was filed and the investigation completed; the disposition; the date of the disposition; and other pertinent information. Each recipient (State) processing Title VI complaints shall be required to maintain a similar log. A copy of the complaint, together with a copy of the State's report of investigation, shall be forwarded to the FHWA division office within 60 days of the date the complaint was received by the State.
- (4) Develop procedures for the collection of statistical data (race, color, religion, sex, and national origin) of participants in, and beneficiaries of State highway programs, i.e., relocatees, impacted citizens and affected communities.
- (5) Develop a program to conduct Title VI reviews of program areas.
- (6) Conduct annual reviews of special emphasis program areas to determine the effectiveness or program area activities at all levels.
- (7) Conduct Title VI reviews of cities, counties, consultant contractors, suppliers, universities, colleges, planning agencies, and other recipients of Federal-aid highway funds.
- (8) Review State program directives in coordination with State program officials and, where applicable, include Title VI and related requirements.
- (9) The State highway agency Title VI designee shall be responsible for conducting training programs on Title VI and related statutes for State program and civil rights officials.
- (10) Prepare a yearly report of Title VI accomplishments for the past year and goals for the next year.
- (11) Beginning October 1, 1976, each State highway agency shall annually submit an updated Title VI implementing plan to the Regional Federal Highway Administrator for approval or disapproval.
- (12) Develop Title VI information for dissemination to the general public and, where appropriate, in languages other than English.
- (13) Establishing procedures for pre-grant and post-grant approval reviews of State programs and applicants for compliance with Title VI requirements; i.e., highway location, design and relocation, and persons seeking contracts with the State.
- (14) Establish procedures to identify and eliminate discrimination when found to exist.
- (15) Establishing procedures for promptly resolving deficiency status and reducing to writing the remedial action agreed to be necessary, all within a period not to exceed 90 days.

**§ 200.11 Procedures for processing Title VI reviews.**

- (a) If the regional Title VI review report contains deficiencies and recommended actions, the report shall be forwarded by the Regional Federal Highway Administrator to the Division Administrator, who will forward it with a cover letter to the State highway agency for corrective action.
- (b) The division office, in coordination with the Regional Civil Rights Officer, shall schedule a meeting with the recipient, to be held not later than 30 days from receipt of the deficiency report.

- (c) Recipients placed in a deficiency status shall be given a reasonable time, not to exceed 90 days after receipt of the deficiency letter, to voluntarily correct deficiencies.
- (d) The Division Administrator shall seek the cooperation of the recipient in correcting deficiencies found during the review. The FHWA officials shall also provide the technical assistance and guidance needed to aid the recipient to comply voluntarily.
- (e) When a recipient fails or refuses to voluntarily comply with requirements within the time frame allotted, the Division Administrator shall submit to the Regional Administrator two copies of the case file and a recommendation that the State be found in noncompliance.
- (f) The Office of Civil Rights shall review the case file for a determination of concurrence or non-concurrence with a recommendation to the Federal Highway Administrator. Should the Federal Highway Administrator concur with the recommendation, the file is referred to the Department of Transportation, Office of the Secretary, for appropriate action in accordance with 49 CFR.

**§ 200.13 Certification acceptance.**

Title VI and related statutes requirements apply to all State highway agencies. States and FHWA divisions operating under certification acceptance shall monitor the Title VI aspects of the program by conducting annual reviews and submitting required reports in accordance with guidelines set forth in this document.



## Standard U.S. DOT Title VI Assurances

The (Title of Recipient) (hereinafter referred to as the "Recipient") HEREBY AGREES THAT as a condition to receiving any Federal financial assistance from the Department of Transportation it will comply with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d-42 U.S.C. 2000d-4 (hereinafter referred to as the Act), and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, SubTitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964 (hereinafter referred to as the Regulations) and other pertinent directives, to the end that in accordance with the Act, Regulations, and other pertinent directives, no person in the United States shall, on the grounds of race color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Recipient receives Federal financial assistance from the Department of Transportation, including the (*Name of Appropriate Administration*), and HEREBY GIVES ASSURANCE THAT it will promptly take any measures necessary to effectuate this agreement. This assurance is required by subsection 21.7(a)(1) of the Regulations, a copy of which is attached.

More specifically and without limiting the above general assurance, the Recipient hereby gives the following specific assurances with respect to its (*Name of Appropriate Program*):

1. That the Recipient agrees that each "program" and each "facility as defined in subsections 21.23(e) and 21.23(b) of the Regulations, will be (with regard to a "program") conducted, or will be (with regard to a "facility") operated in compliance with all requirements imposed by, or pursuant to, the Regulations.
2. That the Recipient shall insert the following notification in all solicitations for bids for work or material subject to the Regulations and made in connection with all (*Name of Appropriate Program*) and, in adapted form in all proposals for negotiated agreements:

The (Recipient), in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, SubTitle A, Office the Secretary, Part 21, Nondiscrimination in Federally assisted programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidden that it will affirmatively insure that in any contact entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

3. That the Recipient shall insert the clauses of Appendix A of this assurance in every contract subject to the Act and the Regulations.
4. That the Recipient shall insert the clauses of Appendix B of this assurance, 'as a covenant running with the land, in any deed from the United States effecting a transfer of real property, structures, or improvements thereon, or interest therein.
5. That where the Recipient receives Federal financial assistance to construct a facility, or part of a facility, the assurance shall extend to the entire facility and facilities operated in connection therewith.

6. That where the Recipient receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the assurance shall extend to rights to space on, over or under such property.
7. That the Recipient shall include the appropriate clauses set forth in Appendix C of this assurance, as a covenant running with the land, in any future deeds, leases, permits, licenses, and similar agreements entered into by the Recipient with other parties: (a) for the subsequent transfer of real property acquired or improved under *(Name of Appropriate Program)*; and (b) for the construction or use of or access to space on, over or under real property acquired, or improved under *(Name of Appropriate Program)*.
8. That this assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property or interest therein or structures or improvements thereon, in which case the assurance obligates the Recipient or any transferee for the longer of the following periods: (a) the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which the Recipient retains ownership or possession of the property.
9. The Recipient shall provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he delegates specific authority 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.
10. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Act, the Regulations, and this assurance.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts or other Federal financial assistance extended after the date hereof to the Recipient Department of Transportation under the *(Name of Appropriate Program)* and is binding on it, other recipients, sub-grantees, contractors, subcontractors, transferees, successors in interest and other participants in the *(Name of Appropriate Program)*. The person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Recipient

Dated \_\_\_\_\_

\_\_\_\_\_  
(Recipient)

by \_\_\_\_\_  
(Signature of Authorized Official)

## APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

**(1) Compliance with Regulations:** The contractor shall comply with the Regulation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

**(2) Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

**(3) Solicitations for Subcontractors, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

**(4) Information and Reports:** The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the *(Recipient)* or the *(Name of Appropriate Administration)* to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to the *(Recipient)*, or the *(Name of Appropriate Administration)* as appropriate, and shall set forth what efforts it has made to obtain the information.

**(5) Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the *(Recipient)* shall impose such contract sanctions as it or the *(Name of Appropriate Administration)* may determine to be appropriate, including, but not limited to:

- (a) withholding of payments to the contractor under the contract until the contractor complies, and/or
- (b) cancellation, termination or suspension of the contract, in whole or in part.

**(6) Incorporation of Provisions:** The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The contractor shall take such action with respect to any subcontractor procurement as the *(Recipient)* or the *(Name of Appropriate Administration)* may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the *(Recipient)* to enter into such litigation to protect the interests of the *(Recipient)*, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

## APPENDIX B

A. The following clauses shall be included in any and all deeds effecting or recording the transfer of real property, structures or improvements thereon, or interest therein from the United States.

### (GRANTING CLAUSE)

NOW, THEREFORE, the Department of Transportation, as authorized by law, and upon the condition that the *(Name of Recipient)* will accept Title to the lands and maintain the project constructed thereon, in accordance with *(Name of Appropriate Legislative Authority)*, the Regulations for the Administration of *(Name of Appropriate Program)* and the policies and procedures prescribed by *(Name of Appropriate Administration)* of the Department of Transportation and, also in accordance with and in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, SubTitle A, Office of the Secretary, Part 21, Nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter referred to as the Regulations) pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the *(Name of Recipient)* all the right, Title and interest of the Department of Transportation in and to said lands described in Exhibit "A" attached hereto and made a part hereof.

### (HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto *(Name of Recipient)* and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and shall be binding on the *(Name of Recipient)*, its successors and assigns.

The *(Name of Recipient)*, in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person shall on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on over or under such lands hereby conveyed [,] [and]\* (2) that the *(Name of Recipient)* shall use the lands and interests in lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, SubTitle A, Office of the Secretary, Part 21, Nondiscrimination in federally assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended [,] and (3) that in the event of breach of any of the above-mentioned nondiscrimination conditions, the Department shall have a right to reenter said lands and facilities on said land, and the above described land and facilities shall thereon revert to and vest in and become the absolute property of the Department of Transportation and its assigns as such interest existed prior to this instruction.\*

---

\* Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.

## APPENDIX C

The following clauses shall be included in all deeds, licenses, leases, permits, or similar instruments entered into by the *(Name of Recipient)* pursuant to the provisions of Assurance 6(a).

The (grantee, licensee, lessee, permittee, etc., as appropriate) for himself, his heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land"] that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this (deed, license, lease, permit, etc.) for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, SubTitle A, office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

[Include in licenses, leases, permits, etc.]\*

That in the event of breach of any of the above nondiscrimination covenants, *(Name of Recipient)* shall have the right to terminate the [license, lease, permit, etc.] and to re-enter and repossess said land and the facilities thereon, and hold the same as if said [licenses, lease, permit, etc.] had never been made or issued.

[Include in deed.]\*

That in the event of breach of any of the above nondiscrimination covenants, *(Name of Recipient)* shall have the right to reenter said lands and facilities thereon, and the above described lands and facilities shall thereupon revert to and vest in and become the absolute property of *(Name of Recipient)* and its assigns.

The following shall be included in all deeds, licenses, leases, permits, or similar agreements entered into by *(Name of Recipient)* pursuant to the provisions of Assurance 6(b).

The (grantee, licensee, lessee, permittee, etc., as appropriate) for himself, his personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds, and leases add "as a covenant running with the land") that (1) no person on the ground of race, color, or national origin shall be excluded from participation in, denied the benefits of, or he otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the ground of, race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations. Department of Transportation, SubTitle A, Office of the Secretary. Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964), and as said Regulations may be amended.

[Include in licenses, leases, permits, etc.]\*

---

\* Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.

That in the event of breach of any of the above nondiscrimination covenants, (Name of Recipient) shall have the right to terminate the [license, lease, permit, etc.] and to reenter and repossess said land and the facilities thereon, and hold the same as if said [license, lease, permit, etc.] had never been made or issued.

[Include in deeds]\*

That in the event of breach of any of the above nondiscrimination covenants, (*Name of Recipient*) shall have the right to reenter said land and facilities there-on, and the above described lands and facilities shall thereupon revert to and vest in and become the absolute property of (*Name of Recipient*) and its assigns.

---

\* Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.

### PURPOSE OF THIS DOCUMENT

This document provides an overview of those elements that are essential to effective Title VI program implementation, compliance, and enforcement. It is intended that this document will be updated periodically to reflect significant changes in law, regulation, and/or policy. Further, this document is intended to provide general guidance to State Transportation Agencies (“STAs,” which include here, State Departments of Transportation and State Highway Administrations) and other interested entities.

### INTRODUCTION

**Title VI Affects All of Us.** Each year, Federal government agencies distribute hundreds of billions of dollars through the Federally assisted programs they administer. These programs impact virtually every aspect of American life. The agencies’ power to extend Federal financial assistance to any program or activity by way of, for example, a grant, loan, or contract, creates for them a legal obligation to ensure that all persons regardless of their race, color, or national origin are afforded an equal opportunity to benefit from that assistance. (*42 U.S.C. § 2000d-1 (1988)*). Recipients of Federal financial assistance are also obligated to assure nondiscrimination in all their programs and activities. Therefore, they are required to have a comprehensive and proactive Title VI enforcement program to eliminate and prevent discrimination in each of the Federally assisted programs they administer.

**Nondiscrimination Provisions.** These apply to all programs and activities of Federal-aid recipients, sub-recipients, and contractors, regardless of tier. The provisions prohibit any use of Federal-aid funds to subsidize, promote, or perpetuate discrimination based on race, color, national origin, sex, age, disability, or retaliation. Primary recipients are responsible for determining and obtaining compliance by their sub-recipients and contractors. (**See Attachment A: Selected Nondiscrimination Authorities**)

**Title VI of the Civil Rights Act of 1964.** (*42 U.S.C. 2000d*) This statute provides that “No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance.” The scope of Title VI was expanded by the Civil Rights Restoration Act of 1987 (*P.L. 100-209*) to include all of a recipient’s and contractor’s programs or activities, whether Federally assisted or not. *49 C.F.R. Part 21* – U.S. Department of Transportation Regulations for the implementation of Title VI – requires assurances from States and other recipients that no person on grounds of race, color, or national origin is excluded from participation, denied the benefits of, or in any other way subjected to discrimination under any program or activity for which the recipient receives Federal assistance from the USDOT, including the FHWA.

**The Civil Rights Restoration Act of 1987:** This statute restored the intent of Title VI and the broad, institution-wide scope and coverage of nondiscrimination statutes to include **all** programs and activities of Federal-aid recipients, sub-recipients and contractors, whether those programs and activities are Federally funded or not. The Civil Rights Restoration Act was a direct response to, and a rejection of, the 1984 Supreme Court decision, *Grove City College v. Bell* (465 U.S. 555) in which Federal agency nondiscrimination requirements were limited to just those areas of the recipient’s operation that directly benefited from Federal assistance. (*See FHWA Notice N4720.6, September 2, 1992: “Impacts of the Civil Rights Restoration Act of 1987 on FHWA Programs.”*)

**Employment Discrimination and Title VI:** Title VI expressly prohibits employment discrimination in a Federally assisted program where the primary objective of the Federal financial assistance is to provide employment. (*49 C.F.R. § 21.5(c); See Also 42 U.S.C. § 2000d-3.73*) Employment practices covered by Title VI are those that:

- Exist in a program where a primary objective of the Federal financial assistance is to provide employment, or

- Cause discrimination on the basis of race, color or national origin with respect to beneficiaries or potential beneficiaries of the assisted program. (*DOT Order 1000.12, Chapter III*)

**The Purpose of Title VI is, therefore, clear:** To ensure that public funds are not spent in a way that encourages, subsidizes, or results in discrimination. To achieve this end, Title VI bars both intentional and disparate treatment and disparate impacts and effects.

**Helping States Prevent and Eliminate Discrimination.** Pursuant to the requirements of Title VI, the Federal Highway Administration (FHWA) has issued regulations and policy guidelines to its States' Transportation Agencies (STAs) to assist them in implementing the nondiscrimination provisions of the Title VI and other nondiscrimination authorities. The FHWA regulations are found in *23 C.F.R. Part 200* and those of the United States Department of Transportation (USDOT) are found in *49 C.F.R. Part 21*.

**In addition, FHWA advises every STA that a well developed Title VI program should include an implementation plan that:**

- 1) describes the nature of the program and the responsibilities of the operating divisions, office or unit that administers the Federally assisted program;
- 2) indicates the number of programs administered annually, an estimated total of the amount of Federal financial assistance distributed annually, and the approximate number of grants and recipients and sub-recipients involved;
- 3) includes proactive programs to prevent discrimination; and
- 4) includes enforcement procedures that correspond with the objectives of their Federally assisted programs and activities.

It is expected that each STA tailor its Title VI enforcement procedures and proactive programs specifically to correspond with the objectives of its Federally assisted programs and activities.

**Responsibilities of Federal Agencies and STAs:** Every Federal agency must have a comprehensive and proactive Title VI enforcement program to eliminate and prevent discrimination in each of the federally assisted programs it administers. Every executive agency that extends Federal financial assistance covered by Title VI is subject to the United States Department of Justice's (DOJ) coordination regulations and guidelines. (*28 C.F.R. Part 42, Subpart F (1994)*; and *28 CFR § 50.3*.) FHWA, for example, is required to obtain assurances of compliance with Title VI from STAs per these regulations. (*28 C.F.R. §§ 41.5(a)(2), 42.407(b)*). In addition, Executive Order 12250 requires each agency to issue appropriate regulations or policy guidance to implement the nondiscrimination provisions of the statutes subject to Executive Order 12250. (*Executive Order No. 12250, §1-402, 3 C.F.R. 298 (1981), reprinted in 42 U.S.C. § 2000d-1 (1988)*). Accordingly, the FHWA is required to issue appropriate regulations or policy guidance to its STAs to assist them in implementing the nondiscrimination provisions of the Title VI statutes.

**A Special Note on Assurances:** Assurances serve primarily two major purposes: 1) they remind prospective recipients of their nondiscrimination obligations, and 2) they provide a basis for the Federal government to sue to enforce compliance with these statutes. If an applicant for Federal assistance refuses to sign a required assurance, the agency may deny assistance only after providing notice of the noncompliance, an opportunity for a hearing, and other statutory procedures. (*See 42 U.S.C. § 2000d-1; 28 C.F.R §50.3*). However, the agencies need not prove actual discrimination at the administrative hearing, but only that the applicant refused to sign an assurance of compliance with Title VI or similar nondiscrimination laws. (*Also See, DOT Order 1050.2 (1971) – Standard DOT Title VI Assurances.*)

**Title VI Program and Related Statutes—Implementation and Review Procedures:** Guidelines for the FHWA's implementation of its Title VI compliance program, and for conducting Title VI program compliance reviews relative to the Federal-aid highway program are found in *23 C.F.R Part 200*. (*See § 200.7* that states:

“It is the policy of the FHWA to ensure compliance with Title VI of the Civil Rights Act of 1964; 49 C.F.R. Part 21; and related statutes and regulations.) The provisions of this part of the regulation also note that 49.C.F.R. § 21 (Department of Transportation Regulations for the implementation of Title VI of the Civil Rights Act of 1964) requires assurances from States (which are considered “recipients” of Federal assistance) “that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the recipient receives Federal assistance from the Department of Transportation, including the Federal Highway Administration.”

