

Overview of the NDOT/FHWA Civil Rights Program

Chris Hassler
NDOT Highway Civil Rights Coordinator
1500 Highway 2
P.O. Box 94759
Lincoln, NE 68509-4759
402-479-3553
christopher.hassler@nebraska.gov

What is Title VI?

'Title VI' refers to Title VI of the Civil Rights Act of 1964.

Title VI states:

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

The FHWA and NDOT Title VI Programs include multiple Codes and Regulations which add to, inform, or further explain Title VI. For example:

The Civil Rights Restoration Act of 1987: Direct response to, and rejection of, 1984 Supreme Court decision in *Grove City College vs. Bell* case (*465 U.S. 555*). Restored original intent & scope of Title VI to include all programs & activities of Federal-aid recipients and contractors whether federally funded or not. The result is that if your LPA receives even one dollar of Federal funds, every program or activity, even if not specifically Federally funded, must comply with Title VI.

The Uniform Act of 1970 (*42 USC 4601*): The purpose is to provide fair and equitable treatment of persons whose property is acquired or who are displaced as a result of a Federal or Federally-assisted project. Applies to State Transportation Agencies and LPA's mostly in the context of Right-of-Way notice to owners, appraisals, negotiations, and fair market-value payments

The 1973 Federal-Aid Highway Act (*23 USC 324*): States that "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." Essentially prohibits discrimination on the basis of gender by Federal financial assistance recipients.

The 1975 Age Discrimination Act (*42 USC 6101*): States that "No person 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."

Essentially prohibits discrimination on the basis of age by Federal financial assistance recipients.

Section 504 of the 1973 Rehabilitation Act (*29 USC 790*): States that “No qualified individual with a disability in the United States shall be excluded from, denied the benefits of, or be subjected to discrimination under” any program that receives Federal financial assistance. Essentially included the disabled as a qualified group under Title VI, eligible to receive its legal protections.

Title II of the Americans with Disabilities Act of 1990 (*42 USC 12101*): The ADA prohibits discrimination against people with disabilities in all aspects of life, including transportation, public services, employment housing, public accommodations, education, communication, and many others. Title II specifically applies the act to all state and local governments. This expands Section 504 requirements to ALL public entities, instead of only those that receive Federal financial assistance.

Executive Order 12898 on Environmental Justice: This is a Presidential mandate to address equity and fairness toward low income and minority populations or persons. Specifically in the context of transportation, the Order calls for “identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of” various State and LPA transportation projects. In addition, the Order calls for improved methods in research, data collection, and analysis, and it also encourages participation of impacted citizens in all phases of the decision-making.

Executive Order 13166 on Limited English Proficiency: Requires Federal agencies and their recipients to improve access to Federally-sponsored programs for persons with Limited English Proficiency.

Implementation of Title VI

The regulations that implement Title VI largely apply to state transportation agencies (i.e., NDOT), rather than local agencies. However, the states have the responsibility to create a program to oversee the local agencies that receive funds from them. NDOT has created a program for local agencies with essentially the same requirements as the FHWA program for the state transportation agencies in *49 CFR 21*.

There are two key sections in the Code of Federal Regulations that put the Title VI law into effect:

49 CFR 21: applies to all recipients, and has most of the information specific to Local Public Agencies (LPAs).

23 CFR 200: applies mainly to state transportation agencies, but includes some LPA-specific info.

A Note on Recipients and Local Public Agencies

What is a Recipient? *23 CFR 200.5(n)*

“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.”

What is a Local Public Agency? *23 CFR 635.102*

“Any city, county, township, municipality, or other political subdivision that may be empowered to cooperate with the state transportation department in highway matters.”

Many localities are both Local Public Agencies as well as (sub)recipients.

Requirements and Responsibilities of Local Public Agencies

Local Agencies must have Signed Title VI Assurances (*49 CFR 21.7*)

As a condition of applying for or receiving ANY federal financial assistance, the recipient must sign an assurance that the program will be conducted or the facility will be operated in compliance with Title VI requirements.

The Standard Department of Transportation Assurance document is found in *DOT Order 1050.2(a)*.

The Assurance states that, as a condition of receiving Federal financial assistance, the LPA must and will abide by all Title VI directives. The ultimate purpose being to prevent discrimination on the basis of race, color, national origin, gender, age, or disability.

The Assurance states that the LPA will insert certain required clauses into every contract subject to the Title VI program. These clauses can be found in Attachment “A” of the Assurance.

