Title VI: State and Local Requirements

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1. Understand the basics of Title VI

2. Understand the roles and relationships between federal, state, and local recipients

3. Understand specific State and Local Requirements and best practices
What is the law?

“No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 42 U.S.C. § 2000d, et seq.
Title VI - Basics

What is the law?

Title I – Voting Rights
Title II – Discrimination in Public Accommodations
Title III – Desegregation of Public Facilities
Title IV – Desegregation of Public Education
Title V – Commission on Civil Rights
Title VI – Non Discrimination in Federally Assisted Programs
Title VII – Equal Employment Opportunity
What is the law?

Civil Rights Restoration Act of 1987

- Rejected 1984 Supreme Court decision in Grove City College v. Bell (465 US 555)
- “Program or activity” means all of the operations—any part of which is extended Federal financial assistance—of:
  - a department, agency, special purpose district, or other instrumentality of a State or of a local government; or
  - 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 governmental of the operations of any entity” 42 U.S.C. § 2000d-4a(1).
What is the case law?

  - Held the Title VI statute does not provide a private right of action in civil court for disparate impact. The private right of action is only for disparate treatment.
  - However, the Court recognized federal agencies may pass disparate impact regulations, which are enforceable under administrative law. E.g. persons may file a Title VI disparate impact complaint pursuant to USDOT regulations (49 C.F.R. §21.5 (b)(2)), a Letter of Finding may be issued, and enforcement actions taken.
# Title VI - Basics

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<td>• 23 CFR Part 200</td>
<td>• FTA Circular 4702.1B</td>
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<td>• 1973 Federal-aid Highway Act (23 USC 324) (Sex)</td>
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<th>Additional Authorities in the FHWA “Title VI Program”</th>
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<td>• The 1970 Uniform Act (42 USC 4601)</td>
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<td>• Section 504 of the 1973 Rehabilitation Act (29 USC 790)</td>
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<td>• EO 12898 on Environmental Justice (EJ)</td>
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<td>• EO 13166 on Limited English Proficiency (LEP)</td>
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<td>• DOT Order 1050.2: standard assurances</td>
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Other Notes

• Title VI only applies to public entities, in general. It applies to contractors only when carrying out a governmental function.

• Title VI doesn’t apply to employment, unless Federal assistance is specifically for employment.

• Cross-cutting laws and protected categories beyond race, color, nat’l origin are part of the FHWA nondiscrimination program but are enforced through their own authorities. E.g. recipients must ensure nondiscrimination for “low income” persons under EJ Executive Order, but individuals cannot file Title VI compliant for just that status.
Title VI - Roles and Responsibilities

FHWA
- Provides stewardship and oversight
- Approves Implementation Plans and conducts process reviews
- Provide policy and technical assistance training

State DOTs
- Perform required actions under 23 C.F.R. Part 200
- Submit annual Plan, assurances, and Report to FHWA Division
- Conducts internal and external reviews
- Process and investigate complaints against subrecipients
State and Local Recipients

• Conform to State DOT Implementation Plan, including:
  – Collection and analysis of demographic data to ensure nondiscrimination
  – Complaint procedures
  – Training requirements
  – Limited English Proficiency policies
  – Submit annual assurances to State DOT and use contract inserts
  – Submit reports on demographic data requested from State DOT

• Assist in State DOT external reviews
1. **Implementation Plans:** States “shall **annually** submit an **updated** Title VI implementing plan to the Regional Federal Highway Administrator for **approval** or **disapproval.**” 23 CFR §200.9(b)(11).
   – Due by October 1 each Federal Fiscal Year
   – Submitted even if changes are minor
   – Accompanied by signed assurances

2. **Title VI Coordinator**

3. **Annual internal program area reviews / Data Collection and Analysis.** 23 CFR 200.9(b)(4-5).

4. **Subrecipient Reviews.** 23 CFR 200.9(b)(7).
3. **Complaint processing and investigation.** 23 CFR 200.9(b)(3).
   – See FHWA External Complaint Manual:

4. **Internal training for State Program Managers.** 23 CFR 200.9(b)(9).

5. **Limited English Proficiency Plan.** Executive Order 13166.

6. **Environmental Justice.** Executive Order 12898.
Title VI – Key Local Public Agency Requirements

• Regulations do not provide express requirements for Local Public Agencies (LPAs), however, as Recipients they are required to affirmatively ensure nondiscrimination in their transportation programs and activities.

• At a minimum, LPAs must:
  – Submit annual signed Title VI Assurances and insert language from DOT Order 1050.2A into agreements
  – Collect demographic data on program participants and beneficiaries
  – Conform to the State DOT’s policies and reporting requirements in the State DOT’s Title VI Implementation Plan (LEP, complaint procedures, etc.) and the LPA must develop its own written procedures. While the regulations do not require LPAs to have an IP, they must be able to demonstrate how they comply with Title VI.
  – Designate a responsible point of contact to coordinate Title VI efforts
What’s the Risk?

- If Recipients lack good data, analysis, and review procedures, they can adversely impact the public and Recipients will have little defense if:
  1. Formal complaints are filed against them with FHWA or USDOJ, or
  2. FHWA initiates a compliance review.
What does this mean?

- Civil Rights practitioners must be conversant in project development (planning, NEPA, etc.) and data analysis.
- Checklists and forms can be useful to roll up information but cannot replace in depth reviews.
- “Interdisciplinary” means meeting face-to-face with other disciplines and reviewing material together.
Example Review Methods:

1. **Threshold or Representation analysis** compares demographics to actual distribution of benefit/burden (e.g. project alternative route selection)

2. **Barrier analysis** to test whether practices have a disproportionate, adverse impact, acting as a barrier to participation (e.g. venue for public meetings).

3. **Selection analysis** to determine whether the selection rate for one demographic group of beneficiaries is lower than other groups (e.g. selection of consultants).
How do I know what data to collect and analyze?

- Think from **perspective of the public** and **beneficiaries**.
- Where and how do you **contact public**?
- Where are your **contracts**; who with?
- Where does the state **spend** its funds?
- Have you received formal **or informal complaints or public comments**?
How do I know what data to collect and analyze?

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Use a Risk-Based Approach:

- Internally: process reviews to include “desk audit” and data analysis
- Externally: use selection method best suited for your program. If your state has too many LPAs to review annually, sampling and weighting criteria are acceptable. But, remember risk can come from the smallest subrecipients.
Discussion

Questions & Comments?
Thank you for your hard work and assistance!