**The responsibilities of STAs** are stated in detail under 23 C.F.R. § 200.9, and address the following areas:

- State assurances;
- Requirements of Section 162(a) of the Federal-Aid Highway Act of 1973 (23 U.S.C. § 324) that prohibits discrimination on the ground of sex;
- Affirmative action requirements to correct deficiencies;
- Conducting annual reviews;
- Establishing a civil rights unit and designating a Title VI coordinator;
- Adequately staffing the civil rights unit;
- Developing procedures for prompt processing and disposition of Title VI complaints received directly by the State and not by the FHWA;
- Developing procedures for the collection of statistical data (i.e., with respect to race, color, sex, and national origin, of participants in, and beneficiaries of State highway programs);
- Developing a program to conduct Title VI review of program areas, and annual reviews of special emphasis program areas;
- Conducting Title VI reviews of cities, counties, consultant contractors, higher education institutions, planning agencies, and other recipients of Federal-aid highway funds;
- Review State program directives;
- STA Title VI training programs;
- Preparing annual accomplishment reports;
- Updating Title VI implementation plans;
- Developing Title VI information for dissemination to the general public;
- Establishing procedures for pre-grant and post-grant approvals;
- Establishing procedures to identify and eliminate discrimination when found to exist; and
- Establishing procedures for resolving deficiency status of complaints.

**A Note on Procedures:** A STA’s directives or administrative orders should: Establish basic procedures for complaint processing, post-award reviews, achieving compliance, and imposing sanctions for non-compliance; and include the issuance of specific procedures or compliance manuals that aid in the daily operation of Title VI enforcement. These procedures should be more detailed and specific than the procedure embodied in the directives.

The variety and complexity of the covered programs require that the STA’s Title VI procedures be tailored to meet the needs of each specific assistance program it conducts. They should address the entire compliance process, from application and pre-award requirements, through compliance review and complaint processing. Procedures or manuals also may provide program participants and beneficiaries with step-by-step instructions on filing complaints against funding recipients. Such instructions assist beneficiaries in exercising fully their rights under Title VI.

**THE TITLE VI/NONDISCRIMINATION PLAN: MINIMUM REQUIREMENTS AND OBLIGATIONS** (See 23 C.F.R. Part 200 – Title VI Program and Related Statutes – Implementation and Review Procedures.)

**A Viable Implementation Plan serves three primary purposes:**

- a - assist the FHWA in its oversight of the STA's external civil rights enforcement;
- b - function as a management tool to help STA's plan their civil rights activities; and
- c - serve as a resource document for the general public.

**An updated implementation plan must be submitted annually to the FHWA Division Office by October 1<sup>st</sup> for approval or concurrence.**

The plan specifies the implementation and enforcement procedures, strategies, and activities to facilitate and assure nondiscrimination. A complete implementation plan sets forth the STA's goals and priorities for the coming year, and indicates the allocation of specific staff and resources to specific tasks in order to accomplish the STA's goals. The plan includes goals and objectives for conducting research, education, technical assistance and staff training, initiating compliance reviews, and complaint investigations. Implementation plans are essential tools for linking goals with the budget process. Such plans should also be available to the public.

**At a minimum, the plan should:**

- Describe the nature of the program and the responsibilities of the operating divisions, office or unit that administers the FHWA-assisted program;
- Indicate the number of programs administered annually, an estimated total of the amount of FHWA financial assistance distributed annually, and the approximate number of grants and recipients and sub-recipients involved;
- Include proactive programs to prevent discrimination;
- Include enforcement procedures that correspond with the objectives of FHWA-assisted programs and activities;
- Address the methods for choosing recipients for compliance reviews, establish timetables for compliance reviews, and explain the procedures for handling complaints.

**In addition, every STA Title VI/Nondiscrimination Plan should include 10 core elements, each of which is described in detail below.**

- 1) **A Nondiscrimination Policy Statement:** This statement should express a commitment to assure nondiscrimination, and should be signed by the top STA official. Further, the policy statement should define Federal financial assistance and the recipients who are affected; delineate specific forms of discrimination that are prohibited, with examples from the STA's programs; and provide a list of the STA's programs and activities covered by Title VI.

**Specific Discriminatory Practices:** The following discriminatory practices must be prohibited by each STA's directives: (49 C.F.R. §21.5(b)) Note: To ensure uniformity and enforceability of agency regulations, DOJ and the U.S. Commission on Civil Rights cooperated to develop the compliance standards published in the U.S. Commission on Civil Rights, *Compliance Officer's Manual: A Handbook of Compliance Procedures under Title VI of the Civil Rights of Act of 1964* (1966), p. 5; hereafter cited as *Compliance Officer's Manual*. Examples include, but are not limited to:

- Denial to an individual any service, financial aid, or other benefit provided under the program;
- Distinctions in the quality, quantity, or manner in which the benefit is provided;
- Segregation or separate treatment in any part of the program;
- Restriction in the enjoyment of any advantages; privileges, or other benefits provided to others;

- Different standards or requirements for participation;
- Methods of Administration which directly or through contractual relationships would defeat or substantially impair the accomplishment of effective nondiscrimination;
- Discrimination in any activities related to highway and infrastructure or facility built or repaired in whole or in part with Federal funds;
- Discrimination in any employment resulting from a program, the primary purpose of which is to provide employment.

These are minimum requirements: This list is not intended to limit the STAs, but rather, is designed to indicate those activities that must be prohibited to comply, at a minimum, with the requirements of Title VI. In addition to meeting these minimum requirements, STAs have the authority to prohibit additional activities in their regulations and guidelines. Also, they may be flexible in testing the limits of Title VI and in tailoring their Title VI regulations to address unique aspects of their federally assisted programs.

**2) *Establishment of a Civil Rights Unit (CRU) and Adequate Staffing.***

This should include a description of the STA, a description of the Staff, an organization chart of the unit's relationship to the head of the STA, and an organization chart of the unit showing names and titles of staff. The recommendations that follow are derived from the U.S. Department of Justice, Civil Rights Division, "Checklist for Analysis of a Federal Agency's Title VI Enforcement Effort," *Title VI Forum*, vol. 4., no.2 (Fall 1979); hereafter cited as *DOJ Title VI Checklist*.

**Organizational Placement of the Civil Rights Office (23 C.F.R. § 200.9(b)(1)):**

**The head of the civil rights office should report to a senior, executive level authority within the STA to be effective.** Accordingly, there should be a demonstrated commitment on the part of the senior level authority to enforce Title VI. Such placement of the civil rights office will more likely ensure that it is on an equal plane with the STA's overall program or operational units. The clear backing of the STA's chief executive, coupled with sufficient formal authority to exercise a variety of important functions (including policy and procedures development; training; technical assistance; information systems management; quality control; and monitoring and evaluation), will advance the civil rights office's effectiveness and efficiency.

**The Civil Rights Staff (23 C.F.R. § 200.9(b)(1), (2)):**

Given that programmatic and civil rights responsibilities differ, the civil rights staff should report to civil rights leadership, not to program office supervisors. The independence of the civil rights enforcement function is necessary when civil rights-related interests conflict with operational and/or programmatic interests.

**The Civil Rights Office – Authority Within the STA (23 C.F.R. § 200.9(b)(1)):**

Civil rights offices should have sufficient authority to ensure that discrimination is eradicated in the STA's federally assisted programs; placing Title VI offices in subordinate positions to program offices may compromise the operational integrity of these offices. The civil rights office should be in a position to develop and issue STA-wide policy on civil rights issues.

Further, all Title VI covered programs within the STA should be subject to the review authority of the STA's civil rights office. This will ensure that staff functions regarding the funding of programs and preventing discrimination in such programs do not conflict.

## **The Civil Rights Office – Policy and Planning Responsibility:**

A critical mass of expertise and staff resources should be devoted to external civil rights enforcement, regardless of organizational location. Development and issuance of civil rights policy, procedures, directives, and policy interpretations, are major functions of a civil rights office, and should not be performed by compliance personnel on a part-time basis.

## **Budget, Staffing, and Workload:**

The STA's civil rights leadership should be fully involved in the agency's budget process, and ensure that the STA has an earmarked budget and appropriation for external civil rights enforcement. The STA's civil rights leadership must have authority over the funds received for salaries, office resources, equipment, and for funds designated for achieving particular civil rights enforcement goals.

## **A full-time Title VI coordinator and sufficient staff should be available for conducting pre-awards, post-awards, complaint inquiries, investigations, outreach, education, technical assistance, and Title VI enforcement.**

### **Staff Training (23 C.F.R. § 200.9(b)(3) and (9)):**

The quality of an agency's civil rights program depends upon the expertise of the staff conducting it. For this reason, it is essential that each STA provide regular and comprehensive training in Title VI enforcement to all staff responsible for external civil rights compliance, including the STA's program administration staff. Effective staff training programs not only provide education on Title VI compliance and enforcement policies and procedures, but also, ensure that the civil rights staff understands the relationship between Title VI and other civil rights statutes. Effective training also keeps staff apprised of legal developments affecting Title VI, including new civil rights laws. Further, it is important for the civil rights staff to understand the agency's federally assisted programs and the nexus between program objectives and civil rights obligations. STAs may also use staff training to improve the staff's ability to conduct enforcement activities, such as investigations and compliance reviews, and to identify subtle forms of discrimination.

- 3) Title VI Monitoring and Review Process:** This is a summary of how the STA's Title VI monitoring will be accomplished in the respective program areas, such as planning, design build, project development, right-of-way, construction, research, complaints, and records and reports. (49 C.F.R. § 21.7(b))

Rather than providing funds directly to the ultimate recipients, FHWA may provide Federal financial assistance through continuing programs to STAs that, in turn, disburse funds to sub-recipients. In these instances, the State or local agency is responsible not only for enforcing Title VI with respect to sub-recipients or sub-grantees, but also, for assessing its own Title VI compliance efforts. The FHWA's primary function is to oversee and monitor Title VI enforcement as conducted by the recipient State or local agency.

States receiving Federal assistance through continuing State programs must establish a Title VI compliance program for themselves and their sub-recipients. (23 C.F.R. § 200.9(b)(5), (6), and (7)) STAs are required to perform the following Title VI program review activities:

- Develop a program to conduct Title VI reviews of program areas;
- Conduct an annual Title VI review of its program areas to determine the effectiveness of program area activities at all levels; and
- Conduct Title VI reviews of sub-recipients (i.e., cities, counties, consultants, contractors, colleges and universities, planning agencies, and other recipients of Federal-aid highway funds).

- 4) **Compliance Component:** The STA should describe the Title VI enforcement procedures when noncompliance with Title VI exists. Also, the STA should describe the sanctions to be applied by the STA in the event of a sub-recipient's or contractor's noncompliance with Title VI.

**The STA's Title VI enforcement process should contain the following elements, regardless of the nature of the STA's programs (23 C.F.R. § 200.9(b)(3)(4)(5)(11)(12)(13) and (15); 23 C.F.R. § 200.11; and See 49 C.F.R. § 21.9)):**

- Pre-award reviews
- Post-award reviews
- Complaint investigations
- Identification of deficiencies, remedies, and sanctions
- Outreach and education
- Technical assistance

Each STA civil rights office must conduct or review all determinations of compliance with Title VI. Also, to facilitate the prompt and vigorous enforcement of Title VI by STAs that administer Federal financial assistance, it is essential that the STAs have comprehensive mechanisms not only for enforcement of Title VI, but also, for overseeing and monitoring their enforcement activities.

**A more detailed explanation of each of these compliance and enforcement elements follow.**

*Pre-award Reviews:* Generally, STAs should conduct routine checks prior to releasing funds to ensure that recipients have submitted assurances of Title VI compliance. A pre-award review of recipients can assist the STA in determining whether the prime contractor operates in a discriminatory manner. Such reviews can also be used to require applicants to take preventive measures to ensure that discrimination will not occur in their programs as a condition of receiving Federal funds. Pre-award reviews represent a frontline approach to eliminating and preventing discrimination before it occurs.

Regardless of whether the pre-award review is a desk-audit review (requiring more than that the applicant or recipient submit an assurance compliance form) or an onsite review (i.e., an extensive investigation of a recipient's program conducted in the field at program offices), if the STA discovers a Title VI violation, the agency must attempt to secure the prime contractor's voluntary compliance. If that attempt fails, the agency has the option of withholding or denying Federal funds. (49 C.F.R. § 21.13(a)(b)(c) and (d); 28 C.F.R. § 50.3; DOT Order 1000.12, Chapter IV, 1: "It is the policy of the Department to award and to continue to provide Federal financial assistance only to those applicants and recipients who comply fully with all the Title VI requirements." See Also DOJ Title VI Checklist, p. 13, no.30.)

FHWA's responsibilities include determining:

- Whether the STA performs an extensive pre-award review;
- The number of pre-award desk audits conducted each year;
- The nature of the material reviewed; and
- Whether the information reviewed varies according to the type of program involved.

In addition, FHWA will document the outcomes of the reviews and whether the STA uses the information to target prime contractors for technical assistance or onsite investigation.

*Post-Award or Onsite Compliance Reviews:* Once a recipient has received Federal funds, the STA must review the prime contractor periodically to ensure that the recipient remains in compliance with Title VI. As with the pre-award reviews, post-award reviews may take the form of either desk-audit reviews or more extensive onsite compliance reviews. Again, as with pre-award reviews, desk audits have their limitations in that they may not detect all discriminatory practices and may have to be supplemented with onsite

investigations to make findings of noncompliance. In either case, the results must be in writing and must include specific findings of fact and recommendations, with a determination of compliance status made as promptly as possible. (28 C.F.R. § 42.407(b) and (c)).

As discrimination may not always be overt and, therefore, may be more difficult to identify, onsite compliance reviews have become an increasingly important means of discovering discriminatory practices. (DOT Order 1000.12, Chapter IV) They are conducted periodically and as warranted. (23 C.F.R. § 200.9(4)(b), (5), (6), and (7); and 23 C.F.R. § 200.11; and 49 C.F.R. § 21.9)

There are six essential steps to conducting these systematic inspections:

Step 1: Compliance Plan – This is necessary and should include:

- A program and schedule for compliance reviews;
- Uniform standards for conducting and reporting compliance reviews; and
- Policies and procedures for uniform evaluations of compliance reviews.

Step 2: Preliminary Preparation – This involves collection of background information on recipients. It includes:

- Review of agency files to determine the nature of recipient services, type of Federal assistance; and Title VI Assessment;
- Review of pertinent assurance, policy statement and statements of compliance;
- Review of compliance reports to determine recipient's self-evaluation; and
- Review of any complaints, lawsuits, or previous investigations of recipient.

Step 3: Scope of Compliance Review – This should be done at the outset to determine whether the review should be extensive or limited to a particular program area(s). Determining the scope of review would involve an analysis of:

- Nature and extent of recipient's operation;
- Applicable laws, regulations and authorities; and
- Complaints and/or lawsuits.

Step 4: Notifying Recipient – An advance notice through a letter is recommended. This is necessary to:

- Give recipient opportunity to have various data, records, witnesses and staff available; and
- As a matter of courtesy and to maintain partnering relationship.

Step 5: Onsite Compliance Review – Should start with an entrance meeting/conference with leadership and pertinent personnel. Onsite review should:

- Provide sufficient information to determine recipient's compliance;
- Include final report of findings, conclusions, and recommendations; and
- Report that recipient is obligated to cooperate by keeping and providing records/other data; and permitting access to records.

Step 6: Closing Conference – Arranged to provide leadership of recipient with preliminary findings; recipient is informed when final report is submitted.

The value of a quality compliance review: A quality compliance review can require a substantial amount of resources and staff time. However, it is more likely to identify deficiencies or violations that are not revealed by pre-award reviews or desk-audit reviews. In addition, compliance reviews can deter discrimination and encourage accurate record keeping techniques, particularly if agencies conduct sufficient numbers of onsite reviews

and applicants remain subject to a review at any time. Onsite compliance reviews also demonstrate the proactive resolve of a Federal or State agency to eliminate discrimination. They also afford an excellent opportunity for agencies to provide education and technical assistance to reviewed recipients.

As with desk audits, agencies are required to issue written findings and determinations of Title VI compliance after completing onsite reviews. To facilitate the compliance review, the recipients are required to keep and submit records for review, as well as provide access to these records for agency staff.

*Complaint Investigations:* (23 C.F.R. § 200.9(4)(b)(3); and 49C.F.R. § 21.11 (b)) In addition to periodic post-award desk-audit and onsite compliance reviews, FHWA will investigate recipients against whom they have received complaints alleging violations of Title VI or other Federal civil rights statutes. Depending on the nature of the complaint, an investigation can be a cursory desk-audit review or a more extensive, onsite review, and will be based upon current judicial, administrative, and legislative interpretations of Title VI. If FHWA's primary recipients such as STAs, are permitted to investigate complaints, FHWA requires that the STA submit a written report on each complaint and its investigation. The FHWA must ensure that the STA's procedures are adequate and will maintain a review authority over the investigation and disposition of the complaints.

Note: 49 C.F.R. § 21.11(b) requires that a complaint be filed not later than 180 days after the date of the alleged discrimination, unless the time for filing is extended by the Secretary of Transportation.

*Deficiencies, Remedies, and Sanctions:* (23 C.F.R. § 200.11) FHWA may determine, after the completion of a pre-award or post-award desk audit review, compliance review or complaint investigation, that a recipient is not in compliance with Title VI. Deficiencies can take the form of technical violations, such as failing to include an equal opportunity statement on a poster, or filling out an assurance form incorrectly, or, more serious, overt discriminatory practices that have the effect of denying equal access to program funds.

