PTN Review Checklist for Subrecipient Title VI Programs

In accordance with FTA Circular 4702.1B, "Title VI Requirements and Guidelines for FTA Recipients," October 1, 2012.

Part One: General Requirements. Every Title VI Program shall include the following information:

(1) Requirement #1: Title VI Notice to the Public. A copy of the recipient's Title VI notice to the public that indicates the recipient complies with Title VI, and informs members of the public of the protections against discrimination afforded to them by Title VI. Include a list of locations where the notice is posted. A sample Title VI notice is in Appendix B.

Clarifying Information from FTA Circular 4072.1B, Chapter III:
At a minimum, recipients shall disseminate this information to the public by posting a Title VI notice on the agency's website and in public areas of the agency's office(s), including the reception desk, meeting rooms, etc. Recipients should also post Title VI notices at stations or stops, and/or on transit vehicles. Sample Title VI notice: Appendix B.

Contents. The Title VI notice shall include:
a. A statement that the agency operates programs without regard to race, color, or national origin.
b. A description of the procedures that members of the public should follow in order to request additional information on the recipient's Title VI obligations.
c. A description of the procedures that members of the public shall follow in order to file a Title VI discrimination complaint against the recipient.

Effective Practices for Fulfilling the Notification Requirement.
a. Dissemination. Agencies shall inform the public of their rights under Title VI through such measures as posting the Title VI notice on posters, comment cards, or flyers placed at stations, bus shelters, and in transit vehicles.
b. Document translation. Notices detailing a recipient's Title VI obligations and complaint procedures shall be translated into languages other than English, as needed and consistent with the DOT LEP Guidance and the recipient's language assistance plan.
c. Subrecipients. In order to reduce the administrative burden associated with this requirement, subrecipients may adopt the Title VI Notice developed by the primary recipient; however, subrecipients shall notify passengers and other interested persons that they may file discrimination complaints directly with the subrecipient.

(2) Requirement #2: Title VI Complaint Procedures and Complaint Form. A copy of the recipient's instructions to the public regarding how to file a Title VI discrimination complaint, including a copy of the complaint form. Sample complaint procedures are in Appendix C, and a sample Title VI complaint form is in Appendix D.

Clarifying Information from FTA Circular 4072.1B, Chapter III:
All recipients shall develop procedures for investigating and tracking Title VI complaints filed against them and make their procedures for filing a complaint available to members of the public. Recipients must also develop a Title VI complaint form, and the form and procedure for filing a complaint shall be available on the recipient's website. FTA requires direct and primary recipients to report information regarding their complaint procedures in their Title VI Programs in order for FTA to determine compliance with DOT's Title VI regulations. In order to reduce the administrative burden associated with this requirement, subrecipients may adopt the Title VI complaint investigation and tracking procedures and complaint form developed by the primary recipient. Sample complaint procedure and complaint forms: Appendices C and D.

(3) Requirement #3: A List of Transit-related Title VI Investigations, Complaints, and Lawsuits. A list of any public transportation-related Title VI investigations, complaints, or lawsuits filed with the recipient since the time of the last submission. See Appendix E for an example of how to report this information. This list should include only those investigations, complaints, or lawsuits that pertain to allegations of discrimination on the basis of race, color, and/or national origin in transit-related activities and programs and that pertain to the recipient submitting the report, not necessarily the larger agency or department of which the recipient is a part. If there are no investigations, complaints, or lawsuits, include a blank table and a text explanation that there are none. This will ensure that you have the means to document

any future incidents and will convey to the reviewer that you are aware of the requirement in your program.

Clarifying Information from FTA Circular 4702.1B, Chapter III:
FTA requires all recipients to prepare and maintain a list of any of the following that allege discrimination on the basis of race, color, or national origin: active investigations conducted by entities other than FTA; lawsuits; and complaints naming the recipient. This list shall include the date that the investigation, lawsuit, or complaint was filed; a summary of the allegation(s); the status of the investigation, lawsuit, or complaint; and actions taken by the recipient in response, or final findings related to, the investigation, lawsuit, or complaint. This list shall be included in the Title VI Program submitted to FTA every three years. Example: Appendix E.

