
Title VI Overview & Explanation Local Public Agencies

NEBRASKA DEPARTMENT OF ROADS

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Overview

Each year, the Federal Highway Administration (FHWA) distributes billions of dollars to States through the federally-assisted programs it administers. The agencies' power to extend Federal financial assistance to any program or activity by way of a grant, loan, or contract, creates a legal obligation to ensure that all persons regardless of race, color, or national origin are afforded an equal opportunity to benefit from that assistance. Recipients of Federal financial assistance are also obligated to assure nondiscrimination in all their programs and activities.

These nondiscrimination provisions 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 the sub-recipients and contractors.

This document provides guidance for a Local Public Agency (LPA) to understand and comply with the requirements of Title VI and related nondiscrimination laws and regulations that are applicable to Federal funding assistance that is passed through the Nebraska Department of Roads (NDOR).

Title VI of the Civil Rights Act of 1964

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

The Civil Rights Act of 1964 (the Act) is a fundamental piece of legislation that forms the basis for a wide array of subsequent laws, executive orders and regulations, all designed to prohibit discrimination. Technically, Title VI covers race, color and national origin. However the term “Title VI” is also used more generically to refer to non-discrimination on any basis.

There are eleven titles in the Act covering a variety of activities, for example: Title I – Voting Rights, Title II – Public Accommodations, and Title VII – Equal Employment Opportunity. Title VI of the Act deals specifically with Nondiscrimination in Federally Assisted Programs and Activities.

The Act has broad application. It prohibits discrimination in impacts, services, benefits of, access to, participation in, and treatment under a Federal-aid recipient's programs or activities. Title VI of the Act is not limited to a particular program or issue. Title VI can surface at any phase of a transportation project with potentially significant impacts. Because of this, preventing discrimination is everyone's responsibility. It is not a duty that can be delegated or assigned entirely to an individual or a team. It is important for all staff to have some awareness of non-discrimination concepts so they can be observant for prohibited actions as they conduct their daily routine.

There are some important points to take note of. The Act does not mention a specific race (e.g. Hispanic), color (e.g. Black) or national origin (e.g. Chinese). It prohibits discrimination against *any* race, color or national origin. There is no “reverse discrimination”, only discrimination. For example, denying services to

a white male because of race is also discrimination. Also, the Act uses the language...“No person in the United States...” it does not mention citizenship. It applies to all people in the U.S, citizen or not, with regard to any program or activity to which they are otherwise eligible for.

Discrimination

To help understand Title VI impacts and application it is useful to define discrimination and identify how it may surface.

The Federal Highway Administration (FHWA) regulations which implement Title VI and the related statutes define discrimination as “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.” (23 CFR 200.5(f)).

Discrimination is evidenced primarily in two fashions, disparate treatment and disparate impact.

Disparate treatment occurs when a person is treated differently (discriminated against) because of their race, color, national origin, etc. This is a more obvious form of intentional discrimination that occurs when the person’s race or protected class status are known, and when a decision is made (at least in part) on a prohibited basis. For example, a contractor or supplier is not used, or is held to a different standard, because of their race. Disparate treatment involves the inconsistent application of rules or policies to one group of people or another.

Disparate impact is more unintentional discrimination. This occurs when a policy or program, while neutral on its face, has the unintended consequence of being discriminatory. For example, a public transit system ends service at 10:00 P.M., yet late night customers are primarily Hispanic because many people in the Hispanic community depend on public transportation for late shift employment. On the surface the policy is neutral; service ends for all riders at a designated time. Yet, unintentionally, the Hispanic community bears a disproportionately large negative impact. This type of discrimination is more subtle and difficult to identify. However, to comply with Title VI regulations it must be avoided.

Related Non-discrimination Authorities

Right-of-way and Property Impacts

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601)

“For the fair and equitable treatment of persons displaced as a direct result of programs or projects undertaken by a Federal agency or with Federal Financial assistance.”

This prohibits unfair or inequitable treatment of persons displaced or whose property will be acquired as a result of Federal and Federal-aid programs and policies. Note that this applies regardless of the source of funds used to purchase the property, Federal-aid or not.

Disability

Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794)

The Americans with Disabilities Act (P.L. 101-336)

“No 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.”