The consequence for failing to provide signed assurances is that your LPA could lose access to federal funding: “If an applicant fails or refuses to furnish an assurance required...or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that section, Federal financial assistance may be refused.” *49 CFR 21.13(b) & (c)*

Local Agencies must have a Title VI Implementation Plan

NDOT requires that a Title VI Implementation Plan contain the following elements:

1. **Statement of Policy:** Express commitment to Title VI Nondiscrimination Obligation. Policy statement must be signed by Chief Administrative Officer and the policy statement must be circulated throughout the organization and the public.
2. **Organization and Structure:** LPA must designate a Title VI coordinator, manager, or specialist. Outline the roles/responsibilities of the authority in the Title VI Plan.
3. **Procedures for Ensuring Compliance and Enforcement (Methods of Administration):** “The recipient shall provide for such methods of administration...to give reasonable guarantee that it, other recipients, sub-grantees, contractors, sub-contractors, 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.” Standard DOT Assurance #9. Also *49 CFR 21.7(b)*.

These Methods of Administration, at minimum, must include:

- a. **Public Outreach and Education Plan/Procedures:** A plan for notification of beneficiaries and potential beneficiaries of the program of nondiscrimination under Title VI is a requirement. “Specific methods by which beneficiaries are to be informed of this policy should ... be set forth, and may include public statements, letters, brochures, meetings with community groups and organizations, and releases to the news media.” – *pg. 6, Title VI Compliance Officer’s Manual*
- b. **Training Programs for Staff and Others.** Your plan should include instructions to staff regarding non-discrimination policies, requirements of the Federal agencies in implementing Title VI and techniques for communicating this to all employees, recipients, and veNDOTs (if any). – *pg. 7, Title VI Compliance Officer’s Manual*
- c. **Procedures for Processing Complaints.** “Procedures for informing all beneficiaries of their right to file complaints under the Federal agency’s regulations, for setting up channels for handling complaints, and for notifying the [State and] Federal agency involved are required.” *pg. 7, Title VI Compliance Officer’s Manual*
- d. **Program to Review and Periodically Report on Status of Title VI Compliance.** “This should include an identification of the procedures whereby the [LPA] will periodically assess and report on the progress that is being made in achieving and maintaining compliance in the program. An essential ingredient of this will be assigning staff responsibility and setting up standards for reports and record keeping.” *pg. 7, Title VI Compliance Officer’s Manual*
- e. **Detailed Plans for Bringing Discriminatory Programs into Compliance.** This should include detailed identification of the actions being taken or planned, such as assignment of staff responsibility, dates and agenda of meetings and workshops, copies of instructions, meetings with veNDOTs, and so forth. The plan should

also include a timetable showing how long it will take to bring the total program into compliance. *pg. 7, Title VI Compliance Officer's Manual*

- f. Data Collection Procedures and Methods. "In general, recipients should have available...racial and ethnic data showing the extent to which members of minority groups are beneficiaries of programs receiving Federal financial assistance." *49 CFR 21.9(b)*

Localities must collect and maintain statistical data on their potential and actual sub-recipients and sub-grantees, beneficiaries, and affected communities. From the *FHWA Title VI Desk Reference, pg. 4-A-12*

- 4. Annual Work Plan: Outline Title VI monitoring and review activities planned for the upcoming year. State by whom each activity will be accomplished and the target dates for completion.
- 5. Required Title VI Contract Provisions. The LPA must have procedures in place to ensure that Title VI provisions are included in all Federally-funded contracts, regardless of tier. These provisions are included with *USDOT Order 1050.2(a)*, and include:
 - a. Nondiscrimination in selection and retention of subcontractors and in procurement of materials and leases of equipment;
 - b. Nondiscrimination in notification of Title VI obligation to each potential subcontractor or supplier; and
 - c. Nondiscrimination in employment practices when employment is the primary objective of the Federal assistance.

Limited English Proficiency Requirements: Executive Order 13166

"In certain circumstances, failure to ensure that LEP persons can effectively participate in or benefit from federally assisted programs or activities may violate...Title VI regulations against national origin discrimination." From *USDOT LEP Guidance, pg. 74089*.

LPA's must work through the LEP four-factor analysis and create their own LEP Plan based on the results of the analysis. Because of the flexibility of the factors, each plan should be unique to a particular jurisdiction.