There are six essential steps that should be followed if a Title VI Review Report contains deficiencies and recommendations as specified in 23 C.F.R. § 200.11:

- Step 1: The Division Administrator will forward report with a cover letter to the STA for corrective action.
- Step 2: The Division Office will schedule a meeting with recipient, to be held no later than 30 days from receipt of deficiency report.
- Step 3: Recipients placed in deficiency status shall be given a reasonable time, not to exceed 90 days after receipt of deficiency letter, to voluntarily correct deficiencies.
- Step 4: The Division Administrator shall seek cooperation from recipient to correct deficiencies found during review. FHWA will provide technical assistance and guidance needed to aid the recipient comply voluntarily.
- Step 5: When the recipient fails or refuses to voluntarily comply with requirements within allotted timeframe, a case file and recommendation that the State be found in noncompliance is submitted to FHWA Headquarters Office of Civil Rights.
- Step 6: The FHWA Headquarters Office of Civil Rights will review case file for determination of concurrence or non-concurrence. FHWA will then forward recommendation to the Office of Chief Counsel at FHWA for legal sufficiency review. After such review, FHWA will send recommendations to Federal Highway Administrator. Should the Federal Highway Administrator concur with recommendation, the file is referred to the Office of the Secretary, US DOT for appropriate action in accordance with 49 C.F.R. (Also See 23 C.F.R. § 200.11(a)-(f))

When Compliance Cannot be Achieved Voluntarily: (49 C.F.R. § 21.13) In the event that compliance cannot be achieved voluntarily, Title VI permits Federal agencies to use other means authorized by law to bring about compliance. In addition to referral to DOJ for litigation in Federal court, these “other means” include administrative avenues such as:

1. Seeking consultation with, or assistance from another Federal agency (such as the Office of Federal Contract Compliance at the Department of Labor) with authority to enforce nondiscrimination requirements; or
2. Consulting with, or seeking assistance from State or local agencies with nondiscrimination enforcement authority;

Refusal to Grant or Termination of Funds: (49 C.F.R. § 21.13). In the event that compliance cannot be achieved, Title VI also provides one other sanction in the event that a Federal agency may refuse to grant or may terminate funds after notice and an opportunity for a hearing. If the agency determines after completion of the hearing, that funds should be terminated, denied, or discontinued, the agency must submit a complete written report on its decision to the House and Senate committee having legislative jurisdiction over the program or activity before the decision can be implemented. DOT guidelines provide procedures for conducting fund termination or denial hearings. They also permit, in limited circumstances, a Federal agency to defer action on an assistance application temporarily pending initiation and completion of the notice and hearing. Such temporary suspension of funds allows agencies to prevent the continuation of the alleged discrimination pending a final determination.

Emphasis on Voluntary Compliance: It is important to restate that prompt action to achieve voluntary compliance is the first objective with respect to all instances in which noncompliance is found and should be pursued through each stage of enforcement action (See 23 C.F.R. § 200.11(d); 28 C.F.R. § 50.3).

Community Outreach and Public Education (23 C.F.R. § 200.9; 23 C.F.R. § 450.212; 49 C.F.R. § 21.5; 28 C.F.R. 42.405): The primary purpose of community outreach and public education is to inform funding recipients of their Title VI obligations, and to inform actual and potential participants and beneficiaries of the rights afforded them by Title VI. Without regular and comprehensive outreach and education, members of the public generally do not have the information necessary to pursue and protect their rights under Title VI by filing complaints against discriminating recipients. Therefore, one sign of a poor outreach and education program may be a small number of complaints filed with a funding recipient.

Outreach and education efforts also afford agencies an opportunity to inform potential recipients of assistance programs and the nondiscriminatory policies and requirements of Title VI. They enable potential recipients to learn grant application procedures. Agencies also learn about community concerns and receive public input in the development of Title VI enforcement programs.

Public participation provides for public involvement of all persons, affected public agencies, Federal employees, applicants for Federal assistance, recipients, beneficiaries, and other interested persons.

The responsibilities of funding recipients include:

- Displaying posters that state the recipient’s nondiscrimination policy and compliance with Title VI;
- Providing outreach and education to persons with limited English proficiency;
- Taking reasonable measures to disseminate written material in the appropriate languages when a significant number of beneficiaries, potential beneficiaries, or the affected community require information in a language other than English (23 C.F.R. § 200.9(b)(12) and E.O. 12166);
- Taking reasonable steps to provide, in languages other than English, information on federally assisted programs subject to Title VI.

- Summarizing the requirements of Title VI;
- Noting the availability of Title VI information from the recipient and the Federal funding agency;
- Explaining briefly the procedures for filing a complaint; and
- Using other forms of public distribution, such as pamphlets, handbooks, manuals, and the use of the print or broadcast media to disseminate Title VI and civil rights information.

*Technical Assistance:* Both FHWA Notice N 4720.6 and FHWA Order 4720.1A require FHWA to provide STAs and other recipients with technical assistance and training in civil rights, including Title VI, upon request. A similar requirement is found in 23 C.F.R. 200.11(d), and in DOT Order 1000.12, § 3.a.(6), which refers to the Departmental Director of Civil Rights.

Technical assistance may take the form of (not an exclusive list):

- Providing sample grant applications;
- Explaining procedures for data collection;
- Helping recipients establish an advisory board; or
- Conducting workshops and conferences for both recipients and beneficiaries.

Providing technical assistance also affords agencies another opportunity to inform the general public of their Federally assisted programs. It is an important tool for preventing discrimination in programs that are already using Federal funds. Further, it enables an agency not only to respond to specific concerns of recipients, but also, to offer assistance proactively when deficiencies are detected in a recipient's application or existing program during a desk-audit review, or when new developments warrant changes in a recipient's procedures.

In addition to facilitating the elimination of discrimination, technical assistance can help recipients reduce costs, such as when it is used to secure voluntary compliance in lieu of a costly compliance review. Technical assistance may also be in the form of suggestions for more cost-effective methods for eliminating discrimination in recipient programs. And most important, perhaps, is that strong technical assistance programs allow agencies to work with recipients to prevent and correct – voluntarily – any violations of Title VI that may exist in a recipient's program.

- 5) **Title VI Assurances:** These include copies of the STA's signed Title VI Assurance(s) including appendices. (See "A Special Note on Assurances," on page 5-2 of this document.) It is recommended that a copy of these Assurances are attached to the STA's agreement.
- 6) **Accomplishment Report:** This includes the STA's major accomplishments; the last plan update; instances where Title VI issues were identified and discrimination prevented; activities and efforts of the Title VI Coordinator/Specialist and program area personnel in monitoring Title VI; a description of scope and conclusions of any special reviews conducted; the identification of major problems and corrective action(s) undertaken; and a summary and status report on any Title VI complaints filed with the STA.
- 7) **Annual Work Plan:** This is an outline of monitoring and review activities determined for the next planning year and respective target dates, as well as a list of personnel assigned to activities.
- 8) **State Procedures, Manuals, and Directives Applicable to the Federal-aid Highway Program:** This is a list of all procedures, manuals, and directives the STA uses that are applicable to the Federal-Aid Highway Program and Title VI.

**9) Data Collection and Reporting Requirements** (23 C.F.R. § 200.9(b)(4), 771.111(h) (ii), and § 200.9(b)(3); 28 C.F.R. § 42.406; and 49 C.F.R. § 21.9): The collection and analysis of data on recipients are key elements of a successful Title VI enforcement strategy. Data collection is the primary means by which an agency can monitor whether its program funds are reaching the communities that need the assistance. Monitoring, in turn, is more likely to produce desired changes in civil rights enforcement when there are quantifiable standards with which to measure performance. When the monitoring agency can numerically assess the reach of its program funds, the agency is in a better position to assess whether corrective action is necessary to ensure nondiscrimination. This information may be used in all stages of the compliance process and may assist in developing strategies for case analysis and Title VI testing.

State and local primary recipients administering Federal assistance programs must collect and maintain statistical data on their potential and actual sub-recipients and sub-grantees, beneficiaries, and affected communities. Therefore, it is also part of FHWA's role to monitor this data collection process and ensure that the State and local agencies are maintaining sufficient records on their sub-recipients and ultimate beneficiaries.

Recipients and Applicants must collect the following data and information:

- The manner in which services are provided by the program;
- The race, color, and national origin of the population eligible to be served;
- Data regarding covered employment, including the use of bilingual employees to work with beneficiaries have limited English proficiency;
- The location of existing or proposed facilities and information regarding whether the location will have the effect of denying access to any person on the basis of prohibited discrimination;
- The race, color, and national origin of the members of any planning or advisory body that is an integral part of the program; and
- Requirements and procedures designed to guard against unnecessary impact on persons on the basis of race, color, or national origin when relocation is involved.

Recipients are authorized to include demographic information regarding racial composition when it is necessary or appropriate. Recipients must also require that applicants and sub-recipients notify the agency upon request of any lawsuits filed against the applicant or recipient alleging discrimination; and a statement as to whether the applicant has been found in noncompliance with any relevant civil rights requirements.

Recipients' guidelines also must require applicants and sub-recipients to provide a brief description of any applications pending at other Federal agencies; a statement describing any compliance reviews conducted in the prior two years, and a written assurance that they will compile and maintain records pursuant to the data collection guidelines.

**10) Issuance of Guidelines** (23 C.F.R. § 200.7; Also See 28 C.F.R. § 42.404(a)(1994):

In addition to requiring STAs to issue Title VI administrative orders, notices, or directives, the FHWA requires each STA to publish Title VI guidelines for each type of Federal financial assistance program under its jurisdiction. Specifically, the guidelines must:

- Describe the nature of Title VI coverage;
- Describe methods of enforcement;
- Provide examples of prohibited practices in the context of the particular type of program;
- Indicate required or suggested remedial action; and
- Explain the nature of requirements relating to covered employment, data collection, complaints, and public information.

Guidelines specific to each STA program or activity are a critical feature of Title VI enforcement. They provide recipients, as well as STA program offices, with program-specific information on compliance with Title VI requirements. They also establish definitive compliance standards and compliance review procedures for STAs assuming Title VI compliance responsibility. Effective guidelines should:

- Define the exact nature of the STA's Title VI requirements;
- Establish methods of administration or requirements for STAs assuming Title VI compliance responsibility for their recipients;
- Ensure that recipients conduct self-assessments of their compliance status, and take voluntary action to correct any deficiencies noted in the self-assessments;
- Include detailed complaint procedures, investigative methods, timetables for filing complaints, methods of enforcement, and remedial action procedures.
- Be distributed to funding recipients, beneficiaries, and affected communities to ensure they are informed of their rights and responsibilities under Title VI. (*Compliance Officer's Manual, § 6.311, p. 7.*)

Distribution of Guidelines (49 C.F.R. § 21.9(d)): FHWA requires STAs to distribute the guidelines to recipients, beneficiaries, compliance officers, and the general public to ensure that they are informed of their responsibilities and rights under Title VI. In addition, FHWA requires STAs to provide for the collection of data and information from applicants for, and recipients of Federal assistance in order for Title VI to be effectively enforced (23 C.F.R. § 200.9(b)(4)).

**A Note on Sub-recipients' Responsibilities** (23 C.F.R. § 200.5(n)): This group consists of Metropolitan Planning Organizations (MPOs), counties, cities, townships, colleges, universities, and consultants, including contractors and subcontractors. Sub-recipients may adapt or adopt the STA's plan and practices, or abide by the procedures proscribed by the STA.

**A Note on FHWA's Role** (23 C.F.R. § 200.7; also see 23 C.F.R. § 200.11(d)(f)): Although the STAs are responsible for Title VI enforcement in the continuing Federal financial assistance programs they administer, FHWA remains ultimately accountable for ensuring nondiscrimination in such programs. For this reason, FHWA must monitor the quality of the Title VI enforcement conducted by the recipients and provide assistance whenever possible.

To monitor State or local recipients effectively, FHWA must evaluate the recipients' civil rights enforcement programs to ensure that they execute their methods of administration properly. Methods of administration are plans that State and local recipients are required to develop to outline the procedures they intend to employ to meet their Title VI enforcement responsibilities. FHWA ensures that State and local recipients adequately perform the Title VI compliance reviews of the ultimate recipients that manage the Federal programs, as well as all other implementation and enforcement procedures.

## **METHODS OF ADMINISTRATION**

State and local recipients operating continuing programs should provide "methods of administration" designed to ensure that they and all sub-recipients comply with Title VI and remedy any existing compliance problems. (See 49 C.F.R. §21.7(b))

**The minimum components of this requirement are** (See 49 C.F.R. § 21.9, and §21.11):

1. A specific public outreach and education plan for notifying beneficiaries and potential beneficiaries, through public statements, written documents, meetings with community organizations and the media, of the Title VI requirements that apply to the Federally funded State program.
2. Training for State or local program staff, sub-recipients, and beneficiaries or potential beneficiaries in the Federal agency's nondiscrimination policies and procedures.

3. Procedures for processing complaints, notifying the Federal funding agency, and informing beneficiaries of their right to file a complaint.
4. A program to assess and report periodically on the status of their Title VI compliance that goes beyond a mere checklist of activities and assurances.
5. Detailed plans for bringing discriminatory programs into compliance within a specified time period.

By examining recipients' methods of administration, funding agencies can determine whether there is sufficient accountability for the actions of recipients and sub-recipients to ensure compliance with Title VI.

**STRATEGIC PLANNING AND TITLE VI IMPLEMENTATION PLAN** (23 C.F.R. § 200.9(b)(11))

FHWA regulations require each STA to annually submit an updated Title VI implementation plan to the Division Office for approval. An implementation plan is a detailed plan setting forth the STA's goals and priorities for the coming year, and indicates how specific staff and resources are allocated to specific tasks in order to accomplish the STA's goals. These plans often include goals and objectives for conducting outreach, education, and technical assistance, and for initiating compliance reviews, investigating complaints, and providing staff training. The implementation plan is an essential tool for linking goals and priorities with the budgeting process.

The implementation plan should be available to the public and should establish the STA's Title VI enforcement priorities and procedures. The plan should also include the following elements:

- Address the methods for choosing recipients for compliance reviews, establishing timetables for compliance reviews, and explaining the procedures for handling complaints;
- Establish timetables for compliance reviews;
- Explain the procedures for handling complaints;
- Describe the allocation of staff to compliance functions;
- Develop guidelines or provide an explanation when guidelines are not appropriate; and
- Include provisions for civil rights training of agency staff.

## *Title VI Coordinator/Specialist Responsibilities*

### **Title VI Coordinator/Specialist Responsibilities**

The Title VI Coordinator/Specialist is the focal point for the implementation and monitoring of the Title VI program at the State level. However, for effective implementation and monitoring of activities, it is essential that the Title VI Coordinator/Specialist coordinate and collaborate with the major program area officials or designees, and sub-recipients.

The following lists are by no means exhaustive; however, they capture key responsibilities that the Title VI Coordinator/Specialist should execute.

#### **General Responsibilities:**

1. Coordinate Title VI program development with the major program area officials;
2. Provide technical assistance, guidance, and advice on the Title VI Program;
3. Conduct Title VI reviews of STAs and its sub-recipients major program areas and activities;
4. Review findings of program area reviews to ensure determinations of discrimination or nondiscrimination are sufficiently supported;
5. Participate in the development and dissemination of Title VI information to the public (in languages other than English where necessary);
6. Develop and implement procedures for the prompt processing of Title VI discrimination complaints;
7. Conduct/coordinate Title VI training;
8. Establish procedures to resolve determinations of noncompliance;
9. Update Title VI Implementation Plan; and
10. Establish procedures for processing Title VI reviews.

#### **Specific Activities:**

1. Participate in all transportation decision making;
2. Take part in identifying Title VI impacts with major program area officials/personnel;
3. Participate in identifying mitigation measures for minorities and low income persons, and when possible determine the effectiveness of such measures;
4. Participate in obtaining public involvement, especially in minority and low income areas;
5. Attend statewide/regional planning and project meetings/hearings involving Title VI issues or where Title VI impacts have been identified;
6. Accompany program area officials/personnel on selected right-of-way activities to compare treatment received by minorities and non-minorities;
7. Review all contracting procedures to ensure nondiscrimination;
8. Review prequalification/ bonding requirements and contractor selection procedures to determine uniformity in their application to minority and non-minority contractors;
9. Assist major program area officials/personnel and sub-recipients in communicating contract opportunities to minority/women-owned contractors and subcontractors; and
10. Review selection procedures for principal researchers and staff to determine minority participation; assist in identifying minority institutions of higher education interested in conducting research.

## *Sub-recipients Responsibilities*

### **Sub-recipients Responsibilities**

Title VI applies to all recipients, sub-recipients, and contractors. The sub-recipient group consists of Metropolitan Planning Organizations (MPOs), counties, cities, townships, colleges, universities, and consultants, including contractors and subcontractors. Sub-recipients may adapt or adopt the STAs plan and practices or abide by the procedures prescribed by the STA. As a Federal-aid provider, sub-recipients should be mindful of the following key requirements:

**Nondiscrimination:** There must be no discrimination in their programs and activities. For instance: A contractor should not discriminate in their selection and retention of first-tier subcontractors. Similarly, a first-tier subcontractor should not discriminate in their selection and retention of second-tier subcontractors (Appendix C to Part 21(a)(2)(iii)).

Also, sub-recipients should not discriminate in their employment practices in connection with highways construction projects or other projects assisted by the FWHA (42 USC 2000d-3; 49 CFR Part 21, Appendix C (a)(2)(v); DOT Order 1000.12, Chapter III(2)(a)(1)).

**Assurance Required:** Every sub-recipient application for USDOT (including operating administrations) assistance should submit an assurance that the program will be conducted or the facility operated in a nondiscriminatory manner (49 CFR Part 21 and 23 CFR § 200.9(a)(1)).

**Voluntary Compliance:** Sub-recipients are required to cooperate in obtaining their voluntary compliance with Title VI. State DOTs shall provide assistance and guidance to sub-recipients in obtaining their compliance. (49 CFR §21.9(a))

**Data Collection:** Sub-recipients are required to keep accurate and complete records necessary to ascertain whether they are complying with Title VI. The reports should be submitted in a timely manner. In addition, sub-recipients should have available racial and ethnic data showing the extent to which members of minority groups are beneficiaries of programs receiving Federal financial assistance (49 CFR § 21.9(b)).

## *Strategies For Preventing Discrimination*

### **Strategies For Preventing Discrimination**

To assure nondiscrimination, be **proactive!** However, at a minimum, STAs should do the following:

- Training
- Education
- Outreach
- Technical Assistance
- Data Collection & Analysis

#### **Some Specific Strategies**

- Implement the multidisciplinary approach to involve all program areas including the head of State agency
- Conduct frequent Title VI training
- Have regular/periodic TEAM meetings
- Carry out periodic reviews & evaluations
- Develop public involvement strategies according to situation at hand
- Encourage information sharing on significant nondiscrimination practices, policies, and procedures.
- Pursue outreach activities
- Encourage & sustain public participation, involvement & cooperation
- 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 & demographic data
- Document processes, data & activities related to Title VI



## *Major Federal-aid Highway Programs*

### **Title VI Considerations in the Major Federal-Aid Highway Programs**

The following narrative describes the Federal-aid highway program and is intended as a guide for Federal and State Civil Rights personnel and others charged with the effective execution of nondiscrimination laws, regulations and authorities related to the Federal-aid highway process. Some information and terms used in this guide may vary from State to State. Therefore, questions regarding how the Federal-aid highway process is carried out in a particular State should be directed to appropriate program area personnel. It should further serve as an opportunity for Civil Rights personnel and program area personnel to work more closely together in carrying out their mutual nondiscrimination program responsibilities.