Discrimination because of a mental or physical disability is prohibited.

Sex (Gender)

Federal-aid Highway Act of 1973 (23 U.S.C. 324)

“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.”

Discrimination because of sex (gender) is prohibited.

Age

The Age Discrimination Act of 1975 (42 U.S.C. 6101)

“No person shall on the basis of age, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”

Discrimination on the basis of age is prohibited.

The Civil Rights Restoration Act of 1987 (P.L. 100-259)

The Restoration Act of 1987 clarifies 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 Rehabilitation Act of 1973.

This act 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.

What this means is that if an LPA receives even one dollar of Federal financial assistance, then all of the programs and activities of that LPA are covered by Title VI, whether all those programs and activities are Federally funded or not. For example, if a County Secondary Road Department receives Federal Highway Bridge Program funds to reconstruct a bridge, all of the activities and programs of the county government are covered by Title VI.

Limited English Proficiency LEP (Executive Order 13166)

Executive order 13166: “Improving Access to Services for Persons with Limited English Proficiency,” Signed by President Clinton on August 11, 2000.

A person is considered to have limited English proficiency (LEP) if they do not speak English as their primary language and if they have a limited ability to read, speak, write or understand English. Programs and services normally provided in English must be accessible to persons with LEP in order to avoid national origin discrimination that is prohibited by Title VI.

Meaningful access is the key concept. The central goal of this presidential order is to provide meaningful access for LEP persons to programs and services offered by recipients of Federal financial assistance. Recipients continue to be subject to Federal non-discrimination requirements even though they may be in a jurisdiction where English has been declared as the official language. Federal requirements supersede State and local ones.

Environmental Justice (Executive Order 12898)

Executive order 12898 is titled, “Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations.” It was signed by President Clinton on February 11, 1994.

Environmental Justice (EJ) relates to the human environment and to human health in minority and low income populations. It says in part, “...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...”

There are three fundamental principles of Environmental Justice:

1. To avoid, minimize, or mitigate disproportionately high and adverse human health and environmental effects, including social and economic effects, on minority populations and low-income populations.
2. To ensure the full and fair participation by all potentially affected communities in the transportation decision-making process.
3. To prevent the denial of, reduction in, or significant delay in the receipt of benefits by minority and low-income populations.

The minority groups that Environmental Justice addresses are Blacks, Hispanics, Asian Americans, American Indians and Alaskan Natives. Low income is defined as a person whose household income is at or below the U.S. Department of Health and Human Services poverty guidelines.

A key component is to identify the populations impacted by transportation projects or services and to ensure they have full opportunity to participate in the decision making process.

An example of Environmental Justice concerns would be locating a highway through a low income neighborhood to avoid a more affluent area.

Program Applications and Impacts

Federal Financial Assistance

Application of many of the non-discrimination requirements is dependent upon the receipt of Federal financial assistance. Federal financial assistance is defined at 49 CFR 21.23 (c). In addition to grants or loans of Federal funds, it also includes Federal property and the detail of Federal personnel (e.g., a Federal employee providing training). Because of the Civil Rights Restoration Act of 1987, if a governmental department receives even one dollar of Federal assistance, then all of the programs and activities of that governmental department are covered by Title VI. Programs and activities are defined at 49 CFR 21.23 (e) and, in the case of assistance to a department of State or local government, it includes all of the operations of the department to which assistance is extended.

The ultimate beneficiaries of Federal assistance are not defined as recipients of Federal assistance. The ultimate beneficiary of Federal Highway Administration (FHWA) funding is the traveling public. For example, the people that drive on the roads and bridges built with that funding, but those persons are not prohibited from discriminating simply because they use a Federally funded project or service. In a related fashion, a contractor building a Federal-aid highway project does not receive Federal assistance. They are simply being paid for work completed. Nevertheless, contractors are prohibited from discriminating because of the standard Title VI assurances included in the contract.