(4) Requirement #4: Public Participation Plan. A public participation plan that includes an outreach plan to engage minority and limited English proficient populations, as well as a summary of outreach efforts made since the last Title VI Program submission. A recipient's targeted public participation plan for minority populations may be part of efforts that extend more broadly to include other constituencies that are traditionally underserved, such as people with disabilities, low-income populations, and others.

Clarifying Information from FTA Circular 4702.1B, Chapter III:
The content and considerations of Title VI, the Executive Order on LEP, and the DOT LEP Guidance shall be integrated into each recipient's established public participation plan or process (i.e., the document that explicitly describes the proactive strategies, procedures, and desired outcomes that underpin the recipient's public participation activities). Recipients have wide latitude to determine how, when, and how often specific public participation activities should take place, and which specific measures are most appropriate. Recipients should make these determinations based on a demographic analysis of the population(s) affected, the type of plan, program, and/or service under consideration, and the resources available. Efforts to involve minority and LEP populations in public participation activities can include both comprehensive measures, such as placing public notices at all transit stations, stops, and vehicles, as well as targeted measures to address linguistic, institutional, cultural, economic, historical, or other barriers that may prevent minority and LEP persons from effectively participating in a recipient's decision-making process. FTA has developed a Circular, 4703.1, "Environmental Justice Policy Guidance for Federal Transit Administration Recipients," that includes many examples of effective strategies for engaging minority and low-income populations. FTA encourages recipients to review that Circular for ideas when developing their public engagement strategy.

Some of those effective practices include:
a. Scheduling meetings at times and locations that are convenient and accessible for minority and LEP communities.
b. Employing different meeting sizes and formats.
c. Coordinating with community- and faith-based organizations, educational institutions, and other organizations to implement public engagement strategies that reach out specifically to members of affected minority and/or LEP communities.
d. Considering radio, television, or newspaper ads on stations and in publications that serve LEP populations. Outreach to LEP populations could also include audio programming available on podcasts.
e. Providing opportunities for public participation through means other than written communication, such as personal interviews or use of audio or video recording devices to capture oral comments.

(5) Requirement # 5: Language Assistance Plan. A copy of the recipient's plan for providing language assistance to persons with limited English proficiency, based on the DOT LEP Guidance.

Consistent with Title VI of the Civil Rights Act of 1964, DOT's implementing regulations, and Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency" (65 FR 50121, Aug. 11, 2000), recipients shall take reasonable steps to ensure meaningful access to benefits, services, information, and other important portions of their programs and activities for individuals who are limited-English proficient (LEP). This Circular contains only a summary of the LEP requirements as they apply to FTA recipients.

a. **Four Factor Analysis**. In order to ensure meaningful access to programs and activities, recipients shall use the information obtained in the Four Factor Analysis to determine the specific language services that are appropriate to provide. A careful analysis can help a recipient determine if it communicates effectively with LEP persons and will inform language access planning. The Four Factor Analysis 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 recipient. This population will be program-specific. In addition to the number or proportion of LEP persons served, the recipient's analysis should, at a minimum, identify:
   (a) How LEP persons interact with the recipient's agency;
   (b) Identification of LEP communities, and assessing the number or proportion of LEP persons from each language group to determine the appropriate language services for each language group;
   (c) The literacy skills of LEP populations in their native languages, in order to determine whether translation of documents will be an effective practice; and
   (d) Whether LEP persons are underserved by the recipient due to language barriers.

2. The frequency with which LEP persons come into contact with the program. Recipients should survey key program areas and assess major points of contact with the public, such as:
   (a) Use of bus and rail service;
   (b) Purchase of passes and tickets through vending machines, outlets, websites, and over the phone;
   (c) Participation in public meetings;
   (d) Customer service interactions;
   (e) Ridership surveys;
   (f) Operator surveys.