#### **I. THE PLANNING PROCESS**

##### **A. General**

The statewide and metropolitan planning process establishes a cooperative, continuous, and comprehensive framework for making transportation investment decisions throughout the State and Metropolitan Area. The States and Metropolitan Planning Organizations (MPOs) have the responsibility of producing a comprehensive transportation planning process through which transportation decisions are made. The process is designed to promote involvement by all levels of government, stakeholders, and the general public, through a proactive public participation process. States have the primary responsibility for preparing and maintaining the statewide transportation plan and the Statewide Transportation Improvement Program (STIP). MPOs have the task of creating a long range transportation plan (LRTP) and transportation improvement program (TIP). In some States, planning is carried out by State Transportation Agencies (STAs) for small communities and rural areas. In other states these functions are performed by Rural Planning Organizations or local government.

There are various analyses and studies which are completed in the process of developing an efficient transportation plan. Many MPOs have their own staff which perform most of the technical studies while other MPOs rely on a consortium of State and local government staff to perform the necessary technical analysis of the plan. In the smaller urbanized areas, the State may conduct the analyses for the MPO. Occasionally, when MPOs do not have the capabilities, consultants may be hired to conduct planning studies, traffic studies, corridor studies, or other highly technical work.

Major changes were made in the planning process by ISTEA. The changes are reflected in the implementing rules 23 Code of Federal Regulations (CFR) 450. Subpart B covers statewide planning and Subpart C covers metropolitan planning. Related regulations are in 23 CFR 500 dealing with Management and Monitoring Systems and in 40 CFR 51 and 93, dealing with air quality conformity. Legislation succeeding ISTEA such as Transportation Equity Act for the 21st. Century (TEA-21) and the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), has also enhanced the transportation planning process. SAFETEA-LU requires MPOs to develop and utilize a "participation plan" that provides reasonable opportunities for interested parties to comment on the metropolitan transportation plan and metropolitan TIP. Further, this participation plan must be developed "in consultation with all interested parties," and the public must have input on the participation plan. Implementation of the Federal planning requirements is a cooperative process involving several key agencies. The FHWA and Federal Transit Administration (FTA) jointly oversee the transportation planning process.

It must be noted that a key element for addressing Title VI at the planning phase is having an effective public involvement process. That process must be proactive and provides complete information, timely public notice, full public access to key decisions and an opportunity for early and continuing involvement. A public involvement process will also include a process for seeking out and considering the needs of those who are traditionally ignored or underserved by existing transportation systems.

## **B. Statewide and Metropolitan Planning**

A statewide transportation planning process is required. Prior to ISTEA, the plan was not a requirement. The statewide transportation planning process produces long-range inter-modal statewide transportation plans and short-range programs or projects. The decisionmaking effort for this process is open for input from a variety of participants and any others who wish to be involved. Projects should be identified and programmed into the STIP and ultimately implemented. The identified projects are placed in the STIP or TIP through a cooperative process involving the STA, MPOs, and transit operators. Project priorities are established in the TIP development process and revised through procedures that meet the project selection stipulations in 23 U.S.C. 134 and 135 for the various funding categories. The STIP must include all projects to be funded by Title 23 or FTA funds. An implementing agency then advances projects from the approved STIP. It is essential that the implemented projects be in line with the goals and objectives identified in the long-range plan.

The metropolitan planning process has been required since the 1962 Federal-aid Highway Act. The process must produce a LRTP and TIP that includes at least all projects that are to be Title 23 or FTA funded and all others involving an FHWA or FTA approval action. Long-range plans frame the State's long-range transportation goals and objectives for the State and/or region. Financial considerations, movement of environmental considerations and the planning process, etc., are emphasized in SAFETEA-LU.

Under SAFETEA-LU (PL-109-59 § 6001(135) (d)), the planning factors for statewide and metropolitan planning have been combined. The following eight factors must be considered in those processes:

1. Support the economic vitality of the United States, the States, non-metropolitan and metropolitan areas, especially by enabling global competitiveness, productivity, and efficiency;
2. Increase the safety of the transportation system for motorized and non-motorized users;
3. Increase the security of the transportation system for motorized and non-motorized users;
4. Increase the accessibility and mobility of people and freight;
5. Protect and enhance the environment, promote energy conservation, improve the quality of life, and promote consistency between transportation improvements and State and local planned growth and economic development patterns;
6. Enhance the integration and connectivity of the transportation system, across and between modes, for people and freight;
7. Promote efficient system management and operation; and
8. Emphasize the preservation of the existing transportation system.

Long-range plans frame the State's long-range transportation goals and objectives for the State and/or region. Projects should be identified and programmed in the STIP and ultimately implemented. The projects implemented from the STIP should be in line with the goals and objectives identified in the long-range plan. Projects are placed on the STIP or TIP through a cooperative process involving the State Transportation Agency (STA), MPOs, and transit operators. Project priorities are established in the TIP development process and revised through procedures that meet the project selection stipulations in 23 U.S.C. 134 and 135 for the various funding categories. An implementing agency then advances projects from the approved STIP.

## **C. Potential Title VI Issues and Suggested Mitigation of Adverse Impacts**

Plans and programs have the potential of being discriminatory in more subtle ways than projects. The major area of impact by plans and programs is through decisions which identify one or more planned improvements over other options. This consequence may result from procedures and processes that exclude a group from the

process, or from the failure to consider the impacts of various transportation system alternatives and programs or projects on one or more identified groups. To the extent that plans and programs include proposed improvements with disproportionate beneficial impacts or reflect decision processes that exclude certain groups, the long-term agenda for transportation improvements may be inappropriately biased. This could lead to project implementation that is inconsistent with nondiscrimination requirements. The actual impacts may only be experienced as projects are implemented. The planning process represents a comprehensive perspective from which to assess the potential consequences of developing and operating the transportation system.

**Issue: 1. Whether there is effective public involvement/participation.**

ISTEA introduced a range of opportunities that encouraged participation in the planning process by transportation stakeholders, ranging from the freight community to environmental groups to the general public. As a result, many states revamped their planning and program development processes to accommodate the new demand for stakeholder involvement.

Under SAFETEA-LU (PL 109-59 § 6001(135) (i) (5) (b), statewide and metropolitan planners and decisionmakers are required to develop a participation plan. The Public Participation Plan (PPP) serves as a guide for the participation process to ensure ongoing public involvement in the development and review of transportation plans, programs, and projects. The plan should be developed in consultation with interested parties that provides reasonable opportunities for all parties to comment. SAFETEA-LU identifies “interested parties” as citizens, affected public agencies, representatives of public transportation employees, freight shippers, providers of transportation, representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, and representatives of the disabled. Implementation of the participation plan should include the following:

- Public meetings conducted at convenient and accessible locations at convenient times.
- The use of visuals to describe plans.
- Public information should be made available in an electronic accessible format (i.e., Internet).
- The participation plan should be published and made available electronically (i.e., Internet).

Inadequate efforts to reach and involve low income, minority, disabled or LEP populations during the planning process can result in denying these groups the opportunity to participate in public decisions on transportation systems and projects directly affecting them.

Public involvement in transportation planning and programming is performance based. This means that the FHWA-FTA joint planning regulations do not have detailed specifications as to how the public, including minorities, are to be involved in statewide or metro-politan planning. Instead, the Federal agencies give performance specifications for public involvement processes in the joint planning regulations (23 CFR 450, Sections 212 and 316). States and MPOs then develop detailed public involvement processes custom tailored for local conditions. The processes describe in detail how the public is provided the opportunity to be involved in the development and approval of transportation plans, State and MPO transportation improvement programs, and opportunities for input for non-attainment transportation management areas. The public also participates in the development of the public involvement processes. At a minimum, there is a 45-day public review period before adoption of public involvement approaches. Both statewide and metropolitan planning require STAs to publish procedures and allow 45 days for public review and written comments before the procedures and any major revisions to existing procedures are adopted.

The FHWA and FTA field staff give technical assistance to MPOs and statewide planning units during development of their public involvement processes. Proactive approaches should provide adequate opportunity for minority populations to be involved in all aspects of the development of the processes. Statewide and metropolitan planners can achieve involvement in all aspects of the planning and programming process to support decision-making, which is sensitive to community impacts and concerns. Statewide and community planners

can achieve involvement through a variety of methods (i.e. contacts with minority group leaders, focus group discussions, and workshop format public meetings and advertising in minority and diverse language media). Focus groups can identify factors hindering participation by low income and minorities, as well as explore their concerns in depth. Workshop meetings in low income and minority communities can solicit ideas as to how residents would like to participate. The FHWA program staff advocate these activities best through contact with the metropolitan or statewide planning staff responsible for public involvement. Contact should be conducted in coordination with FHWA and FTA planning staff.

Statewide and metropolitan planning staff responsible for public involvement should review the public involvement process operation in terms of local minority groups' participation. The public involvement effort should be sensitive to the following considerations.

- Are minority and diverse language media appropriately included in all notification processes for public meetings or public review of agency documents?
- Has there been appropriate contact with minority groups or leaders to identify information needs and planning/programming issues of concern? Focus group discussions are also useful in exploring minority issues in depth.
- Is technical information available in formats and at places and times conducive to review by minorities? This may require provision of information to people with visual impairments, non-English and LEP speakers, or to persons without extensive formal schooling.
- Are persons traditionally underserved by transportation systems such as low-income, minorities or LEP persons actively sought out for involvement? This active effort goes beyond merely offering a passive opportunity to comment to those who see a notice in a newspaper of general circulation. Often, it is necessary to translate bureaucratic documents into lay language and to describe why minorities and other groups should be interested in participating. Another effective approach is to use a neutral facilitator to encourage minority persons at public meetings to actively participate. Some MPOs have used minority citizens advisory committees to foster minority participation. Meetings held in minority areas in the evening encourage minority attendance at far higher levels than meetings in downtown offices during the day.
- Do meeting formats encourage participation by minorities or people with disabilities? Less formal meetings are far less intimidating, e.g., circulating at an open house and asking agency staff one-on-one about plans or programs. Informal discussions provide information tactfully to persons who have difficulty reading. Comments made in one-on-one settings can encourage others to contribute their views.

**Mitigation:**

- Obtain participation from those most directly impacted;
- Contact minority community leaders, organizations, media;
- Consider availability of information (time, place, language, educational level);
- Conduct adequate number of meetings and hearings;
- Utilize citizen advisory committees; and
- Hold meetings or hearings at an appropriate location, convenient time and day of the week, and atmosphere, to increase attendance.

**Issue: 2. Whether input from minority groups/persons is seriously considered.**

Soliciting input from the general public is critical in the planning process. However, failing to seriously consider comments by minority groups/persons is discriminatory. When public agencies receive comments towards the end of the plan or TIP preparation, members of the public may feel that commenting is futile because the agency position is obvious. Consequently, comments tend to be very critical and unconstructive. On the agency side, there is commitment to the work already invested in draft plans and programs. Therefore, in responding to comments, agencies then tend to focus on explaining why public comments cannot be implemented. Collaborative

task forces are effective ways to reassure public citizens that they can influence decisionmaking. The use of newsletters is also an effective medium to provide information to minority communities or groups on how past input has been considered and to continue soliciting their involvement.

Anticipatory and supportive review of the metropolitan and statewide public involvement processes can ensure Title VI compliance. There are three review processes required under the joint planning regulations:

- All MPOs and State DOTs must perform a review of their public involvement processes periodically to assess its effectiveness and to ensure that the process provides full and open access to all. Civil rights staff may assist MPOs and STAs develop ways to increase minority participation during these reviews.
- The FHWA and FTA conduct regular certification reviews of MPOs (at least every 4 years) with populations in excess of 200,000. The certification reviews cover compliance with all provisions of the metropolitan planning regulations including public involvement. Civil rights staff may seek to participate in these reviews and may address minority participation.
- The FHWA and FTA make a planning finding on statewide planning processes including the public involvement process at least every 4 years. Title VI compliance is an identified part of the finding, and civil rights staff can provide input to the finding.

**Mitigation:**

- Actively demonstrate consideration of community input via newsletters, letters, brochures, or other medium that will potentially reach the target group/audience.

**Issue: 3. Whether there is coordination with Indian tribal governments in statewide metropolitan transportation planning.**

Projects that usually have the greatest potential for discriminatory impacts are those within metropolitan areas that involve large numbers of relocations and/or community disruption. However, some rural projects also have potential for discrimination, especially those impacting Native Americans. Furthermore, users of the system, rural or metropolitan, may be adversely impacted by its development, operation and/or maintenance. Hence, it is very important that special efforts are made to reach out to those segments of society that have been traditionally underserved during the planning process to secure their input.

It is necessary for States and MPOs to provide opportunity for active involvement of Indian tribal governments in statewide and metropolitan transportation planning and programming. It is important for agency staff to recognize and be sensitive to tribal customs and to the nationally recognized sovereignty of tribal governments. Tribal governments should be actively solicited to participate in the development of metropolitan and State plans and programs as independent government bodies rather than as specific minority groups. The coordination activities with Indian tribal governments should reflect the following:

- Early involvement.
- Timely information exchange.
- Adequate notice.
- Consideration of input.

**Mitigation:**

- Establish better/effective relationships with Indian tribal governments.
- Obtain training/knowledge of Indian tribal customs and laws that govern their various sovereign nations.

**Issue: 4. Whether data collection/analysis is adequate.**

The information that is collected and analyzed during the planning process is critical to the development of studies and the decisions that are to be reached during project development. It is essential that data collection and analysis reflect the metropolitan area and appropriately address:

- Community boundaries.
- Racial and ethnic make up.
- Income levels, property taxes, etc.
- Community services, schools, hospitals, shopping areas.

**Mitigation:**

Forms, surveys, and other data collection methods designed should contain the following information:

- Description of community boundaries;
- Racial/ethnic makeup;
- Income levels, tax base; and
- Community services, schools, hospitals, shopping, public safety.

**Issue: 5. Whether Social, Economic, and Environmental (SEE) effects and impacts have been identified and described.**

In order to ensure a balanced view of the SEE effects of the planning process, the utilization of a systematic interdisciplinary approach is recommended. The use of a coordinated effort by various disciplines working together can more easily identify all the SEE effects and propose possible mitigation options. The thrust of the overall decision-making process is making transportation decisions that are sensitive to and address community impacts.

Under SAFETEA-LU, planners must include a discussion of potential environmental mitigation activities along with potential sites to carry out the activities proposed. The mitigation should be developed in consultation with Federal, State, Tribal and environmental resource agencies.

**Mitigation:**

- Systematic interdisciplinary approach, and
- Public involvement techniques such as minority citizen advisory committees.

**Issue: 6. Whether contracting opportunities for planning studies, corridor studies, or other work have been provided to minorities and women.**

Consultants may be hired to conduct planning studies, corridor studies, or other highly technical work. Efforts should be made to ensure that minority and women-owned businesses have opportunities to bid on and undertake these studies.

**Mitigation:**

- Outreach efforts to minority and women-owned businesses and minority institutions of higher education.

## II. THE PROJECT DEVELOPMENT PROCESS

### A. General

The term "project development" refers to the process of a highway or transit project in which the environmental study necessary for the National Environmental Policy Act (NEPA) compliance is performed. The NEPA of 1969 is the foundation of the project development process as described in 23 CFR Part 771, the FHWA/FTA joint environmental regulation. The NEPA requires that all Federal agencies examine and disclose the possible and likely effects of their actions on the human environment. The FHWA uses the term, "human environment" in its broadest sense to include neighborhoods, communities, and natural ecosystems. Similarly, effects on the human environment include a broad array of impacts including direct physical effects to air, water, and land, as well as less quantifiable effects, such as impacts to cultural resources, community life and land use patterns.

For highway projects, the STAs perform this analysis and prepare an environmental document with the FHWA's assistance and oversight. Final approval of the process is the responsibility of the FHWA. Environmental compliance requires consideration of all possible SEE effects of a proposed project and seeks to ensure that the decisions made are in the public's best interest. During this process, data and information on project alternatives and related environmental effects are collected and analyzed. The goal of this process is to develop a complete understanding of the existing and future environmental conditions and the possible effects of a proposed project in order to make the best project decision in terms of meeting the intended transportation need, the goals of an area or community, and for protection and enhancement of the environment. Often, the project alternatives are modified to avoid or minimize impacts to sensitive resources identified during the environmental studies. At other times, mitigation measures are made part of the project decision. Furthermore, it is FHWA policy to seek opportunities to go beyond traditional mitigation and implement innovative enhancement measures to help the project fit harmoniously within the community and the natural environs.

Consideration of existing environmental conditions and the potential for a proposed project to negatively or positively affect or impact the human environment actually begins much earlier with the statewide and metropolitan planning processes. (See discussion in previous section relating to planning). The project development process begins where planning ends and is continued through all other developmental phases, such as, final design, and right-of-way acquisition.

Consideration of environmental effects is necessary for any project that proposes to use Federal funds, or which could require another action by the Administration (such as an Interstate system access approval) regardless of the size, type, cost, or purpose of the project. Different levels of environmental documentation and processing are available to satisfy the project development and NEPA compliance process for a particular project. The level of documentation or process selected depends on the potential significance of the environmental impacts which are directly, or indirectly, the result of a project. Documentation and processing options are referred to as "classes of actions" and include Environmental Impact Statements (Class I), Categorical Exclusions (Class II), and Environmental Assessments (Class III).

FHWA is advocating the linking of planning and NEPA (project development) phases. Project development continues through other phases such as right-of-way and final design. The following are synopsis of three classes of environmental documentation that can be prepared on transportation projects.

### B. Class I: Environmental Impact Statement (EIS)

An EIS is prepared when it is determined through environmental studies, public involvement, and coordination with other Federal, State and local agencies that the project will have a significant impact on the environment. An EIS is typically prepared for new freeway projects and for highways of four or more lanes at a new location. The EIS process is the most involved, detailed, demanding, and formal type of process and document. It is also the least commonly used processing option for NEPA compliance in the project development process. The EIS requires a detailed and thorough consideration of all reasonable alternatives, including the no-build alternative; in-depth analysis of the SEE effects associated with the alternatives; and involvement of the public and other Federal, State, and local agencies, not only in the process, but in the decisions related to the selection of a preferred alternative. The EIS process requires the preparation of a Notice of Intent (NOI), a Draft Environmental Impact Statement (DEIS), a Final Environmental Impact Statement (FEIS) and a Record of Decision (ROD).

