U.S. Department of Transportation
Federal Highway Administration

DESK REFERENCE

TITLE VI

TITLE VI NONDISCRIMINATION IN THE FEDERAL-AID HIGHWAY PROGRAM

"Simple justice requires that public funds to which all taxpayers of all races contribute, not be spent in any fashion which encourages, entrenches, subsidizes or results in racial discrimination."

—John F. Kennedy

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Nondiscrimination in the Federal-aid Highway Program

The focal point of nondiscrimination law is Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, or national origin in any program or activity receiving Federal financial assistance. However, the broader application of nondiscrimination law is found in other statutes, regulations and Executive Orders. Section 324 of the Federal-Aid Highway Act of 1973 prohibits discrimination based on sex. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 prohibits unfair and inequitable treatment of persons as a result of projects that are undertaken with Federal financial assistance. Section 504 of the Rehabilitation Act of 1973 prohibits discrimination on the basis of disability as does the Americans with Disabilities Act of 1990 (ADA). The ADA also prohibits discrimination in the provision of access to public buildings and requires that rest areas be accessible by wheelchair. The Age Discrimination Act of 1975 prohibits age discrimination. The Civil Rights Restoration Act of 1987 clarified the intent of Title VI to include all programs and activities of Federal-aid recipients and contractors whether those programs and activities are federally-funded or not.

In addition to these statutory authorities, the 1994 Executive Order 12898*, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,"* requires Federal agencies to achieve environmental justice as part of their mission by identifying disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority and low-income populations. The 2000 Executive Order 13166, *"Improving Access to Services For Persons With Limited English Proficiency (LEP),"* requires Federal agencies to examine their services, develop and implement processes by which limited English proficient persons can meaningfully access those services. It also provides that Federal agencies establish guidelines on how recipients can provide meaningful access to LEPs. It is the intent of FHWA to carry out its environmental justice and LEP responsibilities as part of its overall nondiscrimination program. Therefore, our reference to Title VI includes other civil rights provisions of Federal statutes and related nondiscrimination authorities to the extent that they prohibit discrimination in programs and activities receiving Federal financial assistance.

Due to the broad scope and extensive number of nondiscrimination laws, most civil rights and program personnel have had difficulty in keeping up with, as well as understanding, how nondiscrimination requirements apply to their daily program activities. Just as often, civil rights and program personnel are unable to keep up with the changes in the Federal-aid highway process, especially since the inception of the Inter-modal Surface Transportation Efficiency Act of 1991 (ISTEA) which, among other things, ended the interstate construction era and started to focus on system preservation; increased the role and responsibilities of Metropolitan Planning Organizations; made public involvement an integral part of our decision-making; fostered flexibility by allowing states to meet their unique transportation needs as deemed appropriate; emphasized inter-modalism and highlighted concerns related to transportation air quality, the environment and the economy.

Title VI has broad applicability and reach and Title VI issues may arise during any phase of the Federal-aid program with potentially far-reaching consequences. If Title VI issues are not recognized, program personnel cannot address them. Decisions made could violate Title VI and adversely affect the lives of people. Findings of discrimination can also result in costly disruptions to the Federal-aid program. In one State, for example, a finding of discrimination by the U.S. Department of Transportation, based on a complaint, delayed construction of a major urban freeway.

The purpose of this desk reference is to describe the various elements of the Federal-aid program in order to ensure that all nondiscriminatory requirements are identified and considered in advance of any decisionmaking activity. A coordinated and cooperative approach by program and civil rights specialists is essential to effectively fulfilling our nondiscrimination responsibilities.

Considerations in the Federal-aid Highway Program

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 Transportation 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 decision-making 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 metropolitan 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. Three review processes are 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 pro-tection 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 synopses 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 decisionmaking 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 nonexistent.

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 decisionmakers 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;
  - 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 highway 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 non-profit 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 non-profit 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 air-space and the disposal of excess property.

G. Special Right-of-Way Program Areas

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. 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 un-founded 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 STD 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 pre-determined 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 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 3 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 non-resident. 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 on-site 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 STAs 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 non-compliance 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 sub-contractors 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 - Non-segregated 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

Issue1: *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 pre-qualification, 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 predetermined 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., socio-economic, 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.

IMPLEMENTATION

Implementation of the Title VI program is a joint responsibility of FHWA and State program managers at all levels, although primary responsibility lies with the State. To ensure nondiscrimination in their programs, program managers should be familiar with Title VI-related issues, as identified in the previous section, in their day-to-day activities. Impact of these programs on minorities, women, the disabled, the elderly, persons with limited English proficiency, and non-minorities should be monitored to ensure that the programs provide equitable treatment in the provision of benefits, services and opportunities to all beneficiaries of the program.

I. ROLES AND RESPONSIBILITIES

A. FHWA Headquarters Office of Civil Rights

The role of the Headquarters Office of Civil Rights (HCR) is to interpret civil rights laws, including Title VI, Executive Orders, FHWA policies and regulations, provide technical assistance where needed and to establish agency-wide policy for compliance. Specifically, HCR:

1. Provides technical assistance and guidance to all program and field offices.

2. Provides training on Title VI law and regulations to all program offices, field offices and STAs.

3. Processes and investigates Title VI complaints of discrimination.

B. FHWA Resource Center

The role of the Resource Center is to provide training and technical assistance on Title VI statutes, regulations and other authorities where needed. The Civil Rights Technical Assistance Team:

- Provides training and technical assistance to STA and other stakeholders nationwide;

- Participates and/or conducts Title VI reviews upon request;

- In consultation with HCR, provides guidance and interpretation of the agency's policies, procedures and practices;

- Under HCR direction, conducts and/or participates in Title VI investigations.

C. FHWA Division Offices

The role of Division Offices is to interpret Title VI law, regulations, and other authorities, determine Division Office and STA compliance, assist the State in program implementation, provide feedback to HCR and provide technical assistance.

In carrying out this role the Division Office Civil Rights Specialist/Title VI Coordinator has the following responsibilities:

- Review and approve STA Title VI plans and Method of Administration.

- Determine Title VI compliance. Program personnel may, in their review of the various program areas, determine whether Title VI issues are being addressed adequately. However, determination of the State's compliance with Title VI is within the purview of Division Office Civil Rights staff.

- Upon a finding of noncompliance, an attempt is made to obtain voluntary resolution. If efforts to obtain compliance fails, enforcement proceedings against the State is initiated.

- Direct the State Title VI program in coordination with Division program officials, the agency Counsel and Division Administrators.

- Serve as lead agent in coordinating activities in connection with controversial projects where discrimination has been alleged.

- Conduct on-site Title VI reviews to determine program implementation at Division and State levels.

- Participate with program area officials in conducting Title VI reviews.

- Review and comments on Title VI issues in EISs and EA/ FONSIs.

- Recommend appropriate action to program area officials where Title VI issues are involved.

- Process complaints of discrimination.

- Conduct investigations of external complaints in coordination with Washington Headquarters Office of Civil Rights.

- Coordinate Division Office Title VI activities.

- Provide training, information and technical assistance to Division Office program personnel, STA Title VI Specialists and other stakeholders as needed and requested.

- Serve as Division Office contact on Title VI matters.

- Assist in conducting Title VI Reviews.

In carrying out their role in the Title VI program, Division Office program area personnel have the following responsibilities:

- Monitor STA programs and activities on an on-going basis to ensure nondiscrimination. This should normally be accomplished through daily involvement with State program personnel and reviews of State program activities and documents.

- Provide technical assistance to the State to ensure that Title VI issues are considered and addressed within their program areas.

- Monitor adequacy of State Title VI Specialist as involvement within their respective program activities.

- Communicate problem areas to HCR.

- Provide training, information and technical assistance to State Title VI Specialist as needed and requested.

The preceding list provides general descriptions of the respective roles for the Division Office Title VI Coordinator and program area personnel. The remainder of this section of the guide describes suggested techniques for the Division's use in monitoring the State's Title VI compliance. ***The underlying philosophy of the suggested techniques is the same as for the entire desk reference: nondiscrimination, ideally, is best ensured through an ongoing preventive approach with special reviews used periodically to evaluate the State's process for ensuring Title VI compliance.***

Title VI Awareness of Program Area Operational Personnel

Area engineers, district engineers, planners, right-of-way specialists, and environmental specialists are the key division personnel who implement the Federal-aid highway program. For effective monitoring, it is crucial these individuals understand the kinds of Title VI issues that can arise in their program areas. Such awareness can be promoted through:

- Reading the Title VI desk reference with emphasis on those parts pertinent to their program areas.
- General discussion of Title VI desk reference by program area personnel.
- Circulating Title VI-related correspondence and/or publications.
- Meetings with Division Office program personnel and State Title VI Specialists.
- Communicating with the other stakeholders and peers.

Division Office Monitoring of Title VI

To increase the effectiveness of the Division's Title VI monitoring, a systematic interdisciplinary approach should be employed. The Division Office's monitoring plan should be developed consistent with the needs in its particular State. In States that have effectively and continually integrated Title VI considerations into their day-to-day program operations, the division office's monitoring could be considerably reduced. Accordingly, the level of monitoring required will vary from Division to Division. With this in mind, the following are some suggested components of a Division Office's monitoring plan:

- The Division Office should develop an overall monitoring plan to address, as appropriate, any of the major areas covered by Title VI (Planning, Project Development, Right-of-Way and Construction). The plan would detail items which Division personnel should be aware of on a daily basis and as necessary provide for periodic special reviews of the State's processes for ensuring nondiscrimination.
- When conducted, special reviews should be carried out in accordance with guidelines that address the State's Title VI Plan.
- The monitoring plan should describe the assignment of responsibility for Title VI within the Division Office.
- The monitoring plan should provide for a Title VI work plan to be carried out and updated on a regular basis to reflect the current level of program implementation by the State.
- The Division Office should advise the HCR on particularly significant program deficiencies. Any other recommendations or comments may be provided along with the State's Annual Title VI Accomplishment Report and Work Plan.

D. State Transportation Agency

The role of the State transportation agencies involves implementing Title VI, developing the Title VI Program and establishing adequate procedures for identifying and addressing Title VI issues.

While the Title VI Specialist is the focal point for the Title VI program at the State level, it is essential that the program's implementation and monitoring activities be undertaken in a joint fashion with program area officials. In certain cases, the Title VI Specialist's role will be participatory, particularly in the preconstruction phases. In other cases, the Title VI Specialist's role will be a lead role, such as in monitoring of program areas for Title VI compliance. However, even in these activities it is essential that the Title VI Specialist consult with the appropriate program area officials to ensure that the end product is accurate from a programmatic standpoint.

In carrying out this role, the State Title VI Specialist has the following responsibilities. These responsibilities may vary from State to State depending upon the particular organization and structure of each State highway agency.

- Coordinate Title VI Program development with program area officials.
- Provide technical assistance and advice on Title VI matters to State program area officials.
- Conduct Title VI reviews of program area activities when necessary to cover aspects not covered through the day-to-day approach. Only those parts of programs where Title VI issues are involved should be reviewed.
- Participate with program area personnel in reviews of program activities, which include Title VI issues.
- Review findings of program area reviews which address Title VI issues to ensure findings of discrimination or nondiscrimination are adequately supported.
- Participate with program officials in developing Title VI information for dissemination to the public.
- Develop and implement procedures for the prompt processing of complaints of discrimination.
- Work with program officials to correct identified Title VI problems or discriminatory practices or policies.
- Establish procedures to resolve determinations of noncompliance.
- Conduct Title VI training programs.
- Prepare an annual summary of Title VI activities, accomplishments and problems.
- Update the Title VI Plans as necessary to reflect organizational policy or implementation changes.

The following are examples of specific activities that may be undertaken by the Title VI Specialist/Coordinator. Title VI implementation activities should be undertaken on a day-to-day basis whenever possible. Since budgetary and staff resources are usually limited, it is expected that the Title VI Specialist will prioritize program areas based on the status of the highway program in his/her State.

1. Identification of Impacts

- Assist program area personnel in identifying Title VI impacts of proposed projects.
- Review and provide feedback to program area personnel on data reflecting the racial demographics, ages, or other characteristics of communities affected by projects.
- Review environmental documents.

- Attend meetings with program area personnel during development of environmental assessments of projects.
- Review procedures followed in identifying and considering impacts of projects on minority areas.

2. Mitigation Measures

- Assist program area personnel in identifying mitigation measures for minority areas.
- Follow up on mitigative measures identified in EIS which have significant impacts on minorities. Determine whether measures have been taken and if so, assess their effectiveness or, as appropriate, identify alternative measures.

3. Public Involvement

- Assist program area personnel in obtaining public involvement, particularly in minority areas.
- Attend MPO planning meetings involving Title VI issues.
- Attend public meetings and hearings held for projects with potential Title VI impacts.
- Assist program personnel in developing Title VI information for dissemination to the general public and in languages other than English when necessary.
- Review procedures and efforts of the MPOs and State program area personnel to obtain public involvement, particularly minority citizen participation.

4. Benefits and Services

- Assist program area personnel in the identification of minorities in right-of-way activities.
- Accompany program personnel on selected right-of-way activities to compare treatment received by minorities and non-minorities.
- Review property management procedures to ensure nondiscrimination.
- Review appraisal, acquisition and relocation procedures to assure equitable benefits and services are provided to minority and non-minority property owners.

5. Contracting

(a) Consultants

- Review consultant selection procedures of MPOs and State program areas.
- Review program area personnel's monitoring of Title VI compliance by consultants.

(b) Fee Appraisers/Fee Attorneys

- Review selection procedures for fee appraisers/fee attorneys to ensure nondiscrimination.
- Assist program area personnel in identifying minority and female fee appraisers/fee attorneys.

(c) Construction

- Review prequalification and bonding requirements and contractor selection procedures to determine uniformity in their application to minority and non-minority contractors.
- Assist program area personnel in communicating contracting opportunities to minority contractors and subcontractors.
- Ensure that State policies and procedures for monitoring activity during construction are not applied in a discriminatory fashion. Examples of these activities are plan changes, supplemental agreements, liquidated damages, project inspections and traffic control.
- Ensure insertion of Title VI requirements in contracts, subcontracts and material supply agreements.

(d) Research

- Review selection procedures for principal researchers and research staffs to determine minority participation.
- Assist program area personnel in identifying minority universities interested in conducting research.

In carrying out their role, the State's program area officials have the following responsibilities in their day-to-day monitoring activities:

- Implement the State's Title VI policy through daily activities and ongoing monitoring.

- Pursuant to 49 CFR § 21.9(b) and 23 CFR § 200.9(b)(4), maintain statistical data by race, color, national origin and sex of participants and beneficiaries of the State's highway programs (i.e., relocatees, affected citizens and affected communities).

- Pursuant to 23 CFR § 200.9(b)(7), conduct Title VI reviews or include Title VI issues in program reviews of cities, counties, consultant contractors, suppliers, universities, colleges, planning agencies and other recipients of Federal-aid highway funds.

- Ensure that Title VI requirements are included in program area directives and that procedures used have built-in safeguards to prevent discrimination.

- Advise the Title VI Specialist of Title VI-related issues or discrimination complaints.

- Cooperate with Title VI Specialist in conducting reviews.

- Advise the Title VI Specialist of findings related to Title VI in conjunction with program area reviews.

- Request that Title VI Specialist be involved in development of projects where there may be Title VI issues.

II. Documentation

A certain amount of documentation is necessary to substantiate Title VI monitoring and compliance determinations. In most cases, routine correspondence between the various offices and review reports addressing Title VI issues or findings will suffice. The following outlines examples of suggested documentation.

1. Headquarters Office of Civil Rights

- Correspondence to Division Offices providing guidance or information on Title VI.
- Reports, case studies, data, sample documents on Title VI shared with the Division and STAs.

2. Division Offices

- Review reports containing Title VI findings and recommendations.
- Normal correspondence with the State where Title VI related issues are discussed.
- Division Office Title VI monitoring plans, as appropriate.
- Guidelines followed in making special Title VI reviews. *Special Title VI Reviews are reviews by the Division Office of the State's Title VI process within a particular program (Planning, Project Development, Right-of-Way or Construction) to assess the program's effectiveness in identifying and addressing Title VI issues.*
- Documents describing Title VI responsibilities and assignments.

3. State Title VI Specialist

- Reports on Title VI reviews of program areas.
- Correspondence documenting advice or assistance to program area offices.
- Documentation related to Title VI complaints.
- Annual Title VI Summaries.

4. State Program Offices

- Routine correspondence, environmental or planning documents that identify Title VI issues.
- Correspondence reflecting efforts to address Title VI issues and responsibilities.
- As appropriate, records identifying participants and beneficiaries of the Federal-aid highway program by race, color, sex, national origin, age, and disability.

III. Title VI Plan Development

This section outlines the required elements of the State's Title VI Plan. A comprehensive and proactive Title VI Plan should contain procedures, strategies and activities to facilitate and assure nondiscrimination in federally-assisted programs and activities of the State. The plan will include mechanisms to guarantee effective and efficient implementation, compliance and enforcement of Title VI. A complete plan sets forth that State's goals and priorities for the coming year; indicates the allocation of staff and resources for specific tasks to accomplish set goals; objectives for conducting outreach, education, technical assistance and staff training; as well as how and when compliance reviews and complaints investigations will be conducted. The key elements are discussed as follows:

1. Nondiscrimination Statement of Policy
Include the State's Policy on Title VI which must be signed by the top State Transportation Agency official. The policy statement should define Federal financial assistance and recipients, delineate specific forms of discrimination prohibited and specify programs and activities covered by Title VI.

2. Organization and Staffing of Civil Rights Unit
Include a description of the organization and staffing of the Civil Rights Unit, an organization chart which shows the relationship of the Civil Rights Unit to the head of the highway agency and other offices, as well as an organization chart of the Civil Rights Unit showing the names and titles of the staff. The Civil Rights Unit must be adequately staffed and have a Civil Rights Office head or director who has direct access to the State Transportation Agency's head with authority and responsibility to implement the civil rights program. The Civil Rights Unit must be an independent office to be able to maintain its independence, objectivity and impartiality in the discharge of its nondiscrimination responsibilities. An autonomous office is also required to prevent potential conflict between other operational interests and the Civil Rights mission and to be able to develop, issue and enforce agency-wide policies on civil rights impartially without prejudice and bias.

Indicate resources allocated for accomplishing Title VI goals, outreach, education, technical assistance and training programs.

3. Title VI Monitoring and Review Process
In this section include how and when compliance reviews and complaint investigations will be conducted. For each of the following major program areas, summarize how Title VI monitoring will be accomplished by the Title VI Specialist and by the program area personnel.

a. Planning
b. Project Development
c. Right-of-Way
d. Construction
e. Research

4. Compliance
Describe enforcement procedures to be followed by the FHWA in the event of a STA's noncompliance with Title VI may be found at 49 CFR § 21.13 and 23 CFR § 200.11. Where compliance cannot be corrected by informal means, Federal financial assistance may be suspended or terminated and further assistance may be refused.

Sanctions to be applied by State transportation agencies in the event of a sub-recipient's or contractor's non-compliance with Title VI may be found in Appendix A of the Standard DOT Title VI Assurances executed by the State Highway Agency as a condition to receiving any financial assistance from the U.S. Department of Transportation. These sanctions include withholding of payments and/or cancellation, termination, or suspension of the contract, in whole or in part.

5. Title VI Assurances
Include copies of the State's signed Title VI assurances, including appendixes.

6. Accomplishment Report
List major accomplishments made regarding Title VI since the last plan update, and goals for the next year. Include instances where Title VI issues were identified and discrimination was prevented. Indicate activities and efforts the Title VI Specialist and program area personnel have undertaken in monitoring Title VI. Include a description of the scope and conclusions of any special reviews conducted by the Title VI Specialist. List any major problems identified and corrective actions taken. Include a summary and status report on any Title VI complaints filed with the State.

7. Annual Work Plan
Outline Title VI monitoring and review activities planned for the coming plan year; State by whom each activity will be accomplished and target date for completion.

8. State Procedures, Manuals and Directives Applicable to Federal-aid Highway Program
List all procedures, manuals and directives the State uses which are applicable to the Federal-aid highway program and Title VI.

9. Data Collection and Reporting Requirements
Indicate the statistics and other data collected on potential and actual sub-recipients, sub-grantees, beneficiaries and affected communities. This includes, for instance, the race, color, and national origin of population served or eligible to be served; the demographic profile of impacted or potentially affected communities; the race, color, and national origin of any planning or advisory body; requirements and procedures to guard against unnecessary impact on persons on the ground of race, color or national origin with respect to relocation; etc.

10. Issuance of Guidelines
Include guidelines established for each Federal financial assistance program and how they are distributed to recipients, beneficiaries, compliance officers and the general public.

IV. Title VI Program: Minimum Requirements

Regulations in 23 CFR Part 200 require that State Transportation Agencies do at least the following:

Subject	Action Required	Citation
A. Assurances	1. Submit nondiscrimination assurances 2. Certify that discrimination based on sex will be proscribed in assurances	23 CFR § 200.9 (a)(1) 23 CFR § 200.9 (a)(2)
B. Civil Rights Unit	1. Establish an adequately staffed Civil Rights Unit with a Title VI coordinator	23.CFR§ 200.9 (b)(1) & (2)
C. Title VI Coordinator's Responsibilities	**GENERAL** 1. Have access to head of agency 2. Monitor Title VI activities and prepare required reports 3. Provide training 4. Submit Implementation Plan to FHWA Division Administrator 5. Develop Title VI information for dissemination (where necessary; in language other than English) 6. Prepare an annual accomplishment report	23.CFR § 200.9 (b)(1) 23 CFR § 200.9 (b)(1) 23 CFR § 200.9 (b)(9) 23 CFR § 200.9 (b)(11) 23 CFR § 200.9 (b)(12) 23 CFR§ 200.9 (b)(10)
	ESTABLISH PROCEDURES 1. To promptly investigate complaints 2. To identify and eliminate discrimination 3. To review programs and grant applications 4. To resolve deficiencies within 90 days 5. To collect and analyze statistical date	23.CFR § 200.9 (a)(3) 23.CFR § 200.9 (b)(14) 23.CFR § 200.9 (b)(13) 23.CFR § 200.9 (a)(3) and (b)(15) 23.CFR § 200.9 (b)(4)
	CONDUCT REVIEWS 1. Of programs - with program personnel 2. Of grant applications 3. Of special emphasis areas 4. Of sub-recipients, cities, counties, contractors, consultants, suppliers, universities, colleges, planning agencies and other recipients of Federal-aid highway funds 5. Of State program directives	23.CFR § 200.9 (a)(4) 23.CFR § 200.9 (b)(13) 23.CFR § 200.9 (b)(6) 23.CFR § 200.9 (b)(7) 23.CFR § 200.9 (b)(8)

V. Contract Requirements

Introduction

Federal-aid contracts normally must include provisions that require compliance with Title VI. The specific contract provision language is included in Appendixes A, B and C of the Title VI Assurances which each State has executed. Examples of the applicability of each Appendix to Federal-aid contracts are described below.

1. Appendix A

This appendix applies to all Federal-aid contracts and must be included as a contract provision. Examples of such contracts in the Federal-aid highway program are:

- Construction contracts, both prime and subcontracts, and vendor/supply agreements.
- Consultant agreements for performance of work in connection with Federal-aid highway projects. Typical ones are those for design work and environmental studies.
- Research agreements with colleges, universities, or other institutions.
- Fee appraiser and fee attorney contracts in connection with federally-aided right-of-way work.
- Contracts between a STA and a contractor for relocation of utilities. It should be noted that Appendix A would not apply when the utility company itself or its contractor relocates utilities.

2. Appendix B

This appendix applies to conveyances of land or property to the States by the Federal government. It conditions the conveyance to require nondiscrimination in connection with the State's use of the property.

3. Appendix C

Applicable to all deeds, licenses, leases, permits, or similar instruments.

Examples:

- Leases and Property Management Agreements
- Permits and Licences, except where they are issued for the construction of utilities on highway rights-of-way, the cost of which is borne by the utility company without Federal participation
- Tenancy Agreements
- Air Space Agreements
- Railroad Agreements

Once the purpose for which Federal financial assistance is extended terminates and/or the State no longer retains ownership or possession of the property, the Title VI Assurances do not apply.

Examples of agreements where Appendix C is not applicable are as follows:

- Pit Agreement
- Stockpiling Agreement
- Encroachment Agreement
- Relocation Agreement
- Determination of Vacation and Abandonment
- Quit Claim Deeds
- Contracts with property owners, i.e., royalty agreements for obtaining materials (borrow agreements)
- Warranty Deeds

VI. Title VI 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 a 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?

TITLE VI/NONDISCRIMINATION

IMPLEMENTATION, COMPLIANCE, and ENFORCEMENT

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/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 noncompliance; 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:

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

An updated implementation plan must be submitted annually to the FHWA Division Office by October 1st 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. 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))* <u>STAs are required to perform the following Title VI program review activities:</u>

- 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 <u>desk-audit review</u> (requiring more than that the applicant or recipient submit an assurance compliance form) or an <u>on-site review</u> (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.)*

<u>FHWA's responsibilities include determining:</u>

- 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 On-Site 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 on-site 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 on-site 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
- A matter of courtesy and to maintain partnering relationship.

Step 5: On-Site Compliance Review – Should start with an entrance meeting/conference with leadership and pertinent personnel. On-site 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 on-site 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 on-site 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 on-site 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, on-site 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. 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*:

1: The Division Administrator will forward report with a cover letter to the STA for corrective action.

2: The Division Office will schedule a meeting with recipient, to be held no later than 30 days from receipt of deficiency report.

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.

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.

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.

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 exhaustive 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 pages 3-4 of this document.)

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, 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 plains 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. <u>The plan should also include the following elements:</u>

- 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 NONDISCRIMINATION
AND THE FEDERAL HIGHWAY ADMINISTRATION

State Transportation Agency (STA) Responsibilities			
A. General:	**Yes**	**No**	**?**
1. Has the STA submitted Title VI nondiscrimination assurances to the Division Office? (*Considerations*: 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 (CR) 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? (*Considerations*: 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)) (*Considerations*: (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?)			
6. Has your STA included in its directives, specific discriminatory practices that are prohibited? (49 CFR 21.5(b)) (Considerations: 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. Implementation:			
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)) (*Consideration*: 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? (*Consideration*: 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)) (*Consideration*: 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)) (*Considerations*: 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)) (*Note*: 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).			

C. Procedures:	Yes	No	?
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 to exist? (23 CFR 200.9(b)(14))			
7. Has your STA used on-site 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))			

D. Program Reviews:	Yes	No	?
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))			

Standard DOT Title VI Assurances

DOT 1050.2
Dated 8/24/71

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, he excluded from participation in, he denied the benefits of, or he 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 thereron, 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 subcontract. or procurement as the *(Recipient)* or the *(Name of Appropriate Administration)* may direct as a means of enforcing such provisions including sanctions for non-compliance: 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 he 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 or 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, he 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 he amended and (3) that in the event of breach of any of the above-mentioned nondiscrimination conditions, the Department shall have a right to re-enter 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.*

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, permitee, 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, permitee, 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 re-enter 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, permitee, 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, permitee, 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.]*

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 [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 re-enter said land 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.

SAMPLE NONDISCRIMINATION AGREEMENT

FEDERAL HIGHWAY ADMINISTRATION
DIVISION OFFICE
CITY, STATE

NONDISCRIMINATION AGREEMENT

THE FEDERAL HIGHWAY ADMINISTRATION

DIVISION ADMINISTRATOR

AND

(NAME OF RECIPIENT)

The (Name of Recipient), (hereinafter referred to as the "Recipient") hereby agrees to comply with the following Federal statutes, U.S. Department of Transportation and Federal Highway Administration Regulations, and the policies and procedures promulgated by the Federal Highway Administration, as a condition to receipt of Federal funds.

TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Title VI of the Civil Rights Act of 1964, as amended, provides that no person shall on the ground of race, color, national origin, sex, age, and handicap/disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. The Civil Rights Restoration Act of 1987 amended Title VI to specify that entire institutions receiving Federal funds--whether schools and colleges, government entities, or private employers--must comply with Federal civil rights laws, rather than just the particular programs or activities that receive the funds.

Nondiscrimination programs require that Federal-aid recipients, sub-recipients, and contractors prevent discrimination and ensure nondiscrimination in all of their programs and activities, whether those programs and activities are federally-funded or not. If a unit of a State or local government is extended Federal-aid and distributes such aid to another governmental entity, all of the operations of the recipient and sub-recipient are covered. Corporations, partnerships, or other private organizations or sole proprietorships are covered in their entirety if such entity received Federal financial assistance (FHWA Notice N 4720.6, September 2, 1992).

ASSURANCES
49 CFR PART 21.7

The (Name of the Recipient), HEREBY GIVES ASSURANCES:

> That no person shall on the grounds or race, color, national origin, sex, age, and handicap/disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity conducted by the recipient regardless of whether those programs and activities are federally-funded or not. Activities and programs which the recipient hereby agrees to carry out in compliance with Title VI and related statutes include but are not limited to:

LIST ALL MAJOR PROGRAMS AND ACTIVITIES OF THE RECIPIENT

1. That it will promptly take any measures necessary to effectuate this agreement.

2. That each program, activity, and facility as defined at 49 CFR 21.23(b) and (e), and the Civil Rights Restoration Act of 1987 will be (with regard to a program or activity) conducted, or will be (with regard to a facility) operated in compliance with the nondiscriminatory requirements imposed by, or pursuant to, this agreement.

3. That these assurances are 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 by the Federal Highway Administration and is binding on it, other recipients, sub-grantees, contractors, subcontractors, transferees, and successors in interest. The person or persons whose signatures appear below are authorized to sign these assurances on behalf of the Recipient.

4. That the Recipient shall insert the following notification in all solicitations for bids for work or material subject to the Regulations and in adapted form all proposals for negotiated agreements:

5. The Recipient, in accordance with Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d to 2000d-4 and 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 issued pursuant to such Act, hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises as defined at 49 CFR Part 23 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, national origin, sex, age, handicap/disabled in consideration for an award.

6. That the Recipient shall insert the clauses of Appendix A of this agreement in every contract subject to the Act and the Regulations.

7. 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 agreement.

IMPLEMENTATION PROCEDURES
23 CFR PART 200

This agreement shall serve as the recipient's Title VI plan pursuant to 23 CFR 200 and the Title VI Implementation Guide.

For the purpose of this agreement, "Federal Assistance" shall include:

1. grants and loans of Federal funds;
2. the grant or donation of Federal property and interest 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 he 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.

The recipient shall:

1. Issue a policy statement, signed by the head of the recipient, which expresses its commitment to the nondiscrimination provisions of Title VI. The policy statement shall be circulated throughout the recipient's organization and to the general public. Such information shall be published where appropriate in languages other than English.

2. Take affirmative action to correct any deficiencies found by the Federal Highway Administration within a reasonable time period, not to exceed 90 days, in order to implement Title VI compliance in accordance with this agreement. The head of the recipient shall be held responsible for implementing Title VI requirements.

3. 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 recipient. 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.

4. Adequately staff the civil rights unit to effectively implement the civil rights requirements.

5. Process complaints of discrimination consistent with the provisions contained in this agreement. Investigations shall be conducted by civil rights personnel trained in discrimination complaint investigations. Identify each complainant by race, color, national origin, sex, age, handicap/disability; the nature of the complaint, the date the complaint was filed, the date the investigation was completed, the disposition, the date of the disposition, and other pertinent information. A copy of the complaint, together with a copy of the recipient's report of investigation, will be forwarded to the Division Office of Civil Rights within 60 days of the date the complaint was received by the recipient.

6. Collect statistical data (race, color, national origin, sex, age, handicap/disability) of participation in, and beneficiaries of the programs and activities conducted by the recipient.

7. Conduct Title VI reviews of the recipient and sub-recipient contractor program areas and activities. Revise where applicable, policies, procedures and directives to include Title VI requirements.

8. Conduct training programs on Title VI and related statutes.

9. Prepare a yearly report of Title VI accomplishments for the past year and goals for the next year.

   (a) Accomplishment Report
   List major accomplishments made regarding Title VI activities. Include instances where Title VI issues were identified and discrimination was prevented. Indicate activities and efforts the Title VI Specialist and program area personnel have undertaken in monitoring Title VI. Include a description of the scope and conclusions of any special reviews conducted by the Title VI Specialist. List any major problem(s) identified and corrective action taken. Include a summary and status report on any Title VI complaints filed with the recipient.

   (b) Annual Work Plan
   Outline Title VI monitoring and review activities planned for the coming year; state by which each activity will be accomplished and target date for completion.

DISCRIMINATION COMPLAINT PROCEDURE

1. Any person who believes that he or she, individually, as a member of any specific class, or in connection with any disadvantaged business enterprise, has been subjected to discrimination prohibited by Title VI of the Civil Rights Act of 1964, as amended, may file a complaint with the recipient. A complaint may also be filed by a representative on behalf of such a person. All complaints will be referred to the recipient's Title VI Specialist for review and action.

2. In order to have the complaint considered under this procedure, the complainant must file the complaint no later than 180 days after:

   - The date of the alleged act of discrimination; or

   - Where there has been a continuing course of conduct, the date on which that conduct was discontinued.

In either case, the recipient or his/her designee may extend the time for filing or waive the time limit in the interest of justice, specifying in writing the reason for so doing.

3. Complaints shall be in writing and shall he signed by the complainant and/or the complainant's representative. Complaints shall set forth as fully as possible the facts and circumstances surrounding the claimed discrimination. In the event that a person makes a verbal complaint of discrimination to an officer or employee of the recipient, the person shall he interviewed by the Title VI Specialist. If necessary, the Title VI Specialist will assist the person in reducing the complaint to writing and submit the written version of the complaint to the person for signature. The complaint shall then be handled in the usual manner.

4. Within 10 days, the Title VI Specialist will acknowledge receipt of the allegation, inform the complainant of action taken or proposed action to process the allegation, and advise the complainant of other avenues of redress available, such as the Federal Highway Administration and the Department of Transportation.

5. Generally, the following information will be included in every notification to the Office of Civil Rights:

   (a) Name, address, and phone number of the complainant.
   (b) Names and address(es) of alleged discriminating official(s).
   (c) Basis of complaint (i.e., race, color, national origin, sex, age, disability/handicap).
   (d) Date of alleged discriminatory act(s).
   (e) Date of complaint received by the recipient
   (f) A statement of the complaint.
   (g) Other agencies (state, local or Federal) where the complaint has been filed.
   (h) An explanation of the actions the recipient has taken or proposed to resolve the issue raised in the complaint.

6. Within 60 days, the Title VI Specialist will conduct and complete an investigation of the allegation and based on the information obtained, will render a recommendation for action in a report of findings to the head of the recipient. The complaint should be resolved by informal means whenever possible. Such informal attempts and their results will be summarized in the report of findings.

7. Within 90 days of receipt of the complaint, the head of the recipient will notify the complainant in writing of the final decision reached, including the proposed disposition of the matter. The notification will advise the complainant of his/her appeal rights with the Department of Transportation, or the Federal Highway Administration, if they are dissatisfied with the final decision rendered by the State.

SANCTIONS

In the event the recipient fails or refuses to comply with the terms of this agreement, the Federal Highway Administration may take any or all of the following sanctions:

   a. Cancel, terminate, or suspend this agreement in whole or in part;
   b. Refrain from extending any further assistance to the recipient under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from the recipient.
   c. Take such other action that may be deemed appropriate under the circumstances, until compliance or remedial action has been accomplished by the recipient.
   d. Refer the case to the Department of justice for appropriate legal proceedings.

SIGNED FOR THE FEDERAL HIGHWAY ADMINISTRATION:

_____ _____

Division Administrator Date

SIGNED FOR THE RECIPIENT:

_____ _____

Authorized Signature Date

SELECTED NONDISCRIMINATION AUTHORITIES

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 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 compiled with applicable Civil Rights statues 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:

  "(I)t 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 decision-making state 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 contact provisions to be included in all Federal-aid construction contracts, including Title VI and other proscriptions 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 Statues 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

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 before 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 Stst. 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.

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.

UNITED STATES PUBLIC LAWS
100TH CONGRESS-SECOND SESSION
PUBLIC LAW 100-259 [S. 557]
MARCH 22, 1988
CIVIL RIGHTS RESTORATION ACT OF 1987
100 P.L. 259; 102 Stat. 28; 1988 Enacted S. 557; 100 Enacted S. 557

CIS LEGIS. HISTORY DOCUMENT: <=1> 100 CIS Legis. Hist. P.L. 259

An Act

To restore the broad scope of coverage and to clarify the application of title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and title VI of the Civil Rights Act of 1964.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SEC. 1. [20 USC 1681 note] This Act may be cited as the "Civil Rights Restoration Act of 1987".
FINDINGS OF CONGRESS

SEC. 2. [20 USC 1687 note] The Congress finds that --

(1) certain aspects of recent decisions and opinions of the Supreme Court have unduly narrowed or cast doubt upon the broad application of title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and title VI of the Civil Rights Act of 1964; and

(2) legislative action is necessary to restore the prior consistent and long-standing executive branch interpretation and broad, institution-wide application of those laws as previously administered.

EDUCATION AMENDMENTS AMENDMENT

SEC. 3. (a) Title IX of the Education Amendments of 1972 is amended by adding at the end the following new sections:

"INTERPRETATION OF 'PROGRAM OR ACTIVITY'

"SEC. 908. [20 USC 1687] For the purposes of this title, the term 'program or activity' and '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, except that such term does not include any operation of an entity which is controlled by a religious organization if the application of section 901 to such operation would not be consistent with the religious tenets of such organization."
(b) Notwithstanding any provision of this Act or any amendment adopted thereto:

"NEUTRALITY WITH RESPECT TO ABORTION "

SEC. 909. [20 USC 1688] Nothing in this title shall be construed to require or prohibit any person, or public or private entity, to provide or pay for any benefit or service, including the use of facilities, related to an abortion. Nothing in this section shall be construed to permit a penalty to be imposed on any person or individual because such person or individual is seeking or has received any benefit or service related to a legal abortion.".

REHABILITATION ACT AMENDMENT

SEC. 4. [29 USC 794] Section 504 of the Rehabilitation Act of 1973 is amended –
(1) by inserting "(a)" after "SEC. 504."; and

(2) by adding at the end the following new subsections:
"(b) For the purposes of this section, the term 'program or activity' means 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.

"(c) Small providers are not required by subsection (a) to make significant structural alterations to their existing facilities for the purpose of assuring program accessibility, if alternative means of providing the services are available. The terms used in this subsection shall be construed with reference to the regulations existing on the date of the enactment of this subsection.".

AGE DISCRIMINATION ACT AMENDMENT

SEC. 5. [42 USC 6107] Section 309 of the Age Discrimination Act of 1975 is amended –

(1) by striking out "and" at the end of paragraph (2);

(2) by striking out the period at the end of paragraph (3) and inserting "; and" in lieu thereof; and

(3) by inserting after paragraph (3) the following new paragraph:

(4) the term 'program or activity' means all of the operations of –

"(A)(i) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or

"(ii) 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;

"(B)(i) a college, university, or other postsecondary institution, or a public system of higher education; or

"(ii) 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;

"(C)(i) 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

"(ii) 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

"(D) any other entity which is established by two or more of the entities described in subparagraph (A), (B), or (C); any part of which is extended Federal financial assistance."

SEC. 6. Title VI of the Civil Rights Act of 1964 is amended by adding at the end the following new section: "SEC. 606. [42 USC 2000d-4a] For the purposes of this title, 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.".

RULE OF CONSTRUCTION

SEC. 7. [20 USC 1687 note] Nothing in the amendments made by this Act shall be construed to extend the application of the Acts so amended to ultimate beneficiaries of Federal financial assistance excluded from coverage before the enactment of this Act.

ABORTION NEUTRALITY

SEC. 8. [20 USC 1688 note] No provision of this Act or any amendment made by this Act shall 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.

CLARIFICATION OF INDIVIDUALS WITH HANDICAPS IN THE EMPLOYMENT CONTEXT

SEC. 9. [29 USC 706] Section 7(8) of the Rehabilitation Act of 1973 is amended by adding after subparagraph (B) the following:

"(C) For the purpose of sections 503 and 504, as such sections relate to employment, such term does not include an individual who has a currently contagious disease or infection and who, by reason of such disease or infection, would constitute a direct threat to the health or safety of other individuals or who, by reason of the currently contagious disease or infection, is unable to perform the duties of the job.".

DESCRIPTORS: DISCRIMINATION AGAINST THE HANDICAPPED; AGE DISCRIMINATION; RACIAL DISCRIMINATION; SEX DISCRIMINATION; DISCRIMINATION IN EDUCATION; SUPREME COURT; FEDERAL AID PROGRAMS; GROVE CITY COLLEGE; ABORTION

Executive Order 12250
Leadership and Coordination of Nondiscrimination Laws
November 2, 1980

By the authority vested in me as President by the Constitution and statutes of the United States of America, including section 602 of the Civil Rights Act of 1964 (42 U.S.C. 2000d-1), Section 902 of the Education Amendments of 1972 (20 U.S.C. 1682), and Section 301 of Title 3 of the United States Code, and in order to provide, under the leadership of the Attorney General, for the consistent and effective implementation of various laws prohibiting discriminatory practices in Federal programs and programs receiving Federal financial assistance, it is hereby ordered as follows:

1-1. Delegation of Function.

