

Title VI Requirements for FHWA Subrecipients



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Introduction

Title VI of the Civil Rights Act of 1964 and related nondiscrimination statutes require that recipients and subrecipients of federal financial assistance ensure that no one is excluded from participation in, denied the benefits of, or subjected to discrimination on the basis of race, color, national origin, sex, age, or disability in any federally-assisted program and activity. Title VI should not be confused with Title VII, which prohibits employment discrimination.

For Title VI purposes, the term “program or activity” means all of the operations of a department, agency, special district, or other instrumentality of a local government. For example, if a local agency’s public works department receives any federal financial assistance, Title VI program requirements apply to every part of that public works department whether federally funded or not. However, Title VI program requirements do not apply to all other departments of the local agency unless the federal assistance is transferred to such departments.

While the original Title VI law only prohibits discrimination on the basis of race, color and national origin, the Federal Highway Administration (FHWA) “Title VI Program” incorporates related statutes that have been passed since 1964 and, therefore, prohibits discrimination on the basis of race, color, national origin, sex, age, and disability. Recipients and subrecipients of federal financial assistance must also comply with federal policies regarding Environmental Justice and Limited English Proficiency. The U.S. Department of Transportation (USDOT)’s Title VI implementing regulations are contained in 49 CFR Part 21 and the FHWA’s Title VI regulations are in 23 CFR Part 200.

Agencies or municipalities that receive federal funds from CDOT are referred to as subrecipients. Subrecipients that receive FHWA funds through CDOT are required to establish a Title VI program that is subject to review by CDOT pursuant to 23 CFR 200.9(b)(7). The purpose of the program is to not only prohibit discrimination but to ensure nondiscrimination through policies, procedures and regular program reviews.

CDOT’s Office of Environmental Justice & Equity (EJE) monitors CDOT subrecipients for Title VI compliance. The following is a summary of items that are required as part of a subrecipient’s Title VI program:

A. Title VI Plan

Subrecipients are required to submit a Title VI Plan to the EJE that documents procedures used for complying with FHWA’s Title VI requirements. Subrecipients may also create their Title VI Plan using CDOT’s Title VI template. Whether the subrecipient uses CDOT’s template or develops its own format for a Title VI Plan, it must contain the following:

- **Nondiscrimination Policy Statement:** A subrecipient must provide a statement of its commitment to nondiscrimination and Title VI compliance that is signed by a top official

and circulated throughout the organization and general public. The policy statement should define federal financial assistance and describe specific forms of prohibited discrimination.

- **Standard DOT Title VI Assurances:** A Title VI Plan must include the USDOT's Standard Title VI Assurances (DOT 1050.2A) in which the subrecipient assures that its program will be conducted in a nondiscriminatory manner. The Standard Assurances should have been included and signed with your agency's intergovernmental agreement with CDOT. The subrecipient must ensure that it has a copy of the signed Standard Assurances or executes one to be included in the plan.

The subrecipient is also responsible for ensuring that the applicable appendix of the Standard Assurances is included in each federally-assisted contract. Moreover, the Standard Assurances require specific language to be included in requests for proposals of work. A template of the Standard Assurances and its appendices are available at [https://www.faa.gov/about/office org/headquarters offices/acr/com civ support/non disc pr/media/dot order 1050 2A standard dot title vi assurances.pdf](https://www.faa.gov/about/office_org/headquarters_offices/acr/com_civ_support/non_disc_pr/media/dot_order_1050_2A_standard_dot_title_vi_assurances.pdf). The Standard Assurances should be signed annually by the subrecipient.

- **Title VI Coordinator:** The subrecipient must designate a Title VI Coordinator who is responsible for managing and monitoring Title VI compliance, providing reports to CDOT, and handling Title VI complaints. Subrecipients should also provide an organizational chart, or at the very least, describe the Title VI Coordinator's placement in the agency and how they interact with and have easy access to management.
- **Primary Program Area Descriptions:** The Title VI Plan must describe the nature of the subrecipient's primary program areas and the way in which the subrecipient seeks to ensure nondiscrimination in each area. For example, a city's public works department may have divisions for transportation planning and right of way services. Each of these program areas has unique Title VI-related responsibilities to ensure nondiscrimination. For example, planning must ensure equal access to the planning process and equal consideration of the interests of minority populations, and right of way must ensure equal treatment of minority populations throughout the acquisition process.
- **Program Review, Compliance, and Enforcement Procedures:** The subrecipient must develop procedures for identifying and addressing potential discrimination or discriminatory procedures within the agency. The Title VI Plan must include a description of how the subrecipient's pertinent program areas are reviewed for Title VI compliance. The Title VI Plan must also outline compliance and enforcement procedures that eliminate and address discrimination and resolve deficiencies when non-compliance occurs.

Subrecipients administering federal aid contracts are also required to monitor prime contractors and subcontractors for Title VI compliance. A description of this process

should also be included in the Title VI Plan.

- **Data Collection and Analysis:** FHWA requires subrecipients to develop procedures for the collection of statistical data of participants in, and beneficiaries of, the subrecipient's programs and activities. Collecting data helps identify and prioritize problem areas and evaluate the effectiveness of policies and programs to ensure nondiscrimination. The Title VI Plan must describe how the subrecipient plans to collect Title VI-related data on an on-going basis. For example, the subrecipient may collect data such as meeting attendees, board member demographics, or persons/communities affected by acquisitions and relocations. Subrecipients may also rely on U.S. Census data to collect relevant demographic information for their service area. For more information on collecting Census data, visit https://www.fhwa.dot.gov/civilrights/programs/title_vi/data_collection_analysis.cfm or <https://www.fhwa.dot.gov/civilrights/programs/docs/Title%20VI%20Data%20collection.pdf>.