The NOI is a notice published in the Federal Register that indicates that the FHWA is proposing to prepare an EIS. The NOI summarizes the purpose of the project, the range of alternative solutions to be studied and known impacts or issues. The NOI is issued as part of a process, known as scoping, that attempts to identify issues, impacts, interests, alternatives, and analytical methods to be employed. Scoping involves engaging members of the general public, interested organizations and affected agencies early in the project development process, so that issues can be identified and addressed systematically as the DEIS is being developed.

The DEIS should identify the location of the project, the makeup of the population and other characteristics of the affected neighborhoods or communities, the estimated number of residences and businesses that will be affected and other potential and probable impacts for each alternative being considered. The DEIS should also present a detailed and thorough discussion of the analysis of all reasonable alternatives and the related SEE impacts and outline all measures to mitigate any adverse impacts.

The FEIS identifies the preferred alternative, provides a basis for comparison of the various alternatives considered, and describes mitigation measures likely to be implemented. After the FEIS has been made available for public comment for at least 30 days, the FHWA issues a ROD that explains the basis for the decision and describes any commitments that will be adhered to in implementing the project. The adoption of the FEIS and signing of the ROD by FHWA constitutes approval of the location and major design features. After the ROD is signed, the State may be authorized to proceed with developing the final engineering design plans and specifications; acquire rights-of-way; and advertise the project for receipt of construction bids.

### **C. Class II: Categorical Exclusion (CE)**

The CE is the most commonly used environmental processing option. The CE is not an environmental document, but a determination that a project will have no significant individual or cumulative SEE impacts. In other words, the project would not have significant impacts on planned growth or land use for the area; does not require the relocation of significant numbers of people; does not have a significant impact on any natural, cultural, recreational, historic or other resource; does not involve significant air, noise, or water quality impacts; do not have significant impacts on travel patterns; or does not otherwise either individually or cumulatively have any significant environmental impacts. Therefore, there is no requirement for the preparation of an environmental document (EA or EIS), although environmental studies may be undertaken to support that the CE determination is proper. A list of project types that have been determined to meet the CE criteria and to have no significant impacts are provided in 23 CFR 771.117(c) and (d). Some of these activities, for example, are: utility installations; bicycle and pedestrian lanes, paths and facilities; installation of fencing, signs and pavement markings; small passenger shelters; traffic signals; railroad warning devices; emergency repairs; improvements to rest areas and truck weigh stations; reconstruction or modification of an existing bridge structure on essentially the same alignment or location; minor modifications of an existing highway; and highway safety or traffic operation improvement projects.

### **D. Class III: Environmental Assessment (EA)**

The EA is prepared for projects when the significance of the impacts is not known or clearly established. Projects that are not categorical exclusions and do not obviously require an EIS will require the preparation of an EA to determine the significance of the impacts and whether an EIS should be prepared. The amount of information and degree of analysis that should be performed and included in an EA will depend on the size, type, location, number of reasonable alternatives, potential for significant impacts and other factors of the project.

The EA should identify the location of the project, the makeup of the population and other characteristics of the affected neighborhoods or communities, the estimated number of residences and businesses that will be affected and other potential and probable impacts for each alternative being considered. The EA may only require that one or two alternatives be considered, including the no-build alternative.

If the analysis of the SEE impacts, along with appropriate interagency coordination and public involvement, indicate that the action will not have any significant direct, indirect, or cumulative impacts, a Finding of No Significant Impact (FONSI) is prepared. The FONSI will finalize the EA process, document the decisions and explain why the impacts are not considered to be significant. However, if it appears that there will be significant impacts, a NOI will be published in the *Federal Register* and a DEIS will be prepared.

In cases where an EA is prepared, the preferred alternative may or may not be indicated as part of the analysis. The EA usually will focus the analysis on a preferred alternative but defer selection until it is determined whether or not an EIS will be needed.

All of the above environmental documents require FHWA concurrence and adoption. However, CEs for activities specified under 23 CFR 771.117(c), normally do not require formal FHWA approval.

### **E. Selection of Alternatives**

A preferred alternative will be selected from the range of alternatives presented in the DEIS or EA. The decision and selection of a preferred alternative should be based on how well the alternative will solve the transportation problems and meet the stated purpose and need. The potential for avoiding and minimizing SEE impacts that are likely to result from the implementation of a given alternative must be considered for any proposed alternative regardless of its ability to satisfy the purpose and need or meet the transportation goals of a given area.

The preferred alternative will usually not be identified in the DEIS (but must be when one is known at the time) and selection of a preferred alternative will be deferred until the results of the analysis are completely understood and the public has had an opportunity to comment. The decision will be documented in the FEIS.

Approval of the FEIS and subsequent ROD, or preparation of a FONSI by FHWA constitutes acceptance of the general project location and major design elements as described in the environmental documents. After completion of the project development process, the State may be authorized to proceed with development of the final engineering design plans and specifications, acquire rights-of-way and advertise the project for receipt of construction bids.

### **F. Potential Title VI Issues and Suggested Mitigation of Adverse Impacts**

The environmental study of project alternatives and impacts must include the consideration of mitigation measures for unavoidable impacts. Mitigation measures and other agreements that are made as part of the decision-making process must be documented and implemented. All projects and environmental studies, whether a CE, EA, or EIS, must include appropriate measures to mitigate for adverse environmental impacts regardless of significance. Environmental commitments, such as noise barriers, joint use facilities, replacement housing and others should be monitored to assure that these mitigative measures are included in the design plans and the construction of the project.

Mitigation measures are provided to minimize the adverse impacts of a project. They may be identified in general terms during the planning process. Specific measures are identified in the environmental document during the project development phase and should be monitored during the remaining phases of the process. Some mitigative measures include:

- Restoration of circulation and pedestrian patterns for disrupted communities.
- Provision of relocation assistance and advisory services, replacement housing and payments for moving displaced families and businesses.
- Provision for maximum retention of existing trees and shrubs included in grading plans for ramp areas and along right-of-way.
- Provision for last resort housing.
- Provision of traffic control.
- Improvements in traffic signalization and street lighting.
- Establishment of priorities for employment, training and contracting opportunities for residents of the affected community.
- Provision of noise barriers and buffer zones.
- Provision of landscaping.
- Functional replacement of publicly-owned facilities displaced by the project.
- Coordination with community development agencies to implement jointly funded initiatives.

**Issue: 1. Whether public involvement was adequately solicited and considered.**

The public involvement performance specifications appear in the FHWA regulations implementing the NEPA process (23 CFR § 771.111(h)). The FHWA approves all State public involvement/public hearing procedures. The FTA has a different public involvement process under 23 CFR § 771.111(i). Currently, the two agencies are discussing the possibility of revising the procedures to unify their environmental regulations and to include public involvement. The main difference between public involvement during planning/programming and during project development is that a public hearing or the opportunity for a public hearing is required for certain projects as described in the regulations. Public hearings are usually scheduled late in project development just after release of the draft environmental impact statement or environmental assessment. This is before the decisionmaking reflected in the final environmental documents.

Just as in the planning and programming processes, the FHWA staff gives technical assistance to STAs during development of their public involvement processes. Approaches to ensure adequate minority participation are similar to those discussed in public involvement processes in statewide and metropolitan planning, with the exception that public involvement is not required during development of public involvement procedures under the NEPA process.

The required public hearing (or opportunity for a public hearing) has often focused too much attention on a single public involvement event. Many STA's have supplemented hearings with public meetings; however, meeting formats tended to be formal like a public hearing. Public involvement is far more effective if it is scheduled early and continuously during project development and contact with the public is kept informal. Many STA's now use the open forum public hearing format in which people gather information through an informal open house and make comments for the record one-on-one to a recorder. Under this format, a far higher percentage of hearing attendees make comments than under the traditional public hearing format.

Public involvement in project development is part of the NEPA process. Under ISTEA, FHWA retained oversight of the environmental process for all Federally funded highway projects, including Surface Transportation Program projects. However, under SAFETEA-LU, States are given the option of assuming some of the oversight responsibilities provided they meet certain conditions. FHWA Division staff periodically observe selected public meetings and public hearings, particularly for controversial projects. Civil rights staff may also observe public meetings and public hearings. The section on Proactive Approaches under Public Involvement Processes in Statewide and Metropolitan Planning outlines specific items to observe. Observation of early meetings for projects with impacts in minority areas is more effective since technical assistance to the STA on minority participation can then affect subsequent public involvement activities. A public hearing is very late in the project development process to discover that minority participation is low to non-existent.

Some FHWA Division Offices regularly conduct program reviews, including reviews of public involvement. Civil rights staff should attend whenever possible.

**Mitigation:**

- Develop a public involvement program, during the planning stage and continue during the project development process, to meet the needs of a particular community (e.g., minority, disabled, and elderly).
- Use newsletters, speakers bureaus and media to provide a consistent flow of information on project development status.
- Provide opportunity for public hearing after release of the DEIS or EA.
- Focus outreach on appropriate communities to ensure involvement.
- Use informal contact which is more effective than a formal atmosphere for a public hearing.
- Experiment with informal open forum public hearing formats; allowing one-on-one comments to a recorder.

**Issue: 2. Whether SEE impacts were adequately identified.**

Addressing impacts to individuals, neighborhoods and communities in environmental documents sometimes does not allow decision makers to focus on the issues of greatest concern to members of the community. As a result, avoidance, minimization, and mitigation strategies are not developed until after political action, administrative complaints, or lawsuits have focused attention and urgency on the real issues. Effective public involvement and agency coordination efforts can identify these concerns prior to the preparation of a DEIS or EA, so that appropriate analysis can be undertaken to assess the severity of the impacts and the potential for mitigation. The FHWA's 1996 handbook, ***Community Impact Assessment: A Quick Reference for Transportation***, provides a framework for evaluating impacts to people.

**Mitigation:**

- Identify beneficial impacts such as increased access to facilities/services and upgrading of affected communities, reduction in cut-through traffic or congestion within communities; and reduction in air quality impacts.
  
- Identify adverse impacts such as:
  - Diminished access to facilities/services;
  - Disruption of community cohesion;
  - Disruption of people, businesses and farms;
  - Changes in tax base and property values
  - Traffic and Noise;
  - Relocation of residences and businesses; and
  - Diminished quality of the water, air, or natural environment used by residents.
  
- Develop mitigation and enhancement strategies based on public involvement and agency coordination.

**Issue: 3. Whether the potential for disproportionate or discriminatory impacts has been adequately addressed.**

Project teams sometimes think that because there is no discriminatory intent on the highway agency's part, impacts of the various alternatives under consideration are not discriminatory or do not fall disproportionately on a particular segment of society. This can be a faulty assumption on some projects - an assumption that can lead to misunderstandings and mistrust. Therefore, it is important to be aware of the signs that a potentially discriminatory situation might exist. Such signs include:

- Demographic profiles that show whether the impacted population has a concentration of minority individuals;
- A history of impacts from governmental projects on a particular minority group or community in the project area. This might include not just highways projects but other governmental projects as well; and
- Complaints or assertions of disproportionate impacts that are unveiled during public involvement activities.

**Mitigation:**

- Each community impact assessments should include a compilation and analysis of demographic data, including breakdowns by characteristics protected under Title VI and related statutes;
  
- The project team should become aware of other actions that have occurred in the impacted area and of how these actions were perceived by members of the community;
  
- The project team should effectively utilize public involvement techniques to identify issues of discriminatory potential as early as possible in the project development process; and
  
- The project team should study avoidance, minimization, mitigation and enhancement strategies, working with the affected community on the specifics as a definite proposal begins to take shape.

### III. RIGHT-OF-WAY

#### A. General

While the project development phase of the highway process is in progress, the right-of-way phase is initiated. Title VI requirements of nondiscrimination apply during all phases of the right-of-way process (See 49 CFR Part 21 Appendix C). Certain activities, such as preparation of an abstract of Title and consideration of hardship and protective buying, may be underway while the environmental documents are being processed. The design work must be finished and, if people are affected, relocation planning must be completed before proceeding with actions which will cause displacement. Right-of-way functional activities include appraisal of all properties to be purchased, negotiation with property owners, acquisition of the property, management of the property acquired, relocation of people and businesses and the adjustment of utilities. Replacement housing must be made available to all displaced persons before FHWA authorizes advertising for construction bids. After right-of-way has been obtained and upon completion of the project development phase, the construction phase may begin.

#### B. Appraisals

Right-of-way activity involves appraisal of properties that are impacted by highway construction. The appraisal provides the basis for payment to a property owner.

The appraiser estimates the fair market value of real property on the basis of objective information and analysis. Objectivity requires that data collection, analysis and reconciliation be conducted in an unbiased manner.

The estimate of fair market value must reflect market activity. It represents the price that a property would sell for under typical circumstances. The appraisal presumes that no undue pressure exists for either the buyer or seller.

The appraisal examines and considers all legal and relevant issues that may influence the value of a particular property. The appraisal is prepared by an appraiser who must act independently and impartially.

Appraisal activity must comply with Title VI, Nondiscrimination in federally assisted Programs and Title VII, Equal Employment Opportunity when Federal funds are used for a highway project. When contract appraisers are hired, the contracting and assignment process must be done without restriction as to race, color, national origin, sex, age, or disability. Available and qualified minority and/or disadvantaged appraisers must be included in the hiring process. Excessive qualifications standards may impose unacceptable barriers.

Information gathering, analysis and reporting must be objective, without regard to race, color, national origin, sex, age, or disability. Some examples of how appraisal reports may reflect bias are by including unfounded statements, inappropriate data, prejudicial analysis or misleading conclusions. Such practices are unethical and illegal. The same concerns may apply to appraisal review reports.

#### C. Appraiser Qualifications

Each STA has minimum appraisal education and experience requirements. All States have State appraiser certification and licensing. In some States these may be mandatory, in others, voluntary. Agencies may pre-qualify appraisers for inclusion on an approved list according to minimum requirements.

Outreach activities such as on-the-job training and subcontracting through qualified firms may be encouraged for Disadvantaged Business Enterprises (DBEs) that cannot meet the qualification requirements.

#### D. Acquisition

Acquisition is one of the most sensitive parts of an agency's effort in the construction of a highway since it involves direct personal contact with the public and may have a substantial impact on people's lives.

To complete the acquisition process, an agency must fulfill the following requirements by law:

1. Make a prompt written offer to the property owner for the full amount the agency believes is just compensation.

2. Provide the owner with the offer in a written statement that must include the amount established by the agency as just compensation along with a summary of the basis for the offer.
3. Before requiring the property owner to surrender possession of their property, the agency shall pay the agreed purchase price or deposit with the court, for the benefit of the owner, an amount no less than the Agency's approved appraisal of the fair market value or the court award of compensation determined in the condemnation proceeding for the property.
4. Offer to acquire any uneconomic remnants.

The offers to purchase property are established by appraisals and are generally made in person. The agency must make every reasonable effort to acquire the property by negotiation. The owner must be given reasonable opportunity to consider the agency's offer and to present any information that is considered relevant to determining the property's value.

When an agreement on the sale of the property cannot be reached, the agency can institute formal condemnation proceedings to acquire the property by exercising the power of eminent domain.

After a settlement has been reached with the property owner either through negotiation or condemnation, the agency prepares the necessary documents required by law for transferring the Title to close the transaction. This function is handled by the agency's staff attorney, fee attorney, or other qualified person. The transfer may require the payment of some incidental expenses by the owner which are generally reimbursable by the agency.

It must be pointed out however that an administrative settlement is reached prior to filing condemnation proceedings. This settlement is based on the value related evidence, administrative consideration or other factors approved by an authorized agency official.

### **E. Relocation**

To meet Title VI requirements, all relocation services and payments must be provided without discrimination. In determining the location of replacement properties made available to the displacee, the State must also ensure that the selection process is conducted without discrimination. Contracts for providing relocation services must contain the provisions of Appendix A of the Title VI Assurances.

Persons who are required to move from their homes due to a Federal or federally assisted project must be provided advisory assistance by State transportation agencies in relocating to decent, safe and sanitary replacement dwellings. Owners and tenants of displaced businesses, farms and nonprofit organizations are to be provided similar assistance in obtaining suitable replacement properties.

Advisory assistance includes those measures and services necessary to determine the relocation needs and preferences of persons displaced and an explanation of the relocation payments and other assistance for which such persons may be eligible. Assistance also includes providing current and continuous information on the availability, purchase prices and rental costs of comparable dwellings or suitable replacement properties for businesses, farms or nonprofit organizations.

Relocation benefits provided to displacees includes the provision of relocation payments. Examples of such payments include replacement housing payments, rental supplements, moving cost payments and business reestablishment expense reimbursement.

When comparable replacement housing is not available or within the financial means of the person displaced, the STA and/or political subdivision may provide such housing under Last Resort Housing provisions. Methods of providing housing under this provision may include, but are not limited to, the following:

1. A replacement housing payment in excess of statutory limits.
2. Rehabilitating existing replacement dwelling.

3. Constructing a new replacement dwelling.
4. Providing a direct loan.
5. Purchasing of land and/or the replacement dwelling by the displacing agency and a subsequent sale or lease to the displaced person.
6. Removing barriers to disabled person(s) who have been displaced.
7. Where cost effective, change in status of displacee from tenant to owner.

In addition to prohibitions against discrimination, the relocation regulations also provide affirmative provisions to ensure equal treatment of displacees and to ensure that assistance will be given to those in special need.

Examples of these provisions are as follows:

- When possible, without the expenditure of a larger payment than is necessary to relocate to comparable housing, minorities will be given the opportunity to relocate to replacement dwellings not located in areas of minority concentration, that are within their financial means.
- All persons, especially the elderly and disabled, shall be offered transportation to inspect housing to which they are referred.

#### **F. Property Management**

All State and political subdivisions that manage highway real property acquired with Federal funds must adhere to property management policies set forth in 23 CFR Part 710. The term "property management" refers to managing and administering property acquired for highway purposes so that the public interest is served. This property is often called highway airspace and is defined as that space located above, at, or below the highway's established guideline, lying within the approved right-of-way limits. Lands acquired for a highway project that are no longer needed for highway or transportation use are called excess property.

Property management involves a variety of responsibilities that include the rental and/or clearance of improvements from the highway right-of-way, access control to the highway facility, the lease of highway airspace and the disposal of excess property.