1-101. The function vested in the President by Section 602 of the Civil Rights Act of 1964 (42 U.S.C. 2000d-1), relating to the approval of rules, regulations, and orders of general applicability, is hereby delegated to the Attorney General.

1-102. The function vested in the President by Section 902 of the Education Amendments of 1972 (20 U.S.C. 1682), relating to the approval of rules, regulations, and orders of general applicability, is hereby delegated to the Attorney General.

1-2. Coordination of Nondiscrimination Provisions.

1-201. The Attorney General shall coordinate the implementation and enforcement by Executive agencies of various nondiscrimination provisions of the following laws:

(a) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.).

(b) Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.).

(c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794).

(d) Any other provision of Federal statutory law which provides, in whole or in part, that no person in the United States shall, on the ground of race, color, national origin, handicap, religion, or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance.

1-202. In furtherance of the Attorney General's responsibility for the coordination of the implementation and enforcement of the nondiscrimination provisions of laws covered by this Order, the Attorney General shall review the existing and proposed rules, regulations, and orders of general applicability of the Executive agencies in order to identify those which are inadequate, unclear or unnecessarily inconsistent.

1-203. The Attorney General shall develop standards and procedures for taking enforcement actions and for conducting investigations and compliance reviews.

1-204. The Attorney General shall issue guidelines for establishing reasonable time limits on efforts to secure voluntary compliance, on the initiation of sanctions, and for referral to the Department of Justice for enforcement where there is noncompliance.

1-205. The Attorney General shall establish and implement a schedule for the review of the agencies' regulations which implement the various nondiscrimination laws covered by this Order.

1-206. The Attorney General shall establish guidelines and standards for the development of consistent and effective recordkeeping and reporting requirements by Executive agencies; for the sharing and exchange by agencies of compliance records, findings, and supporting documentation; for the development of comprehensive employee training programs; for the development of effective information programs; and for the development of cooperative programs with State and local agencies, including sharing of information, deferring of enforcement activities, and providing technical assistance.

1-207. The Attorney General shall initiate cooperative programs between and among agencies, including the development of sample memoranda of understanding designed to improve the coordination of the laws covered by this Order.

1-3. Implementation by the Attorney General.

1-301. In consultation with the affected agencies, the Attorney General shall promptly prepare a plan for the implementation of this Order. This plan shall be submitted to the Director of the Office of Management and Budget.

1-302. The Attorney General shall periodically evaluate the implementation of the nondiscrimination provisions of the laws covered by this Order, and advise the heads of the agencies concerned on the results of such evaluations as to recommendations for needed improvement in implementation or enforcement.

1-303. The Attorney General shall carry out his functions under this Order, including the issuance of such regulations, as he deems necessary, in consultation with affected agencies.

1-304. The Attorney General shall annually report to the President through the Director of the Office of Management and Budget on the progress in achieving the purposes of this Order. This report shall include any recommendations for changes in the implementation or enforcement of the nondiscrimination provisions of the laws covered by this Order.

1-305. The Attorney General shall chair the Interagency Coordinating Council established by Section 507 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794c).

1-4. Agency Implementation.

1-401. Each Executive agency shall cooperate with the Attorney General in the performance of the Attorney General's functions under this Order and shall, unless prohibited by law, furnish such reports and information as the Attorney General may request.

1-402. Each Executive agency responsible for implementing a nondiscrimination provision of a law covered by this Order shall issue appropriate implementing directives (whether in the nature of regulations or policy guidance). To the extent permitted by law, they shall be consistent with the requirements prescribed by the Attorney General pursuant to this Order and shall be subject to the approval of the Attorney General, who may require that some or all of them be submitted for approval before taking effect.

1-403. Within 60 days after a date set by the Attorney General, Executive agencies shall submit to the Attorney General their plans for implementing their responsibilities under this Order.

1-5. General Provisions.

1-501. Executive Order No. 11764 is revoked. The present regulations of the Attorney General relating to the coordination of enforcement of Title VI of the Civil Rights Act of 1964 shall continue in effect until revoked or modified (28 CFR 42.401 to 42.415).

1-502. Executive Order No. 11914 is revoked. The present regulations of the Secretary of Health and Human Services relating to the coordination of the implementation of Section 504 of the Rehabilitation Act of 1973, as amended, shall be deemed to have been issued by the Attorney General pursuant to this Order and shall continue in effect until revoked or modified by the Attorney General.

1-503. Nothing in this Order shall vest the Attorney General with the authority to coordinate the implementation and enforcement by Executive agencies of statutory provisions relating to equal employment.

1-504. Existing agency regulations implementing the nondiscrimination provisions of laws covered by this Order shall continue in effect until revoked or modified.

JIMMY CARTER

THE WHITE HOUSE, November 2, 1980.

Exec. Order No. 12250, 45 FR 72995, 1980 WL 66789 (Pres.)

EXECUTIVE ORDER 12898 of February 11, 1994
FEDERAL ACTIONS TO ADDRESS ENVIRONMENTAL JUSTICE IN MINORITY POPULATIONS AND LOW-INCOME POPULATIONS

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1-1. Implementation.

1-101. *Agency Responsibilities.*

To the greatest extent practicable and permitted by law, and consistent with the principles set forth in the report on the National Performance Review, each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States and its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Mariana Islands.

1-102. *Creation of an Interagency Working Group on Environmental Justice.*

(a) Within 3 months of the date of this order, the Administrator of the Environmental Protection Agency ("Administrator") or the Administrator's designee shall convene an interagency Federal Working Group on Environmental Justice ("Working Group"). The Working Group shall comprise the heads of the following executive agencies and offices, or their designees: (a) Department of Defense; (b) Department of Health and Human Services; (c) Department of Housing and Urban Development; (d) Department of Labor; (e) Department of Agriculture; (f) Department of Transportation; (g) Department of Justice; (h) Department of the Interior; (i) Department of Commerce; (j) Department of Energy; (k) Environmental Protection Agency; (l) Office of Management and Budget; (m) Office of Science and Technology Policy; (n) Office of the Deputy Assistant to the President for Environmental Policy; (o) Office of the Assistant to the President for Domestic Policy; (p) National Economic Council; (q) Council of Economic Advisers; and (r) other such Government officials as the President may designate. The Working Group shall report to the President through the Deputy through the Deputy Assistant to the President for Environmental Policy and the Assistant to the President for Domestic Policy.

(b) The Working Group shall:

(1) provide guidance to Federal agencies on criteria for identifying disproportionately high and adverse human health or environmental effects on minority populations and low-income populations.

(2) coordinate with, provide guidance to, and serve as a clearinghouse for, each Federal agency as it develops an environmental justice strategy as required by section 1-103 of this order, in order to ensure that the administration, interpretation and enforcement of programs, activities and policies are undertaken in a consistent manner;

(3) assist in coordinating research by, and stimulating cooperation among, the Environmental Protection Agency, the Department of Health and Human Services, the Department of Housing and Urban Development, and other agencies conducting research or other activities in accordance with section 3-3 of this order;

(4) assist in coordinating data collection, required by this order;

(5) examine existing data and studies on environmental justice;

(6) hold public meetings as required in section 5-502(d) of this order; and

(7) develop interagency model projects on environmental justice that evidence cooperation among Federal agencies.

1-103. *Development of Agency Strategies.*

(a) Except as provided in section 6-605 of this order, each Federal agency shall develop an agency-wide environmental justice strategy, as set forth in subsections (b)-(e) of this section that identifies and addresses disproportionately high and adverse human health or environmental effects of its programs, policies, or activities on minority populations and low-income populations. The environmental justice strategy shall list programs, policies, planning and public participation practices, enforcement and/or rulemakings related to human health or the environment that should be revised to, at a minimum: (1) promote enforcement of all health and environmental statutes in areas with minority populations and low-income populations; (2) ensure greater public participation; (3) improve research and data collection relating to the health of and environment of minority populations and low-income populations; and (4) identify differential patterns of consumption of natural resources among minority populations and low-income populations. In addition, the environmental justice strategy shall include, where appropriate, a timetable for undertaking identified revisions and consideration of economic and social implications of the revisions.

(b) Within 4 months of the date of this order, each Federal agency shall identify an internal administrative process for developing its environmental justice strategy, and shall inform the Working Group of the process.

(c) Within 6 months of the date of this order, each Federal agency shall provide the Working Group with an outline of its proposed environmental justice strategy.

(d) Within 10 months of the date of this order, each Federal agency shall provide the Working Group with its proposed environmental justice strategy.

(e) Within 12 months of the date of this order, each Federal agency shall finalize its environmental justice strategy and provide a copy and written description of its strategy to the Working Group. During the 12-month period from the date of this order, each Federal agency, as part of its environmental justice strategy, shall identify concerns identified during the development of the proposed environmental justice strategy, and a schedule for implementing those projects.

(f) Within 24 months of the date of this order, each Federal agency shall report to the Working Group on its progress in implementing its agency-wide environmental justice strategy.

(g) Federal agencies shall provide additional periodic reports to the Working Group.

1-104. *Reports to the President.*

Within 14 months of the date of this order, the Working Group shall submit to the President, through the Office of the Deputy Assistant to the President for Environmental Policy and the Office of the Assistant to the President for Domestic Policy, a report that describes the implementation of this order, and includes the final environmental justice strategies described in section 1-103(e) of this order.

Section 2-2. Federal Agency Responsibilities for Federal Programs.

Each Federal agency shall conduct its programs, policies, and activities that substantially effect human health or the environment, in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons (including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under, such programs, policies, and activities, because of their race, color, or national origin.

Section 3-3. Research, Data Collection, and Analysis.

3-301. *Human Health and Environmental Research and Analysis.*

(a) Environmental human health research, whenever practicable and appropriate, shall include diverse segments of the population in epidemiological and clinical studies, including segments at high risk from environmental hazards, such as minority populations, low-income populations and workers who may be exposed to substantial environmental hazards.

(b) Environmental human health analyses, whenever practicable and appropriate, shall identify multiple and cumulative exposures.

(c) Federal agencies shall provide minority populations and low-income populations the opportunity to comment on the development and design of research strategies undertaken pursuant to this order.

3-302. *Human Health and Environmental Data Collection and Analysis*.

To the extent permitted by existing law, including the Privacy Act, as amended { U.S.C. section 552a}

(a) Each Federal agency, whenever practicable and appropriate, shall collect, maintain, and analyze information assessing and comparing environmental and human health risks borne by populations identified by race, national origin, or income. To the extent practicable and appropriate, Federal agencies shall use this information to determine whether their programs, policies, and activities have disproportionately high and adverse human health or environmental effects on minority populations and low-income populations.

(b) In connection with the development and implementation of agency strategies in section 1-103 of this order, each Federal agency, whenever practicable and appropriate, shall collect, maintain and analyze information on the race, national origin, income level, and other readily accessible and appropriate information for areas surrounding facilities or sites expected to have a substantial environmental, human health, or economic effect on the surrounding populations, when such facilities or sites become the subject of a substantial Federal environmental administrative or judicial action. Such information shall be made available to the public, unless prohibited by law: and

(c) Each Federal agency, whenever practicable and appropriate, shall collect, maintain, and analyze information on the race, national origin, income level, and other readily accessible and appropriate information for areas surrounding Federal facilities that are: (1) subject to the reporting requirements under the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. section 11001-11050 as mandated in Executive Order No. 12856; and (2) expected to have a substantial environmental, human health, or economic effect on surrounding populations.

(d) In carrying out the responsibilities in this section, each Federal agency, whenever practicable and appropriate, shall share information and eliminate unnecessary duplication of efforts through the use of existing data systems and cooperative agreements among Federal agencies and with States, local, and tribal governments.

Section 4-4. Subsistence Consumption of Fish and Wildlife.

4-401. *Consumption Patterns.* In order to assist in identifying the need for ensuring protection of populations with differential patterns of subsistence consumption of fish and wildlife, Federal agencies, whenever practicable and appropriate, shall collect, maintain, and analyze information on the consumption patterns of populations who principally rely on fish and/or wildlife for subsistence. Federal agencies shall communicate to the public the risk of those consumption patterns.

4-402. *Guidance*. Federal agencies, whenever practicable and appropriate, shall work in a coordinated manner to publish guidance reflecting the latest scientific information available concerning methods for evaluating the human health risks associated with the consumption of pollutant-bearing fish or wildlife. Agencies shall consider such guidance in developing their policies and rules.

Section 5-5. Public Participation and Access to Information.

(a) The public may submit recommendations to Federal agencies relating to the incorporation of environmental justice principles into Federal agency programs or policies. Each Federal agency shall convey such recommendations to the Working Group.

(b) Each Federal agency may, whenever practicable and appropriate, translate crucial public documents, notices and hearings relating to human health or the environment for limited English-speaking populations.

(c) Each Federal agency shall work to ensure that public documents, notices, and hearings relating to human health or the environment are concise, understandable, and readily accessible to the public.

(d) The Working Group shall hold public meetings, as appropriate, for the purpose of fact-finding, receiving public comments, and conducting inquiries concerning environmental justice. The Working Group shall prepare for public review a summary of the contents and recommendations discussed at the public meetings.

Section 6-6. General Provisions.

6-601. *Responsibility for Agency Implementation.* The head of each Federal agency shall be responsible for ensuring compliance with this order. Each Federal agency shall conduct internal reviews and take such other steps as may be necessary to monitor compliance with this order.

6-602. *Executive Order No. 12250*. This Executive Order is intended to supplement but not supersede Executive Order No. 12250, which requires consistent and effective implementation of various laws prohibiting discriminatory practices in programs receiving Federal financial assistance. Nothing herein shall limit the effect or mandate of Executive Order No. 12250.

6-603. *Executive Order No. 12875*. This Executive Order is not intended to limit the effect or mandate of Executive Order No. 12875.

6-604. *Scope*. For the purposes of this order, Federal agency means any agency on the Working Group, and such other agencies as may be designated by the President, that conducts any Federal program or activity that substantially effects human health or the environment. Independent agencies are requested to comply with the provisions of this order.

6-605. *Petitions for Exemptions*. The head of a Federal agency may petition the President for an exemption from the requirements of this order on the grounds that all or some of the petitioning agency's programs or activities should not be subject to the requirements of this order.

6-606. *Native American Programs*. Each Federal agency responsibility set forth under this order shall apply equally to Native American programs. In addition, the Department of the Interior, in coordination with the Working Group, and after consultation with tribal leaders, shall coordinate steps to be taken pursuant to this order that address Federally-recognized Indian tribes.

6-607. *Costs*. Unless otherwise provided by law, Federal agencies shall assume the financial costs of complying with this order.

6-608. *General*. Federal agencies shall implement this order consistent with, and to the extent permitted by, existing law.

6-609. *Judicial Review*. This order is intended only to improve the internal management of the executive branch and is not intended to, nor does it create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any person. This order shall not be construed to create any right to judicial review involving the compliance or noncompliance of the United States, its agencies, its officers, or any other person with this order.

/signed by/
WILLIAM J. CLINTON

THE WHITE HOUSE
February 11, 1994.

Executive Order 13166 of August 11, 2000

Improving Access to Services for Persons With Limited English Proficiency

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to improve access to federally-conducted and federally-assisted programs and activities for persons who, as a result of national origin, are limited in their English proficiency (LEP), it is hereby ordered as follows:

Section 1. *Goals.*

The Federal Government provides and funds an array of services that can be made accessible to otherwise eligible persons who are not proficient in the English language. The Federal Government is committed to improving the accessibility of these services to eligible LEP persons, a goal that reinforces its equally important commitment to promoting programs and activities designed to help individuals learn English. To this end, each Federal agency shall examine the services it provides and develop and implement a system by which LEP persons can meaningfully access those services consistent with, and without unduly burdening, the fundamental mission of the agency. Each Federal agency shall also work to ensure that recipients of Federal financial assistance (recipients) provide meaningful access to their LEP applicants and beneficiaries. To assist the agencies with this endeavor, the Department of Justice has today issued a general guidance document (LEP Guidance), which sets forth the compliance standards that recipients must follow to ensure that the programs and activities they normally provide in English are accessible to LEP persons and thus do not discriminate on the basis of national origin in violation of title VI of the Civil Rights Act of 1964, as amended, and its implementing regulations. As described in the LEP Guidance, recipients must take reasonable steps to ensure meaningful access to their programs and activities by LEP persons.

Sec. 2. *Federally-Conducted Programs and Activities.*

Each Federal agency shall prepare a plan to improve access to its Federally- conducted programs and activities by eligible LEP persons. Each plan shall be consistent with the standards set forth in the LEP Guidance, and shall include the steps the agency will take to ensure that eligible LEP persons can meaningfully access the agency's programs and activities. Agencies shall develop and begin to implement these plans within 120 days of the date of this order, and shall send copies of their plans to the Department of Justice, which shall serve as the central repository of the agencies' plans.

Sec. 3. *Federally-Assisted Programs and Activities.*

Each agency providing Federal financial assistance shall draft title VI guidance specifically tailored to its recipients that is consistent with the LEP Guidance issued by the Department of Justice. This agency-specific guidance shall detail how the general standards established in the LEP Guidance will be applied to the agency's recipients. The agency-specific guidance shall take into account the types of services provided by the recipients, the individuals served by the recipients, and other factors set out in the LEP Guidance. Agencies that already have developed Title VI guidance that the Department of Justice determines is consistent with the LEP Guidance shall examine their existing guidance, as well as their programs and activities, to determine if additional guidance is necessary to comply with this order. The Department of Justice shall consult with the agencies in creating their guidance and, within 120 days of the date of this order, each agency shall submit its specific guidance to the Department of Justice for review and approval. Following approval by the Department of Justice, each agency shall publish its guidance document in the **Federal Register** for public comment.

Sec. 4. *Consultations.*

In carrying out this order, agencies shall ensure that stakeholders, such as LEP persons and their representative organizations, recipients, and other appropriate individuals or entities, have an adequate opportunity to provide input. Agencies will evaluate the particular needs of the LEP persons they and their recipients serve and the burdens of compliance on the agency and its recipients. This input from stakeholders will assist the agencies in developing an approach to ensuring meaningful access by LEP persons that is practical and effective, fiscally responsible, responsive to the particular circumstances of each agency, and can be readily implemented.

Sec. 5. *Judicial Review.*

This order is intended only to improve the internal management of the executive branch and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers or employees, or any person.

/signed by/
William J. Clinton

THE WHITE HOUSE,
August 11, 2000.

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.

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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 has 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 nondiscrimination 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 noncompliance 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 there-

under 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 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.
vi. 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 reasonable 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 --

I. 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.
II. 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.
III. 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.

US DEPARTMENT OF JUSTICE LEP GUIDANCE

Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons

SUMMARY: The Department of Justice (DOJ) adopts final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (DOJ Recipient LEP Guidance). The DOJ Recipient LEP Guidance is issued pursuant to Executive Order 13166, and supplants existing guidance on the same subject originally published at 66 FR 3834 (January 16, 2001).

DATES: Effective June 12, 2002.

FOR FURTHER INFORMATION CONTACT:

Merrily A. Friedlander
Chief, Coordination and Review Section
Civil Rights Division
950 Pennsylvania Avenue, NW–NYA
Washington, DC 20530
Telephone 202–307–2222
TDD: 202–307–2678.

SUPPLEMENTARY INFORMATION: Under DOJ regulations implementing Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, *et seq.* (Title VI), recipients of Federal financial assistance have a responsibility to ensure meaningful access to their programs and activities by persons with limited English proficiency (LEP). *See* 28 CFR 42.104(b)(2). Executive Order 13166, reprinted at 65 FR 50121 (August 16, 2000), directs each Federal agency that extends assistance subject to the requirements of Title VI to publish guidance for its respective recipients clarifying that obligation. Executive Order 13166 further directs that all such guidance documents be consistent with the compliance standards and framework detailed in DOJ Policy Guidance entitled ''Enforcement of Title VI of the Civil Rights Act of 1964— National Origin Discrimination Against Persons with Limited English Proficiency.'' *See* 65 FR 50123 (August 16, 2000).

Initial guidance on DOJ recipients' obligations to take reasonable steps to ensure access by LEP persons was published on January 16, 2001. *See* 66 FR 3834. That guidance document was republished for additional public comment on January 18, 2002. *See* 67 FR 2671. Based on public comments filed in response to the January 18, 2002 republication, DOJ published revised draft guidance for public comment on April 18, 2002. *See* 67 FR 19237.

DOJ received 24 comments in response to its April 18, 2002 publication of revised draft guidance on DOJ recipients' obligations to take reasonable steps to ensure access to programs and activities by LEP persons. The comments reflected the views of individuals, organizations serving LEP populations, organizations favoring the use of the English language, language assistance service providers, and state agencies. While many comments identified areas for improvement and/or revision, the overall response to the draft DOJ Recipient LEP Guidance was favorable. Taken together, a majority of the comments described the draft guidance as incorporating ''reasonable standards'' or ''helpful provisions'' providing ''useful suggestions instead of mandatory requirements'' reflecting ''common sense'' and a ''more measured tone'' over prior LEP guidance documents.

Two of the comments urged withdrawal of the draft guidance as unsupported by law. In response, the

Department notes here as it did in the draft Recipient LEP Guidance published on April 18, 2002 that the Department's commitment to implement Title VI through regulations reaching language barriers is long-standing and is unaffected by recent judicial action precluding *individuals* from bringing judicial actions seeking to enforce those agency regulations. See 67 FR at 19238 – 19239. This particular policy guidance clarifies existing statutory and regulatory requirements for LEP persons by providing a description of the factors recipients should consider in fulfilling their responsibilities to LEP persons.

Of the remaining 22 comments, three supported adoption of the draft guidance as published, and 19, while supportive of the guidance and the Department's leadership in this area, suggested modifications which would, in their view, either (1) clarify the application of the flexible compliance standard incorporated by the draft guidance to particular areas or situations, or (2) provide a more definitive statement of the minimal compliance standards in this area. Several areas were raised in more than one comment. In the order most often raised, those common areas of comment were (1) recipient language assistance plans, (2) use of informal interpreters, (3) written translation safe harbors, and (4) cost considerations. The comments in each of these areas are summarized and discussed below.

Recipient Language Assistance Plans.

A large number of comments recommended that written language assistance plans (LEP Plans) be required of all recipients. The Department is cognizant of the value of written LEP plans in documenting a recipient's compliance with its obligation to ensure meaningful access by LEP persons, and in providing a framework for the provision of reasonable and necessary language assistance to LEP persons. The Department is also aware of the related training, operational, and planning benefits most recipients would derive from the generation and maintenance of an updated written language assistance plan for use by its employees. In the large majority of cases, the benefits flowing from a written language assistance plan has caused or will likely cause recipients to develop, with varying degrees of detail, such written plans. Even small recipients with limited contact with LEP persons would likely benefit from having a plan in place to assure that, when the need arises, staff have a written plan to turn to - even if it is only how to access a telephonic or community-based interpretation service - when determining what language services to provide and how to provide them.

However, the fact that the vast majority of the Department's recipients already have or will likely develop a written LEP plan to reap its many benefits does not necessarily mean that every recipient, however small its staff, limited its resources, or focused its services, will realize the same benefits and thus must follow an identical path. Without clear evidence suggesting that the absence of written plans for every single recipient is impeding accomplishment of the goal of meaningful access, the Department elects at this juncture to strongly recommend but not require written language assistance plans. The Department stresses in this regard that neither the absence of a requirement of written LEP plans in all cases nor the election by an individual recipient against drafting a plan obviates the underlying obligation on the part of each recipient to provide, consistent with Title VI, the Title VI regulations, and the DOJ Recipient LEP Guidance, reasonable, timely, and appropriate language assistance to the LEP populations each serves.

While the Department continues to believe that the Recipient LEP Guidance strikes the correct balance between recommendations and requirements in this area, the department has revised the introductory paragraph of Section VII of the Recipient LEP Guidance to acknowledge a recipient's discretion in drafting a written LEP plan yet to emphasize the many benefits that weigh in favor of such a written plan in the vast majority of cases.

Informal Interpreters. As in the case of written LEP plans, a large number of the comments urged the incorporation of more definitive language strongly discouraging or severely limiting the use of informal interpreters such as family members, guardians, caretakers, friends, or fellow inmates or detainees. Some recommended that the draft guidance be revised to prohibit the use of informal interpreters except in limited or emergency situations. A common sub-theme running through many of these comments was a concern regarding the technical and ethical competency of such interpreters to ensure meaningful and appropriate access at the level and of the type contemplated under the DOJ Recipient LEP Guidance.[1]

As in the case of written LEP plans, the Department believes that the DOJ Recipient LEP Guidance provides

sufficient guidance to allow recipients to strike the proper balance between the many situations where the use of informal interpreters is inappropriate, and the few situations where the transitory and/or limited use of informal interpreters is necessary and appropriate in light of the nature of a service or benefit being provided and the factual context in which that service or benefit is being provided. Nonetheless, the Department concludes that the potential for the inappropriate use of informal interpreters or, conversely, its unnecessary avoidance, can be minimized through additional clarifications in the DOJ Recipient LEP Guidance. Towards that end, the subsection titled ''Use of Family Members, Friends, Other Inmates, or Other Detainees as Interpreters' of Section VI.A. of the DOJ Recipient LEP Guidance has been revised to include guardians and caretakers among the potential class of informal interpreters, to note that beneficiaries who elect to provide their own informal interpreter do so at their own expense, to clarify that reliance on informal interpreters should not be part of any recipient LEP plan, and to expand the discussion of the special considerations that should guide a recipient's limited reliance on informal interpreters.

Safe Harbors. Several comments focused on safe harbor and vital documents provisions of the written translations section of the DOJ Recipient LEP Guidance.[2] A few comments observed that the safe harbor standard set out in the Recipient LEP Guidance was too high, potentially permitting recipients to avoid translating several critical types of vital documents (*e.g.,* notices of denials of benefits or rights, leases, rules of conduct, *etc.*). In contrast, another comment pointed to this same standard as support for the position that the safe harbor provision was too low, potentially requiring a large recipient to incur extraordinary fiscal burdens to translate all documents associated with the program or activity.

The decision as to what program related documents should be translated into languages other than English is a difficult one. While documents generated by a recipient may be helpful in understanding a program or activity, not all are critical or vital to ensuring meaningful access by beneficiaries generally and LEP persons specifically. Some documents may create or define legally enforceable rights or responsibilities on the part of individual beneficiaries (*e.g.,* leases, rules of conduct, notices of benefit denials, *etc.*). Others, such as application or certification forms, solicit important information required to establish or maintain eligibility to participate in a Federally--assisted program or activity. And for some programs or activities, written documents may be the core benefit or service provided by the program or activity. Moreover, some programs or activities may be specifically focused on providing benefits or services to significant LEP populations. Finally, a recipient may elect to solicit vital information orally as a substitute for written documents. For example, many state unemployment insurance programs are transitioning away from paper-based application and certification forms in favor of telephone based systems.

Also, certain languages (*e.g.,* Hmong) are oral rather than written, and thus a high percentage of such LEP speakers will likely be unable to read translated documents or written instructions since it is only recently that such languages have been converted to a written form. Each of these factors should play a role in deciding what documents should be translated, what target languages other than English are appropriate, or even whether more effective alternatives to a continued reliance on written documents to obtain or process vital information exist.

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[1] A few comments urged the Department to incorporate language detailing particular interpretation standards or approaches. The Department declines to set, as part of the DOJ Recipient LEP Guidance, professional or technical standards for interpretation applicable to all recipients in every community and in all situations. General guidelines for translator and interpreter competency are already set forth in the guidance. Technical and professional standards and necessary vocabulary and skills for court interpreters and interpreters in custodial interrogations, for instance, would be different from those for emergency service interpreters, or, in turn, those for interpreters in educational programs for correctional facilities. Thus, recipients, beneficiaries, and associations of professional interpreters and translators should collaborate in identifying the applicable professional and technical interpretation standards that are appropriate for particular situations

[2] One comment pointed out that current demographic information based on the 2000 Census or other data was not readily available to assist recipients in identifying the number or proportion of LEP persons and the significant language groups among their otherwise eligible beneficiaries. The Department is aware of this potential difficulty and is, among other things, working with the Census Bureau, among other entities, to increase the availability of such demographic data.

As has been emphasized elsewhere, the Recipient LEP Guidance is not intended to provide a definitive answer

governing the translation of written documents for all recipients applicable in all cases. Rather, in drafting the safe harbor and vital documents provisions of the Recipient LEP Guidance, the Department sought to provide one, but not necessarily the only, point of reference for when a recipient should consider translations of documents (or the implementation of alternatives to such documents) in light of its particular program or activity, the document or information in question, and the potential LEP populations served. In furtherance of this purpose, the safe harbor and vital document provisions of the Recipient LEP Guidance have been revised to clarify the elements of the flexible translation standard, and to acknowledge that distinctions can and should be made between frequently-encountered and less commonly-encountered languages when identifying languages for translation.

Costs Considerations. A number of comments focused on cost considerations as an element of the Department's flexible four-factor analysis for identifying and addressing the language assistance needs of LEP persons. While none urged that costs be excluded, some comments expressed concern that a recipient could use cost as a basis for avoiding otherwise reasonable and necessary language assistance to LEP persons. In contrast, a few comments suggested that the flexible fact-dependent compliance standard incorporated by the DOJ Recipient LEP Guidance, when combined with the desire of most recipients to avoid the risk of noncompliance, could lead some large, state-wide recipients to incur unnecessary or inappropriate fiscal burdens in the face of already strained program budgets. The Department is mindful that cost considerations could be inappropriately used to avoid providing otherwise reasonable and necessary language assistance. Similarly, cost considerations could be inappropriately ignored or minimized to justify the provision of a particular level or type of language service where less costly equally effective alternatives exist. The Department also does not dismiss the possibility that the identified need for language services might be quite costly for certain types of recipients in certain communities, particularly if they have not been keeping up with the changing needs of the populations they serve over time.

The potential for possible abuse of cost considerations by some does not, in the Department's view, justify its elimination as a factor in all cases when determining the appropriate ''mix'' of reasonable language assistance services determined necessary under the DOJ Recipient LEP Guidance to ensure meaningful access by LEP persons to Federally- assisted programs and activities. The Department continues to believe that costs are a legitimate consideration in identifying the reasonableness of particular language assistance measures, and that the DOJ Recipient LEP Guidance identifies the appropriate framework through which costs are to be considered.

In addition to the four larger concerns noted above, the Department has substituted, where appropriate, technical or stylistic changes that more clearly articulate, in the Department's view, the underlying principle, guideline, or recommendation detailed in the Guidance. In addition, the Guidance has been modified to expand the definition of ''courts'' to include administrative adjudications conducted by a recipient; to acknowledge that English language instruction is an important adjunct to (but not substitute for) the obligation to ensure access to federally-assisted programs and activities by all eligible persons; and to clarify the Guidance's application to activities undertaken by a recipient either voluntarily or under contract in support of a Federal agency's functions.

After appropriate revision based on a careful consideration of the comments, with particular focus on the common concerns summarized above, the Department adopts final ''Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons.'' The text of this final guidance document appears below.

It has been determined that this Guidance, which supplants existing Guidance on the same subject previously published at 66 FR 3834 (January 16, 2001), does not constitute a regulation subject to the rulemaking requirements of the Administrative Procedure Act, 5 U.S.C. 553.
Dated: June 12, 2002.

R. Alexander Acosta,
Principal Deputy Assistant Attorney General,
Civil Rights Division.

I. Introduction

Most individuals living in the United States read, write, speak and understand English. There are many individuals, however, for whom English is not their primary language. For instance, based on the 2000 census, over 26 million individuals speak Spanish and almost 7 million individuals speak an Asian or Pacific Island language at home. If these individuals have a limited ability to read, write, speak, or understand English, they are limited English proficient, or ''LEP.'' While detailed data from the 2000 census has not yet been released, 26% of all Spanish-speakers, 29.9% of all Chinese-speakers, and 28.2% of all Vietnamese-speakers reported that they spoke English ''not well'' or ''not at all'' in response to the 1990 census.

Language for LEP individuals can be a barrier to accessing important benefits or services, understanding and exercising important rights, complying with applicable responsibilities, or understanding other information provided by Federally- funded programs and activities. The Federal Government funds an array of services that can be made accessible to otherwise eligible LEP persons. The Federal Government is committed to improving the accessibility of these programs and activities to eligible LEP persons, a goal that reinforces its equally important commitment to promoting programs and activities designed to help individuals learn English. Recipients should not overlook the long-term positive impacts of incorporating or offering English as a Second Language (ESL) programs in parallel with language assistance services. ESL courses can serve as an important adjunct to a proper LEP plan. However, the fact that ESL classes are made available does not obviate the statutory and regulatory requirement to provide meaningful access for those who are not yet English proficient. Recipients of Federal financial assistance have an obligation to reduce language barriers that can preclude meaningful access by LEP persons to important government services.[1]

In certain circumstances, failure to ensure that LEP persons can effectively participate in or benefit from Federally- assisted programs and activities may violate the prohibition under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d and Title VI regulations against national origin discrimination. The purpose of this policy guidance is to assist recipients in fulfilling their responsibilities to provide meaningful access to LEP persons under existing law. This policy guidance clarifies existing legal requirements for LEP persons by providing a description of the factors recipients should consider in fulfilling their responsibilities to LEP persons.[2] These are the same criteria DOJ will use in evaluating whether recipients are in compliance with Title VI and Title VI regulations.

[1] DOJ recognizes that many recipients had language assistance programs in place prior to the issuance of Executive Order 13166. This policy guidance provides a uniform framework for a recipient to integrate, formalize, and assess the continued vitality of these existing and possibly additional reasonable efforts based on the nature of its program or activity, the current needs of the LEP populations it encounters, and its prior experience in providing language services in the community it serves.

[2] The policy guidance is not a regulation but rather a guide. Title VI and its implementing regulations require that recipients take responsible steps to ensure meaningful access by LEP persons. This guidance provides an analytical framework that recipients may use to determine how best to comply with statutory and regulatory obligations to provide meaningful access to the benefits, services, information, and other important portions of their programs and activities for individuals who are limited English proficient.

The Department of Justice's role under Executive Order 13166 is unique. The Order charges DOJ with responsibility for providing LEP Guidance to other Federal agencies and for ensuring consistency among each agency-specific guidance. Consistency among Departments of the Federal government is particularly important. Inconsistency or contradictory guidance could confuse recipients of Federal funds and needlessly increase costs without rendering the meaningful access for LEP persons that this Guidance is designed to address. As with most government initiatives, this requires balancing several principles. While this Guidance discusses that balance in some detail, it is important to note the basic principles behind that balance. First, we must ensure that federally-assisted programs aimed at the American public do not leave some behind simply because they face challenges communicating in English. This is of particular importance because, in many cases, LEP individuals form a substantial portion of those encountered in federally-assisted programs. Second, we must achieve this goal while finding constructive methods to reduce the costs of LEP requirements on small businesses, small local governments, or small non-profits that receive Federal financial assistance.

There are many productive steps that the Federal government, either collectively or as individual grant agencies, can take to help recipients reduce the costs of language services without sacrificing meaningful access for LEP persons. Without these steps, certain smaller grantees may well choose not to participate in federally-assisted programs, threatening the critical functions that the programs strive to provide. To that end, the Department plans to continue to provide assistance and guidance in this important area. In addition, DOJ plans to work with representatives of law enforcement, corrections, courts, administrative agencies, and LEP persons to identify and share model plans, examples of best practices, and cost-saving approaches. Moreover, DOJ intends to explore how language assistance measures, resources and cost containment approaches developed with respect to its own federally-conducted programs and activities can be effectively shared or otherwise made available to recipients, particularly small businesses, small local governments, and small non-profits. An interagency working group on LEP has developed a Web site, *www.lep.gov,* to assist in disseminating this information to recipients, Federal agencies, and the communities being served.

Many commentators have noted that some have interpreted the case of *Alexander* v. *Sandoval,* 532 U.S. 275 (2001), as impliedly striking down the regulations promulgated under Title VI that form the basis for the part of Executive Order 13166 that applies to federally-assisted programs and activities. We have taken the position that this is not the case, and will continue to do so. Accordingly, we will strive to ensure that federally-assisted programs and activities work in a way that is effective for all eligible beneficiaries, including those with limited English proficiency.

II. Legal Authority

Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, provides that no person 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.'' Section 602 authorizes and directs Federal agencies that are empowered to extend Federal financial assistance to any program or activity ''to effectuate the provisions of [section 601] * * * by issuing rules, regulations, or orders of general applicability.'' 42 U.S.C. 2000d–1.

Department of Justice regulations promulgated pursuant to section 602 forbid recipients from ''utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals 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 as respects individuals of a particular race, color, or national origin.''
28 CFR 42.104(b)(2).

The Supreme Court, in *Lau* v. *Nichols,* 414 U.S. 563 (1974), interpreted regulations promulgated by the former Department of Health, Education, and Welfare, including a regulation similar to that of DOJ, 45 CFR 80.3(b)(2), to hold that Title VI prohibits conduct that has a disproportionate effect on LEP persons because such conduct constitutes national-origin discrimination. In *Lau,* a San Francisco school district that had a significant number of non-English speaking students of Chinese origin was required to take reasonable steps to provide them with a meaningful opportunity to participate in federally-funded educational programs.

On August 11, 2000, Executive Order 13166 was issued. ''Improving Access to Services for Persons with Limited English Proficiency,'' 65 FR 50121 (August 16, 2000). Under that order, every Federal agency that provides financial assistance to non-Federal entities must publish guidance on how their recipients can provide meaningful access to LEP persons and thus comply with Title VI regulations forbidding funding recipients from ''restrict[ing] an individual 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'' or from ''utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals 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 as respects individuals of a particular race, color, or national origin.''

On that same day, DOJ issued a general guidance document addressed to ''Executive Agency Civil Rights Officers'' setting forth general principles for agencies to apply in developing guidance documents for recipients pursuant to the Executive Order. ''Enforcement of Title VI of the Civil Rights Act of 1964 National Origin Discrimination Against Persons With Limited English Proficiency,'' 65 FR 50123 (August 16, 2000) (''DOJ LEP Guidance'').

Subsequently, Federal agencies raised questions regarding the requirements of the Executive Order, especially in light of the Supreme Court's decision in *Alexander* v. *Sandoval,* 532 U.S. 275 (2001). On October 26, 2001, Ralph F. Boyd, Jr., Assistant Attorney General for the Civil Rights Division, issued a memorandum for ''Heads of Departments and Agencies, General Counsels and Civil Rights Directors.'' This memorandum clarified and reaffirmed the DOJ LEP Guidance in light of *Sandoval.*[3] The Assistant Attorney General stated that because *Sandoval* did not invalidate any Title VI regulations that proscribe conduct that has a disparate impact on covered groups—the types of regulations that form the legal basis for the part of Executive Order 13166 that applies to Federally- assisted programs and activities—the Executive Order remains in force.

Pursuant to Executive Order 13166, DOJ developed its own guidance document for recipients and initially issued it on January 16, 2001. ''Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons,'' 66 FR 3834 (January 16, 2001) (''LEP Guidance for DOJ Recipients''). Because DOJ did not receive significant public comment on its January 16, 2001 publication, the Department republished on January 18, 2002 its existing guidance document for additional public comment. ''Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons,'' 67 FR 2671 (January 18, 2002). The Department has since received substantial public comment.

This guidance document is thus published pursuant to Executive Order 13166 and supplants the January 16, 2001 publication in light of the public comment received and Assistant Attorney General Boyd's October 26, 2001 clarifying memorandum.

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[3] The memorandum noted that some commentators have interpreted Sandoval as impliedly striking down the disparate-impact regulations promulgated under Title VI that form the basis for the part of Executive Order 13166 that applies to Federally- assisted programs and activities. See, e.g., Sandoval, 532 U.S. at 286, 286 n.6 (``[W]e assume for purposes of this decision that section 602 confers the authority to promulgate disparate-impact regulations; * * * We cannot help observing, however, how strange it is to say that disparate-impact regulations are `inspired by, at the service of, and inseparably intertwined with ' Sec. 601 * * * when Sec. 601 permits the very behavior that the regulations forbid."). The memorandum, however, made clear that DOJ disagreed with the commentators' interpretation. Sandoval holds principally that there is no private right of action to enforce Title VI disparate-impact regulations. It did not address the validity of those regulations or Executive Order 13166 or otherwise limit the authority and responsibility of Federal grant agencies to enforce their own implementing regulations.

III. Who Is Covered?

Department of Justice regulations, 28 CFR 42.104(b)(2), require all recipients of Federal financial assistance from DOJ to provide meaningful access to LEP persons.[4] Federal financial assistance includes grants, training, use of equipment, donations of surplus property, and other assistance. Recipients of DOJ assistance include, for example:

- Police and sheriffs' departments
- Departments of corrections, jails, and detention facilities, including those recipients that house detainees of the Immigration and Naturalization Service
- Courts[5]
- Certain non profit agencies with law enforcement, public safety, and victim assistance missions;
- Other entities with public safety and emergency service missions.

Sub-recipients likewise are covered when Federal funds are passed through from one recipient to a sub-recipient.