What Title VI Does

- Prohibits entities from denying an individual any service, financial aid, or other benefit.
- Prohibits entities from providing services or benefits that are different or inferior (either in quantity or quality) to those provided to others.
- Prohibits segregation or separate treatment in any manner related to receiving program services or benefits.
- Prohibits entities from requiring different standards or conditions as prerequisites for serving individuals.
- Encourages the participation of minorities as members of planning or advisory bodies for programs receiving Federal funds.
- Prohibits discriminatory activity in a facility built in whole or in part with Federal funds.
- Requires information and services to be provided in languages other than English when significant numbers of beneficiaries are of limited English speaking ability.
- Requires entities to notify the eligible population about applicable programs.
- Prohibits locating facilities in any way that would limit or impede access to a Federally funded service or benefit.
- Requires assurance of nondiscrimination in purchasing of services.

Planning and Programming

The planning and programming of projects is a critical step in the delivery of transportation services to the public. Funding distribution and allocation can have a significant impact on opportunities for all persons. Those involved in these processes must have knowledge of non-discrimination requirements and how they impact their work.

Typical Assurance Activities:

- Take positive steps to identify impacted groups and to ensure full and fair participation by those groups in the development of the Transportation Improvement Program (TIP).
- Ensure that the planning and programming process results in a program which distributes benefits and mitigates disparate impacts equitably.
- Address complaints and concerns promptly.

Design and Project Development

The final design of individual projects is what ultimately impacts the public in a positive or negative fashion. Designers must recognize how non-discrimination affects the conceptual and technical components of a project.

Typical Assurance Activities:

- Identify minority and low income populations and ensure they have the opportunity for meaningful participation in the design process.
- Thoroughly examine design alternatives to ensure that environmental justice considerations are recognized and addressed during route location selection and final design.
- Consistently apply design standards to eliminate, minimize or mitigate adverse impacts among affected groups and to provide equitable levels of service.

- Provide opportunities for Disadvantaged Business Enterprise (DBE) firms on consultant contracts.
- Ensure that facilities are designed in accordance with current ADA accessibility requirements.

Right-of-Way

No single element of the transportation system may have a greater impact on people than right-of-way activities. The taking or use of one's property can make a major change in their lives. Therefore, people involved in the right-of-way process must understand and practice non-discrimination in their work.

Typical Assurance Activities:

- Make every effort to ensure clear communications with persons who have limited English proficiency or who are hearing impaired. This includes the use of interpreters and translators when necessary.
- Appraisal, acquisition, condemnation and relocation procedures must be fair and impartial.
- Provide opportunities for DBE firms on consultant contracts.

Construction

Construction, including the letting and contract award process, provides opportunities for contractors and impacts property owners. Contract award and administration procedures must be fair and impartial.

Typical Assurance Activities:

- The following activities must be conducted equitably, without regard to race, color, national origin, or other protected basis: Prequalification of contractors; award of contract, subcontract, or extra work; level of inspection; enforcement of specifications; and treatment of adjacent property owners and tenants.

Consultants and Research

Local governments use consultants and other service providers to perform a variety of services. Because of the Restoration Act, non-discrimination applies to the selection and administration in all of the contracts.

Typical Assurance Activities:

- Provide opportunities and encourage the participation of DBE vendors in all categories of service.
- Fairly and equitably award and administer contracts.

Female/Minority Participation and DBE Goals

Title VI and related statutes require that females and minorities be afforded full opportunity to participate in covered contracts. Because of the Restoration Act of 1987 all programs and activities of a Federal-aid recipient are covered by Title VI, whether those programs and activities are Federally funded or not. Female and minority contractors must have every opportunity to submit bids and may not be discriminated against in consideration for award in all contracts, Federal-aid or not. This does not mean that all contracts should have goals for female/minority participation.

Compliance Responsibilities

The Federal Highway Administration (FHWA) requires each local entity that receives Federal funds to establish a Title VI Program of their own in order to prevent discrimination in the provision of benefits and services. This Title VI Program is a system of policies and procedures designed to monitor compliance, address complaints, and to eliminate discrimination where it is found to exist. In turn, the local entity's Title VI Program is reviewed and evaluated by NDOR Highway Civil Rights Coordinator to ensure that it is effective in preventing and eliminating discrimination.

As a recipient of federal financial assistance, sub-recipients must implement a system of procedures, actions and sanctions prohibiting discrimination.