#### **G. Special Right-of-Way Program Areas**

The FHWA's Office of Real Estate Services has responsibility for administering programs involving Outdoor Advertising Controls, Functional Replacement and Right-of-Way Research. The Outdoor Advertising program involves the control of billboard signs along controlled highways outside of the highway limits. The STAs are responsible for the removal of illegal and nonconforming signs as determined by State law.

The Functional Replacement program was developed to provide a method of acquiring and compensating for publicly owned property providing essential public service. Through this program publicly owned land and/or improvements may be functionally replaced with a facility of equivalent functional utility to that acquired for the highway project. Examples of the public properties replaced under this program are schools, police and fire stations and local parks.

## H. Potential Title VI Issues and Suggested Mitigation of Adverse Impacts

### Appraisal Review

**Issue:** *1. Whether there is diversification in the use of appraisers.*

**Mitigation:**

- Expand the pool of qualified fee appraisers via aggressive outreach.

**Issue:** *2. Whether the selection or adjustment of comparable sales and rental properties reflects discrimination and stereotypes.*

**Mitigation:**

- Maximize quality of appraisal reviews (training, selection of fee/staff appraisers, qualified review appraisers, etc.).
- Ensure that appraisal activity complies with Title VI, Nondiscrimination in federally assisted Programs and Title VII, Equal Employment Opportunity.

Ensure that information gathering, analysis and reporting must be objective, without regard to race, color, national origin, sex, age, or disability. Appraisal reports should not reflect bias and should not include unfounded statements, inappropriate data, prejudicial analysis or misleading conclusions. Such practices are unethical and illegal.

**Issue:** *3. Whether adjustments to the comparable sales and rental properties reflect discrimination.*

**Mitigation:**

- Same as above.

**Issue:** *4. Whether there is consistency in the determination of severance/consequential damages.*

**Mitigation:**

- Same as above.

### Negotiation/Acquisition

**Issue:** *1. Whether every effort was made to negotiate for required property before filing condemnation.*

**Mitigation:**

- Ensure compliance with regulatory requirements prior to instituting of condemnation proceedings.

**Issue:** *2. Whether property owners were fully informed of their rights to receive just compensation for their property before any donation of such property.*

**Mitigation:**

- Ensure the parcel record documents the basis for donations and notification of entitlement to just compensation.

**Issue:** *3. Whether the offer was made for the full amount of the review appraiser's determination of compensation.*

**Mitigation:**

- Ensure consistency in the implementation of negotiation procedures.

**Issue:** *4. Whether there is consistency in the application of minimum payment policy.*

**Mitigation:**

- Ensure that policy is applied uniformly from project to project.

## Relocation Advisory Assistance and Payment

**Issue:** 1. Whether relocation advisory assistance was provided equitably and without discrimination to displaced individuals.

**Mitigation:**

- Ensure diversification of relocation staff; obtain feedback from displaced individuals; conduct appropriate needs assessment; conduct self evaluations, etc.

**Issue:** 2. Whether the selection of comparable replacement housing is fair, consistent, and without discrimination.

**Mitigation:**

- Same as above.

**Issue:** 3. Whether decent, safe and sanitary inspection standards are consistently applied.

**Mitigation:**

- Training; diversification of staff; self evaluations, etc.

**Issue:** 4. Adequacy of personal contacts.

**Mitigation:**

- Ensure diversification of relocation staff; appropriate needs assessment; sensitivity training; self evaluations, etc.

## Property Management

**Issue:** 1. Whether the determination of rent amounts is equitable.

**Mitigation:**

- Diversification of staff; training; self evaluations, etc.

**Issue:** 2. Whether the procurement of bids provides equal opportunity.

**Mitigation:**

- Aggressive outreach; removal of barriers, etc.

**Issue:** 3. Whether the maintenance of rental properties on projects is adequate and consistently performed for all renters.

**Mitigation:**

- Self evaluations; tenant feedback; referral services, etc.

## IV. CONSTRUCTION

### A. FHWA Approval and Oversight

Federal funding is provided to assist States and Federal Agencies in providing transportation services through the various Federal Highway Administration programs. By law, the nature of the majority of these Federal programs is Federal assistance for State administered programs. ISTEA and TEA-21 increased the role of STAs in project approvals. These changes did not alter the fact that the FHWA is the Federal Agency responsible for ensuring compliance with Federal requirements in the delivery of the Federal highway program. However, the changes did affect how FHWA implements this responsibility. The flexibility afforded in ISTEA and TEA-21 allowed STAs to assume the Secretary's responsibilities for design, plans, specifications, estimates, contract awards and inspection of many Federal-aid projects. The FHWA has program oversight responsibilities regardless of project approval authorities assumed by the STA or Federal Agency. The FHWA oversight is conducted through a wide range and variety of mechanisms. These include process reviews, program evaluation, program management activities and project involvement activities. The FHWA stewardship activities, beyond oversight, include continuous process improvement initiatives, technical assistance, technology deployment, performance measurement, project involvement activities and sharing best practices.

In accordance with 23 U.S.C. Section 106(c), the FHWA Division Office and the STA shall enter into an agreement relating to the extent to which the State assumes the responsibilities of the Secretary under this subsection. When a STA or Federal Agency assumes project approval responsibilities, it must have mechanisms in-place to assure that all project actions will be carried out according to laws, regulations and policies. This applies to projects administered by the STA or local public agencies (LPA). These mechanisms include the agreement required under 23 U.S.C. Section 106, processes, procedures, and program manuals. The FHWA must conduct verification activities to assure that the STA or Federal Agency implementation of the Federal highway programs conform with laws, regulations and policies and the STA or Federal Agency is carrying out its roles and responsibilities according to the law, regulations, policies and any established agreement with the FHWA. The FHWA oversight and independent verification activities are similar to the quality assurance portion of quality control/quality assurance programs prevalent in many construction and materials programs.

### B. Project Development

The creation of a Federal-aid construction project begins with the planning phase. System deficiencies may be identified that relate to safety, traffic capacity, highway structure, land use, or other problems. STA personnel, affected regions, counties, MPOs, cities, townships, outside agencies, or individual citizens, may identify them. The project development process begins after early planning studies have identified a valid need for a project improvement. The project scoping phase identifies which deficiencies and problems should be corrected and what potential impacts exist. Field review and background researches are usually done to assess identified needs, deficiencies, potential impacts, reasonable alternatives and other factors that may be important elements of the project. Scoping may be formal for major projects or less formal for others. The preliminary design and environmental study phase, continues the engineering design and may include considering alternative designs while seeking to eliminate and/or minimize adverse impacts, or even to enhance the environment. This phase can take many forms, depending on the type of work and the impacts. It may range from a short environmental determination statement to a complex geometric layout, many hours of meetings and numerous detailed reports. The final design phase and (if applicable) right of way acquisition makes use of the preliminary plans and reports to prepare detailed construction plans (Plans Specifications and Estimate or PS&E) and mitigation features. After all phases of the project development process are complete, the project goes to contract letting and award and the construction phase begins.

### C. Federal-aid Contract Provisions

Federal-aid construction contracts contain required contract provisions, as stipulated in Form FHWA-1273. The provisions contained in Form FHWA-1273 are generally applicable to all Federal-aid construction projects and must be made a part of and physically incorporated into, all contracts as well as appropriate subcontracts and purchase orders. These required contract provisions contain requirements that prohibit discrimination; provide for EEO; require payment of predetermined minimum wages; stipulate subcontracting requirements and

limitations; mandate compliance with health and safety standards at the work place and require compliance with all appropriate environmental regulations among the noted provisions. The FHWA--1273 also contains a number of certification/provision requirements including non-collusion, lobbying and suspension/debarment.

In addition, Federal-aid contracts must also contain Buy America, DBE special program provisions and, unless exempted by State statute or promulgated by its own developed provision, must include a standardized changed-site condition clause. On contracts that stipulate specific DBE goals, the successful bidder must either meet the goals or demonstrate that he/she has made a good faith effort to meet them. When there are no DBE goals specified, the contractor may solicit bids from any number of subcontractors, but is required to provide DBEs the maximum opportunity to participate in the subcontract and procurement bid process whenever possible. Also on selected Federal-aid contracts, STAs can have provisions for on-the-job (OJT) training and Indian preference.

#### **D. Project Authorization and Advertisement**

Competitive bidding by private businesses (i.e. contractors) is basic to the Federal-aid highway construction program. The intent of this policy is to eliminate the unfair advantage that public agencies may have relative to available resources, to provide equal economic opportunity for all qualified contractors and to permit projects to be completed at the lowest possible cost.

A project may only be advertised for bids from prospective contractors after PS&E approval and project authorization to proceed to the construction phase. The authorization to proceed is based on assurances that:

- All right-of-way clearances, utility and railroad work either have been completed, or that arrangements have been made for coordination during construction,
- All matters involving the relocation of individuals and families when such circumstances exist have been properly addressed,
- All the requirements pertaining to the public involvement/hearing process and the location and design approval process have been satisfactorily addressed,
- All requirements of 23 CFR Part 771 have been fulfilled and appropriate measures have been included in the PS&E to ensure that conditions and commitments made in the development of the project to mitigate environmental harm will be met,
- Where applicable, area-wide agency review has been accomplished,
- The PS&E provides for the erection of only those information signs and traffic control devices that conform to the standards and do not include promotional or other informational signs regarding such matters as identification of public officials, contractors, organizational affiliations and related logos and symbols.

SAFETEA-LU broadened the definition of "qualified project" allowing a STA or local transportation agency to award a design-build contract without regard to the project cost.

All STA advertising policies and practices must assure free and open competition. This also relates to requirements and practices involving the following:

- Licensing, bonding, prequalification and bidding
- Title VI, and nondiscrimination assurances with regard to age, race, color, sex, national origin or disability.

Contracts are normally advertised in newspapers, trade journals, or other appropriate media to reach a wide audience, attract greater attention and enhance competition. Normally the minimum advertisement period is three weeks. However, there can be exceptions when circumstances warrant shorter periods. This period can also be longer for more complex projects, especially those with scheduled pre-bid meetings to address prospective contractors' concerns and questions.

Addendums to an advertised contract may be issued to correct plan and/or specification errors or to append more current contract document items, such as, revised wage rate schedules, certified DBE firm lists, etc. The advertisement period can be extended in order to give prospective contractors time to receive addendums, review project changes and additions and to correct/change their bid submissions.

### **E. Bid Opening**

Traditionally, contractors submit sealed bids which are opened at bid opening, often referred to as the "bid letting." The bid opening is also the time given in the advertisement period as the last moment that bids can be accepted. For the bidder, the reading of the bids confirms whether his/her bid is successful. For the STA and the general public, this forum establishes the apparent low bidder and the range of bids received for the given project.

Federal regulation requires that all bids be opened publicly and read aloud either item-by-item or by total amount. If a bid is not read, the bidder is to be identified and the reason for not reading the bid announced. Reasons for not reading a bid will either be the result of a bid itself being non-responsive, often called "irregular," or a bidder is determined to be not responsible.

The STAs bidding documents should clearly identify those requirements which the bidder must assure are complied with to make the bid responsive. Reasons for finding a bidder not responsible may include:

- Failure to meet the STAs qualification requirements, or
- Suspension or debarment by a State/Federal agency.

A successful bid opening should identify the responsible bidder submitting the apparent lowest, responsive bid.

Today, there is a practice and orientation toward electronic bidding with electronic signatures.

### **F. Bonding, Licensing & Prequalification**

Most States require that the contractors submit a bond (i.e., Bid Bond, Payment Bond, Performance Bond, etc.) or other security with the bid. Upon submission of bid, the contractor provides a certified check or negotiable instrument which ensures the contractual document will be executed in the specified time.

Generally, contractor qualification, whether prequalification or post qualification, consists of an evaluation of the contractor's experience, personnel, equipment, financial resources and performance record. If a State has a prequalification requirement, the evaluation is normally performed annually. Once deemed pre-qualified, a contractor may be further rated for contract value in a given classification, such as general highway construction, grading and minor structures, grading and paving, or miscellaneous specialty items. The information required for prequalification may be extensive and can also serve as a basis for subsequent bid rigging investigations.

The FHWA does not require the STAs to implement procedures or requirements for prequalification, qualification, bonding, or licensing, on Federal-aid projects. However, if the STAs have such procedures or requirements, they must conform to the FHWA competitive bidding policy.

All proposed procedures/requirements/changes are to be submitted to FHWA for advance approval. No procedure/requirement may operate to restrict competition, prevent submission of a bid, or prohibit consideration of a submitted bid from a responsible contractor, whether resident or nonresident. Thus the requirements must be uniformly applied to all the contractors (including DBE contractors).

No contractor is to be required to obtain a license before submitting a bid or before the bid may be considered for award of a contract. The STA may require licensing of contractors after the bids are opened, if the requirement is consistent with competitive bidding principles.

In regard to prequalification of contractors, such requirements may be imposed as a condition for submission of a bid or award of contract only if there is sufficient time between the date of advertising and the date of the bid opening to allow a bidder to obtain the required prequalification rating.

### **G. Bid Analysis and Contract Award**

The engineer's estimate should be accurate and credible, based on realistic current data, and in general, kept confidential. The STA should have written procedures for justifying the award of a contract, or rejection of the bids, when the low bid appears excessive. Bid analysis is the process performed to justify the award or rejection of bids.

A proper bid analysis better assures that good competition and the lowest possible cost were received and ensures that funds are being used in the most effective manner. The bid analysis process is an examination of the unit bid prices for reasonable conformance with the engineer's estimated prices. Beyond the comparison of prices, other factors that a bid analysis may consider include:

- Comparison of the bids against the engineer's estimate;
- Number of bids submitted;
- Distribution or range of bids received;
- Identity and geographic location of the bidders;
- Potential for savings if the project is re-advertised;
- Bid prices for the project under review versus bid prices for similar projects in the same letting;
- Urgency of the project;
- Current market conditions/workload;
- Any unbalancing of bids;
- Unit bid prices which differ significantly from the estimate and from other bids;
- If there is a justification for the difference; and
- Any other factors the contracting agency has determined to be important.

Not all these factors need to be considered for bids that indicate reasonable prices or show good competition. However, when the low bid exceeds the engineer's estimate by an unreasonable amount, a more thorough analysis should be undertaken to justify award of the contract. In order to justify award of a contract, a bid analysis should provide answers to the following questions:

- Was competition good?
- Is the project essential and would deferral be contrary to public interest?
- Would re-advertisement result in higher bids?
- Is there an error in the engineer's estimate?

An adequate time frame is required to get the bid tabulations reproduced and distributed to the appropriate personnel within the STA and FHWA, as applicable, for review and award concurrence determinations prior to the actual award. States vary this established time frame to award the contract after opening of bids. However, awards shall be within a predetermined time limit established by the STA and subject to prior concurrence by FHWA. Usually this time limit is specified in the State's standard specifications.

During the award process, projects may be awarded, rejected, or held for further details and study. If all bids are rejected, the delay is added to the project by pushing it back to the re-advertisement stage or beyond if other changes in the project plans and documents need to be addressed.

In accordance with the Stewardship Agreement, the FHWA Division Office may require the concurrence to be formally documented in writing and include any qualifying statements concerning the concurrence. Concurrence is also required in the rejection of the low bidder or the rejection of all bidders.

#### **H. Notice of Award and Execution of the Contract**

After the award is made, the contractor is advised by a "Notice of Award." A copy of this award is sent to the appropriate STA field office in order that appropriate plans for staffing, supervision and project control can be arranged. The Notice of Award, the contract, and the contracting bonding forms are sent to the contractor for his/her surety company. These executed documents are to be returned, usually within 15 to 30 calendar days from the date of award, including all evidence of appropriate insurance. If the contractor fails to execute the contract and file a performance bond within this allotted timeframe, a cause for annulment of the award has been established. The proposal guaranty is forfeited to cover liquidated damages. The award may now be made to the next lowest bidder or re-advertised as determined by the STA and concurred by FHWA.

Immediately following the award, the appropriate STA field offices can schedule a preconstruction conference. The purpose of this conference is to: permit advance control planning by the State; permit discussion of known and potential major problems before they occur; let the contractor know the scope and status of agreements; analyze agreements based on proposed operations; outline the sequence of operations; coordinate the efforts and schedules of the agencies concerned; and introduce department personnel who will be assigned to the project. The contractor, his/her superintendent, or his/her authorized agent are to attend this conference and are to present the proposed schedule of work, list of proposed subcontractors, if any, and a list of suppliers from whom materials are anticipated to be purchased. Subcontractors may be invited to attend the reconstruction conference.

Current FHWA policy requires that the prime contractor perform at least 30 percent of contract work with its own organization. The STAs may be more restrictive and specify a higher percentage if they so desire. The FHWA further requires each subcontract to be approved in writing by the STA. This allows some control to screen subcontractors that are not qualified or that may be ineligible (e.g., debarred). It also assures that all Federal and State requirements will be included in the subcontract.

At the preconstruction conference or shortly thereafter, a "Notice to Proceed" is issued to the contractor once all requirements and forms have been properly completed by the contractor. This notice stipulates the date on which it is expected the contractor will begin construction and from which date the contract time will be charged.

#### **I. Construction Project Administration and Project Monitoring**

Once contract time has started, a contractor can start receiving progress payments as early as two weeks to one month into the project's construction. However, payments received are a function of the value of work completed.

Title 23 U.S.C. 302 requires the STAs to be suitably equipped and organized to carry out the Federal-aid program. Projects are required to be completed in accordance with approved plans and specifications, thereby assigning responsibility to the STA. Therefore, it is the responsibility of the STA to administer a Federal-aid construction contract.

Adequate construction personnel should be provided to ensure that quality highways are constructed. State project engineers, inspecting technicians and consultants hired by the State, monitor the construction work to ensure compliance with the contract plans and specifications. Monitoring also includes the sampling and testing of all materials for acceptance, as well as the monitoring and enforcement of required mitigative measures included in the environmental documents and agreements. This monitoring further includes labor compliance, EEO provisions, DBE program requirements, etc.

The FHWA's role in this phase of a construction project can include periodic onsite inspections to monitor the State's control of the work or be included as part of a broader process review. The level of Federal oversight/presence will be a function of the agreement.

When construction is completed, final inspections are made by the State and FHWA, when appropriate. If the construction is completed in reasonably close conformance with the approved plans and specifications, including all authorized changes, extra work orders and all required documentation such as materials certification, Form FHWA – 47 and final voucher, are provided and the State and FHWA can grant final acceptance of the project.