Coverage extends to a recipient's entire program or activity, *i.e.,* to all parts of a recipient's operations. This is true even if only one part of the recipient receives the Federal assistance.[6]

Example: DOJ provides assistance to a state department of corrections to improve a particular prison facility. All of the operations of the entire state department of corrections—not just the particular prison—are covered.

Finally, some recipients operate in jurisdictions in which English has been declared the official language. Nonetheless, these recipients continue to be subject to Federal nondiscrimination requirements, including those applicable to the provision of federally-assisted services to persons with limited English proficiency.

IV. Who Is a Limited English Proficient Individual?

Individuals who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English can be limited English proficient, or ''LEP,'' entitled to language assistance with respect to a particular type of service, benefit, or encounter.

Examples of populations likely to include LEP persons who are encountered and/or served by DOJ recipients and should be considered when planning language services include, but are not limited to:

- Persons who are in the custody of the recipient, including juveniles, detainees, wards, and inmates.
- Persons subject to or serviced by law enforcement activities, including, for example, suspects, violators, witnesses, victims, those subject to immigration-related investigations by recipient law enforcement agencies, and community members seeking to participate in crime prevention or awareness activities.
- Persons who encounter the court system.
- Parents and family members of the above.

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[4] Pursuant to Executive Order 13166, the meaningful access requirement of the Title VI regulations and the four-factor analyses set forth in the DOJ LEP Guidance are to additionally apply to the programs and activities of Federal agencies, including the Department of Justice.

[5] As used in this guidance, the word "court" or "courts" includes administrative adjudicatory systems or administrative hearings administered or conducted by a recipient.

[6] However, is a Federal agency were to decide to terminate Federal funds based on noncompliance with Title VI or its regulations, only funds directed to the particular program or activity that is out of compliance would be terminated. 42 U.S.C. 2000d-1.

V. How Does a Recipient Determine the Extent of Its Obligation To Provide LEP Services?

Recipients are required to take reasonable steps to ensure meaningful access to their programs and activities by LEP persons. While designed to be a flexible and fact-dependent standard, the starting point is an individualized assessment that balances the following four factors: (1) The number or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee; (2) the frequency with which LEP individuals come in contact with the program; (3) the nature and importance of the program, activity, or service provided by the program to people's lives; and (4) the resources available to the grantee/recipient and costs. As indicated above, the intent of this guidance is to suggest a balance that ensures meaningful access by LEP persons to critical services while not imposing undue burdens on small business, small local governments, or small nonprofits.

After applying the above four-factor analysis, a recipient may conclude that different language assistance measures are sufficient for the different types of programs or activities in which it engages. For instance, some of a recipient's activities will be more important than others and/or have greater impact on or contact with LEP persons, and thus may require more in the way of language assistance. The flexibility that recipients have in addressing the needs of the LEP populations they serve does not diminish, and should not be used to minimize, the obligation that those needs be addressed. DOJ recipients should apply the following four factors to the various kinds of contacts that they have with the public to assess language needs and decide what reasonable steps they should take to ensure meaningful access for LEP persons.

(1) The Number or Proportion of LEP Persons Served or Encountered in the Eligible Service Population

One factor in determining what language services recipients should provide is the number or proportion of LEP persons from a particular language group served or encountered in the eligible service population. The greater the number or proportion of these LEP persons, the more likely language services are needed. Ordinarily, persons ''eligible to be served, or likely to be directly affected, by'' a recipient's program or activity are those who are served or encountered in the eligible service population. This population will be program-specific, and includes persons who are in the geographic area that has been approved by a Federal grant agency as the recipient's service area. However, where, for instance, a precinct serves a large LEP population, the appropriate service area is most likely the precinct, and not the entire population served by the department. Where no service area has previously been approved, the relevant service area may be that which is approved by state or local authorities or designated by the recipient itself, provided that these designations do not themselves discriminatorily exclude certain populations. Appendix A provides examples to assist in determining the relevant service area. When considering the number or proportion of LEP individuals in a service area, recipients should consider LEP parent(s) when their English-proficient or LEP minor children and dependents encounter the legal system.

Recipients should first examine their prior experiences with LEP encounters and determine the breadth and scope of language services that were needed. In conducting this analysis, it is important to include language minority populations that are eligible for their programs or activities but may be underserved because of existing language barriers. Other data should be consulted to refine or validate a recipient's prior experience, including the latest census data for the area served, data from school systems and from community organizations, and data from state and local governments.[7] Community agencies, school systems, religious organizations, legal aid entities, and others can often assist in identifying populations for whom outreach is needed and who would benefit from the recipients' programs and activities were language services provided.

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[7] The focus of the analysis is on lack of English proficiency, not the ability to speak more than one language. Note that demographic data may indicate the most frequently spoken languages other than English and the percentage of people who speak that language who speak or understand English less than well. Some of the most commonly spoken languages other than English may be spoken by people who are also overwhelmingly proficient in English. Thus, they may not be the languages spoken most frequently by limited English proficient individuals. When using demographic data, it is important to focus in on the languages spoken by those who are not proficient in English.

(2) The Frequency With Which LEP Individuals Come in Contact With the Program

Recipients should assess, as accurately as possible, the frequency with which they have or should have contact with an LEP individual from different language groups seeking assistance. The more frequent the contact with a particular language group, the more likely that enhanced language services in that language are needed. The steps that are reasonable for a recipient that serves an LEP person on a one-time basis will be very different than those expected from a recipient that serves LEP persons daily. It is also advisable to consider the frequency of different types of language contacts. For example, frequent contacts with Spanish-speaking people who are LEP may require certain assistance in Spanish. Less frequent contact with different language groups may suggest a different and less intensified solution. If an LEP individual accesses a program or service on a daily basis, a recipient has greater duties than if the same individual's program or activity contact is unpredictable or infrequent. But even recipients that serve LEP persons on an unpredictable or infrequent basis should use this balancing analysis to determine what to do if an LEP individual seeks services under the program in question. This plan need not be intricate. It may be as simple as being prepared to use one of the commercially-available telephonic interpretation services to obtain immediate interpreter services. In applying this standard, recipients should take care to consider whether appropriate outreach to LEP persons could increase the frequency of contact with LEP language groups.

(3) The Nature and Importance of the Program, Activity, or Service Provided by the Program

The more important the activity, information, service, or program, or the greater the possible consequences of the contact to the LEP individuals, the more likely language services are needed. The obligations to communicate rights to a person who is arrested or to provide medical services to an ill or injured inmate differ, for example, from those to provide bicycle safety courses or recreational programming. A recipient needs to determine whether denial or delay of access to services or information could have serious or even life-threatening implications for the LEP individual. Decisions by a Federal, State, or local entity to make an activity compulsory, such as particular educational programs in a correctional facility or the communication of Miranda rights, can serve as strong evidence of the program's importance.

(4) The Resources Available to the Recipient and Costs

A recipient's level of resources and the costs that would be imposed on it may have an impact on the nature of the steps it should take. Smaller recipients with more limited budgets are not expected to provide the same level of language services as larger recipients with larger budgets. In addition, ''reasonable steps'' may cease to be reasonable where the costs imposed substantially exceed the benefits.

Resource and cost issues, however, can often be reduced by technological advances; the sharing of language assistance materials and services among and between recipients, advocacy groups, and Federal grant agencies; and reasonable business practices. Where appropriate, training bilingual staff to act as interpreters and translators, information sharing through industry groups, telephonic and video conferencing interpretation services, pooling resources and standardizing documents to reduce translation needs, using qualified translators and interpreters to ensure that documents need not be ''fixed'' later and that inaccurate interpretations do not cause delay or other costs, centralizing interpreter and translator services to achieve economies of scale, or the formalized use of qualified community volunteers, for example, may help reduce costs.[8] Recipients should carefully explore the most cost-effective means of delivering competent and accurate language services before limiting services due to resource concerns. Large entities and those entities serving a significant number or proportion of LEP persons should ensure that their resource limitations are well-substantiated before using this factor as a reason to limit language assistance. Such recipients may find it useful to be able to articulate, through documentation or in some other reasonable manner, their process for determining that language services would be limited based on resources or costs

[8] Small recipients with limited resources may find that entering into a bulk telephonic interpretation service contract will prove cost effective.

This four-factor analysis necessarily implicates the ‘‘mix’’ of LEP services required. Recipients have two main ways to provide language services: Oral interpretation either in person or via telephone interpretation service (hereinafter ‘‘interpretation’’) and written translation (hereinafter ‘‘translation’’). Oral interpretation can range from on-site interpreters for critical services provided to a high volume of LEP persons to access through commercially-available telephonic interpretation services. Written translation, likewise, can range from translation of an entire document to translation of a short description of the document. In some cases, language services should be made available on an expedited basis while in others the LEP individual may be referred to another office of the recipient for language assistance.

The correct mix should be based on what is both necessary and reasonable in light of the four-factor analysis. For instance, a police department in a largely Hispanic neighborhood may need immediate oral interpreters available and should give serious consideration to hiring some bilingual staff. (Of course, many police departments have already made such arrangements.) In contrast, there may be circumstances where the importance and nature of the activity and number or proportion and frequency of contact with LEP persons may be low and the costs and resources needed to provide language services may be high—such as in the case of a voluntary general public tour of a courthouse—in which prearranged language services for the particular service may not be necessary. Regardless of the type of language service provided, quality and accuracy of those services can be critical in order to avoid serious consequences to the LEP person and to the recipient. Recipients have substantial flexibility in determining the appropriate mix.

VI. Selecting Language Assistance Services

Recipients have two main ways to provide language services: oral and written language services. Quality and accuracy of the language service is critical in order to avoid serious consequences to the LEP person and to the recipient.

A. Oral Language Services (Interpretation)

Interpretation is the act of listening to something in one language (source language) and orally translating it into another language (target language). Where interpretation is needed and is reasonable, recipients should consider some or all of the following options for providing competent interpreters in a timely manner:

Competence of Interpreters. When providing oral assistance, recipients should ensure competency of the language service provider, no matter which of the strategies outlined below are used. Competency requires more than self-identification as bilingual. Some bilingual staff and community volunteers, for instance, may be able to communicate effectively in a different language when communicating information directly in that language, but not be competent to interpret in and out of English. Likewise, they may not be able to do written translations.

Competency to interpret, however, does not necessarily mean formal certification as an interpreter, although certification is helpful. When using interpreters, recipients should ensure that they:

Demonstrate proficiency in and ability to communicate information accurately in both English and in the other language and identify and employ the appropriate mode of interpreting (*e.g.,* consecutive, simultaneous, summarization, or sight translation);

Have knowledge in both languages of any specialized terms or concepts peculiar to the entity's program or activity and of any particularized vocabulary and phraseology used by the LEP person;[9] and understand and follow confidentiality and impartiality rules to the same extent the recipient employee for whom they are interpreting and/or to the extent their position requires.

Understand and adhere to their role as interpreters without deviating into a role as counselor, legal advisor, or other roles (particularly in court, administrative hearings, or law enforcement contexts).

Some recipients, such as courts, may have additional self-imposed requirements for interpreters. Where individual rights depend on precise, complete, and accurate interpretation or translations, particularly in the contexts of courtrooms and custodial or other police interrogations, the use of certified interpreters is strongly encouraged.[10] Where such proceedings are lengthy, the interpreter will likely need breaks and team interpreting may be appropriate to ensure accuracy and to prevent errors caused by mental fatigue of interpreters.

While quality and accuracy of language services is critical, the quality and accuracy of language services is nonetheless part of the appropriate mix of LEP services required. The quality and accuracy of language services in a prison hospital emergency room, for example, must be extraordinarily high, while the quality and accuracy of language services in a bicycle safety class need not meet the same exacting standards.

Finally, when interpretation is needed and is reasonable, it should be provided in a timely manner. To be meaningfully effective, language assistance should be timely. While there is no single definition for ''timely'' applicable to all types of interactions at all times by all types of recipients, one clear guide is that the language assistance should be provided at a time and place that avoids the effective denial of the service, benefit, or right at issue or the imposition of an undue burden on or delay in important rights, benefits, or services to the LEP person. For example, when the timeliness of services is important, such as with certain activities of DOJ recipients providing law enforcement, health, and safety services, and when important legal rights are at issue, a r ecipient would likely not be providing meaningful access if it had one bilingual staffer available one day a week to provide the service. Such conduct would likely result in delays for LEP persons that would be significantly greater than those for English proficient persons. Conversely, where access to or exercise of a service, benefit, or right is not effectively precluded by a reasonable delay, language assistance can likely be delayed for a reasonable period.

Hiring Bilingual Staff. When particular languages are encountered often, hiring bilingual staff offers one of the best, and often most economical, options. Recipients can, for example, fill public contact positions, such as 911 operators, police officers, guards, or program directors, with staff who are bilingual and competent to communicate directly with LEP persons in their language. If bilingual staff are also used to interpret between English speakers and LEP persons, or to orally interpret written documents from English into another language, they should be competent in the skill of interpreting. Being bilingual does not necessarily mean that a person has the ability to interpret. In addition, there may be times when the role of the bilingual employee may conflict with the role of an interpreter (for instance, a bilingual law clerk would probably not be able to perform effectively the role of a courtroom or administrative hearing interpreter and law clerk at the same time, even if the law clerk were a qualified interpreter). Effective management strategies, including any appropriate adjustments in assignments and protocols for using bilingual staff, can ensure that bilingual staff are fully and appropriately utilized. When bilingual staff cannot meet all of the language service obligations of the recipient, the recipient should turn to other options.

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[9] Many languages have ``regionalisms,'' or differences in usage. For instance, a word that may be understood to mean something in Spanish for someone from Cuba may not be so understood by someone from Mexico. In addition, because there may be languages which do not have an appropriate direct interpretation of some courtroom or legal terms and the interpreter should be so aware and be able to provide the most appropriate interpretation. The interpreter should likely make the recipient aware of the issue and the interpreter and recipient can then work to develop a consistent and appropriate set of descriptions of these terms in that language that can be used again, when appropriate.

[10] For those languages in which no formal accreditation or certification currently exists, courts and law enforcement agencies should consider a formal process for establishing the credentials of the interpreter.

Hiring Staff Interpreters. Hiring interpreters may be most helpful where there is a frequent need for interpreting services in one or more languages. Depending on the facts, sometimes it may be necessary and reasonable to provide on-site interpreters to provide accurate and meaningful communication with an LEP person.

Contracting for Interpreters. Contract interpreters may be a cost-effective option when there is no regular need for a particular language skill. In addition to commercial and other private providers, many community-based organizations and mutual assistance associations provide interpretation services for particular languages. Contracting with and providing training regarding the recipient's programs and processes to these organizations can be a cost-effective option for providing language services to LEP persons from those language groups.

Using Telephone Interpreter Lines Telephone interpreter service lines often offer speedy interpreting assistance in many different languages. They may be particularly appropriate where the mode of communicating with an English proficient person would also be over the phone. Although telephonic interpretation services are useful in many situations, it is important to ensure that, when using such services, the interpreters used are competent to interpret any technical or legal terms specific to a particular program that may be important parts of the conversation. Nuances in language and non-verbal communication can often assist an interpreter and cannot be recognized over the phone. Video teleconferencing may sometimes help to resolve this issue where necessary. In addition, where documents are being discussed, it is important to give telephonic interpreters adequate opportunity to review the document prior to the discussion and any logistical problems should be addressed.

Using Community Volunteers. In addition to consideration of bilingual staff, staff interpreters, or contract interpreters (either in-person or by telephone) as options to ensure meaningful access by LEP persons, use of recipient-coordinated community volunteers, working with, for instance, community-based organizations may provide a cost-effective supplemental language assistance strategy under appropriate circumstances. They may be particularly useful in providing language access for a recipient's less critical programs and activities. To the extent the recipient relies on community volunteers, it is often best to use volunteers who are trained in the information or services of the program and can communicate directly with LEP persons in their language. Just as with all interpreters, community volunteers used to interpret between English speakers and LEP persons, or to orally translate documents, should be competent in the skill of interpreting and knowledgeable about applicable confidentiality and impartiality rules. Recipients should consider formal arrangements with community-based organizations that provide volunteers to address these concerns and to help ensure that services are available more regularly.

Use of Family Members, Friends, Other Inmates, or Other Detainees as Interpreters. Although recipients should not plan to rely on an LEP person's family members, friends, or other informal interpreters to provide meaningful access to important programs and activities, where LEP persons so desire, they should be permitted to use, at their own expense, an interpreter of their own choosing (whether a professional interpreter, family member, friend, other inmate, other detainee) in place of or as a supplement to the free language services expressly offered by the recipient. LEP persons may feel more comfortable when a trusted family member, friend, or other inmate acts as an interpreter. In addition, in exigent circumstances that are not reasonably foreseeable, temporary use of interpreters not provided by the recipient may be necessary. However, with proper planning and implementation, recipients should be able to avoid most such situations.

Recipients, however, should take special care to ensure that family, legal guardians, caretakers, and other informal interpreters are appropriate in light of the circumstances and subject matter of the program, service or activity, including protection of the recipient's own administrative or enforcement interest in accurate interpretation. In many circumstances, family members (especially children), friends, other inmates or other detainees are not competent to provide quality and accurate interpretations. Issues of confidentiality, privacy, or conflict of interest may also arise. LEP individuals may feel uncomfortable revealing or describing sensitive, confidential, or potentially embarrassing medical, law enforcement (*e.g.,* sexual or violent assaults), family, or financial

information to a family member, friend, or member of the local community.[11] In addition, such informal interpreters may have a personal connection to the LEP person or an undisclosed conflict of interest, such as the desire to protect themselves or another perpetrator in a domestic violence or other criminal matter. For these reasons, when oral language services are necessary, recipients should generally offer competent interpreter services free of cost to the LEP person. For DOJ recipient programs and activities, this is particularly true in a courtroom, administrative hearing, pre- and post-trial proceedings, situations in which health, safety, or access to important benefits and services are at stake, or when credibility and accuracy are important to protect an individual's rights and access to important services.

An example of such a case is when police officers respond to a domestic violence call. In such a case, use of family members or neighbors to interpret for the alleged victim, perpetrator, or witnesses may raise serious issues of competency, confidentiality, and conflict of interest and is thus inappropriate. While issues of competency, confidentiality, and conflict of interest in the use of family members (especially children), friends, other inmates or other detainees often make their use inappropriate, the use of these individuals as interpreters may be an appropriate option where proper application of the four factors would lead to a conclusion that recipient-provided services are not necessary. An example of this is a voluntary educational tour of a courthouse offered to the public. There, the importance and nature of the activity may be relatively low and unlikely to implicate issues of confidentiality, conflict of interest, or the need for accuracy. In addition, the resources needed and costs of providing language services may be high. In such a setting, an LEP person's use of family, friends, or others may be appropriate.

If the LEP person voluntarily chooses to provide his or her own interpreter, a recipient should consider whether a record of that choice and of the recipient's offer of assistance is appropriate. Where precise, complete, and accurate interpretations or translations of information and/or testimony are critical for law enforcement, adjudicatory, or legal reasons, or where the competency of the LEP person's interpreter is not established, a recipient might decide to provide its own, independent interpreter, even if an LEP person wants to use his or her own interpreter as well. Extra caution should be exercised when the LEP person chooses to use a minor as the interpreter. While the LEP person's decision should be respected, there may be additional issues of competency, confidentiality, or conflict of interest when the choice involves using children as interpreters. The recipient should take care to ensure that the LEP person's choice is voluntary, that the LEP person is aware of the possible problems if the preferred interpreter is a minor child, and that the LEP person knows that a competent interpreter could be provided by the recipient at no cost.

B. Written Language Services (Translation)

Translation is the replacement of a written text from one language (source language) into an equivalent written text in another language (target language).

What Documents Should be Translated? After applying the four-factor analysis, a recipient may determine that an effective LEP plan for its particular program or activity includes the translation of vital written materials into the language of each frequently-encountered LEP group eligible to be served and/or likely to be affected by the recipient's program.

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[11] For example, special circumstances of confinement may raise additional serious concerns regarding the voluntary nature, conflicts of interest, and privacy issues surrounding the use of inmates and detainees as interpreters, particularly where an important right, benefit, service, disciplinary concern, or access to personal or law enforcement information is at stake. In some situations, inmates could potentially misuse information they obtained in interpreting for other inmates. In addition to ensuring competency and accuracy of the interpretation, recipients should take these special circumstances into account when determining whether an inmate or detainee makes a knowing and voluntary choice to use another inmate or detainee as an interpreter.

Such written materials could include, for example:

- Consent and complaint forms
- In-take forms with the potential for important consequences
- Written notices of rights, denial, loss, or decreases in benefits or services, parole, and other hearings
- Notices of disciplinary action
- Notices advising LEP persons of free language assistance
- Prison rule books
- Written tests that do not assess English language competency, but test competency for a particular license, job, or skill for which knowing English is not required
- Applications to participate in a recipient's program or activity or to receive recipient benefits or services.

Whether or not a document (or the information it solicits) is ''vital'' may depend upon the importance of the program, information, encounter, or service involved, and the consequence to the LEP person if the information in question is not provided accurately or in a timely manner. For instance, applications for bicycle safety courses should not generally be considered vital, whereas applications for drug and alcohol counseling in prison could be considered vital. Where appropriate, recipients are encouraged to create a plan for consistently determining, over time and across its various activities, what documents are ''vital'' to the meaningful access of the LEP populations they serve.

Classifying a document as vital or non-vital is sometimes difficult, especially in the case of outreach materials like brochures or other information on rights and services. Awareness of rights or services is an important part of ''meaningful access.'' Lacks of awareness that a particular program, right, or service exists may effectively deny LEP individuals meaningful access. Thus, where a recipient is engaged in community outreach activities in furtherance of its activities, it should regularly assess the needs of the populations frequently encountered or affected by the program or activity to determine whether certain critical outreach materials should be translated. Community organizations may be helpful in determining what outreach materials may be most helpful to translate. In addition, the recipient should consider whether translations of outreach material may be made more effective when done in tandem with other outreach methods, including utilizing the ethnic media, schools, religious, and community organizations to spread a message.

Sometimes a document includes both vital and non-vital information. This may be the case when the document is very large. It may also be the case when the title and a phone number for obtaining more information on the contents of the document in frequently encountered languages other than English is critical, but the document is sent out to the general public and cannot reasonably be translated into many languages. Thus, vital information may include, for instance, the provision of information in appropriate languages other than English regarding where a LEP person might obtain an interpretation or translation of the document.

Into What Languages Should Documents be Translated? The languages spoken by the LEP individuals with whom the recipient has contact determine the languages into which vital documents should be translated. A distinction should be made, however, between languages that are frequently encountered by a recipient and less commonly encountered language. Many recipients serve communities in large cities or across the country. They regularly serve LEP persons who speak dozens and sometimes over 100 different languages. To translate all written materials into all of those languages is unrealistic. Although recent technological advances have made it easier for recipients to store and share translated documents, such an undertaking would incur substantial costs and require substantial resources. Nevertheless, well substantiated claims of lack of resources to translate all vital documents into dozens of languages do not necessarily relieve the recipient of the obligation to translate those documents into at least several of the more frequently encountered languages and to set benchmarks for continued translations into the remaining languages over time. As a result, the extent of the recipient's obligation to provide written translations of documents should be determined by the recipient on a case-by-case basis, looking at the totality of the circumstances in light of the four-factor analysis. Because translation is a one-time expense, consideration should be given to whether the upfront cost of translating a document (as opposed to oral interpretation) should be amortized over the likely lifespan of the document when applying this four-factor analysis.

Safe Harbor. Many recipients would like to ensure with greater certainty that they comply with their obligations to provide written translations in languages other than English. Paragraphs (a) and (b) outline the circumstances that can provide a ''safe harbor'' for recipients regarding the requirements for translation of written materials. A ''safe harbor'' means that if a recipient provides written translations under these circumstances, such action will be considered strong evidence of compliance with the recipient's written translation obligations.

The failure to provide written translations under the circumstances outlined in paragraphs (a) and (b) does not mean there is non-compliance. Rather, they provide a common starting point for recipients to consider whether and at what point the importance of the service, benefit, or activity involved; the nature of the information sought; and the number or proportion of LEP persons served call for written translations of commonly-used forms into frequently-encountered languages other than English. Thus, these paragraphs merely provide a guide for recipients that would like greater certainty of compliance than can be provided by a fact-intensive, four-factor analysis.

Example: Even if the safe harbors are not used, if written translation of a certain document(s) would be so burdensome as to defeat the legitimate objectives of its program, the translation of the written materials is not necessary. Other ways of providing meaningful access, such as effective oral interpretation of certain vital documents, might be acceptable under such circumstances.

Safe Harbor. The following actions will be considered strong evidence of compliance with the recipient's written translation obligations:

(a) The DOJ recipient provides written translations of vital documents for each eligible LEP language group that constitutes five percent or 1,000, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered. Translation of other documents, if needed, can be provided orally; or

(b) If there are fewer than 50 persons in a language group that reaches the five percent trigger in (a), the recipient does not translate vital written materials but provides written notice in the primary language of the LEP language group of the right to receive competent oral interpretation of those written materials, free of cost.

These safe harbor provisions apply to the translation of written documents only. They do not affect the requirement to provide meaningful access to LEP individuals through competent oral interpreters where oral language services are needed and are reasonable. For example, correctional facilities should, where appropriate, ensure that prison rules have been explained to LEP inmates, at orientation, for instance, prior to taking disciplinary action against them.

Competence of Translators. As with oral interpreters, translators of written documents should be competent. Many of the same considerations apply. However, the skill of translating is very different from the skill of interpreting, and a person who is a competent interpreter may or may not be competent to translate.

Particularly where legal or other vital documents are being translated, competence can often be achieved by use of certified translators. Certification or accreditation may not always be possible or necessary.[12] Competence can often be ensured by having a second, independent translator ''check'' the work of the primary translator. Alternatively, one translator can translate the document, and a second, independent translator could translate it back into English to check that the appropriate meaning has been conveyed. This is called ''back translation.''

Translators should understand the expected reading level of the audience and, where appropriate, have fundamental knowledge about the target language group's vocabulary and phraseology. Sometimes direct translation of materials results in a translation that is written at a much more difficult level than the English language version

[12] For those languages in which no formal accreditation currently exists, a particular level of membership in a professional translation association can provide some indicator of professionalism.

or has no relevant equivalent meaning.[13] Community organizations may be able to help consider whether a document is written at a good level for the audience. Likewise, consistency in the words and phrases used to translate terms of art, legal, or other technical concepts helps avoid confusion by LEP individuals and may reduce costs. Creating or using already-created glossaries of commonly used terms may be useful for LEP persons and translators and cost effective for the recipient. Providing translators with examples of previous accurate translations of similar material by the recipient, other recipients, or Federal agencies may be helpful.

While quality and accuracy of translation services is critical, the quality and accuracy of translation services is nonetheless part of the appropriate mix of LEP services required. For instance, documents that are simple and have no legal or other consequence for LEP persons who rely on them may use translators that are less skilled than important documents with legal or other information upon which reliance has important consequences (including, e.g., information or documents of DOJ recipients regarding certain law enforcement, health, and safety services and certain legal rights).

The permanent nature of written translations, however, imposes additional responsibility on the recipient to ensure that the quality and accuracy permit meaningful access by LEP persons.

VII. Elements of Effective Plan on Language Assistance for LEP Persons

After completing the four-factor analysis and deciding what language assistance services are appropriate, a recipient should develop an implementation plan to address the identified needs of the LEP populations they serve. Recipients have considerable flexibility in developing this plan. The development and maintenance of a periodically-updated written plan on language assistance for LEP persons (''LEP plan'') for use by recipient employees serving the public will likely be the most appropriate and cost effective means of documenting compliance and providing a framework for the provision of timely and reasonable language assistance. Moreover, such written plans would likely provide additional benefits to a recipient's managers in the areas of training, administration, planning, and budgeting. These benefits should lead most recipients to document in a written LEP plan their language assistance services, and how staff and LEP persons can access those services. Despite these benefits, certain DOJ recipients, such as recipients serving very few LEP persons and recipients with very limited resources, may choose not to develop a written LEP plan. However, the absence of a written LEP plan does not obviate the underlying obligation to ensure meaningful access by LEP persons to a recipient's program or activities. Accordingly, in the event that a recipient elects not to develop a written plan, it should consider alternative ways to articulate in some other reasonable manner a plan for providing meaningful access. Entities having significant contact with LEP persons, such as schools, religious organizations, community groups, and groups working with new immigrants can be very helpful in providing important input into this planning process from the beginning.

The following five steps may be helpful in designing an LEP plan and are typically part of effective implementation plans.

(1) Identifying LEP Individuals Who Need Language Assistance

The first two factors in the four-factor analysis require an assessment of the number or proportion of LEP individuals eligible to be served or encountered and the frequency of encounters. This requires recipients to identify LEP persons with whom it has contact.

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[13] For instance, there may be languages which do not have an appropriate direct translation of some courtroom or legal terms and the translator should be able to provide an appropriate translation. The translator should likely also make the recipient aware of this. Recipients can then work with translators to develop a consistent and appropriate set of descriptions of these terms in that language that can be used again, when appropriate. Recipients will find it more effective and less costly if they try to maintain consistency in the words and phrases used to translate terms of art and legal or other technical concepts. Creating or using already-created glossaries of commonly used terms may be useful for LEP persons and translators and cost effective for the recipient. Providing translators with examples of previous translations of similar material by the recipient, other recipients, or Federal agencies may be helpful.

One way to determine the language of communication is to use language identification cards (or ''I speak cards''), which invite LEP persons to identify their language needs to staff. Such cards, for instance, might say ''I speak Spanish'' in both Spanish and English, ''I speak Vietnamese'' in both English and Vietnamese, etc. To reduce costs of compliance, the Federal government has made a set of these cards available on the Internet. The Census Bureau ''I speak card'' can be found and downloaded at *http://www.usdoj.gov/crt/cor/13166.htm*. When records are normally kept of past interactions with members of the public, the language of the LEP person can be included as part of the record. In addition to helping employees identify the language of LEP persons they encounter, this process will help in future applications of the first two factors of the four-factor analysis. In addition, posting notices in commonly encountered languages notifying LEP persons of language assistance will encourage them to self identify.

(2) Language Assistance Measures

An effective LEP plan would likely include information about the ways in which language assistance will be provided. For instance, recipients may want to include information on at least the following:

- Types of language services available.
- How staff can obtain those services.
- How to respond to LEP callers.
- How to respond to written communications from LEP persons.
- How to respond to LEP individuals who have in-person contact with recipient staff.
- How to ensure competency of interpreters and translation services.

(3) Training Staff

Staff should know their obligations to provide meaningful access to information and services for LEP persons. An effective LEP plan would likely include training to ensure that:

- Staff know about LEP policies and procedures.
- Staff having contact with the public (or those in a recipient's custody) are trained to work effectively with in person and telephone interpreters.

Recipients may want to include this training as part of the orientation for new employees. It is important to ensure that all employees in public contact positions (or having contact with those in a recipient's custody) are properly trained. Recipients have flexibility in deciding the manner in which the training is provided. The more frequent the contact with LEP persons, the greater the need will be for in-depth training. Staff with little or no contact with LEP persons may only have to be aware of an LEP plan. However, management staff, even if they do not interact regularly with LEP persons, should be fully aware of and understand the plan so they can reinforce its importance and ensure its implementation by staff.

(4) Providing Notice to LEP Persons

Once an agency has decided, based on the four factors, that it will provide language services, it is important for the recipient to let LEP persons know that those services are available and that they are free of charge. Recipients should provide this notice in a language LEP persons will understand. Examples of notification that recipients should consider include:

- Posting signs in intake areas and other entry points. When language assistance is needed to ensure meaningful access to information and services, it is important to provide notice in appropriate languages in intake areas or initial points of contact so that LEP persons can learn how to access those language services. This is particularly true in areas with high volumes of LEP persons seeking access to certain

health, safety, or law enforcement services or activities run by DOJ recipients. For instance, signs in intake offices could state that free language assistance is available. The signs should be translated into the most common languages encountered. They should explain how to get the language help.[14]

- Stating in outreach documents that language services are available from the agency. Announcements could be in, for instance, brochures, booklets, and in outreach and recruitment information. These statements should be translated into the most common languages and could be ''tagged'' onto the front of common documents.

- Working with community-based organizations and other stakeholders to inform LEP individuals of the recipients' services, including the availability of language assistance services.

- Using a telephone voice mail menu. The menu could be in the most common languages encountered. It should provide information about available language assistance services and how to get them.

- Including notices in local newspapers in languages other than English.

- Providing notices on non-English language radio and television stations about the available language assistance services and how to get them.

- Presentations and/or notices at schools and religious organizations.

(5) Monitoring and Updating the LEP Plan

Recipients should, where appropriate, have a process for determining, on an ongoing basis, whether new documents, programs, services, and activities need to be made accessible for LEP individuals, and they may want to provide notice of any changes in services to the LEP public and to employees. In addition, recipients should consider whether changes in demographics, types of services, or other needs require annual reevaluation of their LEP plan. Less frequent reevaluation may be more appropriate where demographics, services, and needs are more static. One good way to evaluate the LEP plan is to seek feedback from the community.

In their reviews, recipients may want to consider assessing changes in:

- Current LEP populations in service area or population affected or encountered.
- Frequency of encounters with LEP language groups.
- Nature and importance of activities to LEP persons.
- Availability of resources, including technological advances and sources of additional resources, and the costs imposed.
- Whether existing assistance is meeting the needs of LEP persons.
- Whether staff knows and understands the LEP plan and how to implement it.
- Whether identified sources for assistance are still available and viable.

In addition to these five elements, effective plans set clear goals, management accountability, and opportunities for community input and planning throughout the process.

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[14] The Social Security Administration has made such signs available at http://www.ssa.gov/multilanguage/langlist1.htm. These signs could, for example, be modified for recipient use.

VIII. Voluntary Compliance Effort

The goal for Title VI and Title VI regulatory enforcement is to achieve voluntary compliance. The requirement to provide meaningful access to LEP persons is enforced and implemented by DOJ through the procedures identified in the Title VI regulations. These procedures include complaint investigations, compliance reviews, efforts to secure voluntary compliance, and technical assistance.

The Title VI regulations provide that DOJ will investigate whenever it receives a complaint, report, or other information that alleges or indicates possible noncompliance with Title VI or its regulations. If the investigation results in a finding of compliance, DOJ will inform the recipient in writing of this determination, including the basis for the determination. DOJ uses voluntary mediation to resolve most complaints. However, if a case is fully investigated and results in a finding of noncompliance, DOJ must inform the recipient of the noncompliance through a Letter of Findings that sets out the areas of noncompliance and the steps that must be taken to correct the noncompliance. It must attempt to secure voluntary compliance through informal means. If the matter cannot be resolved informally, DOJ must secure compliance through the termination of Federal assistance after the DOJ recipient has been given an opportunity for an administrative hearing and/or by referring the matter to a DOJ litigation section to seek injunctive relief or pursue other enforcement proceedings. DOJ engages in voluntary compliance efforts and provides technical assistance to recipients at all stages of an investigation. During these efforts, DOJ proposes reasonable timetables for achieving compliance and consults with and assists recipients in exploring cost effective ways of coming into compliance. In determining a recipient's compliance with the Title VI regulations, DOJ's primary concern is to ensure that the recipient's policies and procedures provide meaningful access for LEP persons to the recipient's programs and activities.

While all recipients must work toward building systems that will ensure access for LEP individuals, DOJ acknowledges that the implementation of a comprehensive system to serve LEP individuals is a process and that a system will evolve over time as it is implemented and periodically reevaluated. As recipients take reasonable steps to provide meaningful access to Federally- assisted programs and activities for LEP persons, DOJ will look favorably on intermediate steps recipients take that are consistent with this Guidance, and that, as part of a broader implementation plan or schedule, move their service delivery system toward providing full access to LEP persons. This does not excuse noncompliance but instead recognizes that full compliance in all areas of a recipient's activities and for all potential language minority groups may reasonably require a series of implementing actions over a period of time. However, in developing any phased implementation schedule, DOJ recipients should ensure that the provision of appropriate assistance for significant LEP populations or with respect to activities having a significant impact on the health, safety, legal rights, or livelihood of beneficiaries is addressed first. Recipients are encouraged to document their efforts to provide LEP persons with meaningful access to Federally--assisted programs and activities.

IX. Application to Specific Types of Recipients

Appendix A of this Guidance provides examples of how the meaningful access requirement of the Title VI regulations applies to law enforcement, corrections, courts, and other recipients of DOJ assistance.

A. State and Local Law Enforcement

Appendix A further explains how law enforcement recipients can apply the four factors to a range of encounters with the public. The responsibility for providing language services differs with different types of encounters.

Appendix A helps recipients identify the population they should consider when considering the types of services to provide. It then provides guidance and examples of applying the four factors. For instance, it gives examples on how to apply this guidance to:

- Receiving and responding to requests for help
- Enforcement stops short of arrest and field investigations
- Custodial interrogations
- Intake/detention Community outreach

B. Departments of Corrections

Appendix A also helps departments of corrections understand how to apply the four factors. For instance, it gives examples of LEP access in:

- Intake
- Disciplinary action
- Health and safety
- Participation in classes or other programs affecting length of sentence
- English as a Second Language (ESL) Classes
- Community corrections programs

C. Other Types of Recipients

Appendix A also applies the four factors and gives examples for other types of recipients. Those include, for example:

- Courts
- Juvenile Justice Programs
- Domestic Violence Prevention/Treatment Programs

Appendix A—Application of LEP Guidance for DOJ Recipients to Specific Types of Recipients

While a wide range of entities receive Federal financial assistance through DOJ, most of DOJ's assistance goes to law enforcement agencies, including state and local police and sheriffs' departments, and to state departments of corrections. Sections A and B below provide examples of how these two major types of DOJ recipients might apply the four-factor analysis. Section C provides examples for other types of recipients. The examples in this Appendix are not meant to be exhaustive and may not apply in many situations.

The requirements of the Title VI regulations, as clarified by this Guidance, supplement, but do not supplant, constitutional and other statutory or regulatory provisions that may require LEP services. Thus, a proper application of the four-factor analysis and compliance with the Title VI regulations does not replace constitutional or other statutory protections mandating warnings and notices in languages other than English in the criminal justice context. Rather, this Guidance clarifies the Title VI regulatory obligation to address, in appropriate circumstances and in a reasonable manner, the language assistance needs of LEP individuals beyond those required by the Constitution or statutes and regulations other than the Title VI regulations.

A. State and Local Law Enforcement

For the vast majority of the public, exposure to law enforcement begins and ends with interactions with law enforcement personnel discharging their duties while on patrol, responding to a request for services, talking to witnesses, or conducting community outreach activities. For a much smaller number, that exposure includes a visit to a station house. And for an important but even smaller number, that visit to the station house results in one's exposure to the criminal justice, judicial, or juvenile justice systems.

The common thread running through these and other interactions between the public and law enforcement is the exchange of information. Where police and sheriffs' departments receive Federal financial assistance, these departments have an obligation to provide LEP services to LEP individuals to ensure that they have meaningful access to the system, including, for example, understanding rights and accessing police assistance. Language barriers can, for instance, prevent victims from effectively reporting crimes to the police and hinder police investigations of reported crimes. For example, failure to communicate effectively with a victim of domestic violence can result in reliance on the batterer or a minor child and failure to identify and protect against harm.

Many police and sheriffs' departments already provide language services in a wide variety of circumstances to obtain information effectively, to build trust and relationships with the community, and to contribute to the safety of law enforcement personnel. For example, many police departments already have available printed Miranda rights in languages other than English as well as interpreters available to inform LEP persons of their rights and to interpret police interviews.[1] In areas where significant LEP populations reside, law enforcement officials already may have forms and notices in languages other than English or they may employ bilingual law enforcement officers, intake personnel, counselors, and support staff. These experiences can form a strong basis for applying the four-factor analysis and complying with the Title VI regulations.

1. General Principles

The touchstone of the four-factor analysis is reasonableness based upon the specific purposes, needs, and capabilities of the law enforcement service under review and an appreciation of the nature and particularized needs of the LEP population served. Accordingly, the analysis cannot provide a single uniform answer on how

[1] The Department's Federal Bureau of Investigation makes written versions of those rights available in several different languages. Of course, where literacy is of concern, these are most useful in assisting an interpreter in using consistent terms when providing Miranda warnings orally.

service to LEP persons must be provided in all programs or activities in all situations or whether such service need be provided at all. Knowledge of local conditions and community needs becomes critical in determining the type and level of language services needed.

Before giving specific examples, several general points should assist law enforcement in correctly applying the analysis to the wide range of services employed in their particular jurisdictions.

a. Permanent Versus Seasonal Populations

In many communities, resident populations change over time or season. For example, in some resort communities, populations swell during peak vacation periods, many times exceeding the number of permanent residents of the jurisdiction. In other communities, primarily agricultural areas, transient populations of workers will require increased law enforcement services during the relevant harvest season. This dynamic demographic ebb and flow can also dramatically change the size and nature of the LEP community likely to come into contact with law enforcement personnel. Thus, law enforcement officials may not want to limit their analysis to numbers and percentages of permanent residents. In assessing factor one—the number or proportion of LEP individuals—police departments should consider any significant but temporary changes in a jurisdiction's demographics.