Subrecipients must also provide an analysis of any Title VI data collected, including how it relates to the subrecipient's programs and activities.

- **Staff Training:** The Title VI Plan must indicate how and when agency staff is trained on Title VI related policies and procedures.
- **Complaint Procedures:** Subrecipients must develop Title VI complaint procedures that address how to handle Title VI complaints. Subrecipients are encouraged to utilize CDOT's FHWA complaint procedures template. At a minimum, a Title VI complaint procedure must include the subrecipient's specific contact information on how and where to file a complaint, as well as a section on how to file a complaint directly with FHWA. Complainants should also have 180 days from the last alleged discrimination to file a complaint.

All FHWA Title VI complaints received by a subrecipient must be forwarded to CDOT within three (3) business days. CDOT will then forward any Title VI complaints to FHWA for processing. A subrecipient's Title VI complaint procedure must be posted on their website and translated into any language that meets the Limited English Proficient (LEP) Safe Harbor threshold (e.g., LEP language groups that constitute five percent (5%) or 1,000 persons, whichever is less, of the total population of persons eligible to be served by the subrecipient).

- **Dissemination of Title VI Information:** Title VI Plans must include community outreach and public education procedures relating to nondiscrimination under Title VI. At a minimum, Title VI Plans must include the following:
 - **Notice of Rights:** Members of the public must be informed of their rights against discrimination on the basis of race, color and national origin under Title VI and how they can file a Title VI discrimination complaint. The Notice must include information on how to file a complaint directly with FHWA. The Notice must be made available on the agency's website and be posted in locations accessible to the public. The Notice must also be translated into any language that meets the

Limited English Proficient (LEP) Safe Harbor threshold (e.g., LEP language groups that constitute five percent (5%) or 1,000 persons, whichever is less, of the total population of persons eligible to be served by the subrecipient). Please see CDOT's Notice template as an example.

- **Public Participation Plan:** The Title VI Plan must describe procedures for eliciting and soliciting participation by minority communities. The Title VI Plan must identify how the subrecipient communicates with and conducts outreach to minority and Limited English Proficient (LEP) individuals. The process must address how input from minority populations is considered during agency decision-making.
- **Review of Local Directives:** Title VI Plans must include an assurance by subrecipients that they will review local city and county directives for Title VI implications, and if needed, will provide an interpretation of how Title VI related directives could impact program areas.

B. Language Assistance Plan

Limited English Proficient (LEP) individuals are those individuals for whom English is not their primary language and have a limited ability to speak, read, write, or understand English. Failure to provide language assistance for LEP persons may result in national origin discrimination. Therefore, pursuant to Executive Order 13166, FHWA subrecipients are required to perform an LEP analysis of their service area and develop a plan for providing language assistance and outreach to LEP populations.

The following is the four-factor analysis which must be used to determine what measures are necessary to provide meaningful access for LEP individuals:

1. **Identify the number or proportion** of LEP persons eligible to be served or likely to be encountered by the subrecipient.
2. **Determine the frequency** with which LEP persons come into contact with the subrecipient.
3. **Determine the nature and importance** of the program, activity, or service provided by the subrecipient.
4. **Identify the resources** available to the subrecipient and the costs.

After analyzing these four factors, subrecipients must establish an outreach plan for providing language assistance to LEP individuals. For more information on the Language Assistance Plan, please refer to the USDOT's LEP Guidance at <https://www.transportation.gov/civil-rights/civil-rights-awareness-enforcement/dots-lep-guidance>.

C. Environmental Justice

Executive Order 12898 directs federal agencies to identify and address the disproportionately high and adverse human health and environmental effects of their actions on minority and low-income populations. Subrecipients are required to comply with the federal government's Environmental Justice (EJ) policy by integrating EJ principles into their programs. This can be

accomplished by describing how minority and low-income data is collected, describing how EJ populations are included in public participation activities, and analyzing how a subrecipients' actions impact EJ populations. For more information, please visit

<https://www.transit.dot.gov/regulations-and-guidance/fta-circulars/environmental-justice-policy-guidance-federal->

D. CDOT Compliance Reviews

FHWA requires CDOT to conduct Title VI compliance reviews of its subrecipients. Compliance reviews focus on determining whether the subrecipient has met the criteria of FHWA's Title VI program and that the subrecipient is ensuring nondiscrimination in its programs and activities. CDOT staff may evaluate the subrecipient's Title VI Plan and related documents, interview individuals with Title VI responsibilities, and/or conduct a site visit as part of the process.

The subrecipient's completed Title VI and Language Assistance Plans should be readily available for CDOT review. If you would like assistance in completing these plans, contact the CDOT Office of Environmental Justice & Equity (EJE) at the information provided below.

Title VI Resources

FHWA Title VI Guidance and Resources

https://www.fhwa.dot.gov/civilrights/programs/title_vi/

CDOT Title VI Guidance and Resources

<https://www.codot.gov/business/civilrights/titlevi>

Contact Us

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