#### **J. Title VI Federal-aid Construction Contract Requirements**

Federal-aid construction contracts must include provisions which require compliance with Title VI. The specific contract provision language is included in Form FHWA-1273, "Required Contract Provisions." The specific provisions related to Title VI are covered under Sections II and III. Form FHWA-1273 is a convenient collection of contract provisions and proposal notices that are required by regulations promulgated by the FHWA and other Federal agencies. Copies of the current version of FHWA Form-1273 and FHWA Form--1273A are included in Appendix F.

The provisions contained in Form FHWA-1273 are generally applicable to all Federal-aid construction projects and must be made a part of and physically incorporated into all contracts as well as appropriate subcontracts and purchase orders.

STAs are not permitted to modify the provisions of FHWA Form FHWA-1273. Minor additions covering State requirements may be included in a separate supplemental specification, provided they do not conflict with State or Federal laws and regulations and do not change the intent of the required contract provisions. The FHWA Form-1273 provisions apply to all work performed on the contract including work performed by subcontract. The FHWA Form-1273 provisions are required to be physically incorporated into each subcontract and subsequent lower tier subcontracts and may not be incorporated by reference. The prime contractor is responsible for compliance with the FHWA Form-1273 requirements by all subcontractors and lower tier subcontractors. Failure to comply with the Required Contract Provisions may be considered as grounds for contract termination.

#### ***Section II - Nondiscrimination***

The provisions of Section II of FHWA Form-1273 are derived from the basic statutory authority of Title VI of the Civil Rights Act of 1964 and FHWA implementing guidelines set forth under 23 CFR Part 200. Section II applies to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.

The provisions of Section II promulgate Title VI mandates that, basically, do not allow any Federal assistance to be used to discriminate. Through expansion of this mandate and the issuance of parallel legislation, the prescribed basis of discrimination include race, color, sex, national origin, age and disability.

Title VI assures that the STA's guarantee that no person is subjected to discrimination in connection with any activity, including any contract, for which the State receives Federal assistance. In the event of noncompliance by a contractor and/or subcontractor, payment may be withheld or the contract may be canceled in whole or in part.

Section II of the FHWA Form-1273 is essentially the Standard EEO Construction Contract Specifications, as included in 23 CFR Part 230, Subpart A. The goal of EEO is increased participation of minorities and women in the work force and extends to contractor practices in recruitment, hiring, pay, training, promotion and retention.

#### ***General Guidance***

Guidance on nondiscrimination principles is fairly simple in that no person, firm, or other entity is to be subjected to discrimination because of race, color, sex, national origin, age, or disability. The nondiscrimination provisions extend to the contractor's employment practices, solicitations for employment, selection of subcontractors and suppliers and procurement of materials.

## 1. FHWA Form-1273 Sections II.1 - II.9.

**Section II.1.** Requires the contractor to have an operating EEO policy that prohibits discrimination and provides for affirmative action in employment practices. The contractor shall adopt the following statement as his operating policy:

*"It is the policy of this company to assure that applicants are employed and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age, or disability. Such action shall include: employment upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other, forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship and/or on-the-job training."*

Affirmative action is defined as a good faith effort to eliminate past and present discrimination and to ensure that future discriminatory practices do not occur. Actions aimed at addressing under-representation of minorities and women are outlined in the "Sixteen Steps" in 41 CFR 60.

**Section II.2.** Requires the contractor to have a designated EEO Officer who has the responsibility and authority to administer the contractor's EEO program.

**Section II.3.** Requires all of the contractor's employees who have an active role in the hiring, supervision, advancement or discharge of employees to be fully aware of and implement the contractor's EEO policy. In addition, it is required that employees, including applicants and potential employees, be informed of the contractor's EEO policy through posted notices, posters, handbooks and employee meetings. This section lists minimum actions to be taken to ensure the contractor's obligations are met.

**Section II.4.** Mandates that the contractor not to discriminate in his recruitment practices and to make an effort to identify sources for potential minority and women employees.

**Section II.5.** Requires the contractor to periodically review project sites, wages, personnel actions, etc., for evidence of discriminatory treatment. The contractor is to promptly investigate all alleged discrimination complaints.

**Section II.6.** Requires the contractor to advise employees and applicants of training programs available and to assist in the improvement of the skills of minorities, women and applicants, through such programs.

**Section II.7.** Deals with labor unions in that the contractor is not and cannot be, required to hire union employees; however, if the contractor relies on unions as a source of employees, the contractor is encouraged to obtain cooperation with the unions to increase opportunities for minorities and women. The contractor is required to incorporate an EEO clause into union agreements.

**Section II.8.** Deals with the contractor's EEO policy as it pertains to selection of subcontractors, including material suppliers and equipment leasing companies. Contractors are encouraged to use DBEs or other subcontractors that employ minorities and women. Furthermore, contractors are required to exercise their best efforts to solicit bids from and to utilize DBE subcontractors or subcontractors with meaningful minority group and female representation among their employees, as well as ensure that subcontractors comply with the EEO requirements.

**Section II.9.** Requires the contractor to prepare records that document compliance with the EEO policy and to retain these records for a period of 3 years after completion of the contract work. These records should include the number of minority, women and non-minority employees in each work classification on the project, the progress and effort being made to increase the employment opportunities for minorities and women. The contractor is required to submit an annual EEO report to the STA each July, for the duration of the project. If the project contains on-the-job training (OJT), this information is also required to be collected and reported.

## 2. Compliance Oversight

Enforcement responsibilities are vested with the contracting agency and ultimately falls on the shoulders of the STA personnel in charge. The project engineer should be cognizant of the contractual requirement and observe the contractor for compliance. Specifically, the STA's concern should center on whether discriminatory practices take place, particularly in the hiring, firing, training, promotion and utilization of employees.

Noncompliance with the EEO specifications may be considered a breach of contract for which payment may be withheld or the contract canceled. The State compliance staff should conduct reviews and make noncompliance determinations. In addition, reviews by the Office of Federal Contract Compliance Programs (OFCCP), or actions ordered by OFCCP, may affect the contractor's eligibility to participate in Federal-aid programs.

### ***Section III - Nonsegregated Facilities***

The intent of the provisions of Section III of FHWA Form-1273 is to ensure that past discriminatory practices for providing separate facilities or prohibiting minorities access to certain facilities are eliminated. Section III, which is also derived from Title VI, applies to contractors, subcontractors and material suppliers on all Federal-aid contracts and related subcontracts of \$10,000 or more.

By entering into a Federal-aid construction contract, organizations and firms are certifying that they maintain non-segregated facilities that conform to requirements of 41 CFR 60.1.8. These regulations also require a prime contractor to obtain a similar certification from each subcontractor and supplier, as applicable.

## **K. Potential Title VI Issues and Suggested Mitigation of Adverse Impacts**

**Issue:** *1. Whether appropriate contract provisions are incorporated in Federal-aid contracts.*

**Mitigation:**

- Process reviews.

**Issue:** *2. Whether the monitoring/inspection of work by the State results in disparate treatment of protected groups.*

**Mitigation:**

- Process reviews; training; diversification of staff, etc.

**Issue:** *3. Whether required mitigation measures have been effectively implemented, i.e., safety through construction zones; noise and air impacts; employment and contracting goals, etc.*

**Mitigation:**

- Process reviews; feedback from public involvement; coordination with public interest groups, etc.

**Issue:** *4. Whether barriers exist in prequalification, approval of subcontractors, bonding and licensing requirements.*

**Mitigation:**

- Process reviews; survey subcontractors; supportive services; self evaluations, etc.

**Issue:** *5. Whether uniformity exists in the approval of plans changes and supplemental agreements.*

**Mitigation:**

- Process reviews; training; feedback; supportive services, etc.

**Issue:** *6. Whether uniformity exists in the assessment of sanctions, liquidated damages, withholding payments, suspension/termination of contracts, and decertification.*

**Mitigation:**

- Process reviews; training; feedback, etc.

## V. RESEARCH

### A. Description of Research Program

The States are encouraged to conduct transportation-related research projects which may be funded with Federal-aid funds. The research may be conducted by State personnel or contracted to universities or consultants who have the capabilities and staff to perform the research.

*A research project usually begins with a solicitation of problem statements. The problem statement provides a brief description of the proposed research, need for the research and estimated cost. The problem statements are then prioritized by the State Transportation Agency. The projects may be undertaken by transportation agency personnel or awarded to a university or consultant according to the State's procurement regulations. If it is determined that a university will be used and more than one university has the capability, a request for proposal may be sent to the universities. The selection of a university to perform the research is usually pre-determined based on type of research and area of expertise of the university. Minority universities interested in performing research for a transportation agency are encouraged to learn the procurement regulations for that agency and to submit proposals when there are studies proposed which they have the capability to accomplish.*

*Each research project awarded is monitored by State personnel and a principal researcher who is usually a member of the involved department at the university. University research may be actually conducted by university students under the supervision of the principal researcher. Not all research projects are engineering--related; e.g., socioeconomic, environmental, transit or transportation needs studies.*

### B. Potential Title VI Issues and Suggested Mitigation of Adverse Impacts

**Issue:** *1. Whether there is diversification in the selection of consultants/universities.*

**Mitigation:**

Aggressive outreach; supportive services; feedback; removal of barriers, etc.

**Issue:** *2. Proposal/problem statement solicitation.*

**Mitigation:**

Same as above.



## *Review Guidelines*

### **Organization and Process**

- Who is the Title VI Coordinator? (23 CFR 200.9)
- Has a Civil Rights Unit been established to carry out Title VI program objectives? (23 CFR § 200.9)
- Does the recipient's Title VI Coordinator have direct access to the Chief Executive Officer? (23 CFR § 200.9)
- Describe the staffing of the Civil Rights Unit. (23 CFR § 200.9)
- Is the staffing level adequate? If not, why not? What would be an adequate staffing level? (23 CFR § 200.9)
- What process has been established to conduct annual reviews of various program areas? (23 CFR § 200.9)
- Who is responsible for determining areas to be reviewed? (23 CFR § 200.9)
- How are areas for review identified? (23 CFR § 200.9)
- What role do the program area officials play in the Title VI program in general and in the conduct of annual reviews? (23 CFR § 200.9)
- Describe the recipient's process to conduct Title VI reviews of cities, counties, consultants, suppliers, universities, colleges, planning agencies and other recipients of Federal-aid highway funds (23 CFR § 200.9)
- How are the recipient's directives reviewed to ensure that Title VI and related requirements are included? (23 CFR § 200.9)
- What process is followed when a new directive is issued? (23 CFR § 200.9)
- Has the recipient's Title VI Coordinator conducted Title VI training programs for State program and civil rights officials? (23 CFR § 200.9)
- If so, list the training provided by the coordinator in the last five years, the number of persons receiving the training and the subject matter presented.
- Who is responsible for preparing the annual Title VI Plan, report of accomplishments and work plan for the next year? (23 CFR § 200.9)

## **Title VI Coordinator**

- How does the Title VI Coordinator coordinate the development of the Title VI program with each program official?
- What assistance and training on Title VI does the Title VI Coordinator provide?
- What Title VI program area reviews has the Title VI Coordinator conducted?
- What review guidelines were used?
- How were the program areas selected for review?
- Summarize major findings.
- What major results occurred?
- What reviews of program activities did the Title VI Coordinator conduct with program area personnel?
- What mechanism is used by the Title VI Coordinator to review program area review reports which address Title VI issues to ensure Title VI findings are adequately supported?
- What role do the program area officials play in the Title VI program in general and in the conduct of annual reviews? (23 CFR § 200.9)
- Describe the recipient's process to conduct Title VI reviews of cities, counties, consultants, suppliers, universities, colleges, planning agencies and other recipients of Federal-aid highway funds (23 CFR § 200.9)
- How are the recipient's program directives reviewed to ensure that Title VI and related requirements are included? (23 CFR § 200.9)
- What process is followed when a new directive is issued?
- Has the recipient's Title VI Coordinator conducted Title VI training programs for State program and civil rights officials? (23 CFR § 200.9)
- If so, list the training provided by the Coordinator in the last five years, the number of persons receiving the training and the subject matter presented.
- Who is responsible for preparing the annual Title VI Plan, report of accomplishments and work plan for the next year? (23 CFR § 200.9)

- How does the Title VI Coordinator follow up to ensure mitigative measures identified for projects significantly impacting minorities are carried through?
- How does the Title VI Coordinator assist program area personnel in obtaining public involvement?
- Has the Title VI Coordinator attended MPO planning meetings?
- During the last three years, has the Title VI Coordinator attended public meetings and hearings held for projects with potential Title VI impacts?
- How does the Title VI Coordinator review procedures and efforts of MPOs and program area personnel to obtain public involvement, particularly minority citizen participation?
- Does the Title VI Coordinator assist program area personnel identify minorities in right-of-way activities?
- Does the Title VI Coordinator accompany right-of-way personnel on selected activities to compare treatment provided to minorities versus non-minorities?
- How does the Title VI Coordinator review property management procedures to ensure nondiscrimination?
- What reviews of appraisal, acquisition and relocation procedures has the Title VI Coordinator conducted to ensure nondiscrimination in benefits and services to property owners?
- How does the Title VI Coordinator do the following:
  - ◊ Review consultant selection procedures of the recipient?
  - ◊ Review program area personnel who monitor consultants' Title VI compliance?
  - ◊ Review selected procedures for fee appraisers/fee attorneys to ensure nondiscrimination?
  - ◊ Assist program area personnel in identifying minority and female fee appraisers/fee attorneys?
  - ◊ Review prequalification and bonding requirements and contractor selection procedures to ensure uniform application to minority and non-minority contractors?
  - ◊ Assist program area personnel in communicating contracting opportunities to minority contractors?

## **Planning**

- What office or section within the planning function has lead responsibility for Title VI matters?
- What process has the recipient developed to ensure Title VI issues are addressed in the planning process?
- How does the recipient ensure that MPOs have representation in their membership reflecting the makeup of the population they serve?
- How does the recipient ensure that MPOs solicit and consider the views of all groups within the population in the planning of highway projects?

## **Project Development**

- What office or section within the project development function has the lead responsibility for Title VI matters?
- Who is responsible for identifying Title VI issues in the environmental effects determination of proposed projects?
- What is the role of the Title VI Coordinator in the project development stage? Please describe that role in the following areas:
  - ◇ Public involvement and citizen advisory committees
  - ◇ Scheduling time and location of public meetings and hearings
  - ◇ Identification of impacts
  - ◇ Identification of mitigation measures
  - ◇ Environmental assessments
  - ◇ Consideration of alternatives with respect to corridors and locations.

## **Right-of-Way**

- What office or section within the right-of-way function has the lead responsibility for Title VI matters?
- What is the role of the Title VI Coordinator in the right-of-way stage?
- What efforts are exerted by the recipient to ensure that minority and female fee appraisers are provided maximum opportunity to participate in the appraisal process?

- How does the recipient ensure nondiscrimination in the following areas:
  - ◊ Appraisals
  - ◊ Replacement housing
  - ◊ Decent, safe and sanitary housing determinations
  - ◊ Negotiation
  - ◊ Compensation
  - ◊ Last Resort Housing authorizations.

## **Construction**

- What office or section within the construction function has the lead responsibility for Title VI matters?
- What is the role of the Title VI Coordinator in the construction stage?
- How does the recipient ensure that its bidding and contract award procedures are consistent with the nondiscrimination and affirmative action requirements of Title VI?
- What has the recipient done to identify any requirements or procedures that may present barriers or obstacles to DBE firms attempting to seek contract opportunities? Areas to look at include the following:
  - ◊ Preparation of PS&Es
  - ◊ Bonding requirements
    - (1) Bid Bond
    - (2) Payment Bond
    - (3) Performance Bond

## **Research**

- What office or section within the research function has the lead responsibility for Title VI matters?
- What is the role of the Title VI Coordinator in the research area?
- What efforts have been made to ensure that minority universities or universities with significant minority student representation participate in research projects?

## Complaints

- What are the procedures for processing complaints alleging reprisal and retaliation? (49 CFR 21.11)
- How are the recipient's Title VI complaint procedures disseminated internally and externally? (49 CFR § 21.11)
- What records does the recipient maintain on complaints? (23 CFR § 200.9)
- Does the recipient maintain complaint data to reflect, at minimum, the following about the complaint:
  - ◇ Name
  - ◇ Race
  - ◇ Color
  - ◇ Sex
  - ◇ National Origin
  - ◇ Nature of complaint

## Records and Reports

- What records and reports does the recipient maintain that specifically reflect compliance with Title VI? (40 CFR § 21.9)
- What data (race, color, religion, sex, and national origin) does the recipient maintain that reflects the extent to which members of minority groups are beneficiaries of programs receiving Federal financial assistance? (49 CFR § 21.9).
- Who is responsible for developing, maintaining and reporting this data?
- How is this data used?

### QUESTIONS AND ANSWERS

The following questions and answers correspond to the numbered questions, per specific section, on the Title VI Technical Assistance Tool document.

## STATE TRANSPORTATION AGENCY (STA) RESPONSIBILITIES:

### A. GENERAL ISSUES:

**Question 1:** *What kind of assurances is a State Transportation Agency (STA) required to submit to the State Division (the Division) of the Federal Highway Administration (FHWA)?*

**Answer:** According to 23 CFR 200.9(a)(1), Title 49, CFR part 21 (U.S. Department of Transportation Regulations for the implementation of Title VI of the Civil Rights Act of 1964) requires assurances from States that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the recipient receives Federal assistance from the Department of Transportation, including the Federal Highway Administration.

There are essentially two important purposes of assurances: 1) they remind prospective recipients of their nondiscrimination obligations, and 2) they provide a basis for the Federal Government to sue to enforce compliance with these statutes.

**Question 2:** *Does the STA's assurance need to include a prohibition of discrimination based on sex?*

**Answer:** Yes. According to 23 CFR 200.9(a)(2), Section 162a of the Federal-Aid Highway Act of 1973 (23 U.S.C. 324) requires that there be no discrimination on the ground of sex.