Example: A rural jurisdiction has a permanent population of 30,000, 7% of which is Hispanic. Based on demographic data and on information from the contiguous school district, of that number, only 15% are estimated to be LEP individuals. Thus, the total estimated permanent LEP population is 315 or approximately 1% of the total permanent population. Under the four-factor analysis, a sheriffs' department could reasonably conclude that the small number of LEP persons makes the affirmative translation of documents and/or employment of bilingual staff unnecessary. However, during the spring and summer planting and harvest seasons, the local population swells to 40,000 due to the influx of seasonal agricultural workers. Of this transitional number, about 75% are Hispanic and about 50% of that number are LEP individuals. This information comes from the schools and a local migrant worker community group. Thus, during the harvest season, the jurisdiction's LEP population increases to over 10% of all residents. In this case, the department may want to consider whether it is required to translate vital written documents into Spanish. In addition, this increase in LEP population during those seasons makes it important for the jurisdiction to review its interpretation services to ensure meaningful access for LEP individuals.

b. Target Audiences

For most law enforcement services, the target audience is defined in geographic rather than programmatic terms. However, some services may be targeted to reach a particular audience (*e.g.*, elementary school children, elderly, residents of high crime areas, minority communities, small business owners/operators). Also, within the larger geographic area covered by a police department, certain precincts or portions of precincts may have concentrations of LEP persons. In these cases, even if the overall number or proportion of LEP individuals in the district is low, the frequency of contact may be foreseeably higher for certain areas or programs. Thus, the second factor—frequency of contact—should be considered in light of the specific program or the geographic area being served.

Example: A police department that receives funds from the DOJ Office of Justice Programs initiates a program to increase awareness and understanding of police services among elementary school age children in high crime areas of the jurisdiction. This program involves ''Officer in the Classroom'' presentations at elementary schools located in areas of high poverty. The population of the jurisdiction is estimated to include only 3% LEP individuals. However, the LEP population at the target schools is 35%, the vast majority of whom are Vietnamese speakers. In applying the four-factor analysis, the higher LEP language group populations of the target schools and the frequency of contact within the program with LEP students in those schools, not the LEP population generally, should be used in determining the nature of the LEP needs of that particular program. Further, because the Vietnamese LEP population is concentrated in one or two main areas of town, the police department should consider whether to apply the four-factor analysis to other services provided by the police department.

c. Importance of Service/Information

Given the critical role law enforcement plays in maintaining quality of life and property, traditional law enforcement and protective services rank high on the critical/ non-critical continuum. However, this does not mean that information about, or provided by, each of the myriad services and activities performed by law enforcement officials must be equally available in languages other than English. While clearly important to the ultimate success of law enforcement, certain community outreach activities do not have the same direct impact on the provision of core law enforcement services as the activities of 911 lines or law enforcement officials' ability to respond to requests for assistance while on patrol, to communicate basic information to suspects, etc. Nevertheless, with the rising importance of community partnerships and community based programming as a law enforcement technique, the need for language services with respect to these programs should be considered in applying the four-factor analysis.

d. Interpreters

Just as with other recipients, law enforcement recipients have a variety of options for providing language services. Under certain circumstances, when interpreters are required and recipients should provide competent interpreter services free of cost to the LEP person, LEP persons should be advised that they may choose either to secure the assistance of an interpreter of their own choosing, at their own expense, or a competent interpreter provided by the recipient.

If the LEP person decides to provide his or her own interpreter, the provision of this choice to the LEP person and the LEP person's election should be documented in any written record generated with respect to the LEP person. While an LEP person may sometimes look to bilingual family members or friends or other persons with whom they are comfortable for language assistance, there are many situations where an LEP person might want to rely upon recipient-supplied interpretative services. For example, such individuals may not be available when and where they are needed, or may not have the ability to interpret program-specific technical information. Alternatively, an individual may feel uncomfortable revealing or describing sensitive, confidential, or potentially embarrassing medical, law enforcement (e.g., sexual or violent assaults), family, or financial information to a family member, friend, or member of the local community. Similarly, there may be situations where a recipient's own interests justify the provision of an interpreter regardless of whether the LEP individual also provides his or her own interpreter. For example, where precise, complete and accurate translations of information and/or testimony are critical for law enforcement, adjudicatory or legal reasons, a recipient might decide to provide its own, independent interpreter, even if an LEP person wants to use their own interpreter as well.

In emergency situations that are not reasonably foreseeable, the recipient may have to temporarily rely on non-recipient provided language services. Reliance on children is especially discouraged unless there is an extreme emergency and no preferable interpreters are available. While all language services need to be competent, the greater the potential consequences, the greater the need to monitor interpretation services for quality. For instance, it is important that interpreters in custodial interrogations be highly competent to translate legal and other law enforcement concepts, as well as be extremely accurate in their interpretation. It may be sufficient, however, for a desk clerk who is bilingual but not skilled at interpreting to help an LEP person figure out to whom he or she needs to talk about setting up a neighborhood watch.

2. Applying the Four-Factor Analysis Along the Law Enforcement Continuum

While all police activities are important, the four-factor analysis requires some prioritizing so that language services are targeted where most needed because of the nature and importance of the particular law enforcement activity involved. In addition, because of the ''reasonableness'' standard, and frequency of contact and resources/costs factors, the obligation to provide language services increases where the importance of the activity is greater.

Under this framework, then, critical areas for language assistance could include 911 calls, custodial interrogation, and health and safety issues for persons within the control of the police. These activities should be considered the most important under the four-factor analysis. Systems for receiving and investigating complaints

from the public are important. Often very important are routine patrol activities, receiving non-emergency information regarding potential crimes, and ticketing. Community outreach activities are hard to categorize, but generally they do not rise to the same level of importance as the other activities listed. However, with the importance of community partnerships and community-based programming as a law enforcement technique, the need for language services with respect to these programs should be considered in applying the four-factor analysis. Police departments have a great deal of flexibility in determining how to best address their outreach to LEP populations.

a. Receiving and Responding to Requests for Assistance

LEP persons must have meaningful access to police services when they are victims of or witnesses to alleged criminal activity. Effective reporting systems transform victims, witnesses, or bystanders into assistants in law enforcement and investigation processes. Given the critical role the public plays in reporting crimes or directing limited law enforcement resources to time-sensitive emergency or public safety situations, efforts to address the language assistance needs of LEP individuals could have a significant impact on improving responsiveness, effectiveness, and safety.

Emergency service lines for the public, or 911 lines, operated by agencies that receive Federal financial assistance must be accessible to persons who are LEP. This will mean different things to different jurisdictions. For instance, in large cities with significant LEP communities, the 911 line may have operators who are bilingual and capable of accurately interpreting in high stress situations. Smaller cities or areas with small LEP populations should still have a plan for serving callers who are LEP, but the LEP plan and implementation may involve a telephonic interpretation service that is fast enough and reliable enough to attend to the emergency situation, or include some other accommodation short of hiring bilingual operators.

Example: A large city provides bilingual operators for the most frequently encountered languages, and uses a commercial telephone interpretation service when it receives calls from LEP persons who speak other languages. Ten percent of the city's population is LEP, and sixty percent of the LEP population speaks Spanish. In addition to 911 service, the city has a 311 line for non-emergency police services. The 311 Center has Spanish-speaking operators available, and uses a language bank, staffed by the city's bilingual city employees who are competent translators, for other non-English-speaking callers. The city also has a campaign to educate non-English speakers when to use 311 instead of 911. These actions constitute strong evidence of compliance.

b. Enforcement Stops Short of Arrest and Field Investigations

Field enforcement includes, for example, traffic stops, pedestrian stops, serving warrants and restraining orders, Terry stops, activities in aid of other jurisdictions or Federal agencies (e.g., fugitive arrests or INS detentions), and crowd/traffic control. Because of the diffuse nature of these activities, the reasonableness standard allows for great flexibility in providing meaningful access. Nevertheless, the ability of law enforcement agencies to discharge fully and effectively their enforcement and crime interdiction mission requires the ability to communicate instructions, commands, and notices. For example, a routine traffic stop can become a difficult situation if an officer is unable to communicate effectively the reason for the stop, the need for identification or other information, and the meaning of any written citation. Requests for consent to search are meaningless if the request is not understood. Similarly, crowd control commands will be wholly ineffective where significant numbers of people in a crowd cannot understand the meaning of law enforcement commands.

Given the wide range of possible situations in which law enforcement in the field can take place, it is impossible to equip every officer with the tools necessary to respond to every possible LEP scenario. Rather, in applying the four factors to field enforcement, the goal should be to implement measures addressing the language needs of significant LEP populations in the most likely, common, and important situations, as consistent with the recipients' resources and costs.

Example: A police department serves a jurisdiction with a significant number of LEP individuals residing in one or more precincts, and it is routinely asked to provide crowd control services at community events or demonstrations in those precincts. If it is otherwise consistent with the requirements of the four-factor analysis, the police

department should assess how it will discharge its crowd control duties in a language-appropriate manner. Among the possible approaches are plans to assign bilingual officers, basic language training of all officers in common law enforcement commands, the use of devices that provide audio commands in the predictable languages, or the distribution of translated written materials for use by officers.

Field investigations include neighborhood canvassing, witness identification and interviewing, investigative or Terry stops, and similar activities designed to solicit and obtain information from the community or particular persons. Encounters with LEP individuals will often be less predictable in field investigations. However, the jurisdiction should still assess the potential for contact with LEP individuals in the course of field investigations and investigative stops, identify the LEP language group(s) most likely to be encountered, and provide, if it is consistent with the four-factor analysis, its officers with sufficient interpretation and/or translation resources to ensure that lack of English proficiency does not impede otherwise proper investigations or unduly burden LEP individuals.

Example: A police department in a moderately large city includes a precinct that serves an area which includes significant LEP populations whose native languages are Spanish, Korean, and Tag-a-log. Law enforcement officials could reasonably consider the adoption of a plan assigning bilingual investigative officers to the precinct and/or creating a resource list of department employees competent to interpret and ready to assist officers by phone or radio. This could be combined with developing language-appropriate written materials, such as consents to searches or statements of rights, for use by its officers where LEP individuals are literate in their languages. In certain circumstances, it may also be helpful to have telephonic interpretation service access where other options are not successful and safety and availability of phone access permit.

Example: A police department receives Federal financial assistance and serves a predominantly Hispanic neighborhood. It routinely sends officers on domestic violence calls. The police department is in a state in which English has been declared the official language. The police therefore determine that they cannot provide language services to LEP persons. Thus, when the victim of domestic violence speaks only Spanish and the perpetrator speaks English, the officers have no way to speak with the victim so they only get the perpetrator's side of the story. The failure to communicate effectively with the victim results in further abuse and failure to charge the batterer. The police department should be aware that despite the state's official English law, the Title VI regulations apply to it. Thus, the police department should provide meaningful access for LEP persons.

c. Custodial Interrogations

Custodial interrogations of unrepresented LEP individuals trigger constitutional rights that this Guidance is not designed to address. Given the importance of being able to communicate effectively under such circumstances, law enforcement recipients should ensure competent and free language services for LEP individuals in such situations. Law enforcement agencies are strongly encouraged to create a written plan on language assistance for LEP persons in this area. In addition, in formulating a plan for effectively communicating with LEP individuals, agencies should strongly consider whether qualified independent interpreters would be more appropriate during custodial interrogations than law enforcement personnel themselves.[2]

Example: A large city police department institutes an LEP plan that requires arresting officers to procure a qualified interpreter for any custodial interrogation, notification of rights, or taking of a formal statement where the suspect's legal rights could be adversely impacted. When considering whether an interpreter is qualified, the LEP plan discourages use of police officers as interpreters in interrogations except under circumstances in which the LEP individual is informed of the officer's dual role and the reliability of the interpretation is verified, such as, for example, where the officer has been trained and tested in interpreting and tape recordings are made of the

[2] Some State laws prohibit police officers from serving as interpreters during custodial interrogation of suspects. entire interview. In determining whether an interpreter is qualified, the jurisdiction uses the analysis noted above. These actions would constitute strong evidence of compliance.

d. Intake/Detention

State or local law enforcement agencies that arrest LEP persons should consider the inherent communication impediments to gathering information from the LEP arrestee through an intake or booking process. Aside from the basic information, such as the LEP arrestee's name and address, law enforcement agencies should evaluate their ability to communicate with the LEP arrestee about his or her medical condition. Because medical screening questions are commonly used to elicit information on the arrestee's medical needs, suicidal inclinations, presence of contagious diseases, potential illness, resulting symptoms upon withdrawal from certain medications, or the need to segregate the arrestee from other prisoners, it is important for law enforcement agencies to consider how to communicate effectively with an LEP arrestee at this stage. In jurisdictions with few bilingual officers or in situations where the LEP person speaks a language not encountered very frequently, telephonic interpretation services may provide the most cost effective and efficient method of communication.

e. Community Outreach

Community outreach activities increasingly are recognized as important to the ultimate success of more traditional duties. Thus, an application of the four-factor analysis to community outreach activities can play an important role in ensuring that the purpose of these activities (to improve police/community relations and advance law enforcement objectives) is not thwarted due to the failure to address the language needs of LEP persons.

Example: A police department initiates a program of domestic counseling in an effort to reduce the number or intensity of domestic violence interactions. A review of domestic violence records in the city reveals that 25% of all domestic violence responses are to minority areas and 30% of those responses involve interactions with one or more LEP persons, most of whom speak the same language. After completing the four-factor analysis, the department should take reasonable steps to make the counseling accessible to LEP individuals. For instance, the department could seek bilingual counselors (for whom they provided training in translation) for some of the counseling positions. In addition, the department could have an agreement with a local university in which bilingual social work majors who are competent in interpreting, as well as language majors who are trained by the department in basic domestic violence sensitivity and counseling, are used as interpreters when the in-house bilingual staff cannot cover the need. Interpreters under such circumstances should sign a confidentiality agreement with the department. These actions constitute strong evidence of compliance.

Example: A large city has initiated an outreach program designed to address a problem of robberies of Vietnamese homes by Vietnamese gangs. One strategy is to work with community groups and banks and others to help allay traditional fears in the community of putting money and other valuables in banks. Because a large portion of the target audience is Vietnamese speaking and LEP, the department contracts with a bilingual community liaison competent in the skill of translating to help with outreach activities. This action constitutes strong evidence of compliance.

B. Departments of Corrections/Jails/Detention Centers

Departments of corrections that receive Federal financial assistance from DOJ must provide LEP prisoners[3] with meaningful access to benefits and services within the program. In order to do so, corrections departments, like other recipients, must apply the four-factor analysis.

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[3] In this Guidance, the terms ``prisoners'' or ``inmates'' include all of those individuals, including Immigration and Naturalization Service (INS) detainees and juveniles, who are held in a facility operated by a recipient. Certain statutory, regulatory, or constitutional mandates/rights may apply only to juveniles, such as educational rights, including those for students will disabilities or limited English proficiency. Because a decision by a recipient or a federal, state, or local entity to make an activity compulsory serves as strong evidence of the program's importance, the obligation to provide language services may differ depending upon whether the LEP person is a juvenile or an adult inmate.

1. General Principles

Departments of corrections also have a wide variety of options in providing translation services appropriate to the particular situation. Bilingual staff competent in interpreting, person or by phone, pose one option. Additionally, particular prisons may have agreements with local colleges and universities, interpreter services, and/or community organizations to provide paid or volunteer competent translators under agreements of confidentiality and impartiality. Telephonic interpretation services may offer a prudent oral interpreting option for prisons with very few and/or infrequent prisoners in a particular language group. Reliance on fellow prisoners is generally not appropriate. Reliance on fellow prisoners should only be an option in unforeseeable emergency circumstances; when the LEP inmate signs a waiver that is in his/her language and in a form designed for him/her to understand; or where the topic of communication is not sensitive, confidential, important, or technical in nature and the prisoner is competent in the skill of interpreting.

In addition, a department of corrections that receives Federal financial assistance would be ultimately responsible for ensuring that LEP inmates have meaningful access within a prison run by a private or other entity with which the department has entered into a contract. The department may provide the staff and materials necessary to provide required language services, or it may choose to require the entity with which it contracted to provide the services itself.

2. Applying the Four Factors Along the Corrections Continuum

As with law enforcement activities, critical and predictable contact with LEP individuals poses the greatest obligation for language services. Corrections facilities have somewhat greater abilities to assess the language needs of those they encounter, although inmate populations may change rapidly in some areas. Contact affecting health and safety, length of stay, and discipline likely present the most critical situations under the four-factor analysis.

a. Assessment

Each department of corrections that receives Federal financial assistance should assess the number of LEP prisoners who are in the system, in which prisons they are located, and the languages he or she speaks. Each prisoner's LEP status, and the language he or she speaks, should be placed in his or her file. Although this Guidance and Title VI are not meant to address literacy levels, agencies should be aware of literacy problems so that LEP services are provided in a way that is meaningful and useful (*e.g.,* translated written materials are of little use to a nonliterate inmate). After the initial assessment, new LEP prisoners should be identified at intake or orientation, and the data should be updated accordingly.

b. Intake/Orientation

Intake/Orientation plays a critical role not merely in the system's identification of LEP prisoners, but in providing those prisoners with fundamental information about their obligations to comply with system regulations, participate in education and training, receive appropriate medical treatment, and enjoy recreation. Even if only one prisoner doesn't understand English, that prisoner should likely be given the opportunity to be informed of the rules, obligations, and opportunities in a manner designed effectively to communicate these matters. An appropriate analogy is the obligation to communicate effectively with deaf prisoners, which is most frequently accomplished through sign language interpreters or written materials. Not every prison will use the same method for providing language assistance. Prisons with large numbers of Spanish-speaking LEP prisoners, for example, may choose to translate written rules, notices, and other important orientation material into Spanish with oral instructions, whereas prisons with very few such inmates may choose to rely upon a telephonic interpretation service or qualified community volunteers to assist.

Example: The department of corrections in a state with a 5% Haitian Creole-speaking LEP corrections population and an 8% Spanish-speaking LEP population receives Federal financial assistance to expand one of its prisons. The department of corrections has developed an intake video in Haitian Creole and another in Spanish for all of the prisons within the department to use when orienting new prisoners who are LEP and speak

one of those languages. In addition, the department provides inmates with an opportunity to ask questions and discuss intake information through either bilingual staff who are competent in interpreting and who are present at the orientation or who are patched in by phone to act as interpreters. The department also has an agreement whereby some of its prisons house a small number of INS detainees. For those detainees or other inmates who are LEP and do not speak Haitian Creole or Spanish, the department has created a list of sources for interpretation, including department staff, contract interpreters, university resources, and a telephonic interpretation service. Each person receives at least an oral explanation of the rights, rules, and opportunities. These actions constitute strong evidence of compliance.

*Example: A d*epartment of corrections that receives Federal financial assistance that, even though the state in which it resides has a law declaring English the official language, it should still ensure that LEP prisoners understand the rules, rights, and opportunities and have meaningful access to important information and services at the state prisons. Despite the state's official English law, the Title VI regulations apply to the department of corrections.

c. Disciplinary Action

When a prisoner who is LEP is the subject of disciplinary action, the prison, where appropriate, should provide language assistance. That assistance should ensure that the LEP prisoner had adequate notice of the rule in question and is meaningfully able to understand and participate in the process afforded prisoners under those circumstances. As noted previously, fellow inmates should generally not serve as interpreters in disciplinary hearings.

d. Health and Safety

Prisons providing health services should refer to the Department of Health and Human Services' guidance[4] regarding health care providers' Title VI and Title VI regulatory obligations, as well as with this Guidance.

Health care services are obviously extremely important. How access to those services is provided depends upon the four-factor analysis. If, for instance, a prison serves a high proportion of LEP individuals who speak Spanish, then the prison health care provider should likely have available qualified bilingual medical staff or interpreters versed in medical terms. If the population of LEP individuals is low, then the prison may choose instead, for example, to rely on a local community volunteer program that provides qualified interpreters through a university. Due to the private nature of medical situations, only in unpredictable emergency situations or in non-emergency cases where the inmate has waived rights to a non-inmate interpreter would the use of other bilingual inmates be appropriate.

e. Participation Affecting Length of Sentence

If a prisoner's LEP status makes him/her unable to participate in a particular program, such a failure to participate should not be used to adversely impact the length of stay or significantly affect the conditions of imprisonment. Prisons have options in how to apply this standard. For instance, prisons could: (1) Make the program accessible to the LEP inmate; (2) identify or develop substitute or alternative, language-accessible programs, or (3) waive the requirement.

Example: State law provides that otherwise eligible prisoners may receive early release if they take and pass an alcohol counseling program. Given the importance of early release, LEP prisoners should, where appropriate, be provided access to this prerequisite in some fashion. How that access is provided depends on the three factors other than importance. If, for example, there are many LEP prisoners speaking a particular language in the prison system, the class could be provided in that language for those inmates. If there were far fewer LEP

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[4] A copy of that guidance can be found on the HHS Web site at http://www.hhs.gov/ocr/lep. and at http://www.usdoj.gov/crt/cor.

prisoners speaking a particular language, the prison might still need to ensure access to this prerequisite because of the importance of early release opportunities. Options include, for example, use of bilingual teachers, contract interpreters, or community volunteers to interpret during the class, reliance on videos or written explanations in a language the inmate understands, and/or modification of the requirements of the class to meet the LEP individual's ability to understand and communicate.

f. ESL Classes

States often mandate English-as-a-Second language (ESL) classes for LEP inmates. Nothing in this Guidance indicates how recipients should address such mandates. But recipients should not overlook the long-term positive impacts of incorporating or offering ESL programs in parallel with language assistance services as one possible strategy for ensuring meaningful access. ESL courses can serve as an important adjunct to a proper LEP plan in prisons because, as prisoners gain proficiency in English, fewer language services are needed. However, the fact that ESL classes are made available does not obviate the need to provide meaningful access for prisoners who are not yet English proficient.

g. Community Corrections

This guidance also applies to community corrections programs that receive, directly or indirectly, Federal financial assistance. For them, the most frequent contact with LEP individuals will be with an offender, a victim, or the family members of either, but may also include witnesses and community members in the area in which a crime was committed.

As with other recipient activities, community corrections programs should apply the four factors and determine areas where language services are most needed and reasonable. Important oral communications include, for example: interviews; explaining conditions of probations/release; developing case plans; setting up referrals for services; regular supervision contacts; outlining violations of probations/parole and recommendations; and making adjustments to the case plan. Competent oral language services for LEP persons are important for each of these types of communication. Recipients have great flexibility in determining how to provide those services.

Just as with all language services, it is important that language services be competent. Some knowledge of the legal system may be necessary in certain circumstances. For example, special attention should be given to the technical interpretation skills of interpreters used when obtaining information from an offender during pre-sentence and violation of probation/parole investigations or in other circumstances in which legal terms and the results of inaccuracies could impose an enormous burden on the LEP person.

In addition, just as with other recipients, corrections programs should identify vital written materials for probation and parole that should be translated when a significant number or proportion of LEP individuals that speak a particular language is encountered. Vital documents in this context could include, for instance: probation/parole department descriptions and grievance procedures, offender rights information, the pre-sentence/release investigation report, notices of alleged violations, sentencing/release orders, including conditions of parole, and victim impact statement questionnaires.

C. Other Types of Recipients

DOJ provides Federal financial assistance to many other types of entities and programs, including, for example, courts, juvenile justice programs, shelters for victims of domestic violence, and domestic violence prevention programs. The Title VI regulations and this Guidance apply to those entities. Examples involving some of those recipients follow:[5]

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[5] As used in this appendix, the word ``court'' or ``courts'' includes administrative adjudicatory systems or administrative hearings administered or conducted by a recipient.

1. Courts

Application of the four-factor analysis requires recipient courts to ensure that LEP parties and witnesses receive competent language services, consistent with the four-actor analysis. At a minimum, every effort should be taken to ensure competent interpretation for LEP individuals during all hearings, trials, and motions during which the LEP individual must and/or may be present. When a recipient court appoints an attorney to represent an LEP defendant, the court should ensure that either the attorney is proficient in the LEP person's language or that a competent interpreter is provided during consultations between the attorney and the LEP person.

Many states have created or adopted certification procedures for court interpreters. This is one way for recipients to ensure competency of interpreters. Where certification is available, courts should consider carefully the qualifications of interpreters who are not certified. Courts will not, however, always be able to find a certified interpreter, particularly for less frequently encountered languages. In a courtroom or administrative hearing setting, the use of informal interpreters, such as family members, friends, and caretakers, would not be appropriate.

Example: A state court receiving DOJ Federal financial assistance has frequent contact with LEP individuals as parties and witnesses, but has experienced a shortage in certified interpreters in the range of languages encountered. State court officials work with training and testing consultants to broaden the number of certified interpreters available in the top several languages spoken by LEP individuals in the state. Because resources are scarce and the development of tests expensive, state court officials decide to partner with other states that have already established agreements to share proficiency tests and to develop new ones together. The state court officials also look to other existing state plans for examples of: codes of professional conduct for interpreters; mandatory orientation and basic training for interpreters; interpreter proficiency tests in Spanish and Vietnamese language interpretation; a written test in English for interpreters in all languages covering professional responsibility, basic legal term definitions, court procedures, etc. They are considering working with other states to expand testing certification programs in coming years to include several other most frequently encountered languages. These actions constitute strong evidence of compliance.

Many individuals, while able to communicate in English to some extent, are still LEP insofar as ability to understand the terms and precise language of the courtroom. Courts should consider carefully whether a person will be able to understand and communicate effectively in the stressful role of a witness or party and in situations where knowledge of language subtleties and/or technical terms and concepts are involved or where key determinations are made based on credibility.

Example: Judges in a county court receiving Federal financial assistance have adopted a voir dire for determining a witness' need for an interpreter. The voir dire avoids questions that could be answered with ''yes'' or ''no.'' It includes questions about comfort level in English, and questions that require active responses, such as: ''How did you come to court today?'' etc. The judges also ask the witness more complicated conceptual questions to determine the extent of the person's proficiency in English. These actions constitute strong evidence of compliance.

Example: A court encounters a domestic violence victim who is LEP. Even though the court is located in a state where English has been declared the official language, it employs a competent interpreter to ensure meaningful access. Despite the state's official English law, the Title VI regulations apply to the court.

When courts experience low numbers or proportions of LEP individuals from a particular language group and infrequent contact with that language group, creation of a new certification test for interpreters may be overly burdensome. In such cases, other methods should be used to determine the competency of interpreters for the court's purposes.

Example: A witness in a county court in a large city speaks Urdu and not English. The jurisdiction has no court interpreter certification testing for Urdu language interpreters because very few LEP individuals encountered speak Urdu and there is no such test available through other states or organizations. However, a non-certified interpreter is reliable and has been given the standard English-language test on court processes and interpreter

ethics. The judge brings in a second, independent, bilingual Urdu-speaking person from a local university, and asks the prospective interpreter to interpret the judge's conversation with the second individual. The judge then asks the second Urdu speaker a series of questions designed to determine whether the interpreter accurately interpreted their conversation. Given the infrequent contact, the low number and proportion of Urdu LEP individuals in the area, and the high cost of providing certification tests for Urdu interpreters, this ''second check'' solution may be one appropriate way of ensuring meaningful access to the LEP individual.

Example: In order to minimize the necessity of the type of intense judicial intervention on the issue of quality noted in the previous example, the court administrators in a jurisdiction, working closely with interpreter and translator associations, the bar, judges, and community groups, have developed and disseminated a stringent set of qualifications for court interpreters. The state has adopted a certification test in several languages. A questionnaire and qualifications process helps identify qualified interpreters even when certified interpreters are not available to meet a particular language need. Thus, the court administrators create a pool from which judges and attorneys can choose. A team of court personnel, judges, interpreters, and others have developed a recommended interpreter oath and a set of frequently asked questions and answers regarding court interpreting that have been provided to judges and clerks. The frequently asked questions include information regarding the use of team interpreters, breaks, the types of interpreting (consecutive, simultaneous, summary, and sight translations) and the professional standards for use of each one, and suggested questions for determining whether an LEP witness is effectively able to communicate through the interpreter. Information sessions on the use of interpreters are provided for judges and clerks. These actions constitute strong evidence of compliance.

Another key to successful use of interpreters in the courtroom is to ensure that everyone in the process understands the role of the interpreter.

Example: Judges in a recipient court administer a standard oath to each interpreter and make a statement to the jury that the role of the interpreter is to interpret, verbatim, the questions posed to the witness and the witness' response. The jury should focus on the words, not the non-verbals, of the interpreter. The judges also clarify the role of the interpreter to the witness and the attorneys. These actions constitute strong evidence of compliance.

Just as corrections recipients should take care to ensure that eligible LEP individuals have the opportunity to reduce the term of their sentence to the same extent that non-LEP individuals do, courts should ensure that LEP persons have access to programs that would give them the equal opportunity to avoid serving a sentence at all.

Example: An LEP defendant should be given the same access to alternatives to sentencing, such as anger management, batterers' treatment and intervention, and alcohol abuse counseling, as is given to non-LEP persons in the same circumstances.

Courts have significant contact with the public outside of the courtroom. Providing meaningful access to the legal process for LEP individuals might require more than just providing interpreters in the courtroom. Recipient courts should assess the need for language services all along the process, particularly in areas with high numbers of unrepresented individuals, such as family, landlord-tenant, traffic, and small claims courts.

Example: Only twenty thousand people live in a rural county. The county superior court receives DOJ funds but does not have a budget comparable to that of a more populous urbanized county in the state. Over 1000 LEP Hispanic immigrants have settled in the rural county. The urbanized county also has more than 1000 LEP Hispanic immigrants. Both counties have ''how to'' materials in English helping unrepresented individuals negotiate the family court processes and providing information for victims of domestic violence. The urban county has taken the lead in developing Spanish-language translations of materials that would explain the process. The rural county modifies these slightly with the assistance of family law and domestic violence advocates serving the Hispanic community, and thereby benefits from the work of the urban county. Creative solutions, such as sharing resources across jurisdictions and working with local bar associations and community groups, can help overcome serious financial concerns in areas with few resources.

There may be some instances in which the four-factor analysis of a particular portion of a recipient's program leads to the conclusion that language services are not currently required. For instance, the four-factor analysis may not necessarily require that a purely voluntary tour of a ceremonial courtroom be given in languages other than English by courtroom personnel, because the relative importance may not warrant such services given an application of the other factors. However, a court may decide to provide such tours in languages other than English given the demographics and the interest in the court. Because the analysis is fact-dependent, the same conclusion may not be appropriate with respect to all tours.

Just as with police departments, courts and/or particular divisions within courts may have more contact with LEP individuals than an assessment of the general population would indicate. Recipients should consider that higher contact level when determining the number or proportion of LEP individuals in the contact population and the frequency of such contact.

Example: A county has very few residents who are LEP. However, many Vietnamese-speaking LEP motorists go through a major freeway running through the county that connects two areas with high populations of Vietnamese speaking LEP individuals. As a result, the Traffic Division of the county court processes a large number of LEP persons, but it has taken no steps to train staff or provide forms or other language access in that Division because of the small number of LEP individuals in the county. The Division should assess the number and proportion of LEP individuals processed by the Division and the frequency of such contact. With those numbers high, the Traffic Division may find that it needs to provide key forms or instructions in Vietnamese. It may also find, from talking with community groups, that many older Vietnamese LEP individuals do not read Vietnamese well, and that it should provide oral language services as well. The court may already have Vietnamese-speaking staff competent in interpreting in a different section of the court; it may decide to hire a Vietnamese-speaking employee who is competent in the skill of interpreting; or it may decide that a telephonic interpretation service suffices.

2. Juvenile Justice Programs

DOJ provides funds to many juvenile justice programs to which this Guidance applies. Recipients should consider LEP parents when minor children encounter the legal system. Absent an emergency, recipients are strongly discouraged from using children as interpreters for LEP parents.

Example: A county coordinator for an anti-gang program operated by a DOJ recipient has noticed that increasing numbers of gangs have formed comprised primarily of LEP individuals speaking a particular foreign language. The coordinator may choose to assess the number of LEP youths at risk of involvement in these gangs, so that she can determine whether the program should hire a counselor who is bilingual in the particular language and English, or provide other types of language services to the LEP youths.

When applying the four factors, recipients encountering juveniles should take into account that certain programs or activities may be even more critical and difficult to access for juveniles than they would be for adults. For instance, although an adult detainee may need some language services to access family members, a juvenile being detained on immigration-related charges who is held by a recipient may need more language services in order to have access to his or her parents.

3. Domestic Violence Prevention/Treatment Programs

Several domestic violence prevention and treatment programs receive DOJ financial assistance and thus must apply this Guidance to their programs and activities. As with all other recipients, the mix of services needed should be determined after conducting the four-factor analysis. For instance, a shelter for victims of domestic violence serving a largely Hispanic area in which many people are LEP should strongly consider accessing qualified bilingual counselors, staff, and volunteers, whereas a shelter that has experienced almost no encounters with LEP persons and serves an area with very few LEP persons may only reasonably need access to a telephonic interpretation service. Experience, program modifications, and demographic changes may require modifications to the mix over time.

Example: A shelter for victims of domestic violence is operated by a recipient of DOJ funds and located in an area where 15 percent of the women in the service area speak Spanish and are LEP. Seven percent of the women in the service area speak various Chinese dialects and are LEP. The shelter uses competent community volunteers to help translate vital outreach materials into Chinese (which is one written language despite many dialects) and Spanish. The shelter hotline has a menu providing key information, such as location, in English, Spanish, and two of the most common Chinese dialects. Calls for immediate assistance are handled by the bilingual staff. The shelter has one counselor and several volunteers fluent in Spanish and English. Some volunteers are fluent in different Chinese dialects and in English. The shelter works with community groups to access interpreters in the several Chinese dialects that they encounter. Shelter staff train the community volunteers in the sensitivities of domestic violence intake and counseling. Volunteers sign confidentiality agreements. The shelter is looking for a grant to increase its language capabilities despite its tiny budget. These actions constitute strong evidence of compliance.

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U S DEPARTMENT OF TRANSPORTATION
ORDER 1000.12
1/19/77

IMPLEMENTATION OF THE DEPARTMENT OF TRANSPORTATION TITLE VI PROGRAM

1. **PURPOSE**

   a. The purpose of this Order is to implement Title VI of the Civil Rights Act of I964 (42 U.S.C. 2000d et seq.); the regulations of this Department (49 C.F.R. Part 21); and the regulations of the Department of Justice (28 C.F.R. Part 42, Subpart F) issued pursuant to Executive Order 11764. This Order establishes the uniform minimum responsibilities of each operating element, of this Department in implementing and enforcing the Title VI program, to the end 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 from this Department.

   b. Nothing in this Order is intended to, nor shall it diminish or abrogate the requirements of section 905 of the Railroad Revitalization and Regulatory Reform Act of 1976 or section 30 of the Airport and Airway Development Act of 1970 as amended or the regulations, orders or directives established pursuant thereto, to the extent that such requirements are more stringent or contain higher standards.

2. **REFERENCES**

   a. Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d-1 et seq.;

   b. Regulations of the Department of Transportation, 49 C.F.R. Part 21;

   c. Executive Order 11764, dated January 21, 1974, 42 U.S.C. 2000d-1 (note) (Supp. 1976); and

   d. Regulations of the Department of Justice, 28 C.F.R. Part 42, Subpart F.

3. **SCOPE**
   This Order applies to the Departmental Office of Civil Rights and all operating elements of the Department.

BACKGROUND

Executive Order 11764 delegated to the Attorney General authority to coordinate and assist agency enforcement of Title VI, to prescribe standards and procedures regarding such enforcement, and to issue necessary regulations and orders. On December 1, 1976, at 41 FR 52669, the Department of Justice published regulations, effective January 3, 1977, which govern the respective obligations of Federal agencies regarding enforcement of Title VI. This Order sets forth Departmental instructions establishing explicit procedures for implementing and enforcing the Title VI program and the regulations of the Department of Justice.

/signed by/

William T. Coleman, Jr.
Secretary of Transportation

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CHAPTER I—GENERAL

1. PURPOSE:

The purpose of the Title VI program of each operating element is to ensure (1) that each applicant for or recipient of Federal financial assistance is, and will continue to be, in compliance with Title VI, and (2) that the program or activity for which Federal financial assistance is sought is consistent with the operating element's Title VI program. In this latter regard, the objective is to ensure among other things that: (1) the benefits and services of the program or activity are made available to, and are fairly and adequately distributed among, beneficiaries without regard to race, color, or national origin; (2) the location of existing or proposed facilities and the provision of services involved in the program or activity will not deny access to any person on the basis of prohibited discrimination; and (3) persons in the affected community are not differentially or adversely impacted on the basis of race, color, or national origin.

2. DEFINITIONS:

a. **Affected Community**
means that person or persons served or likely to be directly or indirectly affected by a program or activity receiving Federal financial assistance from the Department.

b. **Affirmative Action**
means a positive program to eliminate discrimination and ensure nondiscriminatory practices in the future.

c. **Compliance**
means that condition existing when a recipient has implemented all of the Title VI requirements effectively and there is not any evidence of discrimination.

d. **Department and DOT**
mean the Department of Transportation.

f. **Director**
means the Director of the Office of Civil Rights of the Department.

g. **Discrimination**
means that act or failure to act, intentional or unintentional, the effect of which is that a person, because of race, color, or national origin, has been excluded from participation in, denied the benefits of, or has been otherwise subjected to unequal treatment under any program or activity receiving Federal financial assistance from the Department.

h. **Minority Contractor**
means a business, at least 50 percent of which is owned by or controlled by minority group members. For the purpose of this definition, "minority group members" include but are not limited to Blacks, Hispanics, American Indians, Eskimos, Alaskan Aleuts, and American Orientals.

i. **Noncompliance**
means a failure to meet the requirements of Title VI and the regulations and orders of the Department issued there under or failure to implement an approved Title VI affirmative action program.

J. **Office**
means the Department Office of Civil Rights.

k **Respondent**
an applicant, recipient, sub grantee, or contractor alleged to be in noncompliance or probable noncompliance with the Title VI program.

l. **Title VI**
means Title VI of the Civil Rights Act of 1964.

m. **Title VI Program**
means the system of requirements, procedures, actions and sanctions through which the Department of Transportation enforces Title VI and the regulations effectuating it and ensures that discrimination does not occur in connection with programs and activities which receive Federal financial assistance from this Department.

n. **Other Terms**
Other terms used herein shall have the meaning as defined in 49 C.F.R. 21.23.

3. RESPONSIBILITIES:

a. **Departmental Director of Civil Rights**
The Director acts as the responsible Departmental official in matters relating to Title VI and assists the Secretary in carrying out the Title VI responsibilities of the Department. Specifically, the Director has the responsibility to:

(1) Recommend, develop, disseminate, monitor, and vigorously pursue Departmental policies on the implementation of Title VI and assist the operating elements in the establishment of Title VI programs.

(2) Prepare uniform Departmental Title VI regulations and issue guidelines and program directives.

(3) Advise the Secretary concerning significant developments in the implementation of the Department's Title VI program.

(4) Review, evaluate, and vigorously monitor operating elements' activities and programs relating to Title VI and effectuate changes to assure consistency and program effectiveness.

(5) Monitor compliance with DOT Order 1050.2, Standard DOT Title VI Assurances, including the review of any expansion or addenda to the Assurances by the operating elements.

(6) Provide leadership, guidance, and technical assistance to the operating elements in the carrying out of their Title VI responsibilities.

(7) Ensure that all complaints of discrimination alleging noncompliance with Title VI, this Order and the regulations of the Department implementing Title VI are processed, investigated and resolved in a fair and timely manner in accordance with Title VI and the regulations and orders of the Department.

(8) Take appropriate, fair and timely action with regard to all findings of noncompliance under Title VI, by initiating or participating inter alia in attempts at informal resolution, hearings, and reports to the Secretary for submission to Congress ordering the suspension or termination of Federal financial assistance.

(9) Provide primary coordination and liaison with other agencies, offices, and public and private organizations outside the Department and with the Department of Justice, in conjunction with the Office of General Counsel, to achieve program objectives.

(10) Disseminate information to and provide continuous and meaningful consultation with the public concerning the Department's Title VI program, including, in appropriate situations, the provision of material in languages other than English.

b. **Operating Elements**
Each operating element, with respect to the Federal financial assistance programs it administers, has the responsibility to ensure that the objectives of Title VI, the regulations of the Department at 49 C.F.R. Part 21, and the regulations of the Department of Justice at 28 C.F.R. Part 42, Subpart F, are achieved. The head of each operating element shall:

(1) Cause each application for Federal financial assistance:

(a) To be reviewed by its office of civil rights for a written determination as to whether the applicant is in compliance with Title VI, and whether the program, project, or activity which is funded in whole or in part by such Federal financial assistance is consistent with the operating element's Title VI program.