3. The nature and importance of the program, activity, or service provided by the program to people's lives. Generally speaking, the more important the program, the more frequent the contact and the likelihood that language services will be needed. The provision of public transportation is a vital service, especially for people without access to personal vehicles. An MPO's regional planning activities will impact every person in a region. Development of a coordinated plan to meet the specific transportation needs of seniors and people with disabilities will often also meet the needs of LEP persons. A person who is LEP may have a disability that prevents the person from using fixed route service, thus making the person eligible for ADA complementary paratransit. Transit providers, States, and MPOs must assess their programs, activities and services to ensure they are providing meaningful access to LEP persons. Facilitated meetings with LEP persons are one method to inform the recipient on what the local LEP population considers to be an essential service, as well as the most effective means to provide language assistance.

4. The resources available to the recipient for LEP outreach, as well as the costs associated with that outreach. Resource and cost issues 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, LEP populations and Federal agencies. Large entities and those entities serving a significant number of LEP persons should ensure that their resource limitations are well substantiated before using this factor as a reason to limit language assistance.

b. **Developing a Language Assistance Plan**. After completing the Four Factor Analysis, the recipient shall use the results of the analyses to determine which language assistance services are appropriate. Additionally, the recipient shall develop an assistance plan to address the identified needs of the LEP population(s) it serves. The DOT LEP Guidance recognizes that certain recipients, such as those serving very few LEP persons or those with very limited resources, may choose not to develop a written plan. However, FTA has determined it is necessary to require its recipients to develop an assistance plan in order to ensure compliance. A recipient may formally request an exemption from this requirement if it believes it fits within the exception described.

Recipients have considerable flexibility in developing a Language Assistance Plan, or LEP Plan. An LEP Plan <u>shall, at a minimum:</u>
   (a) Include the results of the Four Factor Analysis, including a description of the LEP population(s) served;
   (b) Describe how the recipient provides language assistance services by language;
   (c) Describe how the recipient provides notice to LEP persons about the availability of language assistance;
   (d) Describe how the recipient monitors, evaluates and updates the language access plan; and
   (e) Describe how the recipient trains employees to provide timely and reasonable language assistance to LEP populations.

FTA will solely determine, at the time the recipient submits its Title VI Program or subsequent to a complaint investigation or compliance review, whether a recipient's plan is sufficient to ensure meaningful access and thus ensure the recipient is not engaging in discrimination on the basis of national origin.

After completing the Four Factor Analysis, a recipient may determine that an effective LEP plan for its community includes the translation of vital documents into the language of each frequently encountered LEP group eligible to be

served and/or likely to be affected by the recipient's programs and services. Vital written documents include, but are not limited to, consent and complaint forms; intake and application forms with the potential for important consequences; written notices of rights; notices of denials, losses, or decreases in benefits or services; and notices advising LEP individuals of free language assistance services. Examples of vital documents include an ADA complementary paratransit eligibility application, a Title VI complaint form, notice of a person's rights under Title VI, and other documents that provide access to essential services. Failure to translate these vital documents could result in a recipient denying an eligible LEP person access to services and discrimination on the basis of national origin.

c. **Safe Harbor Provision.** DOT has adopted DOJ's Safe Harbor Provision, which outlines circumstances that can provide a "safe harbor" for recipients regarding translation of written materials for LEP populations. The Safe Harbor Provision stipulates that, if a recipient provides written translation of vital documents for each eligible LEP language group that constitutes five percent (5%) or 1,000 persons, whichever is less, of the total population of persons eligible to be served or likely to be affected or encountered, then such action will be considered strong evidence of compliance with the recipient's written translation obligations. Translation of non-vital documents, if needed, can be provided orally. If there are fewer than 50 persons in a language group that reaches the five percent (5%) trigger, the recipient is not required to translate vital written materials but should provide 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. A recipient may determine, based on the Four Factor Analysis, that even though a language group meets the threshold specified by the Safe Harbor Provision, written translation may not be an effective means to provide language assistance measures. For example, a recipient may determine that a large number of persons in that language group have low literacy skills in their native language and therefore require oral interpretation. In such cases, background documentation regarding the determination shall be provided to FTA in the Title VI Program.