Subject	Action
I. Assurances	<ol style="list-style-type: none"> 1. Submit signed nondiscrimination assurances 2. Certify that discrimination based on sex will be proscribed in assurances
II. Civil Rights Unit	<ol style="list-style-type: none"> 1. Establish an adequately staffed Civil Rights Unit with a Title VI Coordinator.
III. Title VI Coordinator's Responsibilities	<p>General</p> <ol style="list-style-type: none"> 1. Have access to head of agency/firm 2. Monitor Title VI activities and prepare required reports. 3. Provide training 4. Submit implementation plan to NDOR 5. Develop Title VI information for dissemination (where appropriate, in other languages) 6. Prepare an annual accomplishment report <p>Establish Procedures</p> <ol style="list-style-type: none"> 1. To promptly investigate complaints 2. To identify and eliminate discrimination 3. To review programs and sub-recipients 4. To resolve deficiencies within 90 days 5. To collect and analyze statistical data <p>Conduct Reviews</p> <ol style="list-style-type: none"> 1. Of program – with program personnel 2. Of sub-recipients 3. Of special emphasis areas 4. Of grant/award applications

Compliance Actions

The goal of the U.S. Department of Transportation, the FHWA, and the NDOR is voluntary compliance with non-discrimination requirements. This is achieved through an on-going process of education, analysis, implementation, and evaluation. The guidance provided here is a first step in the education process. It can be used to raise awareness among staff of local governments.

Compliance requires more than simply recognizing these issues exist however. Some action must be taken. In order to begin the process, the NDOR recommends that local governments take the following actions as minimum and initial effort:

- Recognize that preventing discrimination is everyone's responsibility. Share this information and other non-discrimination information with all staff so they can be aware of the various requirements and work to achieve compliance.
- Ensure the required Standard DOT Title VI assurances, adapted as appropriate, are included in all Federal-aid contracts and subcontracts. A Federal-aid contract is one in which the cost of the work, services, material, etc. obtained by the contract will be reimbursed with Federal funds.

For other types of Federal-aid contracts, such as those for locally let construction contracts, consultant contracts, railroad work, utility relocations, acquisition of property rights, permits, or licenses; the LPA shall include the applicable Standard DOT Title VI assurances in all such contracts and subcontracts. The Standard DOT Title VI assurances are included in Appendix B to the FHWA Office of Civil Rights training manual titled, "[Preventing Discrimination in the Federal Aid Program: Systematic Interdisciplinary Approach Reference Notebook](#)".

- The following standard non-discrimination notification, modified as appropriate, shall be included in all solicitations for bids and in all requests for negotiated agreements, whether Federal-aid will be used or not:

“The (name of LPA), 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 of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation issued pursuant to such Act, hereby notifies all (bidders / consultants) that it will affirmatively insure that in any contract entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit (bids / proposals) 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.”
- Recognize and respond to LEP issues. Current guidance from U.S. DOT is available on the Federal Register (FR) at 70 FR 74087 (12/14/05). This includes a four factor analysis to determine the appropriate response, and defines a “safe harbor” for measuring compliance with written translations.
- Address any complaints. Informal reports of discrimination should be investigated and resolved promptly. Formal written complaints against a local government must be forwarded to the NDOR, Highway Civil Rights Coordinator, 1500 Highway 2, Lincoln, NE, 68509.

Resources and References

28 CFR 35 – Department of Justice’s regulations governing nondiscrimination on the basis of disability in state and local government services

49 CFR 21 – United States Department of Transportation’s regulation on implementing Title VI of the Civil Rights Act of 1964

23 CFR 200 – Federal Highway Administration’s regulation on implementing Title VI of the Civil Rights Act of 1964

Federal Highway Administration Office of Civil Rights webpage – This webpage also provides links to several resources related to some specific areas of Title VI compliance, including:

Executive Order 12898, Environmental Justice

Executive Order 13166, Limited English Proficiency

Americans with Disabilities Act (ADA) Questions and Answers

United States Access Board – A Federal Agency Committed to Accessible Design

Glossary

Beneficiary – any person or group of persons (other than States) entitled to receive benefits, directly or indirectly, from any federally-assisted program, i.e., relocates, impacted citizens, communities, etc.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.