(b) To include the Standard DOT Title VI Assurances required

Within 90 days from the date of this Order, develop and submit to the Director for review and approval:

(a) A Title VI program, in accordance with paragraph 4 of this chapter and the regulations of the Department of Justice at 28 C.F.R. 42, Subpart F, relating to each Federal financial assistance program it administers; and

(b) A draft o f proposed procedures and requirements that will cause the applicants and recipients to take all actions necessary to implement the Title VI program;

(3) Within 30 days after approval by the Director, cause to be published in the Federal Register, procedures and requirements that will implement the operating element's Title VI program;

(4) Assign sufficient personnel to implement fully and to ensure compliance with its Title VI program;

(5) Cause to be included in each agreement pursuant to which Federal financial assistance is to be provided, a requirement that the recipient notify the operating element immediately in writing of:

(a) Any lawsuit or complaints filed against the recipient alleging discrimination on the basis of race, color, or national origin; and

(b) Any application it files with other Federal agencies for Federal financial assistance, including a brief description of the application; and

(6) Cause each environmental impact review made pursuant to DOT Order 5610.lB in connection with Federal financial assistance programs to be reviewed by its office of civil rights prior to approval in order to ascertain whether the environmental determinations are consistent with its Title VI program determinations.

4. REQUIREMENTS:

a. **Program Examination**
Each operating element shall, in developing its Title VI program, examine in detail the nature and structure of programs and activities for which it provides Federal financial assistance, require information of applicants and recipients to determine compliance, and establish requirements so as to ensure that the purpose of its Title VI program is achieved.

b. **Title VI Program Development**

In developing its Title VI program, each operating element shall, in addition to the requirements of 28 C.F.R. Part 42, Subpart F, be guided by the following considerations:

(1) **Covered Employment**

Under Title VI, the employment practices of an applicant or recipient can be considered where (1) a primary purpose of the program or activity is to provide employment [see 49 C.F.R. Part 21.5(c)(1)(2)]; or (2) discriminatory employment practices could cause discrimination with respect to beneficiaries. (See Chapter III for further guidance on covered employment.)

(2) **Participation in Decision Making**

(a) Where the program or activity for which Federal financial assistance is sought involves non elected boards, advisory councils, or committees which are an integral part of planning or implementing the program or activity, the Title VI program shall require appropriate action to insure that such boards, councils or committees reasonably reflect the racial/ethnic composition of the community affected by the program or activity.

(b) Where the program or activity requires public hearings, the Title VI program shall require appropriate action to ensure that notice of such hearings reaches all segments of the affected community. Notices shall be published in and announced over general and minority newspaper and broadcast media respectively. Such publications and broadcasts shall State that discrimination in the program is prohibited by Federal law. The Title VI program shall also require that direct contact shall be made with racial/ethnic community organizations and/or leaders in communities affected or served by the program or activity. The participation of such persons and organizations in the decision-making process shall be solicited.

(c) Where a significant number or proportion of the affected community needs information in a language other than English in order to be effectively informed of or to participate in the public hearings, the recipient shall publish and announce notices of public hearings in the other languages and shall take any other reasonable steps, including the furnishing of an interpreter, considering the scope of the program and the size and concentration of the non-English speaking population.

(3) **Minority Contractor Participation**

Requirements shall be established to ensure that business organizations are not excluded from participation in the program or activity on the grounds of race, color, or national origin. The Title VI program shall require every application for Federal financial assistance in which there will be contracts awarded to include an affirmative action program for minority contractor participation. (See Chapter II for further guidance on minority contractor participation.)

(4) **Pre-award Reviews**

As part of its Title VI program, each operating element shall cause each application for Federal financial assistance to be reviewed by its office of civil rights which shall make a written determination as to whether the applicant is in probable compliance or compliance with Title VI, and whether the program, project, or activity which is funded in whole or in part by such Federal financial assistance is consistent with the operating element's Title VI program. An application for Federal financial assistance shall not be approved unless the office of civil rights of the operating element has found in its written determination that the applicant is in probable compliance or compliance and that the project, program, or activity is consistent with the Title VI program. (See Chapter IV.)

(5) **Post-Award Reviews**

As part of its Title VI program, each operating element shall establish and maintain an effective program of post award compliance reviews with respect to programs and activities which have been furnished Federal financial assistance. Such reviews are to include periodic submission of compliance reports by recipients and on-site reviews. (See Chapter IV.)

5. **COMPLIANCE WITH TITLE VI:**

Each operating element shall refer all complaints alleging discrimination which is prohibited by Title VI, and all matters which, based on a compliance review, report or other information, indicate a possible failure to comply with Title VI, to the Director for investigation and handling in accordance with the regulations of this Department at 49 C.F.R. Part 21. Each operating element shall cooperate with the Director in handling all such compliance matters.

CHAPTER II—MINORITY CONTRACTOR PARTICIPATION

1. **GENERAL**
Each operating element shall develop and maintain procedures to:

a. Ensure that an applicant or recipient does not discriminate against any business organization in the award of any contract because of the race, color, or national origin of its managers, employees, or owners; and

b. Require applicants and recipients to take affirmative action to ensure that minority businesses are afforded a fair and representative opportunity to do business.

2. **APPLICATION REVIEW**

a. Reporting
Each operating element shall require every applicant for Federal financial assistance in which there will be contracts awarded to include information sufficient to make a determination as to minority contractor participation. As a minimum, each operating element shall require the following information in the TITLE VI ASSESSMENT required by Chapter IV, paragraph 2a, of this Order:

(1) An analysis of awards of contracts to minority contractors during the previous year describing the nature of goods and services purchased and the dollar amount involved.

(2) A comparison of the percentage of awards of contracts to minority contractors (by number of contracts and by total dollar amount involved) to the total procurement activity of applicant or recipient for the previous year.

(3) Details of proposed contracts in excess of [*] $____ to be awarded that would describe the services or products which will be sought, including estimated quantities; give the location where the services are to be provided; the manner in which proposals will be solicited and contracts will be awarded; and the description of bidding procedures.

(4) Procedures to ensure that known minority contractors will have an equitable opportunity to compete for contracts and subcontracts shall include the:

(a) Ways in which the applicant plans to arrange solicitations, time for presentation of bids, quantities, specifications and delivery schedules so as to facilitate the participation of minority contractors:

(b) Means by which the applicant could assist minority contractors in overcoming barriers to program participation in such areas as bonding, insurance and technical assistance;

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[*] The amount to be established by the head of each operating element for the Federal financial assistance program he/she administers with the concurrence of the Director.

(c) Kinds of information the applicant will use to make minority contractors aware of contracting opportunities in its program; where appropriate, information should be in languages other than English;

(d) Projected percentage goals or dollar values to be awarded to minority contractors; and

(e) Designation of a liaison officer who will administer the applicant's minority contract program.

(5) Procedures by which the applicant or recipient will seek affirmative action from its sub grantees and contractors to ensure minority contractor participation that include:

(a) In advertised and negotiated specifications for Federally- assisted contracts, requirements that (1) each bidder submit a minority contractor plan stating whether or not the bidder intends to subcontract a portion of the work and, if so, the type of affirmative action taken to seek out and consider minority contractors as potential subcontractors; and (2) each bidder intending to subcontract make contact with potential minority contractors to solicit affirmatively from minority contractors their interest, capability and prices, and document the results of such contacts.

(b) In federally-assisted contract requirements, assurances that prime contractors requesting permission to subcontract part of the contract work take the action required in subparagraphs (4)(a) and (4)(e) of this chapter.

(c) In every sub-grant, a requirement assuring that the sub-grantee will take the action required in subparagraphs (4)(a) through (4)(e) of this chapter and subparagraphs (a) and (b) of this paragraph.

b. Analysis

Based upon the information submitted by the applicant, and additional information that the operating element may require, the operating element shall determine whether the applicant may be considered to be in compliance with regard to minority contractor participation, or whether, by means of a pre-award agreement, the applicant has been brought in compliance with Title VI. (See Chapter VI.)

CHAPTER III—COVERED EMPLOYMENT

I. **DEFINITION**

Employment discrimination includes: (1) consideration of a person's race, color, or national origin in weighing 8 person's qualifications for hire, discharge, promotion, demotion, transfer, layoff, rates of pay or other forms of compensation or benefits, selection for training or apprenticeship; or (2) consideration of race, color, or national origin with respect to recruitment or recruitment advertising techniques. Actions that are required to be taken under an approved affirmative action plan do not constitute discrimination in employment.

2. **TYPES OF COVERED EMPLOYMENT**

a. **Primary Objective is to Provide Employment**

An operating element may take the actions specified in this Order against any applicant or recipient of Federal financial assistance that practices discrimination in employment, "where a primary objective of the Federal financial assistance is to provide employment." [See, 49 C.F.R. 21.5(c)(l), (2).] .

(1) Those programs for which the Department has determined that a primary objective is to provide employment are listed in Appendix B to 49 C.F.R. Part 21. In addition, with respect to any program providing financial assistance for construction, including alteration and repair, or for the purchase of transportation equipment, it shall be assumed that a primary purpose of the program is to provide employment, notwithstanding that the program is not listed in Appendix B.

(2) Except with respect to those programs listed in Appendix B, each element should determine by examination of the legislative history and the language of each statute authorizing Federal financial assistance, whether a significant concern of Congress was the provision of employment, as well as the provision of any other services to the public. Congress may have had several primary objectives in enacting legislation which provides financial assistance. If providing employment was a substantial concern of Congress in enacting a statute, it shall be deemed to have been a "primary objective," and the employment practices of the applicant or recipient shall be treated under this chapter. Upon a determination of whether the program's primary objectives include or do not include employment, the opinion and information supporting it shall be forwarded to the Director by the operating element involved.

b. **Primary Objective is Not to Provide Employment**

Regardless of the objectives of the Federal financial assistance program, discrimination in employment practices by recipients of Federal financial assistance is prohibited where discrimination in employment causes discrimination to the beneficiaries. [See, 49 C.F.R. 21.5(c)(3).] In this regard, it shall be presumed, with respect to the employment practices of an applicant or recipient, that employees who engage in direct contact with interested beneficiaries, or who engage in the planning and implementation of a program or activity involving Federal financial assistance, have direct impact upon beneficiaries.

3. **COMPLIANCE RESPONSIBILITIES**.

a. **Procedures**

Each operating element shall develop and maintain procedures to:

(1) Analyze each of its programs and recipients to determine:

(a) Whether the recipient engages in discrimination in employment; and

(b) Whether the recipient's employment practices cause beneficiaries to be denied equal opportunity and nondiscriminatory treatment in connection with the recipient's federally-assisted activities.

(2) Considerations to be taken into account by these provisions include but are not limited to:

(a) The nature and purpose of the program;

(b) The benefits of the program;

(c) The intended beneficiaries (care should be taken to distinguish incidental beneficiaries and intended beneficiaries);

(d) The nature of the recipient's employment practices and the ways in which those practices may affect the benefits provided by the program.

b. **Pre-award Information Required**

(1) Each operating element shall require that each applicant for Federal financial assistance submit the information necessary to permit the operating element to make the determinations regarding the employment practices of the applicant necessary for a finding respecting probable compliance. At a minimum, the TITLE VI ASSESSMENT provided for in Chapter IV, paragraph 2a shall contain:

(a) A statistical breakdown by race, color, and national origin of that portion of the applicant% workforce that is or is likely to be involved in any manner, either directly or indirectly, in the preparation of the application for Federal financial assistance, the handling or use of such funds, or the work to be performed with the aid of such funds. The breakdown shall be by job titles, grouped as necessary for work of comparable difficulty and responsibility.

(b) A listing of the number and types of employment openings that are expected to be created in connection with the Federally- assisted work, including those that will not be reimbursed directly from Federal funds.

(c) A cumulative listing of employment actions, including hirings, firings, promotions, layoffs, training courses, etc., for the previous year in that portion of the applicant's workforce for which the breakdown in (1) is provided.

(d) An analysis of the available workforce in the area in which the applicant does or may reasonably recruit, expressed in terms of the race, color, or national origin characteristics of the workforce.

A copy of any affirmative action plan pertaining to the applicant's employment practices.

4. PRE-AWARD AGREEMENTS

Whenever an operating element finds cause to believe that an applicant is in noncompliance or probable noncompliance with the employment requirements of Title VI, it may attempt to resolve the problem informally through the provisions set forth in Chapter VI of this Order. Any such informal resolution of an employment noncompliance problem will set forth in writing the terms and conditions relating to employment to which the applicant will be bound as a condition to receiving Federal financial assistance. Such terms and conditions may include the creation of and commitment to carry out affirmative action steps, including goals and timetables, that are designed to ensure that the purposes of Title VI are met during the period that Federal financial assistance is to be extended. Any such agreement shall be signed by all parties and shall be subject to approval by the Director.

CHAPTER IV—COMPLIANCE REVIEWS

1. **GENERAL**
Each operating element is responsible for reviewing each application for Federal financial assistance and for monitoring the performance of each recipient of Federal financial assistance from the Department to ensure that each applicant and recipient complies fully with Title VI. 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.

2. **APPLICATION REVIEW**.

a. **Title VI Assessments**
Each operating element shall require every applicant for Federal financial assistance to include in its application a section entitled "TITLE VI ASSESSMENT." This section shall contain information sufficient to permit an initial determination by DOT of whether the applicant will probably comply fully with the Title VI requirements. This section shall also contain the applicant's analysis of the effects of the proposed use of Federal financial assistance upon Title VI concerns.

(1) Information Required
Within 90 days of the effective date of this Order, each operating element shall prepare application guidelines setting forth, in detail, the specific information to be required from applicants with respect to each of the operating element's Federal financial assistance programs. The Director shall review and approve, disapprove or amend these guidelines. A copy of these guidelines will be provided to each applicant requesting Federal financial assistance under the program concerned. While these guidelines should be tailored to the needs of each specific Federal financial assistance program, they shell call for the following information:

(a) A statistical breakdown by race, color and national origin of:

- The population eligible or likely to be served or affected by the project;
- The projected users or beneficiaries of the project;
- The owners of property to be taken, and persons or businesses to be relocated or adversely affected, as a result of the project; and
- The present or proposed membership of any planning or advisory body which is an integral part of the program or project.

(b) The information concerning employment required by Chapter III, paragraph 3b of this Order.

(c) The information relating to minority contractor participation required by Chapter II, paragraph 2a.

(d) The proposed location, and alternative locations, of any facilities to be constructed or used in connection with the project, together with data concerning the composition by race, color and national origin of the populations of the areas surrounding such facilities.

(e) A concise description of:

- Any lawsuits or complaints alleging discrimination on the basis of race, color or national origin filed against the applicant or any of its proposed sub-grantees within the five years next previous to the date of the application, together with a statement of the status or outcome of each such complaint or lawsuit;

- Any pending application by the applicant or any of its proposed sub-grantees for Federal financial assistance to any Federal agency; and

- Any civil rights compliance review performed or being performed on the applicant or any of its proposed sub-grantees by any State, local or Federal agency within the five years next previous to the date of the application, together with a statement of the status or outcome of such review.

(f) Any other information deemed necessary by the operating element office of civil rights or the Director.

(2) Analysis
Each operating element shall require every applicant for Federal financial assistance, as a part of its "TITLE VI ASSESSMENT," to analyze its probable Title VI performance. The precise components of this analysis shall be made part of the "application guidelines" to be prepared by the operating elements pursuant to this Order. The analysis in any case shall include the following items:

(a) The relative benefits, services, and adverse impacts of the proposed project and its alternatives on persons and businesses of majority and minority racial and national origin groups;

(b) A statement of any problems, potential as well as actual, that will or may occur with respect to any Title VI concern;

(c) A statement of what action the applicant agrees to take to correct any such problems;

(d) A statement of the affirmative action that the applicant will take to ensure full compliance with all Title VI requirements, including, but not limited to, such matters as provisions for communicating with persons whose primary language is not English, nondiscrimination in covered employment, outreach at all stages of the planning and implementation of the project to persons and communities affected thereby, equal access to services and benefits of the project, and minority contractor participation;

(e) A description of how the applicant will enforce the Title VI requirements of its sub-grantees and contractors; and

(f) Any additional analysis deemed necessary by the operating element office of civil rights or the Director.

b. **Additional Information and Analysis**
If the operating element office of civil rights determines that the "TITLE VI ASSESSMENT" is incomplete or that more information is needed to make a determination respecting probable compliance, the operating element shall require the applicant to provide such information within 60 days of the request. Failure by the applicant to provide such information in a timely fashion shall be a ground for a determination of probable noncompliance.

c. **Initial Determination Respecting Probable Compliance**
Based upon the TITLE VI ASSESSMENT, and within 30 days of receiving the application or additional information pursuant to paragraph 2a(3) of this chapter, the operating element office of civil rights shall make a determination respecting probable compliance. This determination shall be one of the following:

(1) The applicant will probably comply in all respects with the Title VI requirements;

(2) It cannot be determined without an on-site compliance review whether the applicant will comply in all respects with the Title VI requirements; or

(3) The applicant probably will not comply in all respects with the Title VI requirements.

d. **Outcomes**

(1) In the event that a determination of probable compliance is made, no further pre-award civil rights review shall be necessary.

(2) In the event that an on-site compliance review is required, the applicant shall be found as a result of this review either to be in compliance or noncompliance with all aspects of the Title VI requirements.

(3) In the event that a determination of probable noncompliance is made, the applicant may, within 60 days of receiving notice of the determination, ask for reconsideration, submitting there with any additional information or analysis it believes to be relevant. The operating element office of civil rights shall consider and decide any such request for reconsideration, within 30 days of receiving it. In response to a request for reconsideration, the operating element may make one of the findings in paragraph b(l) or paragraph b(2).

(4) In the event of a determination of probable compliance after an application review or of compliance as the result of a pre-award on-site compliance review, the operating element office of civil rights shall concur in any approval of the application. The operating element office of civil rights shall not concur in the approval of the application where there is a finding of probable noncompliance resulting from an application review or noncompliance resulting from a pre-award on-site compliance review. An operating element may not approve any application for Federal financial assistance without the concurrence of its office of civil rights pursuant to this subsection.

e. **Review by the Director**
Where a finding of probable noncompliance or noncompliance is made by the operating element, as the result of a complaint investigation, application review, or on-site review, the operating element shall notify the Director within five working days. The Director shall decide within five working days whether the Office or the operating element office of civil rights shall process the matter thereafter.

3. ON-SITE COMPLIANCE REVIEWS.

a. **Responsibility for Conducting On-Site Compliance Reviews**
On-site compliance reviews shall be conducted by the operating elements' office of civil rights. The Director may order that the Office perform a review rather than the Operating element's office of civil rights.

b. **Content**.

(1) Onsite compliance reviews shall include, in detail, all aspects of a recipient's performance relevant to Title VI compliance. The review shall include personal interviews with persons in the applicant's or recipient's organization and in the community likely to have relevant information or views. The reviewer shall also gather all statistical and documentary materials needed to make a determination of compliance or noncompliance. The findings, conclusions and recommendations, with supporting rationale, should be set forth in a report.

(2) Each operating element office of civil rights shall, within 120 days of the effective date of this Order, develop a manual prescribing in detail the procedures to be followed and the information to be gathered as part of its on-site compliance reviews and a uniform review format. The procedural and

substantive requirements should be tailored to fit the needs of the particular programs through which each operating element provides Federal financial assistance. The manual shall also set forth standards for evaluating the Title VI performance of applicants and recipients examined by on-site compliance reviews. The Director shall review and approve, disapprove, or amend as necessary the operating elements' manuals.

c. **When Required**
On-site compliance reviews shall be required under the following circumstances:

(1) When it is determined, pursuant to paragraph 2b(2) of this chapter, that a determination respecting probable compliance cannot be made on the basis of the applicant's "TITLE VI ASSESSMENT."

(2) When a project for which a determination of probable compliance has been made on the basis of the applicant's TITLE VI ASSESSMENT, within one year of the approval of Federal financial assistance for the project, or at the estimated mid-point of a project expected to be completed within less than two years.

(3) When recipients have been found in partial noncompliance by a pre-award on-site compliance review and, as the result of informal resolution, have agreed to take corrective measures, within one year of the approval of Federal financial assistance for the project, or at the estimated mid-point of a project expected to be completed within less than two years. The operating element office of civil rights concerned has the discretion to limit such reviews to consideration of the deficiencies identified by the previous review and the corrective measures undertaken as a result of conciliation.

(4) When projects require or are expected to require at least three years from approval of Federal financial assistance to completion, and a total of at least *$____ in Federal financial assistance has been or will be expended, recurrent reviews shall be conducted at two-year intervals. If, in the opinion of the operating element office of civil rights, less than one year remains before total completion of the project, this requirement may be waived.

(5) At any time when the Director believes that such a review is warranted with respect to any project. The staff of the Office shall perform all special on-site compliance reviews.

(6) When less than *$_____in Federal financial assistance is provided by DOT with respect to any project, the operating element office of civil rights may waive any requirement for a post-award onsite compliance review.

d. **Reports**
The result of every compliance review shall be set forth in a written report to be completed within 30 days of the completion of the on-site visit. The report shall include a summary of the information obtained, specific findings of fact, a determination of compliance or noncompliance, and recommendations, if any. A copy of this report and the CRIS Data Entry form shall be sent to the Director and to the applicant or recipient within five (5) days of its approval by the operating element's office of civil rights.

e. **Reconsideration**
Within 60 days of being notified of a finding of noncompliance, the applicant or recipient may request reconsideration of the findings by submitting to the operating element's office of civil rights any additional information or analysis it considers relevant. The operating element's office of civil rights shall consider the request within 30 days.

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* The amount to be established by the head of each operating element for the Federal financial assistance program he/she administers with the concurrence of the Director.

f. Notification of the Assistant Attorney General
The Director shall promptly notify the Assistant Attorney General, Civil Rights Division, of every finding of noncompliance resulting from an on-site compliance review.

4. PERIODIC COMPLIANCE REPORTS

a. The operating elements shall require all recipients to submit semiannual compliance reports to the operating element's office of civil rights. The content of these reports shall be prescribed in detail by compliance report guidelines which the operating elements shall develop and submit to the Director for approval within 120 days of the effective date of this Order. These reports shall provide updated information in those categories of data required as part of the TITLE VI ASSESSMENT in the recipient's application and relate progress made with respect to the recipient's affirmative equal opportunity programs and agreements to correct any previously identified noncompliance problems.

In the event that the operating element office of civil rights involved believes that a compliance report indicates a possible noncompliance problem, he shall, within 30 days of receiving the report, advise the Director. Based upon the report and the operating element office civil rights' comments, the Director shall decide within IO days whether a special compliance review pursuant to paragraph 3c(5) of this chapter is necessary.

CHAPTER V—COMPLAINT PROCEDURES

1. GENERAL.

Purpose. These procedures are intended to prescribe the responsibilities of the Department of Transportation to enforce Title VI of the Civil Rights Act of 1964 with respect to the filing, processing, investigating, and disposing of complaints of discrimination.

2. FILING OF COMPLAINTS.

a. **Persons Eligible to File**
Any person who believes that he or she, individually, as a member of any specific class of persons, or in connection with any minority contractor, has been subjected to discrimination prohibited by Title VI of the Civil Rights Act of 1964 may file a complaint, as stated in 49 C.F.R. 2l.ll(b). A complaint may also be filed by a representative on behalf of such a person.

b. **Time for Filing**
In order to have the complaint considered under this chapter, the complainant must file the complaint no later than 180 days after:

(1) The date of an alleged act of discrimination; or

(2) Where there has been a continuing course of conduct, the date on which that conduct was discontinued. In either case, the Director or his/her designee may extend the time for filing or waive the time limit in the interest of justice, specifying in writing the reason for so doing.

c. **Officials Authorized to Receive Complaints**
Complainants may submit their complaints to the Director, heads of operating elements, directors of civil rights of operating elements, heads of DOT field offices and installations, or the designees of any of these officials. Any other DOT officer or employee receiving a complaint shall immediately forward it to the nearest such official. All complaints received by officials other than the Director shall immediately be forwarded to the Director, date stamped and marked "Attention: Complaints Division."

d. **Form of Complaints**
Complaints shall be in writing and shall be signed by the complainant and/or the complainant's representative. Complaints shall set forth as fully as possible the facts and circumstances surrounding the claimed discrimination. In the event that a person makes a verbal complaint of discrimination to a DOT officer or employee, the person shall be interviewed by a DOT official authorized to receive complaints or the official's designee. If necessary, the official will assist the person in reducing the complaint to writing and submit the written version of the complaint to the person for signature. The complaint shall then be handled in the usual manner.

e. **Responsibility of Operating Elements**
Operating elements shall require their applicants for and recipients of Federal financial assistance to forward any complaint of discrimination made to them about their own actions or actions of sub-grantees or contractors to a DOT official, authorized to receive the complaint.

3. PROCESSING OF COMPLAINTS.

a. **Acknowledgement**
The Complaints Division of the Office shall acknowledge in writing the receipt of every complaint within five (5) days of receiving it. At the same time, the Complaints Division shall notify the party charged (and the primary recipient, if the primary recipient is not the party charged) that a complaint has been filed.

b. **Information for Operating Elements**
Immediately upon receiving a complaint, the Complaints Division shall request the following information from the operating element(s) concerned, which shall furnish the information requested within ten (10) days of receiving the request:

(1) Project and file number(s);

(2) Location and brief description of project;

(3) Status of funding for the project;

(4) Copies of any compliance reviews of the recipient with respect to the project;

(5) Copies of the TITLE VI ASSESSMENT and other nondiscrimination assurances signed with respect to the project; and

(6) A statement of whether a compliance review with respect to the project has been scheduled or is contemplated within the time allowed for processing of the complaint.

c. **Information from Other Agencies**
The Complaints Division shall contact tie Equal Employment Opportunity Commission (EEOC), State or local civil rights offices, other Federal agencies providing Federal financial assistance to the respondent, and community organizations to determine whether any other allegations of noncompliance against the respondent exist. The existence of a pattern of such allegations may be ground for the Director to initiate a special on-site compliance review pursuant to paragraph 3c(5) of Chapter IV.

d. **Determination of Jurisdiction and Investigative Merit**
Based upon the information in the complaint and the information provided by the operating element, the Complaints Division shall determine whether the Department has jurisdiction to pursue the matter and whether the complaint has sufficient merit to warrant investigation. These determinations shall be made within 15 days of the receipt by the Complaints Division of the information requested from the operating element.

(1) **Jurisdiction**
The Department has jurisdiction to investigate a complaint if:

(a) The complaint involves a program or activity for which DOT has furnished or agreed to furnish Federal financial assistance, or for which such assistance has been requested by an applicant;

(b) The complaint alleges any of the specific actions prohibited by 49 C.F.R. 21.5 or any other action which discriminates against any person, class, or minority contractor on the basis of race, color, or national origin; or

(c) The complaint alleges discrimination with respect to covered employment (see Chapter III).

(2) **Investigative Merit**
A complaint shall be regarded as meriting investigation unless:

(a) It clearly appears on its face to be frivolous or trivial;

(b) Within the time allotted for making the determination of jurisdiction and investigative merit, the party complained against voluntarily concedes noncompliance and agrees to take appropriate remedial action;

(c) Within the time allotted for making the determination of jurisdiction and investigative merit, the complainant withdraws the complaint; or

(d) Other good cause for not investigating the complaint exists.

(3) **Request for Additional Information from Complainant**
In the event that the complaint does not contain sufficient information to Permit a determination of jurisdiction and investigative merit to be made, the Complaints Division shall request the complainant to provide specific additional information. Such a request shall be made within fifteen (15) days of the receipt by the Complaints Division of the complaint, and shall require the complainant to furnish the information within 60 days. Failure of the complainant to do so may be considered good cause for a determination of no investigative merit.

(4) **Concurrence of Director**
The Director must personally review and concur with any determination that a complaint should not be investigated for lack of jurisdiction or investigative merit.
The Director will approve or disapprove the determination of the Complaints Division within five (5) days of receiving it.

(5) **Notification of Disposition**
Within five (5) days of the Director's decision concerning the disposition of the complaint, the Director shall notify by registered letter the complainant, party charged, and primary recipient (if not the respondent) of the disposition.

(a) In the event of a decision not to investigate the complaint, the notification shall specifically state the reason for the decision.

(b) In the event the complaint is to be investigated, the notification shall state the grounds of DOT jurisdiction, inform the parties that an on-site investigation will take place and request any additional information needed to assist the investigator in preparing for the investigation.

(6) **Referral to Other Agencies**
When DOT lacks jurisdiction, the Director shall when possible, refer the complaint to other State or Federal agencies, informing the parties of his action. For example, the Director could refer complaints regarding noncovered employment to the EEOC or the State anti-discrimination agency.

(7) **Priority Complaints**
All incoming complaints shall be examined to determine whether the discrimination alleged would be irremediable if not dealt with promptly; e.g., complaint of a minority contractor when the contract is to be awarded in a short time. If such a determination is made, the complaint shall be given priority status. The processing, investigation, and determination of such complaints shall be accelerated so as to advance significantly the normal completion date of the process.

4. INVESTIGATIONS.

a. **Assignment**
The Chief of the Complaints Division shall assign all complaints to an investigator within the division, except where the Director determines that because of workload in the Office:

(1) The matter would be expedited if handled by an operating element's office of civil rights and that such handling is appropriate in the case; or

(2) The complaint shall be referred to the primary recipient for action pursuant to paragraph 6 of this chapter. The responsibilities of an operating element's office of civil rights to investigate the complaint may not be delegated to any regional field office. When an operating element's office of civil rights makes the investigation and prepares the investigation report, the Director shall review and approve the recommended disposition of the matter in the same manner provided in paragraph 5h of this chapter.

b. **Investigator's Preparation**
Before beginning the field investigation, the investigator shall become familiar with all factual and legal aspects of the case, send a letter of introduction, prepare an investigation plan and establish the dates and times for visits and interviews. This preparation shall be completed within thirty (30) days of the assignment of the case to the investigator.

(1) Letter of Introduction
This letter shall inform the party charged with discrimination of the identity of the investigator, request any specific information or documents which the party will be asked to produce, and propose a time and place for a visit (at least two weeks subsequent to the date of the letter). A copy of the letter will also be sent to the complainant (and the complainant's authorized representative, if applicable) and to the primary recipient (if different from the respondent).

(2) Rescheduling of Visit
The investigator shall contact the head of the party charged with discrimination to confirm the time and date of the scheduled visit. If necessary, the visit may be rescheduled for any time within ten (10) days of the original date.

(3) Investigation Plan
Prior to contacting the recipient to schedule the complaint investigation, the investigator shall prepare an investigation plan, in order to focus on relevant issues; diminish the possibility of inadvertent gaps in the investigation, and note areas in which additional information will be required. In the event that an office, other than the Complaints Division, is conducting the investigation, the investigation plan shall be submitted to the Complaints Division for review and approval.

5. CONDUCT OF INVESTIGATIONS.

a. **Scope**
Investigations shall be confined to issues and facts relevant to the allegations of the complaint. Investigators who are concurrently conducting a compliance review shall gather all information relevant to both purposes.

b. **Confidentiality**
Complainant shall be offered a pledge of confidentiality as to his or her identity. This offer, if accepted by the complainant, shall be binding on the investigator. Complainants shall be interviewed at times and places which will not create a risk of violating or vitiating this pledge. Except where essential to the investigation (e.g., in an individual employment discrimination case), the investigator shall not reveal the identity of the complainant to the respondent or to any third party. If the investigator in such a case determines that he must reveal the complainant's identity, he shall first secure the complainant's permission to do so. In no case may any DOT officer or employee provide a copy of the complaint to the respondent or to any third party unless the prior written consent of the complainant is obtained.

c. **Cooperation of Recipients**
The operating elements shall require that their recipients and applicants (and, through primary recipients, sub-grantees and contractors as well) cooperate fully in the conduct of investigations. Such cooperation shall include, but not be limited to, the following:

Question Responses.
Officials and employees of the respondent shall answer fully all questions proposed to them by the investigator.

(2) Compliance Data
The respondent shall furnish to the investigator all relevant compliance data required to be compiled by the operating element pursuant to 49 C.F.R. Section 21.9(b).

(3) Access to Sources of Information
The respondent shall permit access to such books, records, accounts, and other sources of information as may be pertinent to the investigation.

(4) Records in Possession of Third Party
In the event that any information requested of a respondent is in the exclusive possession of any other agency, institution, or person, which refuses or fails to furnish this information to the respondent, the respondent shall so certify and set forth the efforts it has made to obtain the information.

d. **Failure to Cooperate**
Failure or refusal by the respondent to furnish requested information or other failure to cooperate is a violation of DOT Title VI regulations. In the event that a respondent fails or refuses to furnish information to an investigator, the investigator shall inform the head of the respondent organization that such failure may result in the imposition of sanctions, or termination or refusal to grant or to continue to grant pursuant to 49 C.F.R. section 21.13. The investigator shall indicate in the investigation report that the respondent refused to provide pertinent information, and shall set forth efforts to obtain the information.

e. **Interview with Respondent**.

(1) Purpose Explained
After presenting his/her credentials, the investigator shall explain the right secured by Title VI and indicate the purpose of the visit to be: (1) a complaint investigation or (2) a combined complaint investigation and compliance review.

(2) Allegations Explained
The investigator shall provide a complete summary of the allegations made in the complaint and provide the respondent an opportunity to rebut or refute information on allegation provided or made by the complainant.

(3) Request for Compliance Records
The investigator shall request copies of all records and other material requested in the letter of introduction which have not been received.

(4) Written Statements
The investigator may, with the consent of an interviewee, take a written statement which shall be reviewed by the interviewee, signed and filed with the investigator's report.

f. **Other Interviews**
The investigator shall interview the complainant and any third parties having or likely to have information relevant to the subject matter of the complaint during this interview or at an appropriate later time, the complainant shall have an opportunity to refute information or allegations provided by the respondent.

g. **Investigation Report**
Within ten (10) days after the conclusion of the investigation, the investigator shall prepare an investigation report, setting forth all relevant information, findings, and recommendations for submission to the Director. This report shall include a summary of the complaint; citation of all relevant Federal, State and local laws, rules, regulations, and formal procedures; a concise summary of the issues raised by the complaint; a description of the investigation; findings (of compliance or noncompliance) and recommendations. The report shall include as attachments all correspondence, reports, data, written statements, and other information collected and/or received during the course of the investigative process. The report shall be submitted to the Director for review and approval.

h. **Approval and Notice of Finding**
The Director shall approve or disapprove the findings and recommendations of the investigation report within ten (10) days of the submission of the report to the Director. The consequent disposition of the complaint shall be communicated to the complainant, respondent, and primary recipient (if not the respondent) by registered letter within five (5) days of the Director's decision. A summary of the rationale supporting the disposition made and any recommendations to any party shall be included in this letter.

i. **Request for Reconsideration**
Within 30 days of being notified of a finding of noncompliance, pursuant to a complaint, the respondent may file a request for reconsideration, submitting any additional information or analysis it considers relevant. The Director shall decide such requests within 30 days of receiving them.

6. INVESTIGATIONS BY PRIMARY RECIPIENTS.

a. **Authorization of Primary Recipients to Process Complaints**
The Director may authorize primary recipients to investigate and make findings and recommendations with respect to Title VI complaints, subject to the provisions of subparagraph b of this section. The Director may authorize such action only by those primary recipients who have submitted to the Office a complaint handling procedure substantially complying with this chapter and which the Director has approved. Before approving any such procedure, the Director must be convinced that the primary recipient has the staff and resources to deal effectively, thoroughly and promptly with Title VI complaints.

b. **Scope of Primary Recipients' Authority**
The role in processing Title VI complaints granted to primary recipients under this section is regulated as follows:

(1) The primary recipient may process complaints against its sub-grantees or contractors; it may not process any such complaint, however, if the complaint directly or indirectly implicates the primary recipient itself, or any of its officers or employees, in the alleged discrimination;

(2) When a complaint is made to the recipient about the conduct of one of its contractors or sub-grantees, the recipient shall forward a copy to the Director within five (5) days. The Director shall decide within ten (10) days of receiving the complaint from the primary recipient whether to permit the primary recipient to process the complaint or to assign the complaint to the Complaints Division for action.

(3) When the Director receives a complaint against a primary recipient's subgrantee or contractor which was not first filed with the primary recipient, the Director may, at his/her discretion, refer the complaint to the primary recipient for action or assign the matter to the Complaints Division.

(4) The Director may withdraw the recipient's authority to investigate a complaint at any time prior to the forwarding of the report, findings and recommendations.

(5) In any case in which the primary recipient processes the complaint, the primary recipient shall forward the investigation report, findings and recommendations to the Director. The Director shall review and approve or disapprove the findings and recommendations and notify the parties of the decision as provided in paragraph 5h of this chapter.

7. RECORD-KEEPING AND REPORT REQUIREMENTS.

a. **Records**
The Director shall maintain a log of Title VI complaints filed with it and with its recipients, identifying each Complainant by race, color, 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 disposition; and other pertinent information. Each recipient processing Title VI complaints shall be required to maintain a similar log.

b. **Reports to the Assistant Attorney General Civil Rights Division**
The Director shall prepare the semi-annual reports to the Assistant Attorney General, Civil Rights Division, concerning Title VI complaints required by 28 C.F.R. section 42.408(d).

CHAPTER VI—INFORMAL RESOLUTION

1. GENERAL
Informal resolution means the voluntary agreement by the respondent to take steps, approved by the Department, to correct noncompliance or probable noncompliance identified by complaint investigations, on-site compliance reviews or application reviews. The purpose of resolving the matter by inform& means is not to alter or review findings of noncompliance. Rather, the purpose is to create a plan agreeable to the respondent and the Department that will correct noncompliance which the Department has found to exist and assure continued compliance.

2. PROCEDURE.

a. **Invitation to Informal Resolution**
In every case in which a complaint investigation, application review, or on-site compliance review results in a finding that respondent is in noncompliance or probable noncompliance, the Director shall in the notification of this finding invite the respondent to participate in informal resolution. The invitation shall summarize the steps in the informal resolution process and inform the respondent that it must submit its proposal for correcting noncompliance or probable noncompliance within 30 days.

b. **Respondent's Submission**
Within 30 days of the receipt of the invitation, any respondent desiring to participate in informal resolution shall submit to the Director its proposal for correcting the noncompliance problems identified by the complaint investigation, application review, or field compliance review involved.

c. **Informal Resolution**.

(1) Within 5 days of receiving the respondent's submission, the Director shall assign action on the matter to the staff of the Office or the office of civil rights of the concerned operating element. The operating clement office of civil rights may, with the concurrence of the Director, reassign action to regional or field offices in cases of relatively narrow scope which can be handled appropriately at that level, The Director or his/her designee may be present at and participate in any meeting to resolve informally the matter.

(2) The action office shall set a date for a meeting agreeable to the respondent which shall be no later than 30 days from the date on which action is assigned.

(3) Meetings to resolve informally the matter shall be on-the-record, with the verbatim record kept either by stenographic reporter or tape recording. Tapes or transcripts of the meeting shall be available to participants for a reasonable fee.

(4) The subject matter of the meetings shall be limited to means of correcting noncompliance problems identified by complaint investigations, application reviews, or field compliance reviews. The validity or correctness of findings of noncompliance or probable noncompliance shall be presumed and shall not be discussed or negotiated at meetings.

(5) In the event that the parties are able to agree on a plan to bring the respondent into compliance, the action office shall within ten days of the meeting submit the written agreement to the Director for his/her review. The Director will approve or disapprove the agreement within 20 days of receiving it. If the Director approves the agreement, it will be forwarded to the respondent for signature. If the Director disapproves the agreement, the reasons therefore shall be specific in writing and amendments to the agreement shall be proposed to meet his/her objections. The Director shall submit the proposed amendments to the respondent, requiring the respondent to notify him/her of its agreement or disagreement with the amendments within 20 days.

(6) In the event that no agreement is reached at the meeting to resolve informally the matter, but it appears to the action office that further meetings may produce agreement, the action office may schedule further meetings with the respondent for any dates within 60 days from the date of which action was assigned. If no agreement can be reached by that time, the negotiations shall be terminated unless the action office, with the concurrence of the Director, determines that negotiations should continue for 8 specified additional period of time. In any case in which the Director has decided to permit negotiations to continue beyond 60 days from the date action is assigned, the Director shall promptly notify the Assistant Attorney General, Civil Rights Division, stating the reasons for the length of the negotiations.

d. **Effect of Agreement**
In the event that there is an approved agreement pursuant to this chapter, the existence of the finding of noncompliance or probable noncompliance shall not act as a bar to the provision of Federal financial assistance. When Federal financial assistance is provided as a result of such an agreement, an on-site compliance review shall be conducted to ascertain whether the agreement has been fully implemented (see Chapter IV).

e. **Failure to Effect an Agreement**
Failure to reach an informal resolution will result in the initiation of action pursuant to 49 C.F.R. 21.13

U. S. DEPARTMENT OF TRANSPORTATION EJ ORDER
DOT ORDER 5610.2

FEDERAL REGISTER
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Notices

DEPARTMENT OF TRANSPORTATION (DOT)

Office of the Assistant Secretary for Transportation Policy
[OST Docket No. OST-95-141 (50125)]

Department of Transportation (DOT) Order To Address Environmental Justice in Minority Populations and Low-Income Populations

62 FR 18377

DATE: Tuesday, April 15, 1997

ACTION: Notice of final DOT Order on environmental justice.

SUMMARY: The Department of Transportation is issuing its final DOT Order, which will be used by DOT to comply with Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations. The Order generally describes the process that the Office of the Secretary and each Operating Administration will use to incorporate environmental justice principles (as embodied in the Executive Order) into existing programs, policies, and activities. The Order provides that the Office of the Secretary and each Operating Administration within DOT will develop specific procedures to incorporate the goals of the DOT Order and the Executive Order with the programs, policies and activities which they administer or implement.