Title VI is also considered to be the model for several, subsequent statutes that prohibit discrimination on other grounds in Federally assisted programs or activities, including Title IX (discrimination on the basis of sex prohibited in education programs) and Section 504 of the Rehabilitation Act of 1973 (discrimination prohibited on the basis of disability). See *United States Department of Transportation v. Paralyzed Veterans*, 477 U.S. 597, at 600 n.4., where the U.S. Supreme Court held that courts have “relied on case law interpreting Title VI as generally applicable to later statutes.” Also, Title VI does not prohibit discrimination based on religion. Rather, it is Title VII’s provisions, not Title VI’s, that make it an unlawful employment practice for an employer “to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s... religion...,” §703(a)(2), 42 U.S.C. § 2000e-2(a)(1).

**Question 3: *Is the STA required to include Civil Rights provisions of other Federal statutes that prohibit discrimination, and if so, what are some of these statutes?***

**Answer:** Yes. According to 23 CFR 200.5(p), while Title VI of the Civil Rights Act of 1964 is the core of the law, other nondiscrimination authorities have tended to expand the scope and reach of Title VI coverage and applicability. These Federal Statutes include: the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601-4655); Title VIII of the Civil Rights Act of 1968, amended 1974 (42 U.S.C. 3601-3619); 23 U.S.C. 109(h); 23 U.S.C. 324; The Federal-Aid Highway Act of 1973; Section 504 of the Rehabilitation Act of 1973; the Americans with Disabilities Act of 1990; the Age Discrimination Act of 1975; the Civil Rights Restoration Act of 1987, and Executive Order 12898 regarding environmental justice in minority populations and low income populations; and Executive Order 13166 regarding persons with limited English proficiency.

**Question 4: *Is the STA required to have a Civil Rights unit?***

**Answer:** Yes. According to 23 CFR 200.9(b)(1), the STA must establish a civil rights unit. A “unit” is an independent entity, and not a subunit of any other division or unit, e.g., human resources. The independence of the Civil Rights unit avoids conflicts of interest and ensures impartiality and objectivity. The establishment of a Civil Rights Unit should include a description of the STA, a description of the staff, an organization chart of the unit showing names and titles of staff. Additional recommendations may be derived from the U.S. Department of Justice, Civil Rights Division’s publication, “Checklist for Analysis of a Federal Agency’s Title VI Enforcement Effort,” Title VI Forum, vol. 4., no. 2 (Fall 1979).

**Question 5: *What kind of staff must the STA’s Civil Rights unit have?***

**Answer:** According to 23 CFR 200.9(b)(2). The STA’s Civil Rights unit, must be adequately staffed to effectively implement the State’s Civil Rights requirements. The meaning of “adequate” is relative to each office with regard to overall staff responsibilities. There is no “magic figure” concerning the number of staff assigned implementation responsibilities. An important consideration is whether the STA’s staff can, in fact, implement the State’s Civil Rights requirements as opposed to merely knowing what is expected of them. In effect, there must be adequate resources to effectively implement the States’ Civil Rights requirements. Considerations may include, but not be limited to: the number of complaints addressed in the past year; the number of post-reviews conducted annually; and the number and nature of Federal programs engaged in by the STA.

Further, given that programmatic and civil rights responsibilities differ, the civil rights staff should report to civil rights leadership, not to program office supervisors. The independence of the civil rights enforcement function is necessary when civil rights-related interests conflict with operational and/or programmatic interests.

**Question 6: *What are some of the specific discriminatory practices that must be prohibited and that should be included in your STA’s directives?***

**Answer:** The following discriminatory practices must be prohibited by each STA’s directives (49 C.F.R. § 21.5(b)): denial to an individual any service, financial aid, or other benefit provided under the program; distinctions in the quality, quantity, or manner in which the benefit is provided; segregation or separate treatment in any part of the program; restriction in the enjoyment of any advantages, privileges, or other benefits provided to others; different standards or

requirements for participation; methods of administration which directly or through contractual relationships would defeat or substantially impair the accomplishment of effective nondiscrimination; discrimination in any activities related to highway and infrastructure or facility built or repaired in whole or in part with Federal funds; and discrimination in any employment resulting from a program, the primary purpose of which is to provide employment.

These are minimum requirements. This list is not intended to limit the STAs, but rather, is designed to indicate those activities that must be prohibited to comply, at a minimum, with the requirements of Title VI. In addition to meeting these minimum requirements, STAs have the authority to prohibit additional activities in their regulations and guidelines. Also, they may be flexible in testing the limits of Title VI and in tailoring their Title VI regulations to address unique aspects of their Federally assisted programs.

## **B. IMPLEMENTATION:**

### ***Question 1: Is the STA required to designate a Title Coordinator or Title VI Specialist?***

**Answer:** Yes. Although the Title may differ from State to State, according to 23 CFR 200.9(b)(1), the STA must designate a full-time Title VI Equal Employment Opportunity Coordinator or a Title VI Specialist. The important consideration is the individual's duties, not his or her Title per se.

### ***Question 2: What kind of access should the Coordinator/Specialist have with respect to higher levels of authority within the STA?***

**Answer:** According to 23 CFR 200.9(b)(1), the Title VI Coordinator/Specialist should have a responsible position in the organization, as well as easy access to the head of the STA, whatever Title that higher-level individual holds. Moreover, the head of the civil rights unit should report to a senior, executive-level authority within the STA. Bureaucratic protocol must not impede implementation.

### ***Question 3: Who at the STA is responsible for monitoring Title VI activities and preparing required reports?***

**Answer:** According to 23 CFR 200.9(b)(1), the Title VI Coordinator/Specialist shall be responsible for initiating and monitoring Title VI activities and preparing required reports.

### ***Question 4: What kind of training is required, and who is responsible for providing and coordinating it?***

**Answer:** The quality of an STA's civil rights program depends upon the expertise of the staff conducting it. For this reason, it is essential that each STA provide regular and comprehensive training in Title VI enforcement to all staff responsible for external civil rights compliance, including the STA's program administration staff. According to 23 CFR 200.9(b)(9), The STA's Title VI Coordinator/Specialist is the individual responsible for conducting training programs on Title VI and related statutes for State program and civil rights officials. Effective enforcement of Title VI requires that other offices participating in Title VI enforcement receive training from, report to, and are monitored by the STA's civil rights office.

**Question 5: *Is the Title VI Coordinator required to submit a Title VI Implementation Plan to the Division Office for approval?***

**Answer:** Yes. According to 23 CFR 200.9(b)(11), beginning October 1, 1976, each STA has been required to annually submit an updated Title VI implementation plan to the Division Office Administrator (formerly referred to as the “Regional Federal Highway Administrator”) for concurrence and approval. The plan must map out the implementation procedures, strategies, and activities to facilitate and assure nondiscrimination. A complete implementation plan sets forth the STA’s goals and priorities for the coming year, and indicates the allocation of specific staff and resources to specific tasks in order to accomplish the STA’s goals. Such plans also include goals and objectives for conducting outreach, education, technical assistance and staff training, initiating compliance reviews, and complaint investigations. Further, the implementation plan should be available to the public.

**Question 6: *Is the STA required to develop Title VI information for dissemination to the general public, and if so, what are some examples?***

**Answer:** Yes. According to 23 CFR 200.9(b)(12), not only is the STA required to develop such information, but also, it is required to develop and disseminate it, where appropriate, in languages other than English. (*Also See Executive Order 13166, 8/11/2000*). The primary purpose of community outreach and public education is to inform funding recipients of the obligations imposed on them by Title VI, and to inform actual and potential beneficiaries of the rights afforded them by Title VI. The responsibilities of funding recipients include taking reasonable measures to disseminate written material in the appropriate languages when a significant number of beneficiaries, potential beneficiaries, or the affected community require information in a language other than English. Examples of such information dissemination vehicles include, but are not limited to:

- television,
- radio,
- newspapers,
- town meetings,
- flyers, brochures, pamphlets
- placement in public areas,
- handbooks, and manuals.

Demographic profiles of a State’s affected areas will help a STA determine the appropriate information and dissemination vehicle.

**Question 7: *Is the Title VI Coordinator required to prepare an annual accomplishment report for the past year, and goals for the next year?***

**Answer:** Yes. This is required by 23 CFR 200.9(b)(10). There is no need, however, for a separate update if the accomplishment report contains one. The accomplishment report should include not only the STA’s major accomplishments, but also, the last plan update; instances where Title VI issues were identified and discrimination prevented; activities and efforts of the Title VI Coordinator/Specialist and program area personnel in monitoring Title VI; a description of scope and conclusion of any special reviews conducted; the identification of major problems and corrective action(s) undertaken; and a summary and status report on any Title VI complaints filed with the STA.

**Question 8: *What is a STA's obligation with respect to Title VI when it has received Federal assistance through continuing State programs?***

**Answer:** Rather than providing funds directly to the ultimate recipients, FHWA may provide Federal financial assistance through continuing programs to STAs which, in turn, disburse funds to sub-recipients. In these instances, the State or local agency is responsible not only for enforcing Title VI with respect to sub-recipients or sub-grantees, but also, for assessing its own Title VI compliance efforts. FHWA's primary function is to oversee and monitor Title VI enforcement as conducted by the recipient State or local agency. (49 CFR 21.7(b)) According to 23 CFR 200.9(b)(5), States receiving Federal assistance through continuing State programs must establish a Title VI compliance program for themselves and their sub-recipients.

## **C. PROCEDURES:**

**Question 1: *What are the STA's responsibilities with respect to the handling of Title VI complaints received directly by the STA?***

**Answer:** According to 23 CFR 200.9(b)(3), the STA must develop procedures for prompt processing and disposition of Title VI complaints received directly the State and not by FHWA. These procedures should be clearly communicated to civil rights staff, and the Title VI Coordinator/Specialist should ensure that the staff understands them. Moreover, the procedures should meet the needs of each specific Federal assistance program it conducts.

**Question 2: *How soon must a complaint and a copy of the report of investigation be forwarded to the Division Office?***

**Answer:** According to 23 CFR 200.9(b)(3), a complaint and a copy of the report of investigation must be forwarded to the Division Office within 60 days of the date the complaint was received by the STA.

**Question 3: *Must the STA have civil rights personnel trained in compliance investigations?***

**Answer:** Yes. According to 23 CFR 200.9(b)(3), complaints shall be investigated by State civil rights personnel trained in compliance investigations. Effective staff training not only provides education on Title VI compliance and enforcement policies and procedures, but also, ensures that the civil rights staff understand the relationship between Title VI and other civil rights statutes. Effective training also keeps staff apprised of legal developments affecting Title VI, including new civil rights laws, and can facilitate staff identification of subtle forms of discrimination. Examples of training programs that might be helpful to civil rights personnel include those offered by the Graduate School in the United States Department of Agriculture; consultants in the areas of complaints and investigations; FHWA training sessions; and other, certified trainers.

**Question 4: *What kind of log is a STA required to maintain, and what kind of information must be included in the log?***

**Answer:** According to 23 CFR 200.9(b)(3), each STA processing Title VI complaints is required to maintain a log with the following information: Identification of each complaint by race, color, sex, or national origin; the recipient; the nature of the complaint; the dates the complaint was filed and the investigation completed, the disposition; the date of the disposition; and other pertinent information such as age or disability. (See 23 CFR 200.5(p)(6)) This kind of information is essential to monitoring compliance.

**Question 5: *What is the STA's responsibilities with respect to the collection and analysis of statistical data?***

**Answer:** According to 23 CFR 200.9(b)(4), the STA must have procedures to collect and analyze statistical data (e.g., race, color, sex, national origin) of participants and beneficiaries of STA programs. Beneficiaries include relocatees, impacted citizens, and affected communities. Collecting, analyzing and maintaining statistical data are crucial elements of a Title VI/nondiscrimination enforcement program. Also, they constitute an effective mechanism by which to numerically assess the reach and impact of program funds. Further, statistical data collection is a means to determine if FHWA financial assistance is reaching communities and populations that need the assistance, as well as a means to quantitatively monitor the performance of a Title VI/nondiscrimination program. The data collected must, of course, be accurate, current, and sufficient. In addition to Census data, examples of other sources that a STA can utilize include data collected by State Education Departments, community leaders, community-based organizations, and local, data-collecting agencies.

**Question 6: *What is the obligation of a STA when discrimination is found?***

**Answer:** According to 23 CFR 200.9(b)(14), a STA must establish procedures to identify and eliminate discrimination when found to exist; these procedures include proactive programs to prevent discrimination.

**Question 7: *What is the obligation of a STA with regard to the use of onsite compliance reviews?***

**Answer:** Generally, STAs should conduct routine checks prior to releasing funds to ensure that recipients have submitted assurances of Title VI compliance. A pre-award review of recipients can assist the STA in determining whether the prime contractor operates in a discriminatory manner. Such reviews can also be used to require applicants to take preventive measures to ensure that discrimination will not occur in their programs as a condition of receiving Federal funds. Regardless of whether the pre-award review is a desk-audit review or an onsite review (i.e., an extensive investigation of a recipient's program conducted in the field at program offices), if the STA discovers a Title VI violation, the agency must attempt to secure the prime contractor's voluntary compliance. If that attempt fails, the agency has the option of withholding or denying Federal funds. (See DOT Order 100.12, Chapter IV, 1. Also See 23 CFR 200.9(4)(b)(3)(5)(11)(12)(13) & (15); and 200.11)

Further, once a recipient has received Federal funds, the STA must review the prime contractor periodically to ensure that the recipient remains in compliance with Title VI. As with the pre-award reviews, post-award reviews may take the form of either desk-audit reviews or more extensive onsite compliance reviews. As discrimination may not always be overt and, therefore, may be more difficult to identify, onsite compliance reviews have become an increasingly important means of discovering discriminatory practices.

**Question 8: *What is the obligation of the STA when Title VI compliance deficiencies are found?***

**Answer:** According to 23 CFR 200.9(b)(15), a STA must establish procedures for promptly resolving deficiencies and reducing to writing the remedial action agreed to be necessary, all within a period not to exceed 90 days. Deficiencies can take the form of technical violations, such as failing to include an equal opportunity statement on a poster, or filling out an assurance form incorrectly, or more serious, overt discriminatory practices that have the effect of denying equal access to program funds.

**Question 9: *What are the responsibilities of a STA with respect to pre-grant and post-grant approval reviews?***

**Answer:** According to 23 CFR 200.9(a)(3), in accordance with a State's signed assurances and regulation guidelines, the STA must prepare to take affirmative action to correct deficiencies if found. Such affirmative action must be taken within a reasonable time period, not to exceed 90 days. Examples of affirmative action include such preventive measures as: routine checks prior to releasing funds to ensure recipients have submitted assurances of Title VI compliance; onsite compliance reviews; submission of periodic compliance reports.

**Question 10: *What must a STA include in the applicable State program directives?***

**Answer:** According to 23 CFR 200.9(b)(13), a STA must establish procedures for pre-grant and post-grant approval reviews of State programs and applicants for compliance with Title VI (i.e., highway location, design and relocation, and persons seeking contracts with the State).

**Question 11: *How should a STA view the desirability of voluntary compliance?***

**Answer:** Prompt action to achieve voluntary compliance should be the first objective with respect to all instances in which noncompliance is found. (See 23 CFR 200.11(d)). In the event that compliance cannot be achieved voluntarily, Title VI provides other means to secure compliance. (49 CFR 21.13) It permits Federal agencies to use other means authorized by law to bring about compliance. In addition to referral to DOJ for litigation in Federal court, these "other means" include administrative avenues such as: a) seeking consultation with, or assistance from another Federal agency (such as the Office of Federal Contract Compliance at the Department of Labor) with authority to enforce nondiscrimination requirements or, b) consulting with, or seeking assistance from State or local agencies with nondiscrimination enforcement authority.

**Question 12: *What emphasis should a STA place on community outreach and public education?***

**Answer:** Without regular and comprehensive outreach and education, members of the public generally do not have the information necessary to pursue and protect their rights under Title VI by filing complaints against discriminating recipients. Therefore, one sign of a poor outreach and education program may be a small number of complaints filed with a funding agency. Outreach and education efforts also afford agencies an opportunity to inform potential recipients of assistance programs and the nondiscriminatory policies and requirements of Title VI. They enable potential recipients to learn grant application procedures. Agencies also learn about community concerns and receive public input in the development of Title VI enforcement programs.

Public participation provides for public involvement of all persons (including Native Americans, minorities and low-income persons), affected public agencies, Federal employees, applicants for Federal assistance, beneficiaries, and other interested persons. (See 23 CFR 200.9)

**Question 13: *What must a STA include in the applicable State program directives?***

**Answer:** According to 23 CFR 200.9(b)(8), a STA must review State program directives in coordination with State program officials, and, where applicable, include Title VI and related nondiscrimination requirements.

Further, a STA's directives or administrative orders should establish basic procedures for complaint processing, post-award reviews, achieving compliance, and imposing sanctions for noncompliance. The directives should include the issuance of specific procedures or compliance manuals that aid in the daily operation of Title VI enforcement. These procedures should be more detailed and specific than the procedure embodied in the directives.

## **D. PROGRAM REVIEWS:**

### ***Question 1: Is a STA required to develop a program to conduct Title VI reviews of program areas?***

**Answer:** Yes. This is required by 23 CFR 200.9(b)(5). In addition, FHWA advises every STA that a well developed Title program should include an implementation plan that: a) describes the nature of the program and the responsibilities of the operating divisions, office or unit that administers the federally assisted program; b) indicates the number of programs administered annually, an estimated total of the amount of Federal financial assistance distributed annually, and the approximate number of grants and recipients and sub-recipients involved; c) includes proactive programs to prevent discrimination; and d) includes enforcement procedures that correspond with the objectives of their federally assisted programs and activities.

### ***Question 2: What other kinds of reviews are required of a STA's program areas with respect to Title VI?***

**Answer:** According to 23 CFR 200.9(b)(6), a STA must conduct an annual Title VI review of its program areas to determine the effectiveness of program area activities at all levels. Also, the variety and complexity of the covered programs require that the STA's Title VI procedures be tailored to meet the needs of each specific assistance program it conducts. They should address the entire compliance process, from application and pre-award requirements, through compliance review and complaint processing. Procedures or manuals also may provide program participants and beneficiaries with step-by-step instructions on filing complaints against funding recipients. Such instructions assist beneficiaries in exercising fully their rights under Title VI.

### ***Question 3: What are the obligations of a STA with respect to sub-recipients and Title VI reviews?***

**Answer:** According to 23 CFR 200.9(b)(7), a STA must conduct Title VI reviews of sub-recipients (i.e., cities, counties, consultant, contractors, college, universities, MPOs, and other recipients of Federal-aid highway funds).



**FHWA Publication No.  
FHWA-HCR-06-006**