North Carolina
DEPARTMENT OF TRANSPORTATION

Title VI Nondiscrimination: Rural Planning Organizations (RPO-101)

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Nondiscrimination in the Federal-Aid Program

- Nondiscrimination denotes the **absence** of *disparate treatment or impact* in federally-assisted programs and activities.
- The Title VI/Nondiscrimination Program is governed by:
  - Title VI of the Civil Rights Act of 1964
  - 1987 Civil Rights Restoration Act
  - Other *related* Nondiscrimination authorities

Title VI of the Civil Rights Act of 1964

(42 United States Code (U.S.C.) §2000d)

- The law states:
  - **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.
- Title VI is **federal law** so it is "supreme."
  - Supremacy Clause

The 1987 Civil Rights Restoration Act

(42 U.S.C. §2000d-4a)

- **Direct Response** to Grove City College v. Bell (465 U.S. 555 (1984))
- **Restored the original intent** of Title VI to include *all programs and activities* of Federal-aid recipients and contractors *whether federally funded or not*
  - Locally-funded, state-assisted, or federally-assisted activities of RPOs and their member agencies

Other *related* Nondiscrimination Authorities

- Statutes and Policies
  - 1973 Federal-Aid Highway Act (sex)
  - 1975 Age Discrimination Act
  - Section 504 of the 1973 Rehabilitation Act; and The Americans with Disabilities Act (ADA) of 1990 (disability)
  - Uniform Act of 1970 (persons displaced & property acquired)
  - Executive Order 12898 on Environmental Justice (EJ)
  - Executive Order 13166 on Limited English Proficiency (LEP)
- Regulations and Guidance
  - 49 C.F.R. 21 – DOT Title VI Regulations
  - DOT Order 1000.12 – Title VI Program
  - DOT Order 5610.2a (EJ)
  - LEP Guidance for DOT Recipients
  - 23 C.F.R. 200 – FHWA Title VI Program
  - FHWA Order 6640.23A (EJ)
  - FTA Circulars C 4702.1B (Title VI) and C 4703.1 (EJ)
  - DOJ – Title VI Legal Manual

What is Discrimination?

- Federal Highway Administration (FHWA):
  - That act (action or inaction), whether **intentional or unintentional**, through which a person in the United States solely because of **race, color, national origin, sex, age, or disability** is subjected to disparate **treatment or impact**, in any program or activity **receiving** Federal financial assistance from FHWA under 23 U.S.C.

Administration of Program and Policies: Affirmation of Title VI Compliance

- Standard Title VI Assurances
  - USDOT legal document
  - **Must be signed**
  - Failure to sign grounds for terminating or discontinuing assistance
- Nondiscrimination Agreements
  - NCDOT document (June 30th)
  - Outlines compliance expectations for sub-recipients
- Title VI Program Plan ("Implementation Plan")
  - Details Title VI integration into your program
- Quarterly TPB Reporting

Administration of Program and Policies: Title VI Coordinator

- Authority to administer program
  - Member of the Lead Planning Agency
  - **Put** the Coordinator's duties **in writing**
  - Integrated into RPO decision-making processes
  - Trained to implement the program
  - Contact information and duties disseminated
- Identify member agency Title VI contacts
  - Serve as Title VI liaisons for RPO's Coordinator
  - Some LGAs should have Title VI Coordinators

Data Collection and Assessment

- Map race/ethnicity, LEP, low-income, age, gender, disability to identify populations
- Comparative Analysis
  - Benefits and Burdens (positive and adverse)
  - Overlay facilities, amenities, projects/proposals on demographic maps
  - **Document** if disparate or disproportionate
- Participant Data (public involvement)
  - Voluntary Public Involvement Forms
  - GIS (Geographic Information Systems) maps to ID gaps
  - Board/committee members self-ID race and gender

Public Involvement and Outreach

- Ensure public's understanding of its rights
  - Notice to Public, brochures, meetings, etc.
- Outreach strategies in **Public Involvement Plan**
  - EJ/LEP communities **and contacts** identified
  - Best methods for reaching your communities
  - **Document** input and "preferences"
- Adequate Representation on Committees
  - Process to ensure representative participation
  - Citizen Advisory Committees (CACs), minority CACs, planning commissions, Bike/ Ped, Sidewalks/ Greenways, TCC/ TACs, etc.

Limited English Proficiency (LEP)

- Language Assistance procedures
  - Speaks English “less than very well”
- Safe Harbor Threshold
  - 5% or 1,000, whichever is less
  - Translation of **vital** written materials
- Four Factor Analysis
  - Number or proportion served or encountered
  - Frequency of contact with the program
  - Nature and importance of the program, activity, or service *provided by the program* to people's lives
  - Resources available and costs

Environmental Justice

"Because the nondiscrimination requirements of Title VI extend to ***all*** programs and activities of **State DOTs and their respective sub-recipients** and contractors, the concepts of EJ apply to all State projects, **including those which do not involve Federal-aid funds**, whether Advance Construction, Design Build, or not." - *FHWA*

Environmental Justice cont.

- Disproportionately high and adverse effect means an adverse effect that:
  - (1) is predominately borne by a minority population and/or a low-income population, or
  - (2) will be suffered by the minority population and/or low-income population and is appreciably more severe or greater in magnitude than the adverse effect that will be suffered by the non-minority population and/or non-low-income population.

ADA/Section 504

- Discrimination includes **denying** persons with disabilities the opportunity to *participate in or benefit from* any program or activity (28 C.F.R. §35.149)
  - Meeting locations, auxiliary aids, sign language, braille, ads, large print, teletypewriter (TTY), etc.
- Any construction or alteration project that **provides access to pedestrians** must be made accessible to persons with disabilities (28 C.F.R. §§35.150, 35.151)
  - Questions and Answers About ADA/Section 504
  - ADA Accessibility Guidelines

ADA/Section 504 cont.

- ADA Transition Plan:
  - Assesses the needs of persons with disabilities
  - Schedules required ADA accessibility upgrades
    - Buildings and pedestrian facilities
  - Update periodically to develop plans & programs
  - Be defensible
  - Make available for public comment
  - Required for public agencies with 50+ employees
- Self evaluations need to include what's in the public right-of-way

Sanctions for Noncompliance

- Suspension or termination of Federal financial assistance
- Refusal to grant or continue federal financial assistance
- Any other means authorized by law (49 C.F.R. §21.13)
- **Nonresponsive or uncooperative**

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