FOR FURTHER INFORMATION CONTACT: Ira Laster Jr., Office of Environment, Energy, and Safety, Office of the Assistant Secretary for Transportation Policy, (202) 366-4859, or Marc Brenman, Departmental Office of Civil Rights, (202) 366-1119, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Executive Order 12898, as well as the President's February 11, 1994 Memorandum on Environmental Justice (sent to the heads of all departments and agencies), are intended to ensure that Federal departments and agencies identify and address disproportionately high and adverse human health or environmental effects of their policies, programs and activities on minority populations and low-income populations.

The DOT Environmental Justice Order is a key component of DOT's June 21, 1995 Environmental Justice Strategy (60 FR 33896). The Order sets forth a process by which DOT and its Operating Administrations will integrate the goals of the Executive Order into their operations.

This is to be done through a process developed within the framework of existing requirements, primarily the National Environmental Policy Act (NEPA), Title VI of the Civil Rights Act of 1964 (Title VI), the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), the Inter-modal Surface Transportation Efficiency Act of 1991 (ISTEA), and other DOT applicable statutes, regulations and guidance that concern planning; social, economic, or environmental matters; public health or welfare; and public involvement. The Order is an internal directive to the various components of DOT and does not create any right to judicial review for compliance or noncompliance with its provisions.

In order to provide an opportunity for public input, a proposed version of this Order was published for comment on June 29, 1995 (60 FR 33899). A total of 30 written comments were received. Fifteen comments were received from state transportation or highway agencies, representing 20 state agencies (one letter was signed by ten state agencies, but four of those also sent individual comments). The other 15 comments included four from transit agencies, four from national organizations, two each from local governments, metropolitan planning organizations, and citizens objecting to one particular project, and one from a professional association.

Most of the comments from the state agencies suggested that the proposed Order would duplicate existing processes and impose additional burdens on the state agencies, and urged that greater flexibility be granted to states.

The DOT Order reinforces considerations already embodied in NEPA and Title VI, and the final version has been revised to make this clearer. It is intended to insure that a process for the assessment of environmental justice factors becomes common practice in the application of those, and related, statutes.

Many other comments suggested ways in which the Order might be clarified or simplified, or addressed specific details of individual agency implementation. As this Order is only intended to provide general guidance to all DOT components, detailed comments on each agency's implementation are premature, and should be made during opportunities for public input on agency implementation (para. 5 of the Order).

Several commenters suggested greater reliance on existing procedures, particularly those implementing NEPA.

One commenter noted, “Over the past number of years we have seen rules and laws initiated with laudable intent, only to be slowly transformed into bureaucratic mazes only dimly related to their original purpose.”

The Department does not intend that this Order be the first step in creating a new set of requirements. The objective of this Order is the development of a process that integrates the existing statutory and regulatory requirements in a manner that helps ensure that the interests and well being of minority populations and low-income populations are considered and addressed during transportation decision making.

To further advance this objective, explanatory information has been provided in this preamble and several changes have been made in the Order. Most notably:

--Further clarification has been provided concerning the use of existing NEPA, Title VI, URA and ISTEA planning requirements and procedures to satisfy the objectives of Executive Order 12898.

--The application of the Order to ongoing activities is discussed in this preamble.

--The Order has been modified to further clarify the relationship and use of NEPA and Title VI in implementing the Executive Order.

Further, in developing and reviewing implementing procedures, described in paragraph 5a to comply with Executive Order 12898, the emphasis continues to be on the actual implementation of NEPA, Title VI, the URA and ISTEA planning requirements so as to prevent disproportionately high and adverse human health or environmental effects of DOT's programs, policies and activities on minority populations and low-income populations.

One of the primary issues raised in the proposed Order concerned the actions that would be taken if a disproportionately high and adverse human health or environmental effect on minority populations or low-income populations is identified. The proposed Order set forth three options. A variety of comments were received on this issue, both for and against the various options.

The final Order adopts a modified version of Option B from the proposed Order. While Option B implements a new process for addressing disproportionately high and adverse effects, the Department believes that Option B is consistent with existing law and best accomplishes the objectives of the Executive Order. Option B (now incorporated in paragraphs 8a, 8b and 8c of the final Order) provides that disproportionate impacts on low-income and minority populations are to be avoided, if practicable, that is, unless avoiding such disproportionate impacts would result in significant adverse impacts on other important social, economic, or environmental resources. Further, populations protected by Title VI are covered by the additional provisions of paragraph 8b. Three commenters expressed concern and uncertainty as to the implementation of paragraph 6b(1) of Option B as proposed, that provided for an agreement with populations protected by Title VI. DOT agreed with the comments and, accordingly, that paragraph has been deleted from the final Order.

Several commenters asked about the effective date of this Order. In particular they wanted to know whether it applies to ongoing projects. The effective date of the Order is the date of its issuance. However, to the extent that the Order clarifies existing requirements that ensure environmental justice principles are considered and addressed before final transportation decisions are made, its purposes already should be reflected in actions relating to ongoing projects.

Several commenters recommended that insignificant or de minimis actions not be covered by this Order. It is noted that the definition of “programs, policies and/or activities” in Section 1f of the Appendix does not apply to those actions that do not affect human health or the environment. Other actions that have insignificant effects on human health or the environment can be excluded from coverage by a DOT component.

One commenter suggested that this Order might be inconsistent with the Supreme Court's decision in Adarand Constructors v. Pena. DOT has concluded that, since the purpose of this Order is unrelated to the types of programs which were the subject of Adarand, this Order is not affected by the Adarand decision.

Dated: February 3, 1997.

Federico F. Pena,

Secretary of Transportation.

Department of Transportation, Office of the Secretary, Washington, D.C.

Order

Subject: Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

1. Purpose and Authority

a. This Order establishes procedures for the Department of Transportation (DOT) to use in complying with Executive Order 12898, Federal Actions to Address environmental Justice in Minority Populations and Low-Income Populations, dated February 11, 1994. Relevant definitions are in the Appendix.

b. Executive Order 12898 requires each Federal agency, to the greatest extent practicable and permitted by law, and consistent with the principles set forth in the report on the National Performance Review, to achieve environmental justice as part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects, including interrelated social and economic effects, of its programs, policies, and activities on minority populations and low-

income populations in the United States. Compliance with this DOT Order is a key element in the environmental justice strategy adopted by DOT to implement the Executive Order, and can be achieved within the framework of existing laws, regulations, and guidance.

c. Consistent with paragraph 6-609 of Executive Order 12898, this Order is limited to improving the internal management of the Department and is not intended to, nor does it, create any rights, benefits, or trust responsibility, substantive or procedural, enforceable at law or equity, by a party against the Department, its operating administrations, its officers, or any person. Nor should this Order be construed to create any right to judicial review involving the compliance or noncompliance with this Order by the Department, its operating administrations, its officers or any other person.

2. Scope

This Order applies to the Office of the Secretary, the United States Coast Guard, DOT's operating administrations, and all other DOT's components.

3. Effective Date

This Order is effective upon its date of issuance.

4. Policy

a. It is the policy of DOT to promote the principles of environmental justice (as embodied in the Executive Order) through the incorporation of those principles in all DOT programs, policies, and activities. This will be done by fully considering environmental justice principles throughout planning and decisionmaking processes in the development of programs, policies, and activities, using the principles of the National Environmental Policy Act of 1969 (NEPA), Title VI of the Civil Rights Act of 1964 (Title VI), the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (URA), the Inter-modal Surface Transportation Efficiency Act of 1991 (ISTEA) and other DOT statutes, regulations and guidance that address or affect infrastructure planning and decision-making; social, economic, or environmental matters; public health; and public involvement.

b. In complying with this Order, DOT will rely upon existing authority to collect data and conduct research associated with environmental justice concerns. To the extent permitted by existing law, and whenever practical and appropriate to assure that disproportionately high and adverse effects on minority or low income populations are identified and addressed, DOT shall collect, maintain, and analyze information on the race, color, national origin, and income level of persons adversely affected by DOT programs, policies, and activities, and use such information in complying with this Order.

5. Integration With Existing Operations

a. The Office of the Secretary and each operating administration shall determine the most effective and efficient way of integrating the processes and objectives of this Order with their existing regulations and guidance. Within six months of the date of this Order each operating administration will provide a report to the Assistant Secretary for Transportation Policy and the Director of the Departmental Office of Civil Rights describing the procedures it has developed to integrate, or how it is integrating, the processes and objectives set forth in this Order into its operations.

b. In undertaking the integration with existing operations described in paragraph 5a, DOT shall observe the following principles:

(1) Planning and programming activities that have the potential to have a disproportionately high and adverse effect on human health or the environment shall include explicit consideration of the effects on minority populations and low-income populations. Procedures shall be established or expanded, as necessary, to provide meaningful opportunities for public involvement by

members of minority populations and low-income populations during the planning and development of programs, policies, and activities (including the identification of potential effects, alternatives, and mitigation measures).

(2) Steps shall be taken to provide the public, including members of minority populations and low-income

(3) populations, access to public information concerning the human health or environmental impacts of programs, policies, and activities, including information that will address the concerns of minority and low-income populations regarding the health and environmental impacts of the proposed action.

c. Future rulemaking activities undertaken pursuant to DOT Order 2100.5 (which governs all DOT rulemaking), and the development of any future guidance or procedures for DOT programs, policies, or activities that affect human health or the environment, shall address compliance with Executive Order 12898 and this Order, as appropriate.

d. The formulation of future DOT policy statements and proposals for legislation which may affect human health or the environment will include consideration of the provisions of Executive Order 12898 and this Order.

6. Ongoing DOT Responsibility

Compliance with Executive Order 12898 is an ongoing DOT responsibility. DOT will continuously monitor its programs, policies, and activities to ensure that disproportionately high and adverse effects on minority populations and low-income populations are avoided, minimized or mitigated in a manner consistent with this Order and Executive Order 12898. This Order does not alter existing assignments or delegations of authority to the Operating Administrations or other DOT components.

7. Preventing Disproportionately High and Adverse Effects

a. Under Title VI, each Federal agency is required to ensure that no person, on the ground of race, color, or national origin, is excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity receiving Federal financial assistance. This statute affects every program area in DOT. Consequently, DOT managers and staff must administer their programs in a manner to assure that no person is excluded from participating in, denied the benefits of, or subjected to discrimination by any program or activity of DOT because of race, color, or national origin.

b. It is DOT policy to actively administer and monitor its operations and decision making to assure that nondiscrimination is an integral part of its programs, policies, and activities. DOT currently administers policies, programs, and activities which are subject to the requirements of NEPA, Title VI, URA, ISTEA and other statutes that involve human health or environmental matters, or interrelated social and economic impacts. These requirements will be administered so as to identify, early in the development of the program, policy or activity, the risk of discrimination so that positive corrective action can be taken. In implementing these requirements, the following information should be obtained where relevant, appropriate and practical:

-- population served and/or affected by race, color or national origin, and income level;

-- proposed steps to guard against disproportionately high and adverse effects on persons on the basis of race, color, or national origin;

-- present and proposed membership by race, color, or national origin, in any planning or advisory body which is part of the program.

c. Statutes governing DOT operations will be administered so as to identify and avoid discrimination and avoid disproportionately high and adverse effects on minority populations and low-income populations by:

(1) identifying and evaluating environmental, public health, and interrelated social and economic effects of DOT programs, policies and activities,

(2) proposing measures to avoid, minimize and/or mitigate disproportionately high and adverse environmental and public health effects and interrelated social and economic effects, and providing offsetting benefits and opportunities to enhance communities, neighborhoods, and individuals affected by DOT programs, policies and activities, where permitted by law and consistent with the Executive Order,

(3) considering alternatives to proposed programs, policies, and activities, where such alternatives would result in avoiding and/or minimizing disproportionately high and adverse human health or environmental impacts, consistent with the Executive Order, and

(4) eliciting public involvement opportunities and considering the results thereof, including soliciting input from affected minority and low-income populations in considering alternatives.

8. Actions To Address Disproportionately High and Adverse Effects

a. Following the guidance set forth in this Order and its Appendix, the head of each Operating Administration and the responsible officials for other DOT components shall determine whether programs, policies, and activities for which they are responsible will have an adverse impact on minority and low-income populations and whether that adverse impact will be disproportionately high.

b. In making determinations regarding disproportionately high and adverse effects on minority and low-income populations, mitigation and enhancements measures that will be taken and all offsetting benefits to the affected minority and low-income populations may be taken into account, as well as the design, comparative impacts, and the relevant number of similar existing system elements in non-minority and non-low-income areas.

c. The Operating Administrators and other responsible DOT officials will ensure that any of their respective programs, policies or activities that will have a disproportionately high and adverse effect on minority populations or low-income populations will only be carried out if further mitigation measures or alternatives that would avoid or reduce the disproportionately high and adverse effect are not practicable. In determining whether a mitigation measure or an alternative is “practicable,” the social, economic (including costs) and environmental effects of avoiding or mitigating the adverse effects will be taken into account.

d. Operating Administrators and other responsible DOT officials will also ensure that any of their respective programs, policies or activities that will have a disproportionately high and adverse effect on populations protected by Title VI (“protected populations”) will only be carried out if:

(1) a substantial need for the program, policy or activity exists, based on the overall public interest; and

(2) alternatives that would have less adverse effects on protected populations (and that still satisfy the need identified in subparagraph (1) above), either (i) would have other adverse social, economic, environmental or human health impacts that are more severe, or (ii) would involve increased costs of extraordinary magnitude.

e. DOT's responsibilities under Title VI and related statutes and regulations are not limited by this paragraph, nor does this paragraph limit or preclude claims by individuals or groups of people with respect to any DOT programs, policies, or activities under these authorities. Nothing in this Order adds to or reduces existing Title VI due process mechanisms.

f. The findings, determinations and/or demonstration made in accordance with this section must be appropriately documented, normally in the environmental impact statement or other NEPA document prepared for the program, policy or activity, or in other appropriate planning or program documentation.

Appendix

1. Definitions

The following terms where used in this Order shall have the following meanings*:

a. DOT means the Office of the Secretary, DOT operating administrations, and all other DOT components.

b. Low-Income means a person whose median household income is at or below the Department of Health and Human Services poverty guidelines.

c. Minority means a person who is:

(1) Black (a person having origins in any of the black racial groups of Africa);

(2) Hispanic (a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race);

(3) Asian American (a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands); or

(4) American Indian and Alaskan Native (a person having origins in any of the original people of North America and who maintains cultural identification through tribal affiliation or community recognition).

d. Low-Income Population means any readily identifiable group of low-income persons who live in geographic proximity, and, if circumstances warrant, geographically dispersed/transient persons (such as migrant workers or Native Americans) who will be similarly affected by a proposed DOT program, policy or activity.

e. Minority Population means any readily identifiable groups of minority persons who live in geographic proximity, and if circumstances warrant, geographically dispersed/transient persons (such as migrant workers or Native Americans) who will be similarly affected by a proposed DOT program, policy or activity.

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* These definitions are intended to be consistent with the draft definitions for E.O. 12898 that have been issued by the Council on Environmental Quality and the Environmental Protection Agency. To the extent that these definitions vary from the CEQ and EPA draft definitions, they reflect further refinements deemed necessary to tailor the definitions to fit within the context of the DOT program.

f. Adverse effects means the totality of significant individual or cumulative human health or environmental effects, including interrelated social and economic effects, which may include, but are not limited to: bodily impairment, infirmity, illness or death; air, noise, and water pollution and soil contamination; destruction or disruption of man-made or natural resources; destruction or diminution of aesthetic values; destruction or disruption of community cohesion or a community's economic vitality; destruction or disruption of the availability of public and private facilities and services; vibration; adverse employment effects; displacement of persons, businesses, farms, or nonprofit organizations; increased traffic congestion, isolation, exclusion or separation of minority or low-income individuals within a given community or from the broader community; and the denial of, reduction in, or significant delay in the receipt of, benefits of DOT programs, policies, or activities.

g. Disproportionately high and adverse effect on minority and low-income populations 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.

h. Programs, policies, and/or activities means all projects, programs, policies, and activities that affect human health or the environment, and which are undertaken or approved by DOT. These include, but are not limited to, permits, licenses, and financial assistance provided by DOT. Interrelated projects within a system may be considered to be a single project, program, policy or activity for purposes of this Order.

i. Regulations and guidance means regulations, programs, policies, guidance, and procedures promulgated, issued, or approved by DOT.

Federico F. Pena,

Secretary of Transportation.

[FR Doc. 97-9684 Filed 4-14-97; 8:45 am]

BILLING CODE 4910-62-P

U.S. DEPARTMENT OF TRANSPORTATION LEP GUIDANCE

Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficient (LEP) Persons

SUMMARY: The United States Department of Transportation (DOT) is publishing guidance concerning services and policies by recipients of Federal financial assistance from the Department of Transportation related to persons with limited English proficiency. The guidance is based on the prohibition against national origin discrimination in Title VI of the Civil Rights Act of 1964, as it affects limited English proficient persons.

DATES: This guidance is effective immediately. Comments must be received on or before January 13, 2006. Late-filed comments will be considered to the extent practicable. DOT will review all comments and will determine what modifications to the guidance, if any, are necessary. This guidance supplants existing guidance on the same subject originally published at 66 FR 6733 (January 22, 2001).

ADDRESSES: You may submit comments, identified by the docket number [OST 2001–8696], by any of the following methods:

- *Web Site: http://dms.dot.gov*. Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* (202) 493–2251.
- *Mail:* Docket Management System; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* To the Docket Management System; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Instructions: You must include the agency name and docket number [OST–2001–8696] or the Regulatory Identification Number (RIN) for this notice at the beginning of your comment. Note that all comments received will be posted without change to h*ttp://dms.dot.gov*, including any personal information provided.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit h*ttp://dms.dot.gov*.
Docket: You may view the public docket through the Internet at *http://dms.dot.gov* or in person at the Docket Management System office at the above address.

FOR FURTHER INFORMATION CONTACT:
Joseph Austin, Chief, External Policy and Program Development Division, Departmental Office of Civil Rights, Telephone: (202) 366–5992, TTY: (202) 366–9696, E-mail: *joseph.austin@dot.gov*; or Bonnie Angermann, Attorney-Advisor, Office of General Law, Office of the General Counsel, Telephone: (202) 366–9166, Email: *bonnie.angermann@dot.gov*. Arrangements to receive the policy guidance in an alternative format may be made by contacting the named individuals.

SUPPLEMENTARY INFORMATION: Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, *et seq.*, and its implementing regulations provide that no person shall be subjected to discrimination on the basis of race, color, or national origin under any program or activity that receives Federal financial assistance. The purpose of this

limited English proficiency policy guidance is to clarify the responsibilities of recipients of Federal financial assistance from the U.S. Department of Transportation (DOT) (''recipients''), and assist them in fulfilling their responsibilities to limited English proficient (LEP) persons, pursuant to Title VI of the Civil Rights Act of 1964 and implementing regulations.

Executive Order 13166, ''Improving Access to Services for Persons With Limited English Proficiency,'' reprinted at 65 FR 50121 (August 16, 2000), directs each Federal agency that is subject to the requirements of Title VI to publish guidance for its respective recipients clarifying that obligation. Executive Order 13166 further directs that all such guidance documents be consistent with the compliance standards and framework detailed in the Department of Justice's (DOJ's) Policy guidance entitled ''Enforcement of Title VI of the Civil Rights Act of 1964 — National Origin Discrimination Against Persons With Limited English Proficiency.'' *See* 65 FR 50123 (August 16, 2000) (DOJ's General LEP Guidance).

DOT published its initial guidance regarding its recipients' obligations to take reasonable steps to ensure access by LEP persons on January 22, 2001, and requested public comment on the guidance. *See* 66 FR 6733. DOT received 21 comments in response to its January 22, 2001, policy guidance. The comments reflected the views of individuals, organizations serving LEP populations, organizations favoring the use of the English language, and recipient agencies. While many comments identified areas for improvement and/or revision, the majority of the comments on the DOT LEP Guidance expressed agreement with its overall goal of ensuring access of LEP individuals to recipients' services. DOT worked closely with DOJ to ensure that recipients' comments were addressed in a consistent fashion.

In the order most often raised, the common areas of comment regarded: cost considerations, especially for smaller recipients serving few LEP persons; increased litigation risk and liability for recipients as a result of the guidance; and use of interpreters and the definition of ''qualified interpreter.''

A large number of comments focused on cost considerations and suggested that the Department address them as part of its evaluation of the language assistance needs of LEP persons. Particularly, this concern was expressed by state agencies that at the time received Coast Guard grants to administer safe boating courses. But this policy guidance does not require DOT recipients to translate all courses or materials in every circumstance or to take unreasonable or burdensome steps in providing LEP persons access. We have clarified the guidance to better convey its flexibility, based on the four-factor analysis set forth in DOJ's General LEP Guidance.

Several recipients commented that they serve few if any LEP persons and that the cost of interpreting all of their courses and materials would be excessive and unnecessary. While none urged that costs be excluded from consideration altogether, at least one comment expressed concern that a recipient could use cost as a basis for avoiding otherwise reasonable and necessary language assistance to LEP persons. In contrast, a few comments suggested that the flexible fact dependent compliance standard set forth in the guidance, when combined with the desire of most recipients to avoid the risk of noncompliance, could lead some large recipients to incur unnecessary or inappropriate fiscal burdens in the face of already strained program budgets. The Department is mindful that cost considerations could be inappropriately used to avoid providing otherwise reasonable and necessary language assistance. Similarly, cost considerations could be ignored or minimized to justify the provision of a particular level or type of language service even though effective alternatives exist at a minimal cost. The Department also is aware of the possibility that satisfying the need for language services might be quite costly for certain types of recipients, particularly if they have not updated their programs and activities to the changing needs of the populations they serve.

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[1] This guidance does not address the extent to which Executive Order 13166 requires language access services in the provision of boating safety courses funded by the Coast Guard, because that agency is no longer a component of the Department of Transportation.

The potential for some recipients to assert adverse cost impacts in order to avoid Title VI obligations does not, in the Department's view, justify eliminating cost as a factor in all cases when determining the necessary scope of reasonable language assistance services under DOT's guidance. The Department continues to believe that costs are a legitimate consideration in identifying the reasonableness of particular language assistance measures, and the DOJ Recipient LEP Guidance identifies the appropriate framework through which costs are to be considered. *See* Department of Justice Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 FR 41455 (June 18, 2002).

The second most common category of comments DOT received expressed concern over increased litigation risk and liability for recipients as a result of the LEP Guidance. As is addressed below in the Introduction, *Alexander* v. *Sandoval*, 532 U.S. 275 (2001), holds principally that there is no private right of action to enforce Title VI disparate impact regulations. The LEP Guidance is based on Title VI and DOT's Title VI regulations at 49 CFR part 21 and does not provide any private right of action beyond that which exists in those laws. Thus, the LEP Guidance does not increase the risk of recipients' legal liability to private plaintiffs. However, the Department does not dismiss the possibility that individuals may continue to initiate such legal actions.

The third most numerous category of comments DOT received regarded the definition of ''qualified interpreter'' and expressed commentators' concern with recipients' responsibility to make interpreters available, especially for recipients who serve populations with extremely diverse language needs. Set forth below in section VI are practices to help recipients ascertain that their interpreters are both competent and effective. This section should enable recipients to assess the qualifications of the interpreters they use and identify any improvements that need to be addressed.

Three of the comments urged withdrawal of the guidance, arguing it is unsupported by law. In response, the Department notes that its commitment to implementing Title VI and its regulations to address language barriers is longstanding and is unaffected by recent judicial action precluding individuals from successfully maintaining suits to enforce agencies' Title VI disparate impact regulations. This guidance clarifies existing statutory and regulatory provisions by describing the factors recipients should consider in fulfilling their responsibilities to LEP persons.

The remaining 18 comments were generally supportive of the guidance and DOT's leadership in this area. One recipient commented that constraining LEP persons' access to services may actually hinder their ability to become more proficient in the English language, therefore justifying increased programs for LEP persons. Several comments received addressed areas unique to the provision of transportation services to LEP persons. One recipient discussed the inconsistency between the Federal Motor Carrier Safety Administration's (FMCSA's) regulations requiring all drivers to speak and understand a certain amount of English, and the guidance's requirement that the FMCSA division offices provide information and services in other languages to accommodate LEP persons. Pursuant to 49 CFR 391.11(b)(2), a person is qualified to drive a motor vehicle if he or she ''[c]an read and speak the English language sufficiently to converse with the general public, to understand highway traffic signs and signals in the English language, to respond to official inquiries, and to make entries on reports and records.'' In 1997, following an American Civil Liberties Union (ACLU) legal challenge to this requirement, DOT issued an advance notice of proposed rulemaking (ANPRM) to address this issue. On July 24, 2003, FMCSA withdrew this ANPRM, concluding that the information introduced in response to the notice ''does not establish that the current regulation requires an unnecessarily high level of English fluency that has resulted in a discriminatory impact or effect based upon national origin, color, or ethnicity.'' FMCSA determined the regulation ''as written and properly enforced effectively balances issues of civil rights and highway safety.'' 68 FR 43890.

Another recipient, who works with community-based organizations concerned with transportation practices and policies, suggested mandatory LEP Access Assessments be attached to the standard financial assistance Assurance Forms that recipients must execute, to serve as a basis for disqualifying recipients submitting inaccurate or substantially incomplete assessments from Federal grant funding. While providing LEP persons with meaningful access is the law and should be given high priority, DOT advocates a flexible approach in ensuring such access, as outlined below in section V, in order to suit the varying needs of its recipients, and therefore has not adopted this suggestion. As discussed in section VIII, DOT seeks to promote voluntary compliance to meet

Title VI's goal of ensuring that Federal funds are not used in a manner that discriminates on the basis of race, color, or national origin. DOT will work with recipients to meet this goal, and will resort to more intrusive administrative remedies only if voluntary compliance cannot be secured and stronger measures become necessary to ensure LEP persons have meaningful access to services from recipients of DOT financial assistance.

This document has been modified based on careful consideration of public comments received by DOT, and the approach DOJ adopted after analyzing the public comments it received following its initial guidance published at 66 FR 3834 (January 16, 2001). This guidance is consistent with: Title VI, implementing regulations, Executive Order 13166, the DOJ General LEP Guidance, and the model DOJ Recipient Guidance issued on June 18, 2002.

With particular emphasis on the concerns mentioned above, the Department proposes this ''Limited English Proficiency Guidance for Department of Transportation Recipients.'' The text of this guidance document appears below.

Because this guidance must adhere to the Federal-wide compliance standards and framework detailed in the model DOJ Recipient Guidance issued on June 18, 2002, DOT specifically solicits comments on the nature, scope, and appropriateness of the DOT-specific examples set out in this guidance explaining and/or highlighting how those consistent Federal-wide compliance standards are applicable to recipients of Federal financial assistance from DOT. This guidance supplants the existing guidance on the same subject published at 66 FR 6733 (January 22, 2001). This guidance does not constitute a regulation subject to the rulemaking requirements of the Administrative Procedure Act, 5 U.S.C. 553. Dated: December 7, 2005.

J. Michael Trujillo,
Director, Departmental Office of Civil Rights.

Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons

I. Introduction

Most individuals living in the United States read, write, speak, and understand English. There are many individuals, however, for whom English is not their primary language. For instance, based on the 2000 census, regarding individuals older than age 5, over 26 million individuals speak Spanish and almost 7 million individuals speak an Asian or Pacific Island language at home. If these individuals have a limited ability to read, write, speak, or understand English, they are limited English proficient, or ''LEP.''

In a 2001 Supplementary Survey by the U.S. Census Bureau,[2] 33% of Spanish speakers and 22.4% of all Asian and Pacific Island language speakers aged 18–64 reported that they spoke English either ''not well'' or ''not at all.''

Language for LEP individuals can be a barrier to accessing important benefits or services, understanding and exercising important rights, complying with applicable responsibilities, or understanding other information provided by Federally- funded programs and activities. The Federal Government funds an array of services that can be made meaningfully accessible to otherwise eligible LEP persons. The Federal Government is committed to improving the accessibility of these programs and activities to eligible LEP persons, a goal that reinforces its

[2] PO35. *Age by Language Spoken at Home by Ability to Speak English for the Population 5 Years and Over.* Cens. Summ. File 3, 2001 Supp. Survey Summ. Tables (SF 3) (based on 12 monthly samples during 2001) Washington: U.S. Dep't of Comm., Bur. of the Census. Viewed 14 September 2004, available at: *ttp://factfinder.census.gov/servlet/DTTable?_bm=y&-geo_id=D&-ds_name=D&-_lang=en&-redoLog=false&- mt_name=DSS_2001_EST_G2000_P035.*

equally important commitment to promoting programs and activities designed to help individuals learn English. Recipients of Federal financial assistance have an obligation to reduce language barriers that can preclude meaningful access by LEP persons to important government services.[3]

In certain circumstances, failure to ensure that LEP persons can effectively participate in or benefit from Federally- assisted programs and activities may violate the prohibition under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, and Title VI regulations against national origin discrimination. The purpose of this policy guidance is to assist recipients in fulfilling their responsibilities to provide meaningful access to LEP persons under existing law. This guidance clarifies existing legal requirements for LEP persons by describing the factors recipients should consider in fulfilling their responsibilities to LEP persons.[4] These are the same criteria DOT will use in evaluating whether recipients are complying with Title VI and Title VI regulations.

Executive Order 13166 charges DOJ with the responsibility for providing LEP Guidance to other Federal agencies, such as DOT, and for ensuring consistency among each agency-specific guidance. Consistency among Federal Government agencies is particularly important. Inconsistent or contradictory guidance could confuse recipients of Federal funds and needlessly increase costs without facilitating the meaningful access for LEP persons that this policy guidance is designed to address. As with most government initiatives, this requires balancing several principles. While this guidance discusses that balance in some detail, it is important to note the basic principles behind that balance. First, we must ensure that Federally- assisted programs and activities aimed at the American public do not leave individuals behind simply because they face challenges communicating in English. This is of particular importance because, in many cases, LEP individuals form a substantial portion of those who particularly benefit from Federally- assisted programs and activities. Second, we must achieve this goal while finding constructive methods to reduce the costs of LEP requirements on small businesses, small local governments, or small nonprofit organizations that receive Federal financial assistance. There are many productive steps that the Federal Government, either collectively or as individual agencies, can take to help recipients reduce the costs of language services without sacrificing meaningful access for LEP persons. Without these steps, certain smaller recipients may choose not to participate in Federally- assisted programs or activities, threatening the critical functions that the programs or activities strive to assist. To that end, DOT plans to continue to work with DOJ and other Federal agencies to provide ongoing assistance and guidance in this important area. In addition, DOT plans to work with recipients of Federal financial assistance—for example, with motor vehicle departments, transit authorities, state departments of transportation, and other transportation service providers—and LEP persons, to identify and share model plans, examples of best practices, and cost-saving approaches. Moreover, DOT intends to explore how language assistance measures and cost containment approaches developed with respect to its own Federally- conducted programs and activities can be effectively shared or otherwise made available to recipients, particularly small businesses, small local governments, and small nonprofit organizations. An interagency working group on LEP has developed a web site, *http://www.lep.gov,* to assist in disseminating this information to recipients, Federal agencies, and the communities being served.

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[3] DOT recognizes that many recipients had language assistance programs in place prior to the issuance of Executive Order 13166. This policy guidance provides a uniform framework for a recipient to integrate, formalize, and assess the continued vitality of these existing and possibly additional reasonable efforts based on the nature of its programs and activities, the current needs of the LEP populations it encounters, and its prior experience in providing language services in the community it serves.

[4] This policy guidance is not a regulation but rather a guide. Title VI and its implementing regulations require that recipients take responsible steps to ensure meaningful access by LEP persons. Recipients should use the guidance to determine how best to comply with statutory and regulatory obligations to provide meaningful access to the benefits, services, information, and other important portions of their programs and activities for individuals who are LEP.

Many commentators have noted that some have interpreted the case of *Alexander v. Sandoval*, 532 U.S. 275 (2001), as impliedly striking down the regulations promulgated under Title VI that form the basis for the part of Executive Order 13166 that applies to Federally- assisted programs and activities. We have taken the position that this is not the case, and will continue to do so. Accordingly, we will strive to ensure that Federally- assisted programs and activities work in a way that is effective for all eligible beneficiaries, including those with limited English proficiency.

II. Legal Authority

Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, provides that no person 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.'' Section 602 authorizes and directs Federal agencies that are empowered to extend Federal financial assistance to any program or activity ''to effectuate the provisions of [section 601] * * * by issuing rules, regulations, or orders of general applicability.'' 42 U.S.C. 2000d–1.

Department of Justice regulations promulgated pursuant to section 602 forbid recipients from ''utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals 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 as respects individuals of a particular race, color, or national origin.'' 28 CFR 42.104(b)(2). DOT's Title VI regulations include almost identical language in this regard. *See* 49 CFR 21.5(b)(vii)(2) (portions of these regulations are provided in Appendix A).

The Supreme Court, in *Lau* v. *Nichols*, 414 U.S. 563 (1974), interpreted regulations promulgated by the former Department of Health, Education, and Welfare, including a regulation similar to that of DOJ, 45 CFR 80.3(b)(2), to hold that Title VI prohibits conduct that has a disproportionate effect on LEP persons because such conduct constitutes national origin discrimination. In *Lau*, a San Francisco school district that had a significant number of non-English speaking students of Chinese origin was required to take reasonable steps to provide them with a meaningful opportunity to participate in Federally- funded educational programs.

On August 11, 2000, Executive Order 13166 was issued. ''Improving Access to Services for Persons With Limited English Proficiency,'' 65 FR 50121 (August 16, 2000). Under that order, every Federal agency that provides financial assistance to non-Federal entities must publish guidance on how its recipients can provide meaningful access to LEP persons and thus comply with Title VI regulations forbidding recipients from ''restrict[ing] an individual 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'' or from ''utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals 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 as respects individuals of a particular race, color, or national origin.''

On that same day, DOJ issued a general guidance document addressed to ''Executive Agency Civil Rights Officers'' setting forth general principles for agencies to apply in developing guidance documents for recipients pursuant to the Executive Order. ''Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons With Limited English Proficiency,'' 65 FR 50123 (August 16, 2000) (DOJ's General LEP Guidance).

Subsequently, Federal agencies raised questions regarding the requirements of the Executive Order, especially in light of the Supreme Court's decision in *Alexander* v. *Sandoval*, 532 U.S. 275 (2001). On October 26, 2001, the Assistant Attorney General for Civil Rights issued a memorandum for ''Heads of Departments and Agencies, General Counsels and Civil Rights Directors.'' This memorandum clarified and reaffirmed the DOJ LEP

Guidance in light of *Sandoval*. The Assistant Attorney General stated that because *Sandoval* did not invalidate any Title VI regulations that proscribe conduct that has a disparate impact on covered groups—the types of regulations that form the legal basis for the part of Executive Order 13166 that applies to Federally- assisted programs and activities—the Executive Order remains in force.[5]

Pursuant to Executive Order 13166, DOT developed its own guidance document for recipients and initially issued it on January 22, 2001. ''DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries.'' However, in light of the public comments received and the Assistant Attorney General's October 26, 2001, clarifying memorandum, DOT has revised its LEP guidance to ensure greater consistency with DOJ's revised LEP guidance, published June 18, 2002, and other agencies' revised LEP guidance. 67 FR 117 (June 18, 2002).

III. Who Is Covered?

Pursuant to Executive Order 13166, the meaningful access requirement of Title VI, the Title VI regulations, and the four-factor analysis set forth in the DOJ's revised LEP Guidance, 67 FR 117 (June 18, 2002), apply to the programs and activities of Federal agencies, including DOT. Federal financial assistance includes grants, cooperative agreements, training, use of equipment, donations of surplus property, and other assistance. Recipients of DOT assistance include, for example:

- State departments of transportation.
- State motor vehicle administrations.
- Airport operators.
- State highway safety programs.
- Metropolitan planning organizations.
- Regional transportation agencies.
- Regional, state, and local transit operators.
- Public safety agencies.[6]
- Hazardous materials transporters and other first responders.
- State and local agencies with emergency transportation responsibilities, for example, the transportation of supplies for natural disasters, planning for evacuations, quarantines, and other similar action.

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[5] The memorandum noted that some commentators have interpreted *Sandoval* as impliedly striking down the disparate Impact regulations promulgated under Title VI that form the basis for the part of Executive Order 13166 that applies to Federally- assisted programs and activities. *See, e.g., Sandoval*, 532 U.S. at 286, 286 n.6 (''[W]e assume for purposes of this decision that section 602 confers the authority to promulgate disparate impact regulations; * * * We cannot help observing, however, how strange it is to say that disparate-impact regulations are 'inspired by, at the service of, and inseparably intertwined with' Sec. 601 * * * when Sec. 601 permits the very behavior that the regulations forbid''). The memorandum, however, made clear that DOJ disagreed with the commentators' interpretation. *Sandoval* holds principally that there is no private right of action to enforce Title VI disparate impact regulations. It did not address the validity of those regulations or Executive Order 13166 or otherwise limit the authority and responsibility of Federal agencies to enforce their own Title VI regulations.

[6] Recipients should review DOJ's LEP Guidance for specific examples of how the four-factor analysis applies to interactions between funded law enforcement authorities and first responders.

Sub-recipients likewise are covered when Federal funds are passed through from one recipient to a sub-recipient.

Coverage extends to a recipient's entire program or activity, i.e., to all parts of a recipient's operations. This is true even if only one part of the recipient receives the Federal assistance.

Example: DOT provides assistance to a state department of transportation to rehabilitate a particular highway on the National Highway System. All of the operations of the entire state department of transportation—not just the particular highway program—are covered by the DOT guidance.

Finally, some recipients operate in jurisdictions in which English has been declared the official language. Nonetheless, these recipients continue to be subject to Federal nondiscrimination requirements, including those applicable to the provision of Federally- assisted services to persons with limited English proficiency.

IV. Who Is a Limited English Proficient Individual?

Individuals who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English can be limited English proficient, or ''LEP,'' and, therefore, are entitled to language assistance under Title VI of the Civil Rights Act of 1964 with respect to a particular type of service, benefit, or encounter. However, if a Federal agency were to decide to terminate Federal funds based on noncompliance with Title VI or its regulations, only funds directed to the particular program or activity that is out of compliance would be terminated. 42 U.S.C. 2000d–1.

Examples of populations likely to include LEP persons who are served or encountered by DOT recipients and should be considered when planning language services include, but are not limited to:

- Public transportation passengers.
- Persons who apply for a driver's license at a state department of motor vehicles.
- Persons subject to the control of state or local transportation enforcement authorities, including, for example, commercial motor vehicle drivers.
- Persons served by emergency transportation response programs.
- Persons living in areas affected or potentially affected by transportation projects.
- Business owners who apply to participate in DOT's Disadvantaged Business Enterprise program.

V. How Does a Recipient Determine the Extent of Its Obligation to Provide LEP Services?

Recipients are required to take reasonable steps to ensure meaningful access to their programs and activities by LEP persons. While designed to be a flexible and fact-dependent standard, the starting point is an individualized assessment that balances the following four factors: (1) The number or proportion of LEP persons eligible to be served or likely to be encountered by a program, activity, or service of the recipient or grantee; (2) the frequency with which LEP individuals come in contact with the program; (3) the nature and importance of the program, activity, or service provided by the recipient to people's lives; and (4) the resources available to the recipient and costs. As indicated above, the intent of this policy guidance is to suggest a balance that ensures meaningful access by LEP persons to critical services while not imposing undue burdens on small businesses, small local governments, or small nonprofit organizations.

After applying the above four-factor analysis to the various kinds of contacts a recipient has with the public, the recipient may conclude that different language assistance measures are sufficient to ensure meaningful access to the different types of programs or activities in which it engages. For instance, some of a recipient's activities

will have a greater impact on or contact with LEP persons than others, and thus may require more in the way of language assistance. The flexibility that recipients have in addressing the needs of the LEP populations they serve does not diminish, and should not be used to minimize, the obligation that those needs be addressed. DOT recipients should apply the following four factors to the various kinds of contacts that they have with the public to assess language needs and decide what reasonable steps they should take to ensure meaningful access for LEP persons.

(1) The Number or Proportion of LEP

Persons Served or Encountered in the Eligible Service Population The greater the number or proportion of LEP persons from a particular language group served or encountered in the eligible service population, the more likely language services are needed. Ordinarily, persons ''eligible to be served, or likely to be directly affected, by'' a recipient's programs or activities are those who are in fact, served or encountered in the eligible service population. This population will be program-specific, and includes persons who are in the geographic area that is part of the recipient's service area. However, where, for instance, a motor vehicle office serves a large LEP population, the appropriate service area is that served by the office, and not the entire population served by the department. Where no service area has previously been approved, the relevant service area may be that which is approved by state or local authorities or designated by the recipient itself, provided that these designations do not themselves discriminatorily exclude certain populations. When considering the number or proportion of LEP individuals in a service area, recipients should consider LEP parent(s) whose English proficient or LEP minor children and dependents encounter the services of DOT recipients.