(6) Requirement #6: A Table Depicting the Membership of Non-elected Committees and Councils. Recipients that have transit-related, non-elected planning boards, advisory councils or committees, or similar bodies, the membership of which is selected by the recipient, must provide a table depicting the racial breakdown of the membership of those committees, and a description of efforts made to encourage the participation of minorities on such committees or councils.

Clarifying Information from FTA Circular 4702.1B, Chapter III:
Recipients that have transit-related, non-elected planning boards, advisory councils or committees, or similar committees, the membership of which is selected by the recipient, must provide a table depicting the racial breakdown of the membership of those committees, and a description of efforts made to encourage the participation of minorities on such committees.

SAMPLE Table Depicting Membership of Committees, Councils, Broken Down by Race

Body	**Caucasian**	**Latino**	**African American**	**Asian American**	**Native American**
Population	46%	28%	14%	8%	4%
Access Committee	60%	23%	10%	7%	0%
Citizens Advisory Council	40%	25%	20%	10%	5%
Bicycle Pedestrian Committee	45%	30%	15%	5%	5%

(7) Requirement #7: Monitoring Subrecipients. Primary recipients shall include a narrative or description of efforts the primary recipient uses to ensure subrecipients are complying with Title VI, as well as a schedule of subrecipient Title VI program submissions. See Chapter III, Paragraph 11 and Appendix L, Reporting Requirements.

(8) Requirement #8: Title VI Equity Analysis for Facilities. If the recipient has constructed a facility, such as a vehicle storage facility, maintenance facility, operation center, etc., the recipient shall include

a copy of the Title VI equity analysis conducted during the planning stage with regard to the location of the facility.

Clarifying Information from FTA Circular 4702.1B, Chapter III:

Title 49 CFR Section 21.9(b)(3) states, "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."

Title 49 CFR part 21, Appendix C, Section (3)(iv) provides, "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." For purposes of this requirement, "facilities" does not include bus shelters, as these are transit amenities and are covered in Chapter IV, nor does it include transit stations, power substations, etc., as those are evaluated during project development and the NEPA process. Facilities included in this provision include, but are not limited to, storage facilities, maintenance facilities, operations centers, etc. In order to comply with the regulations:

a. The recipient shall complete a Title VI equity analysis during the planning stage with regard to where a project is located or sited to ensure the location is selected without regard to race, color, or national origin. Recipients shall engage in outreach to persons potentially impacted by the siting of facilities. The Title VI equity analysis must compare the equity impacts of various siting alternatives, and the analysis must occur before the selection of the preferred site.
b. When evaluating locations of facilities, recipients should give attention to other facilities with similar impacts in the area to determine if any cumulative adverse impacts might result. Analysis should be done at the Census tract or block group where appropriate to ensure that proper perspective is given to localized impacts.
c. If the recipient determines that the location of the project will result in a disparate impact on the basis of race, color, or national origin, the recipient may only locate the project in that location if there is a substantial legitimate justification for locating the project there, and where there are no alternative locations that would have a less disparate impact on the basis of race, color, or national origin. The recipient must show how both tests are met; it is important to understand that in order to make this showing, the recipient must consider and analyze alternatives to determine whether those alternatives would have less of a disparate impact on the basis of race, color, or national origin, and then implement the least discriminatory alternative.

Part Two: Requirements of Transit Providers (See Chapter IV). All Fixed Route Transit Providers must submit:

(1) All requirements set out in Chapter III (General Requirements)

(2) Service standards (see Chapter IV for details)
   a. Vehicle load for each mode
   b. Vehicle headway for each mode
   c. On time performance for each mode
   d. Service availability for each mode

(3) Service policies (see Chapter IV for details)
   a. Transit Amenities for each mode
   b. Vehicle Assignment for each mode