Recipients should first examine their prior experiences with LEP individuals and determine the breadth and scope of language services that are needed. In conducting this analysis, it is important to: Include language minority populations that are eligible beneficiaries of recipients' programs, activities, or services but may be underserved because of existing language barriers; and consult additional data, for example, from the census, school systems and community organizations, and data from state and local governments, community agencies, school systems, religious organizations, and legal aid entities.[7]

(2) The Frequency With Which LEP Individuals Come in Contact With the Program, Activity, or Service

Recipients should assess, as accurately as possible, the frequency with which they have or should have contact with LEP individuals from different language groups seeking assistance, as the more frequent the contact, the more likely enhanced language services will be needed. The steps that are reasonable for a recipient that serves an LEP person on a one-time basis will be very different than those expected from a recipient that serves LEP persons daily. Recipients should also consider the frequency of different types of language contacts, as frequent contacts with Spanish-speaking people who are LEP may require certain assistance in Spanish, while less frequent contact with different language groups may suggest a different and/or less intensified solution. If an LEP individual accesses a program or service on a daily basis, a recipient has greater duties than if the same individual's program or activity contact is unpredictable or infrequent. However, even recipients that serve LEP persons on an unpredictable or infrequent basis should use this balancing analysis to determine what to do if an LEP individual seeks services under the program in question. This plan need not be intricate. It may be as simple as being prepared to use a commercial telephonic interpretation service to obtain immediate interpreter services. Additionally, in applying this standard, recipients should consider whether appropriate outreach to LEP persons could increase the frequency of contact with LEP language groups.

(3) The Nature and Importance of the Program, Activity, or Service Provided by the Program

The more important the activity, information, service, or program, or the greater the possible consequences of the contact to the LEP individuals, the more likely language services are needed. The obligations to communicate rights to an LEP person who needs public transportation differ, for example, from those to provide

[7] The focus of the analysis is on lack of English proficiency, not the ability to speak more than one language. Note that demographic data may indicate the most frequently spoken languages other than English and the percentage of people who speak that language but speak or understand English less than well. People who are also proficient in English may speak some of the most commonly spoken languages other than English.

recreational programming. A recipient needs to determine whether denial or delay of access to services or information could have serious or even life-threatening implications for the LEP individual. Decisions by a Federal, state, or local entity to make an activity compulsory, such as requiring a driver to have a license, can serve as strong evidence of the importance of the program or activity.

(4) The Resources Available to the Recipient and Costs

A recipient's level of resources and the costs imposed may have an impact on the nature of the steps it should take in providing meaningful access for LEP persons. Smaller recipients with more limited budgets are not expected to provide the same level of language services as larger recipients with larger budgets. In addition, ''reasonable steps'' may cease to be reasonable where the costs imposed substantially exceed the benefits. Recipients should carefully explore the most cost-effective means of delivering competent and accurate language services before limiting services due to resource concerns. Resource and cost issues, however, can often be reduced by technological advances, reasonable business practices, and the sharing of language assistance materials and services among and between recipients, advocacy groups, affected populations, and Federal agencies. For example, the following practices may reduce resource and cost issues where appropriate:

- Training bilingual staff to act as interpreters and translators.
- Information sharing through industry groups.
- Telephonic and video conferencing interpretation services.
- Translating vital documents posted on Web sites.
- Pooling resources and standardizing documents to reduce translation needs.
- Using qualified translators and interpreters to ensure that documents need not be ''fixed'' later and that inaccurate interpretations do not cause delay or other costs.
- Centralizing interpreter and translator services to achieve economies of scale.[8]
- Formalized use of qualified community volunteers.

Large entities and those entities serving a significant number or proportion of LEP persons should ensure that their resource limitations are well substantiated before using this factor as a reason to limit language assistance. Such recipients may find it useful to be able to articulate, through documentation or in some other reasonable manner, their process for determining that language services would be limited based on resources or costs.

This four-factor analysis necessarily implicates the ''mix'' of LEP services required. Recipients have two main ways to provide language services: Oral interpretation either in person or via telephone interpretation service (hereinafter ''interpretation'') and written translation (hereinafter ''translation''). Oral interpretation can range from on-site interpreters for critical services provided to a high volume of LEP persons to access through commercially available telephonic interpretation services. Written translation, likewise, can range from translation of an entire document to translation of a short description of the document. In some cases, language services should be made available on an expedited basis while in others the LEP individual may be referred to another office of the recipient for language assistance.

The correct mix should be based on what is both necessary and reasonable in light of the four-factor analysis. For instance, a motor vehicle department or an emergency hazardous material cleanup team in a largely Hispanic neighborhood may need immediate oral interpreters available and should give serious consideration to

[8] Small recipients with limited resources may find that entering into a bulk telephonic interpretation service contract will prove cost effective.

hiring bilingual staff (of course, many such departments have already made these arrangements). Additionally, providing public transportation access to LEP persons is crucial. An LEP person's inability to utilize effectively public transportation may adversely affect his or her ability to obtain health care, or education, or access to employment. In contrast, there may be circumstances where the importance and nature of the activity and number or proportion and frequency of contact with LEP persons may be low and the costs and resources needed to provide language services may be high—such as in the case of a voluntary general public tour of an airport or train station—in which prearranged language services for the particular service may not be necessary. Regardless of the type of language services provided, quality and accuracy of those services can be critical. Recipients have substantial flexibility in determining the appropriate mix.

VI. Selecting Language Assistance Services

Recipients may provide language services in either oral or written form. Quality and accuracy of the language service is critical in order to avoid potential serious consequences to the LEP person and to the recipient.

A. Oral Language Services (Interpretation)

Interpretation is the act of listening to something in one language (source language) and orally translating it into another language (target language). Where interpretation is needed and is reasonable, recipients should consider some or all of the options below for providing competent interpreters in a timely manner.

Competence of Interpreters. When providing oral assistance, recipients should ensure competency of the language service provider, no matter which of the strategies outlined below are used. Competency requires more than self-identification as bilingual. Some bilingual staff and community volunteers, for instance, may be able to communicate effectively in a different language when communicating information directly in that language, but not be competent to interpret into and out of English. Likewise, they may not be able to do written translations.

Competency to interpret, however, does not necessarily mean formal certification as an interpreter, although certification is helpful. When using interpreters, recipients should ensure that they:

- Demonstrate proficiency in and ability to communicate information accurately in both English and in the other language and identify and employ the appropriate mode of interpreting (e.g., consecutive, simultaneous, summarization, or sight translation).

- Have knowledge in both languages of any specialized terms or concepts peculiar to the recipient's program or activity and of any particularized vocabulary and phraseology used by the LEP person;[9] and understand and follow confidentiality and impartiality rules to the same extent as the recipient employee for whom they are interpreting and/or to the extent their position requires.

- Understand and adhere to their role as interpreters without deviating into a role as counselor, legal advisor, or other roles.

Additionally, some recipients may have their own requirements for interpreters, as individual rights may depend on precise, complete, and accurate interpretations or translations. In some cases, interpreters may be required to demonstrate that their involvement in a matter would not create a conflict of interest.

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[9] Many languages have ''regionalisms,'' or differences in usage. For instance, a word that may be understood to mean something in Spanish for someone from Cuba may not be so understood by someone from Mexico. In addition, because there may be languages that do not have an appropriate direct interpretation of certain legal terms, the interpreter should be able to provide the most appropriate interpretation. The interpreter should make the recipient aware of the issue and the interpreter and recipient can then work to develop a consistent and appropriate set of descriptions of these terms in that language that can be used again, when appropriate.

While quality and accuracy of language services are critical, they are nonetheless part of the appropriate mix of LEP services required. The quality and accuracy of language services as part of disaster relief programs, or in the provision of emergency supplies and services, for example, must be extraordinarily high, while the quality and accuracy of language services in a bicycle safety course need not meet the same exacting standards.

Finally, when interpretation is needed and is reasonable, it should be provided in a timely manner in order to be effective. Generally, to be ''timely,'' the recipient should provide language assistance at a time and place that avoids the effective denial of the service, benefit, or right at issue or the imposition of an undue burden on or delay in important rights, benefits, or services to the LEP person. For example, when the timeliness of services is important, such as when an LEP person needs access to public transportation, a DOT recipient does not provide meaningful LEP access when it has only one bilingual staff member available one day a week to provide the service.

Hiring Bilingual Staff. When particular languages are encountered often, hiring bilingual staff offers one of the best, and often most economical, options. Recipients can, for example, fill public contact positions, such as transit station managers, department of motor vehicle service representatives, security guards, or program directors, with staff that are bilingual and competent to communicate directly with LEP persons in their language. If bilingual staff members are also used to interpret between English speakers and LEP persons, or to orally interpret written documents from English into another language, they should be competent in the skill of interpreting, as discussed above. Effective management strategies, including any appropriate adjustments in assignments and protocols for using bilingual staff, can ensure that bilingual staff members are fully and appropriately utilized. When bilingual staff cannot meet all of the language service obligations of the recipient, the recipient should turn to other options.

Hiring Staff Interpreters. Hiring interpreters may be most helpful where there is a frequent need for interpreting services in one or more languages. Depending on the facts, sometimes it may be necessary and reasonable to provide on-site interpreters to facilitate accurate and meaningful communication with an LEP person.

Contracting for Interpreters. Contract interpreters may be a cost-effective option when there is no regular need for a particular language skill. In addition to commercial and other private providers, many community-based organizations and mutual assistance associations provide interpretation services for particular languages. Contracting with interpreters and providing training regarding the recipient's programs and processes to these organizations can be a cost effective option for providing language services to LEP persons from those language groups.

Using Telephone Interpreter Lines. Telephone interpreter service lines often offer prompt interpreting assistance in many different languages. They may be particularly appropriate where the mode of communicating with an English proficient person would also be over the phone. Although telephonic interpretation services are useful in many situations, it is important to ensure that, when using such services, the interpreters are competent to interpret any technical or legal terms specific to a particular program that may be important parts of the conversation. Nuances in language and non-verbal communication can often assist an interpreter and cannot be recognized over the phone. The issues discussed above regarding interpreter competency are also relevant to telephonic interpreters. Video teleconferencing and allowing interpreters to review relevant documents in advance may also be helpful.

Using Community Volunteers. In addition to consideration of bilingual staff, staff interpreters, or contract interpreters (either in-person or by telephone) as options to ensure meaningful access by LEP persons, use of recipient-coordinated community volunteers may provide a cost-effective supplemental language assistance strategy under appropriate circumstances. They may be particularly useful in providing language access for a recipient's less critical programs and activities. To the extent the recipient relies on community volunteers, it is often best to use volunteers who are trained in the information or services of the program and can communicate directly with LEP persons in their language. Just as with all interpreters, community volunteers used to interpret between English speakers and LEP persons, or to orally translate documents, should be competent in the skill of interpreting and knowledgeable about applicable confidentiality and impartiality rules. Recipients should consider formal arrangements with community-based organizations that provide volunteers to address these concerns and help ensure that services are available more regularly.

Use of Family Members, Friends, Other Customers/Passengers as Interpreters. Although recipients should not plan to rely on an LEP person's family members, friends, or other informal interpreters to provide meaningful access to important programs and activities, where LEP persons so desire, they should be permitted to use an interpreter of their choice at their own expense (whether a professional interpreter, family member, or friend) in place of or as a supplement to the free language services expressly offered by the recipient. LEP persons may feel more comfortable when a trusted family member or friend acts as an interpreter. In addition, in exigent circumstances that are not reasonably foreseeable, temporary use of interpreters not provided by the recipient may be necessary. However, with proper planning and implementation, recipients should be able to avoid most such situations.

Recipients, however, should take special care to ensure that family members, legal guardians, caretakers, and other informal interpreters are appropriate in light of the circumstances and subject matter of the program, service or activity, including protection of the recipient's own administrative, mission-related, or enforcement interest in accurate interpretation. In many circumstances, family members (especially children) or friends are not competent to provide quality and accurate interpretations. Issues of confidentiality, privacy, or conflict of interest may also arise. LEP individuals may feel uncomfortable revealing or describing sensitive or confidential information to a family member, friend, or member of the local community. In addition, such informal interpreters may have a personal connection to the LEP person or an undisclosed conflict of interest, such as the desire to obtain an LEP person's personal identification information, for example, in the case of an LEP person attempting to apply for a driver's license. Thus, DOT recipients should generally offer free interpreter services to the LEP person. This is particularly true in situations in which health, safety, or access to important benefits and services are at stake, or when credibility and accuracy are important to protect an individual's rights and access to important services.

An example of such a case is when no interpreters, or bilingual or symbolic signs are available in a state department of motor vehicles. In an effort to apply for a driver's license, vehicle registration, or parking permit, an LEP person may be forced to enlist the help of a stranger for translation. This practice may raise serious issues of competency or confidentiality and may compromise the personal security of the LEP person, as the stranger could have access to the LEP person's personal identification information, such as his or her name, phone number, address, social security number, driver's license number (if different from the social security number), and medical information. However, there are situations where proper application of the four factors would lead to a conclusion that recipient-provided services are not necessary. An example of this is a voluntary educational tour of an airport, or a train or bus station. There, the importance and nature of the activity may be relatively low and unlikely to implicate issues of confidentiality, conflict of interest, or the need for accuracy. In addition, the resources needed and costs of providing language services may be high. In such a setting, an LEP person's use of family, friends, or others to interpret may be appropriate.

If the LEP person voluntarily chooses to provide his or her own interpreter, a recipient should consider whether a record of that choice and of the recipient's offer of assistance is appropriate. Where precise, complete, and accurate interpretations or translations of information and/or testimony are critical, or where the competency of the LEP person's interpreter is not established, a recipient might decide to provide its own, independent interpreter, even if an LEP person wants to use his or her own interpreter as well. Extra caution should be exercised when the LEP person chooses to use a minor as the interpreter. While the LEP person's decision should be respected, there may be additional issues of competency, confidentiality, or conflict of interest when the choice involves using children as interpreters. The recipient should take care to ensure that the LEP person's choice is voluntary, that the LEP person is aware of the possible problems if the preferred interpreter is a minor child, and that the LEP person knows that a competent interpreter could be provided by the recipient at no cost.

B. Written Language Services (Translation)

Translation is the replacement of a written text from one language (source language) into an equivalent written text in another language (target language).

What Documents Should be Translated? After applying the four factor analysis, a recipient may determine that an effective LEP plan for its particular program or activity includes the translation of vital written materials into the language of each frequently encountered LEP group eligible to be served and/or likely to be affected by the

recipient's program. Such written materials could include, for example:

- Driver's license, automobile registration, and parking permit forms.
- Parking tickets, citation forms, and violation or deficiency notices, or pertinent portions thereof.
- Emergency transportation information.
- Markings, signs, and packaging for hazardous materials and substances.
- Signs in bus and train stations, and in airports.
- Notices of public hearings regarding recipients' proposed transportation plans, projects, or changes, and reduction, denial, or termination of services or benefits.
- Signs in waiting rooms, reception areas, and other initial points of entry.
- Notices advising LEP persons of free language assistance and language identification cards for staff (i.e., ''I speak'' cards).
- Statements about the services available and the right to free language assistance services in appropriate non-English languages, in brochures, booklets, outreach and recruitment information, and other materials routinely disseminated to the public.
- Written tests that do not assess English-language competency, but test competency for a particular license, job, or skill for which knowing English is not required.
- Applications, or instructions on how to participate in a recipient's program or activity or to receive recipient benefits or services.
- Consent forms.

Whether or not a document (or the information it solicits) is ''vital'' may depend upon the importance of the program, information, encounter, or service involved, and the consequence to the LEP person if the information in question is not accurate or timely. For instance, applications for bicycle safety courses should not generally be considered vital, whereas access to safe driving handbooks could be considered vital. Where appropriate, recipients are encouraged to create a plan for consistently determining, over time and across their various activities, what documents are ''vital'' to the meaningful access of the LEP populations they serve.

Classifying a document as vital or non-vital is sometimes difficult, especially in the case of outreach materials like brochures or other information on rights and services. Awareness of rights or services is an important part of ''meaningful access,'' as lack of awareness may effectively deny LEP individuals meaningful access. Thus, where a recipient is engaged in community outreach efforts in furtherance of its programs and activities, it should regularly assess the needs of the populations frequently encountered or affected by the program or activity to determine whether certain critical outreach materials should be translated. Community organizations may be helpful in determining what outreach materials may be most helpful to translate, and some such translations may be made more effective when done in tandem with other outreach methods, including utilizing the ethnic media, schools, and religious and community organizations to spread a message.

Sometimes a very large document may include both vital and non-vital information. This may also be the case when the title and a phone number for obtaining more information on the contents of the document in frequently encountered languages other than English is critical, but the document is sent out to the general public and cannot reasonably be translated into many languages. Thus, vital information may include, for instance, providing information in appropriate languages regarding where an LEP person might obtain an interpretation or translation of the document.

Into What Languages Should Documents be Translated? The extent of the recipient's obligation to provide written translations of documents should be determined by the recipient on a case-by-case basis, looking at the totality of the circumstances in light of the four-factor analysis. Because translation is a one-time expense, consideration should be given to whether the upfront cost of translating a document (as opposed to oral interpretation) should be amortized over the likely lifespan of the document when applying this four-factor analysis.

The languages spoken by the LEP individuals with whom the recipient has frequent contact determine the languages into which vital documents should be translated. However, because many DOT recipients serve communities in large cities or across an entire state and regularly serve areas with LEP populations that speak dozens and sometimes more than 100 languages, it would be unrealistic to translate all written materials into each language. Although recent technological advances have made it easier for recipients to store and share translated documents, such an undertaking would incur substantial costs and require substantial resources. However, well substantiated claims of lack of resources to translate all such documents into dozens or more than 100 languages do not necessarily relieve the recipient of the obligation to translate vital documents into at least several of the more frequently encountered languages. The recipient should then set benchmarks for continued translations into the remaining languages over time.

Safe Harbor. Many recipients would like to ensure with greater certainty that they comply with their obligations to provide written translations in languages other than English. Paragraphs (a) and (b) below outline the circumstances that can provide a ''safe harbor'' for recipients regarding the requirements for translation of written materials. A ''safe harbor'' means that if a recipient provides written translations under these circumstances, such action will be considered strong evidence of compliance with the recipient's written translation obligations under Title VI.

The failure to provide written translations under the circumstances outlined in paragraphs (a) and (b) does not mean there is noncompliance. Rather these paragraphs merely provide a guide for recipients that would like greater certainty of compliance than can be provided by a fact-intensive, four factor analysis. For example, even if a safe harbor is not used, if written translation of a certain document(s) would be so burdensome as to defeat the legitimate objectives of its program, it is not necessary. Other ways of providing meaningful access, such as effective oral interpretation of certain vital documents, might be acceptable under such circumstances.

Safe Harbor. The following actions will be considered strong evidence of compliance with the recipient's written translation obligations:

(a) The DOT recipient provides written translations of vital documents for each eligible LEP language group that constitutes 5% or 1,000, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered. Translation of other documents, if needed, can be provided orally; or

(b) If there are fewer than 50 persons in a language group that reaches the 5% trigger in (a), the recipient does not translate vital written materials but provides written notice in the primary language of the LEP language group of the right to receive competent oral interpretation of those written materials, free of cost.

These safe harbor provisions apply to the translation of written documents only. They do not affect the requirement to provide meaningful access to LEP individuals through competent oral interpreters where oral language services are needed and are reasonable.

Competence of Translators. As with oral interpreters, translators of written documents should be competent. Many of the same considerations apply. However, the skill of translating is very different from the skill of interpreting, and a person who is a competent interpreter may or may not be competent to translate, and vice versa.

Particularly where vital documents are being translated, competence can often be achieved by use of certified translators. Certification or accreditation may not always be possible or necessary.[10] Competence can often be ensured by having a second, independent translator check the work of the primary translator. Alternatively, one translator can translate the document, and a second, independent translator could translate it back into English to check that the appropriate meaning has been conveyed. This is called ''back translation.''

Translators should understand the expected reading level of the audience and, where appropriate, have fundamental knowledge about the target language group's vocabulary and phraseology. Sometimes direct translation of materials results in a translation that is written at a much more difficult level than the English language version or has no relevant equivalent meaning.[11] Community organizations may be able to help consider whether a document is written at an appropriate level for the audience. Likewise, consistency in the words and phrases used to translate terms of art, legal, or other technical or programmatic terms helps avoid confusion by LEP individuals and may reduce costs. Creating or using already created glossaries of commonly used terms may be useful for LEP persons and translators and cost effective for the recipient. Providing translators with examples of previous accurate translations of similar material by other recipients or Federal agencies may also be helpful.

While quality and accuracy of translation services are critical, they are nonetheless part of the appropriate mix of LEP services required. For instance, documents that are simple and have no important consequences for LEP persons who rely on them may be translated by translators who are less skilled than important documents with legal or other information upon which reliance has important consequences (including, *e.g.*, driver's license written exams and documents regarding important benefits or services, or health, safety, or legal information). The permanent nature of written translations, however, imposes additional responsibility on the recipient to ensure that the quality and accuracy permit meaningful access by LEP persons.

VII. Elements of an Effective Implementation Plan on Language Assistance for LEP Persons

After completing the four-factor analysis and deciding what language assistance services are appropriate, a recipient should develop an implementation plan to address the identified needs of the LEP populations it serves. Although recipients have considerable flexibility in developing such a plan, maintaining a periodically updated written plan on language assistance for LEP persons (''LEP plan'') for use by recipient employees serving the public would be an appropriate and cost-effective means of documenting compliance and providing a framework for the provision of timely and reasonable language assistance. Such written plans may also provide additional benefits to a recipient's managers in the areas of training, administration, planning, and budgeting. Thus, recipients may choose to document the language assistance services in their plan, and how staff and LEP persons can access those services. Certain DOT recipients, such as those serving very few LEP persons or those with very limited resources, may choose not to develop a written LEP plan. However, the absence of a written LEP plan does not obviate the underlying obligation to ensure meaningful access by LEP persons to a recipient's program or activities. In that event, a recipient should consider alternative ways to reasonably articulate a plan for providing meaningful access. Early input from entities such as schools, religious organizations, community groups, and groups working with new immigrants can be helpful in forming this planning process. The following five steps may be helpful in designing an LEP plan and are typically part of effective implementation plans.

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[10] For those languages in which no formal accreditation exists, a particular level of membership in a professional translation association can provide some indicator of professional competence.

[11] For instance, although there may be languages that do not have a direct translation of some legal, technical, or program-related terms, the translator should be able to provide an appropriate translation. The translator should likely also make the recipient aware of this. Recipients can then work with translators to develop a consistent and appropriate set of descriptions of those terms in that language that can be used again, when appropriate.

(1) Identifying LEP Individuals Who Need Language Assistance There should be an assessment of the number or proportion of LEP individuals eligible to be served or encountered and the frequency of encounters pursuant to the first two factors in the four-factor analysis.

One way to determine the language of communication is to use language identification cards (or ''I speak cards''), which invite LEP persons to identify their language needs to staff. Such cards, for instance, might say, ''I speak Spanish'' in both Spanish and English, or ''I speak Vietnamese'' in both English and Vietnamese. To reduce costs of compliance, the Federal Government has made a set of these cards available on the Internet. The Census Bureau's ''I speak card'' can be found and downloaded at *http://www.usdoj.gov/ crt/cor/13166.htm.*

When records are normally kept of past interactions with members of the public, the language of the LEP person can be included as part of the record. In addition to helping employees identify the language of LEP persons they encounter, this process will help in future applications of the first two factors of the four-factor analysis. In addition, posting notices in commonly encountered languages notifying LEP persons of language assistance will encourage them to self-identify.

(2) Language Assistance Measures

An effective LEP plan would likely include information about the ways in which language assistance will be provided. For instance, recipients may want to include information on at least the following:

- Types of language services available.
- How recipient staff can obtain those services.
- How to respond to LEP callers.
- How to respond to written communications from LEP persons.
- How to respond to LEP individuals who have in-person contact with recipient staff.
- How to ensure competency of interpreters and translation services.

(3) Training Staff

Staff members should know their obligations to provide meaningful access to information and services for LEP persons, and all employees in public contact positions should be properly trained. An effective LEP plan would likely include training to ensure that:

- Staff knows about LEP policies and procedures.
- Staff having contact with the public (or those in a recipient's custody) is trained to work effectively with in person and telephone interpreters.

Recipients may want to include this training as part of the orientation for new employees. Recipients have flexibility in deciding the manner in which the training is provided, and the more frequent the contact with LEP persons, the greater the need will be for in-depth training. However, management staff, even if they do not interact regularly with LEP persons, should be fully aware of and understand the plan so they can reinforce its importance and ensure its implementation by staff.

(4) Providing Notice to LEP Persons

Once an agency has decided, based on the four factors, that it will provide language services, it is important that the recipient notify LEP persons of services available free of charge. Recipients should provide this notice in languages LEP persons would understand. Examples of notification that recipients should consider include:

- Posting signs in intake areas and other entry points. This is important so that LEP persons can learn how to access those language services at initial points of contact. This is particularly true in areas with high volumes of LEP persons seeking access to certain transportation safety information, or other services and activities run by DOT recipients.12

- Stating in outreach documents that language services are available from the agency. Announcements could be in, for instance, brochures, booklets, and in outreach and recruitment information. These statements should be translated into the most common languages and could be ‘‘tagged’’ onto the front of common documents.

- Working with community-based organizations and other stakeholders to inform LEP individuals of the recipients’ services, including the availability of language assistance services.

- Using an automated telephone voice mail attendant or menu system. The system could be in the most common languages encountered. It should provide information about available language assistance services and how to get them.

- Including notices in local newspapers in languages other than English.

- Providing notices on non-English language radio and television stations about the available language assistance services and how to get them.

- Providing presentations and/or notices at schools and religious organizations.

(5) Monitoring and Updating the LEP Plan

Recipients should, where appropriate, have a process for determining, on an ongoing basis, whether new documents, programs, services, and activities need to be made accessible for LEP individuals, and they may want to provide notice of any changes in services to the LEP public and to employees.

In addition, recipients should consider whether changes in demographics, types of services, or other needs require annual reevaluation of their LEP plan. Less frequent reevaluation may be more appropriate where demographics, services, and needs are more static. One good way to evaluate the LEP plan is to seek feedback from the community.

In their reviews, recipients may want to consider assessing changes in:

- Current LEP populations in the service area or population affected or encountered.

- Frequency of encounters with LEP language groups.

- Nature and importance of activities to LEP persons.

- Availability of resources, including technological advances and sources of additional resources, and the costs imposed.

- Whether existing assistance is meeting the needs of LEP persons.

- Whether staff knows and understands the LEP plan and how to implement it.

- Whether identified sources for assistance are still available and viable. In addition to these five elements, effective plans set clear goals, management accountability, and opportunities for community input and planning throughout the process.

VIII. Voluntary Compliance Effort

The goal for Title VI and Title VI regulatory enforcement is to achieve voluntary compliance. DOT enforces Title VI as it applies to recipients’ responsibilities to LEP persons through the procedures provided for in DOT’s Title VI regulations (49 CFR part 21, portions of which are provided in Appendix A).

The Title VI regulations provide that DOT will investigate whenever it receives a complaint, report, or other information that alleges or indicates possible noncompliance with Title VI or its regulations. If the investigation results in a finding of compliance, DOT will inform the recipient in writing of this determination, including the basis for the determination. DOT uses voluntary mediation to resolve most complaints. However, if a case is fully investigated and results in a finding of noncompliance, DOT must inform the recipient of the noncompliance through a Letter of Findings that sets out the areas of noncompliance and the steps that must be taken to correct the noncompliance. It must attempt to secure voluntary compliance through informal means. If the matter cannot be resolved informally, DOT must secure compliance through the termination of Federal assistance after the DOT recipient has been given an opportunity for an administrative hearing and/or by referring the matter to DOJ with a recommendation that appropriate proceedings be brought to enforce the laws of the United States. In engaging in voluntary compliance efforts, DOT proposes reasonable timetables for achieving compliance and consults with and assists recipients in exploring cost effective ways of coming into compliance. In determining a recipient's compliance with the Title VI regulations, DOT's primary concern is to ensure that the recipient's policies and procedures provide meaningful access for LEP persons to the recipient's programs, activities, and services.

While all recipients must work toward building systems that will ensure access for LEP individuals, DOT acknowledges that the implementation of a comprehensive system to serve LEP individuals is a process and that a system will evolve over time as it is implemented and periodically reevaluated. As recipients take reasonable steps to provide meaningful access to Federally- assisted programs and activities for LEP persons, DOT will look favorably on intermediate steps recipients take that are consistent with this guidance, and that, as part of a broader implementation plan or schedule, move their service delivery system toward providing full access to LEP persons. This does not excuse noncompliance but instead recognizes that full compliance in all areas of a recipient's activities and for all potential language minority groups may reasonably require a series of implementing actions over a period of time. However, in developing any phased implementation schedule, DOT recipients should ensure that the provision of appropriate assistance for significant LEP populations or with respect to activities having a significant impact on the health, safety, legal rights, or livelihood of beneficiaries is addressed first. Recipients are encouraged to document their efforts to provide LEP persons with meaningful access to Federally- assisted programs and activities.

IX. Promising Practices

The following examples are provided as illustrations of the responses of some recipients to the need to provide services to LEP persons, and are meant to be interesting and useful examples of ways in which LEP recipients can provide language services. Recipients are responsible for ensuring meaningful access to all portions of their program or activity, not just the portions to which DOT assistance is targeted. So long as the language services are accurate, timely, and appropriate in the manner outlined in this guidance, the types of promising practices summarized below can assist recipients in moving toward meeting the meaningful access requirements of Title VI and the Title VI regulations. These examples do not, however, constitute an endorsement by DOT, which will evaluate recipients' situations on a case-by-case basis using the factors described elsewhere in this guidance.

Language Banks. In several parts of the country, both urban and rural, community organizations and providers have created language banks that dispatch competent interpreters, at reasonable rates, to participating organizations, reducing the need to have on-staff interpreters for low-demand languages. This approach is particularly appropriate where there is a scarcity of language services or where there is a large variety of language needs but limited demand for any particular language.

Language Support Offices. A state social services agency has established an ''Office for Language Interpreter Services and Translation.'' This office tests and certifies all in-house and contract interpreters, provides agency wide support for translation of forms, client mailings, publications, and other written materials into non-English languages, and monitors the policies of the agency and its vendors that affect LEP persons.

Some recipients have established working liaisons with local community colleges to educate the LEP community in transportation matters. One city formed a multilingual/multi-agency task force to address language barriers and the concerns of the affected communities. The task force completed a survey of city staff with multilingual skills in order to identify employees willing to serve as interpreters and is preparing lists of community and cultural organizations.

Use of Technology. Some recipients use their Internet and/or intranet capabilities to store translated documents online, which can be retrieved as needed and easily shared with other offices. For example, a multi-language gateway on a Web page could be developed for LEP persons and the public to access documents translated into other languages.

Telephone Information Lines and Hotlines. Recipients have subscribed to telephone-based interpretation services and established telephone information lines in common languages to instruct callers on how to leave a recorded message that will be answered by someone who speaks the caller's language. For example, a recipient may choose to adopt a program similar to the National Highway Traffic Safety Administration's (NHTSA's) Auto Safety Hotline, which has four representatives who speak Spanish and are available during normal hotline business hours (Mon.–Fri., 8 a.m.–10 p.m. eastern time).13

Signage and Other Outreach. Recipients have provided information about services, benefits, eligibility requirements, and the availability of free language assistance, in appropriate languages by (a) posting signs and placards with this information in public places such as grocery stores, bus shelters, and subway stations; (b) putting notices in print media and on radio and television stations that serve LEP groups or broadcasting in languages other than English;14 (c) airing videos and public service announcements for non-English-speaking residents; (d) placing flyers and signs in the offices of community-based organizations that serve large populations of LEP persons; (e) distributing information at places of worship, ethnic shopping areas, and other gathering places for LEP groups; (f) using posters with appropriate languages designed to reach potential beneficiaries; and (g) developing pictures, images, figures, or icons that could be understandable alternatives to written words.

- DOT agencies and recipients have implemented numerous language access services:

- DOT's Pipeline and Hazardous Materials Safety Administration (formerly known as the Research and Special Programs Administration), at 49 CFR §§ 192.616 and 195.440, requires pipeline officers to establish a program for effective reporting by the public of gas pipeline emergencies to the operator or public officials, also providing that the program must be conducted in English and other common languages.15 We recommend that recipients consider the appropriateness of such an approach to meet their individual service provision needs.

- DOT's National Highway Traffic Safety Administration (NHTSA) has translated the National Standardized Child Passenger Safety Training Program curriculum into Spanish. The course, designed to help communities work with parents and caregivers on the proper installation of child safety seats, has been pilot tested and is scheduled to be available to the public by early 2006 through many national Latino organizations and State Highway Safety Offices.

- DOT's Federal Motor Carrier Safety Administration (FMCSA) division offices in California, Arizona, New Mexico, Texas, and Puerto Rico employ personnel conversant in Spanish to communicate the agency's critical safety regulations.

- The Del Rio, Texas, Police Department implemented the El Protector program in Del Rio and developed public service broadcasts in Spanish about traffic safety issues such as loading and unloading school buses, drinking and driving, and pedestrian safety.

- Emergency Medical Services (EMS) staff in Los Angeles reported that their system is equipped to receive calls in more than 150 languages, although Spanish is the most frequent language used by 911 callers who do not speak English.

- District of Columbia DMV information, forms, and support material are available in German, Spanish, French, Russian, Dutch, and Portuguese and can be downloaded from the division's Web site. The DC DMV also provides a ''City Services Guide'' in Chinese, Korean, Spanish, and Vietnamese. DC's ''Click It or Ticket'' program material and information on child safety seat loaner programs and fitting station locations are available in Spanish.

- The New Jersey Department of Motor Vehicles administers driver's license tests in more than 15 languages, including Arabic, French, Greek, Korean, Portuguese, and Turkish.16

- In North Dakota, while the Traffic Safety Office acknowledges a limited minority population requiring assistance with translation, the Driver Licensing Unit offers the option of an oral test in Spanish.

- The Iowa Department of Transportation (IDOT) provides a Spanish version of the Commercial Driver's License knowledge test using a touch screen computer, and study guides of the Iowa Driver's Manual in Albanian, Bosnian, Russian, Vietnamese, and Korean. IDOT established a liaison with a local community college to provide education for Bosnian refugees concerning the Commercial Motor Vehicle driving course.17

- The Wisconsin DOT created a 3rd grade level study guide, the Motorist Study Manual Easy Reader, which was translated by the Janesville Literacy Council into Spanish. Wisconsin DOT also provides the regular 6th grade level version of the Reader in English, Spanish, and Hmong; a Motorcycle Study Manual in English and Spanish; and a CDL (Commercial Driver's License) Study Manual in English and Spanish. In addition, Knowledge and Highway Sign Tests are written in 13 languages other than English, recorded on audiocassette tapes in English and Spanish, or orally interpreted by bilingual staffers obtained from a roster of Wisconsin DOT employees who speak, read, or write foreign languages.

- The Idaho Office of Traffic and Highway Safety implemented a Spanish-language safety belt media campaign to educate its Hispanic community on the statewide ''Click It, Don't Risk It!'' program to boost seat belt use. Information appears in *Unido*, Idaho's largest Spanish-language newspaper, and warns all motorists to buckle up or risk receiving a safety belt citation.

- The New Mexico State Highway and Transportation Department, with Federal Highway Administration (FHWA) support, provides Spanish language translations of its Right-of-Way Acquisition and Relocation brochures and also employs bilingual right-of-way agents to discuss project impacts in Spanish.

- The State of Oregon developed a report on multilingual services provided by state agencies. State agencies will use the final document to enhance their existing programs, including expanding communication efforts to serve and protect all Oregonians.

- The Texas DOT utilizes bilingual employees in its permit office to provide instruction and assistance to LEP Spanish-speaking truck drivers when providing permits to route overweight trucks through Texas. In its ''On the Job Training Supportive Services Program'' Texas DOT has used Spanish-language television to inform people who have difficulty reading English of opportunities in the construction industry.

- When the Virginia DOT (VDOT) became aware that several Disadvantaged Business Enterprise (DBE) firms were about to be removed from construction projects in Northern Virginia because they required certified concrete inspectors, and that they could not comply because the concrete inspection test was only offered in English, it used supportive services funding from the Federal Highway Administration to translate the training manual and test material into Spanish. VDOT also provides tutoring for the DBE firms. The Virginia State Police maintains a written list of interpreters available statewide to troopers through the Red Cross Language Bank, as well as universities and local police departments.

- The Colorado State Patrol produced safety brochures in Spanish for farmers and ranchers. It has also printed brochures in Spanish pertaining to regulatory requirements for trucking firms.

- In preparation of its 20-year planning document, the Transportation Concept Report, the California DOT (Caltrans) held a public meeting titled ''Planning the Future of Highway 1'' in the largely Hispanic city of Guadalupe, through which Highway 1 runs. The meeting was broadcast on the local public access channel since many of the Spanish-speaking residents potentially affected by Highway 1 projects rely on the channel to receive public affairs information. Caltrans provided a Spanish-language interpreter during the meeting and also made its Spanish speaking public affairs officer available to meet with participants individually.

- During project planning for interstate improvements along Interstate 710 in California, engineers presented ‘‘good’’ alternatives to the affected communities; however, the proposed highway expansion would have removed low-income homes in communities that are 98% Spanish speaking. To ensure that their concerns were heard, California identified the affected communities and facilitated the establishment of Community Advisory Committees that held bilingual workshops between engineers and the public.

- The Minnesota DOT authored a manual detailing its requirements to provide access to all residents of Minnesota under environmental justice standards, which included ideas such as publishing notices in non-English newspapers, printing notices in appropriate languages, and providing interpreters at public meetings.

- In New Mexico, the Zuni Entrepreneurial Enterprises, Inc. (ZEE) Public Transportation Program designed the Zuni JOBLINKS program to develop, implement, and maintain a transportation system to link Native Americans and other traditionally unserved/underserved persons in the service area to needed vocational training and employment opportunities. Outreach for the program included radio announcements and posting of signs in English and Zuni that described ZEE’s services and provided ZEE’s phone number.

- Washington, DC’s Metropolitan Area Transit Authority (WMATA) publishes pocket guides regarding its system in French, Spanish, German, and Japanese, and has a Multilanguage website link.

- In North Dakota, Souris Basin Transportation (SBT) started using visual logos on the sides of the vehicles to help illiterate passengers identify the bus on which they were riding. Although the illiteracy rate has dropped among seniors, SBT kept the logos on its vehicles for use by the growing LEP population and also added volunteers who speak languages other than English (such as Spanish, German, Norwegian, Swedish, and French) available by phone to drivers and staff.

- New York City Transit MetroCard vending machines are located in every station and contain software that allows them to be programmed in three languages in addition to English, based upon area demographics. Currently, these machines are capable of providing information in Spanish, French, French Creole, Russian, Chinese, Japanese, Italian, Korean, Greek, and Polish. -The Metropolitan Atlanta Rapid Transit Authority (MARTA) advertises upcoming service and fare changes in Spanish, Korean, Vietnamese, and Chinese language newspapers. MARTA also produces a bilingual (Spanish/ English) service modifications booklet.

- The Fort-Worth Transportation Authority communicates information about service and fare changes in Spanish and English. It recruits Spanish-speaking customer service representatives and bus operators and has a community outreach liaison who is bilingual. The transit provider also provides a Spanish-language interpreter at all public meetings.

- The Salt Lake City International Airport maintains a list of 35 bilingual and multilingual employees who speak one of 19 languages (including three dialects of Chinese) and their contact information. The list is published in the Airport Information Handbook and provided to all airport employees. The airport also contracts with a telephonic interpretation service to provide on demand telephone interpretation services to beneficiaries.

- The Port of Seattle has 16 ‘‘Pathfinders’’ on staff who act as guides and information sources throughout the Seattle Tacoma International Airport. A key selection criterion for Pathfinders is multilingual ability. The Pathfinders collectively speak 15 languages and are often called on to act as interpreters for travelers who do not speak English. Pathfinders greet all international flights and are assigned to do so based on language skills.

- Seattle Tacoma International Airport’s trains carry announcements in English, Japanese, and Korean. The Port of Seattle contributed $5,000 to the creation of the City of Tukwila’s ‘‘Newcomers Guide,’’ which is published in six languages and includes information about the airport and Airport Jobs, a referral service for employment at the airport.

The following is a sample notice that would be useful for recipients to add to the publications or signs for their programs, services, or activities, in order to notify LEP individuals of the availability of materials and services in other languages.

Sample Notice of Availability of Materials and Services

FOR FURTHER INFORMATION CONTACT: For hearing-impaired individuals or non- English-speaking attendees wishing to arrange for a sign language or foreign language interpreter, please call or fax [name] of [organization] at Phone: xxx– yyy–zzzz, TTY: xxx–yyy–zzzz, or Fax: xxx–yyy–zzzz.'' 18

Appendix A to DOT Guidance
DOT's Title VI regulation (49 CFR part 21) states the following, in relevant part: Sec. 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;

(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.

* * * * *

(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.

* * * * *

(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.

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[12] For instance, signs in intake offices could state that free language assistance is available. The signs should be translated into the most common languages encountered and should explain how to get the necessary language assistance. The Social Security Administration has made such signs available at *http://www.ssa.gov/ multilanguage/ langlist1.htm.* DOT recipients could, for example, modify these signs for use in programs, activities, and services.

[13] The evening hours permit people from the West Coast (where a significant number of LEP persons reside) to call after work, providing an option for instructions in Spanish, a separate queue, and Spanish-speaking operators.

[14] Notifications should be delivered in advance of scheduled meetings or events to allow time for persons to request accommodation and participate.

[15] ''Each [pipeline] operator shall establish a continuing educational program to enable customers, the public, appropriate government organizations, and persons engaged in excavation related activities to recognize a gas pipeline emergency for the purpose of reporting it to the operator or the appropriate public officials. The program and the media used should be as comprehensive as necessary to reach all areas in which the operator transports gas. The program must be conducted in English and in other languages commonly understood by a significant number and concentration of the non-English speaking population in the operator's area.'' 49 CFR § 192.616. Section 195.440 of title 49, Code of Federal Regulations, imposes similar requirements in the case of hazardous liquid or carbon dioxide pipeline emergencies.

[16] DOT recommends that state agencies share such information, to avoid the necessity of each agency performing every translation.

[17] DOT especially recommends the idea of working with local community colleges to educate the LEP community in transportation matters.

[18] If there is a known and substantial LEP population that may be served by the program discussed in the notice, the notice should be in the appropriate non-English language.

FHWA NOTICE 4720.6
IMPACTS OF THE CIVIL RIGHTS RESTORATION ACT OF 1987
ON FHWA PROGRAMS
September 2, 1992

1. PURPOSE

To provide guidance to Federal Highway Administration (FHWA) field officials, State highway agencies (SHAs), their subrecipients, and contractors regarding the nondiscrimination requirements of the Civil Rights Restoration Act of 1987.

2. BACKGROUND

a. The Supreme Court's decision in the case of Grove City College v. Bell, 465 U.S. 555 (1984), limited the reach of Federal agency nondiscrimination requirements to those parts of a recipient's operations which directly benefited from Federal assistance. The Civil Rights Restoration Act of 1987 clarified the intent of Congress to include all programs and activities of Federal-aid recipients, subrecipients and contractors. This statute clarified the intent of Congress as it relates to the scope of Title VI of the Civil Rights Act of 1964 and related nondiscrimination statutes.

b. Nondiscrimination programs require that Federal-aid recipients, subrecipients, and contractors prevent discrimination and ensure nondiscrimination in all of their programs and activities, whether those programs and activities are federally-funded or not. The factors prohibited from serving as a basis for action or inaction which discriminates include race, color, national origin, sex, age, and handicap/disability. The efforts to prevent discrimination must address, but not be limited to a program's impacts, access, benefits, participation, treatment, services, contracting opportunities, training opportunities, investigations of complaints, allocations of funds, prioritization of projects, and the functions of right-of-way, research, planning, and design.

c. Authorities for nondiscrimination includes but are not limited to: Title VI of the Civil Rights Act of 1964, the Age Discrimination Acts of 1967 and 1975; Section 504 of the Rehabilitation Acts of 1973, the Americans with Disabilities Act of 1990, Title IX of the Education Amendments of 1972, and Title 23, United States Code, Section 324.

3. GUIDANCE

a. The Civil Rights Restoration Act of 1987 amended each of the affected statutes by adding a section defining the word "program" to make clear that discrimination is prohibited throughout an entire agency if any part of the agency receives Federal financial assistance.

b. If a unit of a State or local government is extended Federal aid and distributes such aid to another governmental entity, all of the operations of the entity which distributes the funds and all of the operations of the department or agency to which the funds are distributed are covered.

c. Corporations, partnerships, or other private organizations or sole proprietorships are covered in their entirety if such an entity receives Federal financial assistance which is extended to it as a whole or if it is principally engaged in certain types of activities.

4. ACTION REQUIRED

a. FHWA field officials:
   (1) Inform the States of the existence of the Civil Rights Restoration Act of 1987
   (2) Provide guidance and technical assistance to SHAs upon request.

(3) Inform States of the need to incorporate language in the next scheduled update of their Nondiscrimination ("Title VI") Plans indicating that they are aware of the scope of the nondiscrimination provisions and that they have incorporated a process to inform persons involved in or affected by all of their programs and activities of their rights under Title VI and related nondiscrimination statutes.
(4) Provide and/or coordinate training addressing nondiscrimination program requirements.
(5) Provide guidance on how nondiscrimination complaints will be handled.
(6) If a complaint of discrimination is received from a person who believes that he or she has been subjected to discrimination under any program or activity of a recipient, sub-recipient, or contractors whether Federal-aid funds are involved in a particular program or activity or not, immediately transmit the complaint to the Director, Departmental office of Civil Rights, and send a copy of the complaint to HCR-20.

b. State Transportation Agencies:
(1) Incorporate appropriate language in updates of Nondiscrimination ("Title VI") Plans to ensure that persons affected by or involved in all of a State's programs and activities are aware of their rights to not be subjected to discrimination based on race, color, sex, national origin, age, or handicap/disability.
(2) Ensure that persons who believe they have been subjected to discrimination are made aware of the avenues or redress available to them and that they are provided advice on the process.
(3) Monitor activities and investigate complaints filed against Federal-aid sub-recipients and contractors. The SHAs are also responsible for preventing discrimination in all of their own programs and activities and attempting to informally resolve complaints filed against them throughout the complaint process
(4) Where a complainant lodges a complaint against the SHA, the FHWA will conduct or contract for the investigation or, if a class action complaint, a review.
(5) In instances where the complaint is against a contractor, subcontractor, or sub-recipient, the FHWA can defer to the appropriate SHA to schedule and conduct an investigation, although, initially, involvement by FHWA may be appropriate to ensure the adequacy of the investigation.

/signed by/
T.D. Larson
Federal Highway Administration

FEDERAL HIGHWAY ADMINISTRATION EJ ORDER
FHWA ORDER 6640.23

FHWA ACTIONS TO ADDRESS ENVIRONMENTAL JUSTICE
IN MINORITY POPULATIONS AND LOW-INCOME POPULATIONS

DATE: December 2, 1998

Paragraph:
1. Purpose And Authority
2. Definitions
3. Policy
4. Integrating Environmental Justice Principles With Existing Operations
5. Preventing Disproportionately High and Adverse Effects
6. Actions to Address Disproportionately High and Adverse Effects

1. **PURPOSE AND AUTHORITY.**
   a. This Order establishes policies and procedures for the Federal Highway Administration (FHWA) to use in complying with Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (EO 12898), dated February 11, 1994.
   b. EO 12898 requires Federal agencies to achieve environmental justice by identifying and addressing disproportionately high and adverse human health and environmental effects, including the interrelated social and economic effects of their programs, policies, and activities on minority populations and low-income populations in the United States. These requirements are to be carried out to the greatest extent practicable, consistent with applicable statutes and the National Performance Review. Compliance with this FHWA Order is a key element in the environmental justice strategy adopted by FHWA to implement EO 12898, and can be achieved within the framework of existing laws, regulations, and guidance.
   c. Consistent with paragraph 6-609 of Executive Order 12898 and the Department of Transportation Order on Environmental Justice (DOT Order 5610.2) dated April 15, 1997, this Order is limited to improving the internal management of the Agency and is not intended to, nor does it, create any rights, benefits, or trust responsibility, substantive or procedural, enforceable at law or equity, by a party against the Agency, its officers, or any person. Nor should this Order be construed to create any right to judicial review involving the compliance or noncompliance with this Order by the Agency, its operating administrations, its officers, or any other person.

2. **DEFINITIONS**
   The following terms, where used in this Order, shall have the following meanings:
   a. **FHWA** means the Federal Highway Administration as a whole and one or more of its individual components;
   b. **Low-Income** means a household income at or below the Department of Health and Human Services poverty guidelines;
   c. **Minority** means a person who is:
      (1) Black (having origins in any of the black racial groups of Africa);
      (2) Hispanic (of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race);
      (3) Asian American (having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands); or
      (4) American Indian and Alaskan Native (having origins in any of the original people of North America and who maintains cultural identification through tribal affiliation or community recognition).
   d. **Low-Income Population** means any readily identifiable group of low-income persons who live in geographic proximity, and, if circumstances warrant, geographically dispersed/transient persons (such as

e. **Minority Population** means any readily identifiable groups of minority persons who live in geographic proximity, and if circumstances warrant, geographically dispersed/transient persons (such as migrant workers or Native Americans) who will be similarly affected by a proposed FHWA program, policy, or activity.

f. **Adverse Effects** means the totality of significant individual or cumulative human health or environmental effects, including interrelated social and economic effects, which may include, but are not limited to: bodily impairment, infirmity, illness or death; air, noise, and water pollution and soil contamination; destruction or disruption of man-made or natural resources; destruction or diminution of aesthetic values; destruction or disruption of community cohesion or a community's economic vitality; destruction or disruption of the availability of public and private facilities and services; vibration; adverse employment effects; displacement of persons, businesses, farms, or nonprofit organizations; increased traffic congestion, isolation, exclusion or separation of minority or low-income individuals within a given community or from the broader community; and the denial of, reduction in, or significant delay in the receipt of, benefits of FHWA programs, policies, or activities.

g. **Disproportionately High and Adverse Effect on Minority and Low-Income Populations** 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 nonminority population and/or nonlow- income population.

h. **Programs, Policies, and/or Activities** means all projects, programs, policies, and activities that affect human health or the environment, and that are undertaken, funded, or approved by FHWA. These include, but are not limited to, permits, licenses, and financial assistance provided by FHWA. Interrelated projects within a system may be considered to be a single project, program, policy, or activity for purposes of this Order.

i. **Regulations and Guidance** means regulations, programs, policies, guidance, and procedures promulgated, issued, or approved by FHWA.

3. **POLICY**

a. It is FHWA's longstanding policy to actively ensure nondiscrimination in Federally- funded activities. Furthermore, it is FHWA's continuing policy to identify and prevent discriminatory effects by actively administering its programs, policies, and activities to ensure that social impacts to communities and people are recognized early and continually throughout the transportation decisionmaking process--from early planning through implementation.
Should the potential for discrimination be discovered, action to eliminate the potential shall be taken.

b. EO 12898, DOT Order 5610.2, and this Order are primarily a reaffirmation of the principles of Title VI of the Civil Rights Act of 1964 (Title VI) and related statutes, the National Environmental Policy Act (NEPA), 23 U.S.C. 109(h) and other Federal environmental laws, emphasizing the incorporation of those provisions with the environmental and transportation decisionmaking processes. Under Title VI, each Federal agency is required to ensure that no person on the grounds of race, color, or national origin, is excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity receiving Federal financial assistance. This statute applies to every program area in FHWA. Under EO 12898, each Federal agency must identify and address, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations.

c. FHWA will implement the principles of the DOT Order 5610.2 and EO 12898 by incorporating Environmental Justice principles in all FHWA programs, policies, and activities within the framework of existing laws, regulations, and guidance.

d. In complying with this Order, FHWA will rely upon existing authorities to collect necessary data and conduct research associated with environmental justice concerns, including 49 CFR 21.9(b) and 23 CFR 200.9 (b)(4).

4. **INTEGRATING ENVIRONMENTAL JUSTICE PRINCIPLES WITH EXISTING OPERATIONS**
   a. The principles outlined in this Order are required to be integrated in existing operations.
   b. Future rulemaking activities undertaken, and the development of any future guidance or procedures for FHWA programs, policies, or activities that affect human health or the environment, shall explicitly address compliance with EO 12898 and this Order.
   c. The formulation of future FHWA policy statements and proposals for legislation that may affect human health or the environment will include consideration of the provisions of EO 12898 and this Order.

5. **PREVENTING DISPROPORTIONATELY HIGH AND ADVERSE EFFECTS**
   a. Under Title VI, FHWA managers and staff must administer their programs in a manner to ensure that no person is excluded from participating in, denied the benefits of, or subjected to discrimination under any program or activity of FHWA because of race, color, or national origin. Under EO 12898, FHWA managers and staff must administer their programs to identify and address, as appropriate, disproportionately high and adverse human health or environmental effects of FHWA programs, policies, and activities on minority populations and low-income populations.
   b. FHWA currently administers policies, programs, and activities that are subject to the requirements of NEPA, Title VI, the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (Uniform Act), Title 23 of the United States Code and other statutes that involve human health or environmental matters, or interrelated social and economic impacts. These requirements will be administered to identify the risk of discrimination, early in the development of FHWA's programs, policies, and activities so that positive corrective action can be taken. In implementing these requirements, the following information should be obtained where relevant, appropriate, and practical:
   (1) population served and/or affected by race, or national origin, and income level;
   (2) proposed steps to guard against disproportionately high and adverse effects on persons on the basis of race, or national origin; and,
   (3) present and proposed membership by race, or national origin, in any planning or advisory body that is part of the program.
   c. FHWA will administer its governing statutes so as to identify and avoid discrimination and disproportionately high and adverse effects on minority populations and low-income populations by:
   (1) identifying and evaluating environmental, public health, and interrelated social and economic effects of FHWA programs, policies, and activities; and
   (2) proposing measures to avoid, minimize, and/or mitigate disproportionately high and adverse environmental and public health effects and interrelated social and economic effects, and providing offsetting benefits and opportunities to enhance communities, neighborhoods, and individuals affected by FHWA programs, policies, and activities, where permitted by law and consistent with EO 12898; and
   (3) considering alternatives to proposed programs, policies, and activities, where such alternatives would result in avoiding and/or minimizing disproportionately high and adverse human health or environmental impacts, consistent with EO 12898; and
   (4)providing public involvement opportunities and considering the results thereof, including providing meaningful access to public information concerning the human health or environmental impacts and soliciting input from affected minority and low-income populations in considering alternatives during the planning and development of alternatives and decisions.

6. **ACTIONS TO ADDRESS DISPROPORTIONATELY HIGH AND ADVERSE EFFECTS**
   a. Following the guidance set forth in this Order, FHWA managers and staff shall ensure that FHWA programs, policies, and activities for which they are responsible do not have a disproportionately high and adverse effect on minority or low-income populations.
   b. When determining whether a particular program, policy, or activity will have disproportionately high and adverse effects on minority and low-income populations, FHWA managers and staff should take into account mitigation and enhancements measures and potential offsetting benefits to the affected minority or low-income populations.

Other factors that may be taken into account include design, comparative impacts, and the relevant number of similar existing system elements in non-minority and non-low-income areas.

c. FHWA managers and staff will ensure that the programs, policies, and activities that will have disproportionately high and adverse effects on minority populations or low-income populations will only be carried out if further mitigation measures or alternatives that would avoid or reduce the disproportionately high and adverse effects are not practicable. In determining whether a mitigation measure or an alternative is "practicable," the social, economic (including costs) and environmental effects of avoiding or mitigating the adverse effects will be taken into account.

d. FHWA managers and staff will also ensure that any of their respective programs, policies or activities that have the potential for disproportionately high and adverse effects on populations protected by Title VI ("protected populations") will only be carried out if:
   (1) a substantial need for the program, policy or activity exists, based on the overall public interest; and
   (2) alternatives that would have less adverse effects on protected populations have either:
      (a) adverse social, economic, environmental, or human health impacts that are more severe; or
      (b) would involve increased costs of an extraordinary magnitude.

e. Any relevant finding identified during the implementation of this Order must be included in the planning or NEPA documentation that is prepared for the appropriate program, policy, or activity.

f. Environmental and civil rights statutes provide opportunities to address the environmental effects on minority populations and low-income populations. Under Title VI, each Federal agency is required to ensure that no person on grounds of race, color, or national origin is excluded from participation in, denied the benefits of, or in any other way subjected to discrimination under any program or activity receiving Federal assistance. Therefore, any member of a protected class under Title VI may file a complaint with the FHWA Office of Civil Rights, Attention HCR-20, alleging that he or she was subjected to disproportionately high and adverse health or environmental effects. FHWA will then process the allegation in a manner consistent with the attached operations flowchart.

Original signed by:

Kenneth R. Wykle
Federal Highway Administrator

Attachment – Note: This is a PDF File

FHWA & FTA JOINT MEMORANDUM ON IMPLEMENTING TITLE VI REQUIREMENTS IN METROPOLITAN AND STATEWIDE PLANNING

OCTOBER 7, 1999

U.S. Department of Transportation
Federal Highway Administration
Federal Transit Administration

Memorandum

Subject: **ACTION:** Implementing Title VI Requirements in Metropolitan and Statewide Planning

Date: October 7, 1999

From: (Original signed by)
Kenneth R. Wykle
Administrator, FHWA
(Original signed by)
Gordon J. Linton
Administrator, FTA

Reply to
Attn. of: TOA-1/HEPH-1

To: FHWA Division Administrators
FTA Regional Administrators

Background
The purpose of this memorandum is to issue clarification to you in implementing Title VI of the 1964 Civil Rights Act (42 U.S.C. 2000d-1) and related regulations, The President's Executive Order on Environmental Justice, the U.S. DOT Order, and the FHWA Order.

Title VI states 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." Title VI bars intentional discrimination as well as disparate impact discrimination (i.e., a neutral policy or practice that has a disparate impact on protected groups).

The Environmental Justice (EJ) Orders further amplify Title VI by providing that "each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations."

Increasingly, concerns for compliance with provisions of Title VI and the EJ Orders have been raised by citizens and advocacy groups with regard to broad transportation investment and impact considered in metropolitan and statewide planning. While Title VI and EJ concerns have most often been raised during project development, it is important to recognize that the law also applies equally to the processes and products of planning. The appropriate time for FTA and FHWA to ensure compliance with Title VI in the planning process is during the

planning certification reviews conducted for Transportation Management Areas (TMAs) and through the statewide planning finding rendered at approval of the Statewide Transportation Improvement Program (STIP). This memorandum serves as clarification pending issuance of revised planning and environmental regulations.

Requested Action
We request that during certification reviews you raise questions that serve to substantiate metropolitan planning organization (MPO) self-certification of Title VI compliance. Suggested questions are attached. Also attached are a series of actions that could be taken to support Title VI compliance and EJ goals, improve planning performance, and minimize the potential for subsequent corrective action and complaint.

Statewide planning is also subject to the same Title VI legislative requirements as the metropolitan planning process. The FHWA division offices, jointly with FTA regional terns of offices, should review and document Title VI compliance when making the TEA-21 required finding that STIP development and the overall planning process is consistent with the planning requirements.

In part, the purpose of asking the questions attached to this memorandum is to review the basis upon which the annual self-certification of compliance with Title VI is made. The metropolitan planning certification reviews in TMAs and STIP findings offer an opportunity to FHWA and FTA staff to verify the procedures and analytical foundation upon which the self-certification is made. If it becomes evident that the self-certification was not adequately supported, a corrective action is to be included in their certification report to rectify the deficiency.
The FHWA's and FTA's Division and Regional Administrators should involve their respective civil rights staffs in the EJ and Title VI portions of the metropolitan planning certification reviews in TMAs and statewide planning findings.

Forthcoming Planning Regulations
As you know, FHWA and FTA are preparing to revise the planning (23 CFR 450 and 49 CFR 619) and environmental (23 CFR 771 and 49 CFR 622) regulations. In these rulemakings and subsequent documents, we will propose clarifications and appropriate procedural and analytical approaches for more completely complying with the provisions of Title VI and the Executive Order on Environmental Justice. Specifically, the proposals will focus on public involvement strategies for minority and low-income groups and assessment of the distribution of benefits and adverse environmental impacts at both the plan and project level.

If you have questions on metropolitan applications of this memorandum, please contact Sheldon M. Edner, Team Leader, Metropolitan Planing and Policies, FHWA (202) 366-4066 or Charlie Goodman, Division Chief, Metropolitan Planning, FTA (202) 366-1944. On statewide applications, please contact Dee Spann, Team Leader, Statewide Planning, FHWA (202) 366-4086 or Paul Verchinski, Chief, Statewide Planning, FTA (202) 366-1626.
Attachment 1 & Attachment 2
cc:
FHWA Resource Center Directors
FHWA CBU and SBU Leaders
TOA-1,2
TCR-1
FHWA/FTA Metro Offices

ATTACHMENT 1

Assessing Title VI Capability – Review Questions
September 1999

Discussion of these important issues will be held as part of planning certification reviews, and the discussion will be held as part of statewide planning findings that are made as part of Statewide Transportation Improvement Program (STIP) approval. These questions are offered as an aid to reviewing and verifying compliance with Title VI requirements:

1. *Overall Strategies and Goals:*
   - What strategies and efforts has the planning process developed for ensuring, demonstrating, and substantiating compliance with Title VI? What measures have been used to verify that the multi-modal system access and mobility performance improvements included in the plan and Transportation Improvement Program (TIP) or STIP, and the underlying planning process, comply with Title VI?
   - Has the planning process developed a demographic profile of the metropolitan planning area or State that includes identification of the locations of socio-economic groups, including low-income and minority populations as covered by the Executive Order on Environmental Justice and Title VI provisions?
   - Does the planning process seek to identify the needs of low-income and minority populations? Does the planning process seek to utilize demographic information to examine the distributions across these groups of the benefits and burdens of the transportation investments included in the plan and TIP (or STIP)? What methods are used to identify imbalances?

2. *Service Equity:*
   - Does the planning process have an analytical process in place for assessing the regional benefits and burdens of transportation system investments for different socio-economic groups? Does it have a data collection process to support the analysis effort?
   - Does this analytical process seek to assess the benefit and impact distributions of the investments included in the plan and TIP (or STIP)?
   - How does the planning process respond to the analyses produced? Imbalances identified?

3. *Public Involvement:*
   - Does the public involvement process have an identified strategy for engaging minority and low-income populations in transportation decision-making? What strategies, if any, have been implemented to reduce participation barriers for such populations? Has their effectiveness been evaluated? Has public involvement in the planning process been routinely evaluated as required by regulation? Have efforts been undertaken to improve performance, especially with regard to low-income and minority populations? Have organizations representing low-income and minority populations been consulted as part of this evaluation? Have their concerns been considered?
   - What efforts have been made to engage low-income and minority populations in the certification review public outreach effort? Does the public outreach effort utilize media (such as print, television, radio, etc.) targeted to low-income or minority populations? What issues were raised, how are their concerns documented, and how do they reflect on the performance of the planning process in relation to Title VI requirements?
   - What mechanisms are in place to ensure that issues and concerns raised by low-income and minority populations are appropriately considered in the decision-making process? Is there evidence that these concerns have been appropriately considered? Has the metropolitan planning organization (MPO) or State DOT made funds available to local organizations that represent low-income and minority populations to enable their participation in planning processes?

ATTACHMENT 2

Guidance:
Assessing Title VI Capability – FTA/FHWA Actions

Environmental Justice in State Planning and Research (SPR) and Unified Planning Work Programs (UPWPs) Efforts During Certification Reviews for Title VI Consistency

At a minimum, the FHWA and FTA should review with States, MPOs, and transit operators how Title VI is addressed as part of their public involvement and plan development processes. Since there is likely to be the need for some upgrading of activity in this area, a work element to assess and develop improved strategies for reaching minority and low-income groups through public involvement efforts and to begin developing or enhancing analytical capability for assessing impact distributions should be considered in upcoming SPRs and UPWPs.

Review Public Involvement

In many areas, room for improvement exists in public involvement processes regarding engagement of minority and low-income individuals. It is appropriate to review the extent to which MPOs and States have made proactive efforts to engage these groups through their public involvement programs. Further, FHWA and FTA should review the record of complaints or concerns raised regarding Title VI in the planning process under review. During the on-site element of the metropolitan certification review, the public involvement process, now required by statute, should make a special effort to engage and involve representatives of minority and low-income groups to hear their views regarding changes to and performance of the planning process.

Options for FHWA/FTA Metropolitan Certification Review Actions

- The FHWA and the FTA should seek to determine what, if any, processes are in place to assess the distribution of impacts on different socio-economic groups for the investments identified in the transportation plan and TIP. If the planning process has no such capability in place, there needs to be further investigation as to how the MPO is able to annually self-certify its compliance with the provisions of Title VI.
- If no documented process exists for assessing the distributional effects of the transportation investments in the region, the planning certification report should include a corrective action directing the development of a process for accomplishing this end. This will serve to put the process on notice regarding existing requirements and prepare it for future regulatory requirements. If a minimal effort is in place, the FHWA and the FTA should encourage the planning process participants to become familiar with the provisions of the Executive Order on Environmental Justice and identify needed improvements based on the Order.
- If no formal evaluation of the public involvement process has been conducted per the requirement for periodic assessment (see 23 CFR 450.316(b)), a corrective action to conduct an evaluation should be included in the certification of minority and low-income populations through the local public involvement process. If the MPO or State has conducted a public involvement evaluation, FHWA and FTA should determine whether the involvement of minorities and low-income individuals has been addressed and what strengths and deficiencies were identified. Recommended improvements or corrective actions for the certification report or the STIP findings can be tied to the results of the MPO's or State's public involvement evaluation. on report. The formal evaluation should, at a minimum, assess the effectiveness of efforts to engage.

Required Contract Provisions
Federal-Aid Construction Contracts

I. General
II. Nondiscrimination
III. Nonsegregated Facilities
IV. Payment of Predetermined Minimum Wage
V. Statements and Payrolls
VI. Record of Materials, Supplies, and Labor
VII. Subletting or Assigning the Contract
VIII. Safety: Accident Prevention
IX. False Statements Concerning Highway Projects
X. Implementation of Clean Air Act and Federal Water Pollution Control Act
XI. Certification Regarding Debarment, Suspension Ineligibility, and Voluntary Exclusion
XII. Certification Regarding Use of Contract Funds for Lobbying

Attachments

A. Employment Preference for Appalachian Contracts (included in Appalachian contracts only)

I. GENERAL

1. These contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

2. Except as otherwise provided for in each section, the contractor shall insert in each subcontract all of the stipulations contained in these Required Contract Provisions, and further require their inclusion in any lower tier subcontract or purchase order that may in turn be made. The Required Contract Provisions shall not be incorporated by reference in any case. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with these Required Contract Provisions.

3. A breach of any of the stipulations contained in these Required Contract Provisions shall be sufficient grounds for termination of the contract.

4. A breach of the following clauses of the Required Contract Provisions may also be grounds for debarment as provided in 29 CFR 5.12:
   Section I, paragraph 2;
   Section IV, paragraphs 1, 2, 3, 4, and 7;
   Section V, paragraphs 1 and 2a through 2g.

5. Disputes arising out of the labor standards provisions of Section IV (except paragraph 5) and Section V of these Required Contract Provisions shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor (DOL) as set forth in 29 CFR 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the DOL, or the contractor's employees or their representatives.

6. **Selection of Labor**: During the performance of this contract, the contractor shall not:
   a. discriminate against labor from any other State, possession, or territory of the United States (except for employment preference for Appalachian contracts, when applicable, as specified in Attachment A), or
   b. employ convict labor for any purpose within the limits of the project unless it is labor performed by convicts who are on parole, supervised release, or probation.

II. **NONDISCRIMINATION**

(Applicable to all Federal-aid construction contracts and to all related subcontracts of $10,000 or more.)

1. **Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630 and 41 CFR 60) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The Equal Opportunity Construction Contract Specifications set forth under 41 CFR 60-4.3 and the provisions of the American Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:
   a. The contractor will work with the State highway agency (SHA) and the Federal Government in carrying out EEO obligations and in their review of his/her activities under the contract.
   b. The contractor will accept as his operating policy the following statement:

      "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."

2. **EEO Officer:** The contractor will designate and make known to the SHA contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of EEO and who must be assigned adequate authority and responsibility to do so.

3. **Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as minimum:
   a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.
   b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.
   c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minority group employees.
   d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.
   e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. **Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minority groups in the area from which the project work force would normally be derived.
   a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the contractor for employment consideration.
   b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with EEO contract provisions. (The DOL has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended.)
   c. The contractor will encourage his present employees to refer minority group applicants for employment. Information and procedures with regard to referring minority group applicants will be discussed with employees.

5. **Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:
   a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.
   b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.
   c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.
   d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with his obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of his avenues of appeal.

6. **Training and Promotion:**
   a. The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.
   b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision.
   c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.
   d. The contractor will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.

7. **Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the contractor either directly or through a contractor's association acting as agent will include the procedures set forth below:
   a. The contractor will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.
   b. The contractor will use best efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.
   c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the SHA and shall set forth what efforts have been made to obtain such information.
   d. In the event the union is unable to provide the contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The DOL has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the SHA.

8. **Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment.
   a. The contractor shall notify all potential subcontractors and suppliers of his/her EEO obligations under this contract.
   b. Disadvantaged business enterprises (DBE), as defined in 49 CFR 23, shall have equal opportunity to compete for and perform subcontracts which the contractor enters into pursuant to this contract. The contractor will use his best efforts to solicit bids from and to utilize DBE subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of DBE construction firms from SHA personnel.
   c. The contractor will use his best efforts to ensure subcontractor compliance with their EEO obligations.

9. **Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the SHA and the FHWA.
   a. The records kept by the contractor shall document the following:
      1. The number of minority and non-minority group members and women employed in each work classification on the project;
      2. The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women;
      3. The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees; and

4. The progress and efforts being made in securing the services of DBE subcontractors or subcontractors with meaningful minority and female representation among their employees.

b. The contractors will submit an annual report to the SHA each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data.

III. **NONSEGREGATED FACILITIES**

(Applicable to all Federal-aid construction contracts and to all related subcontracts of $10,000 or more.)

a. By submission of this bid, the execution of this contract or subcontract, or the consummation of this material supply agreement or purchase order, as appropriate, the bidder, Federal-aid construction contractor, subcontractor, material supplier, or vendor, as appropriate, certifies that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments, and that the firm does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The firm agrees that a breach of this certification is a violation of the EEO provisions of this contract. The firm further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability.

b. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive, or are, in fact, segregated on the basis of race, color, religion, national origin, age or disability, because of habit, local custom, or otherwise. The only exception will be for the disabled when the demands for accessibility override (e.g. disabled parking).

c. The contractor agrees that it has obtained or will obtain identical certification from proposed subcontractors or material suppliers prior to award of subcontracts or consummation of material supply agreements of $10,000 or more and that it will retain such certifications in its files.

IV. **PAYMENT OF PREDETERMINED MINIMUM WAGE**

(Applicable to all Federal-aid construction contracts exceeding $2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural minor collectors, which are exempt.)

1. **General:**

a. All mechanics and laborers employed or working upon the site of the work will be paid unconditionally and not less often than once a week and without subsequent deduction or rebate on any account [except such payroll deductions as are permitted by regulations (29 CFR 3) issued by the Secretary of Labor under the Copeland Act (40 U.S.C. 276c)] the full amounts of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment. The payment shall be computed at wage rates not less than those contained in the wage determination of the Secretary of Labor (hereinafter "the wage determination") which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor or its subcontractors and such laborers and mechanics. The wage determination (including any additional classifications and wage rates conformed under paragraph 2 of this Section IV and the DOL poster (WH-1321) or Form FHWA-1495) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. For the purpose of this Section, contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act (40 U.S.C. 276a) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section IV, paragraph 3b, hereof. Also, for the purpose of this Section, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or

incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in paragraphs 4 and 5 of this Section IV.

b. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.
c. All rulings and interpretations of the Davis-Bacon Act and related acts contained in 29 CFR 1, 3, and 5 are herein incorporated by reference in this contract.

2. **Classification:**
   a. The SHA contracting officer shall require that any class of laborers or mechanics employed under the contract, which is not listed in the wage determination, shall be classified in conformance with the wage determination.
   b. The contracting officer shall approve an additional classification, wage rate and fringe benefits only when the following criteria have been met:
      1. the work to be performed by the additional classification requested is not performed by a classification in the wage determination;
      2. the additional classification is utilized in the area by the construction industry;
      3. the proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
      4. with respect to helpers, when such a classification prevails in the area in which the work is performed.
   c. If the contractor or subcontractors, as appropriate, the laborers and mechanics (if known) to be employed in the additional classification or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the DOL, Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, D.C. 20210. The Wage and Hour Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
   d. In the event the contractor or subcontractors, as appropriate, the laborers or mechanics to be employed in the additional classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringbenefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. Said Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary
   e. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 2c or 2d of this Section IV shall be paid to all workers performing work in the additional classification from the first day on which work is performed in the classification.

3. **Payment of Fringe Benefits:**
   a. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor or subcontractors, as appropriate, shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly case equivalent thereof.
   b. If the contractor or subcontractor, as appropriate, does not make payments to a trustee or other third person, he/she may consider as a part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

4. **Apprentices and Trainees (Programs of the U.S. DOL) and Helpers:**
   a. Apprentices:
      1. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the DOL, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau, or if a person is employed in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice.
      2. The allowable ratio of apprentices to journeyman-level employees on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate listed in the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor or subcontractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman-level hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.
      3. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator for the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.
      4. In the event the Bureau of Apprenticeship and Training, or a State apprenticeship agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor or subcontractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the comparable work performed by regular employees until an acceptable program is approved.
   b. Trainees:
      1. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the DOL, Employment and Training Administration.
      2. The ratio of trainees to journeyman-level employees on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.
      3. Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the

wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman-level wage rate on the wage determination which provides for less than full fringe benefits for apprentices, in which case such trainees shall receive the same fringe benefits as apprentices.

4. In the event the Employment and Training Administration withdraws approval of a training program, the contractor or subcontractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Helpers:
Helpers will be permitted to work on a project if the helper classification is specified and defined on the applicable wage determination or is approved pursuant to the conformance procedure set forth in Section IV.2. Any worker listed on a payroll at a helper wage rate, who is not a helper under a approved definition, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.

5. **Apprentices and Trainees (Programs of the U.S. DOT):**
Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

6. **Withholding:**
The SHA shall upon its own action or upon written request of an authorized representative of the DOL withhold, or cause to be withheld, from the contractor or subcontractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements which is held by the same prime contractor, as much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the SHA contracting officer may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

7. **Overtime Requirements:**
No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers, mechanics, watchmen, or guards (including apprentices, trainees, and helpers described in paragraphs 4 and 5 above) shall require or permit any laborer, mechanic, watchman, or guard in any workweek in which he/she is employed on such work, to work in excess of 40 hours in such workweek unless such laborer, mechanic, watchman, or guard receives compensation at a rate not less than one-and-one-half times his/her basic rate of pay for all hours worked in excess of 40 hours in such workweek.

8. **Violation:**
Liability for Unpaid Wages; Liquidated Damages: In the event of any violation of the clause set forth in paragraph 7 above, the contractor and any subcontractor responsible thereof shall be liable to the affected employee for his/her unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic, watchman, or guard employed in violation of the clause set forth in paragraph 7, in the sum of $10 for each calendar day on which such employee was required or permitted to work in excess of the standard work week of 40 hours without payment of the overtime wages required by the clause set forth in paragraph 7.

9. **Withholding for Unpaid Wages and Liquidated Damages:**
The SHA shall upon its own action or upon written request of any authorized representative of the DOL withhold, or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally--assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 8 above.

V. **STATEMENTS AND PAYROLLS**
(Applicable to all Federal-aid construction contracts exceeding $2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural collectors, which are exempt.)

1. **Compliance with Copeland Regulations (29 CFR 3):**
The contractor shall comply with the Copeland Regulations of the Secretary of Labor which are herein incorporated by reference.

2. **Payrolls and Payroll Records:**
   a. Payrolls and basic records relating thereto shall be maintained by the contractor and each subcontractor during the course of the work and preserved for a period of 3 years from the date of completion of the contract for all laborers, mechanics, apprentices, trainees, watchmen, helpers, and guards working at the site of the work.
   b. The payroll records shall contain the name, social security number, and address of each such employee; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalent thereof the types described in Section 1(b)(2)(B) of the Davis Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. In addition, for Appalachian contracts, the payroll records shall contain a notation indicating whether the employee does, or does not, normally reside in the labor area as defined in Attachment A, paragraph 1. Whenever the Secretary of Labor, pursuant to Section IV, paragraph 3b, has found that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis Bacon Act, the contractor and each subcontractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, that the plan or program has been communicated in writing to the laborers or mechanics affected, and show the cost anticipated or the actual cost incurred in providing benefits. Contractors or subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprentices and trainees, and ratios and wage rates prescribed in the applicable programs.
   c. Each contractor and subcontractor shall furnish, each week in which any contract work is performed, to the SHA resident engineer a payroll of wages paid each of its employees (including apprentices, trainees, and helpers, described in Section IV, paragraphs 4 and 5, and watchmen and guards engaged on work during the preceding weekly payroll period). The payroll submitted shall set out accurately and completely all of the information required to be maintained under paragraph 2b of this Section V. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal stock number 029-005-0014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.
   d. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his/her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
      1. that the payroll for the payroll period contains the information required to be maintained under paragraph 2b of this Section V and that such information is correct and complete;

2. that such laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR 3;
3. that each laborer or mechanic has been paid not less that the applicable wage rate and fringe benefits or cash equivalent for the classification of worked performed, as specified in the applicable wage determination incorporated into the contract.

e. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 2d of this Section V.

f. The falsification of any of the above certifications may subject the contractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.

g. The contractor or subcontractor shall make the records required under paragraph 2b of this Section V available for inspection, copying, or transcription by authorized representatives of the SHA, the FHWA, or the DOL, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the SHA, the FHWA, the DOL, or all may, after written notice to the contractor, sponsor, applicant, or owner, take such actions as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

VI. RECORD OF MATERIALS, SUPPLIES, AND LABOR

1. On all Federal-aid contracts on the National Highway System, except those which provide solely for the installation of protective devices at railroad grade crossings, those which are constructed on a force account or direct labor basis, highway beautification contracts, and contracts for which the total final construction cost for roadway and bridge is less than $1,000,000 (23 CFR 635) the contractor shall:
   a. Become familiar with the list of specific materials and supplies contained in Form FHWA-47, "Statement of Materials and Labor Used by Contractor of Highway Construction Involving Federal Funds," prior to the commencement of work under this contract.
   b. Maintain a record of the total cost of all materials and supplies purchased for and incorporated in the work, and also of the quantities of those specific materials and supplies listed on Form FHWA-47, and in the units shown on Form FHWA-47.
   c. Furnish, upon the completion of the contract, to the SHA resident engineer on Form FHWA-47 together with the data required in paragraph 1b relative Furnish materials and supplies, a final labor summary of all contract work indicating the total hours worked and the total amount earned.
   d. At the prime contractor's option, either a single report covering all contract work or separate reports for the contractor and for each subcontract shall be submitted.

VII. SUBLETTING OR ASSIGNING THE CONTRACT

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the State. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635).
   a. "Its own organization" shall be construed to include only workers employed and paid directly by the prime contractor and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor, assignee, or agent of the prime contractor.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph 1 of Section VII is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the SHA contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the SHA contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the SHA has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

VIII. **SAFETY: ACCIDENT PREVENTION**

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the SHA contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

IX. **FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS**

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, the following notice shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS

18 U.S.C. 1020 reads as follows:
"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or
Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or
Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;
Shall be fined not more that $10,000 or imprisoned not more than 5 years or both."

X. **IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**
(Applicable to all Federal-aid construction contracts and to all related subcontracts of $100,000 or more.) By submission of this bid or the execution of this contract, or subcontract, as appropriate, the bidder, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any facility that is or will be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Pub.L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Pub.L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR 15) is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.

2. That the firm agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.

3. That the firm shall promptly notify the SHA of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility that is or will be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.

4. That the firm agrees to include or cause to be included the requirements of paragraph 1 through 4 of this Section X in every nonexempt subcontract, and further agrees to take such action as the government may direct as a means of enforcing such requirements.

XI. **CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

1. **Instructions for Certification - Primary Covered Transactions:**
(Applicable to all Federal-aid contracts - 49 CFR 29)
   a. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.
   b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.
d. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
e. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations.
f. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
g. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the non-procurement portion of the "Lists of Parties Excluded From Federal Procurement or Non-procurement Programs" (Non-procurement List) which is compiled by the General Services Administration.
i. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
j. Except for transactions authorized under paragraph f of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

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Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
Primary Covered Transactions

1. **The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:**
    a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
    b. Have not within a 3-year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
    c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1b of this certification; and
    d. Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
    e. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

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2. **Instructions for Certification - Lower Tier Covered Transactions:**
(Applicable to all subcontracts, purchase orders and other lower tier transactions of $25,000 or more - 49 CFR 29)
    a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.
    b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
    c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.
    d. The terms "covered transaction," "debarred," "suspended," "ineligible," "primary covered transaction," "participant," "person," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
    e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
    f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

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3. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions:

a. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

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XII. **CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**
(Applicable to all Federal-aid construction contracts and to all related subcontracts which exceed $100,000 - 49 CFR 20)

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:
   a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
   b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

3. The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed $100,000 and that all such recipients shall certify and disclose accordingly.

ATTACHMENT A - EMPLOYMENT PREFERENCE FOR APPALACHIAN CONTRACTS

(Applicable to Appalachian contracts only.)

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the sub-region, or the Appalachian counties of the State wherein the contract work is situated, except:
   a. To the extent that qualified persons regularly residing in the area are not available.
   b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.
   c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph 1c shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph 4 below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which he estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, he shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within 1 week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph 1c above.

5. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

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