Limited English Proficiency Four Factors:

- 1. *Determine the number or proportion of LEP persons served or encountered in the eligible service population:* First, examine your prior experiences with LEP individuals and determine the breadth and scope of language services needed. The greater the number or proportion of LEP persons from a particular language group served or encountered, the more likely language services are needed. LPA's should also consult data from the census,

school systems and community organizations, State and local governments, religious organizations, and legal aid entities.

2. *Determine the frequency with which LEP individuals come into 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. 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. Lastly, recipients should consider whether appropriate outreach to LEP persons could increase the frequency of contact with LEP language groups.
3. *Consider the nature and importance of each program, activity, or service provided by your locality:* The more important the activity, information, service, or program, or the greater the possible consequences of the contact to the LEP individual, the more likely language services are needed. A locality 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.
4. *Consider the resources available to your locality and the costs of language services:* A locality'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 localities with more limited budgets are not expected to provide the same level of language services as larger recipients with larger budgets. "Reasonable steps" may cease to be reasonable where the costs imposed substantially exceed the benefits. Cost issues, however, can often be reduced by technological advances, reasonable business practices, and the sharing of language assistance measures and services among localities. Localities should be able to articulate, through documentation or in some other reasonable manner, their process for determining that language services will be limited based on resources or cost.

After the Four-Factor Analysis, each jurisdiction, depending on its size, LEP population, and other factors, will have implementation plans that differ from one another and involve varying elements. Thus, a good portion of LEP Plans will require more than the minimum (some plans will require much more than the minimum). While the LEP Plan standards are designed to be flexible and fact-dependent, a successful LEP plan should have, at minimum, the following elements:

1. Develop ways of identifying LEP individuals who need language assistance. In addition to helping identify the language of the LEP person, the data collected from this process will help in future applications of the first two factors of the four-factor analysis.
2. Language Assistance Measures. An effective LEP Plan includes information about the ways in which language assistance will be provided. For example, localities may want to provide information on the following:
 - a) Types of language services available;
 - b) How the locality staff can access those services;
 - c) How to respond to LEP callers;

- d) How to respond to written communications from LEP persons;
 - e) How to respond to LEP persons who have in-person contact with locality staff; and
 - f) How to ensure competency of translators and interpreters.
3. Training of Staff. Staff members should know their obligation to provide meaningful access to information and services for LEP persons, and all employees in public contact positions should be properly trained to work effectively with in-person and telephone interpreters. Localities may want to provide this training as part of orientation for new employees. However, localities have flexibility in deciding the manner in which the training is provided.

NDOT staff is available to provide LEP training by appointment!

4. Provide notice to LEP persons. Once a locality has decided, based on the four factors, that it will provide language services, it is important to notify LEP persons of services available free of charge. The notice should be provided in languages that LEP persons would understand.

Notification methods that localities should consider include:

- a) Posting signs in entry areas and other access points, particularly in areas with high volumes of LEP persons seeking access to certain transportation safety information.
 - b) Stating in outreach documents that that language services are available from the locality.
 - c) Working with community-based organizations to inform LEP persons of the locality's services.
 - d) Including notices in local newspapers in languages other than English.
 - e) Providing presentations and/or notices at schools and religious organizations.
5. Monitoring and updating the LEP Plan. Recipient should have a process for determining, on an ongoing basis, whether new documents, programs, services, and activities need to be made accessible for LEP persons. In addition, localities 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.

Americans with Disabilities Act, Title II: Public Entities
Section 504 of the Rehabilitation Act: Recipients

Local Public Agency Responsibilities:

In General: from 28 CFR 35.150

A public entity shall operate each service, program, or activity so that the service, program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. This paragraph does not --

(1) Necessarily require a public entity to make each of its existing facilities accessible to and usable by individuals with disabilities;

(2) Require a public entity to take any action that would threaten or destroy the historic significance of an historic property; or

(3) Require a public entity to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens.

Signed Assurances: from 49 CFR 27.9

Each application for Federal financial assistance to carry out a program to which this part applies, and each application to provide a facility, shall, as a condition to approval or extension of any Federal financial assistance pursuant to the application, contain, or be accompanied by, written assurance that the program will be conducted or the facility operated in compliance with all the requirements imposed by or pursuant to this part. An applicant may incorporate these assurances by reference in subsequent applications to the Department.

Public Notice: from 28 CFR 35.106

A public entity shall make available to applicants, participants, beneficiaries, and other interested persons information regarding the provisions of this part and its applicability to the services, programs, or activities of the public entity, and make such information available to them in such manner as the head of the entity finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part.

Designation of Responsible Employee: from 28 CFR 335.107(a)

A public entity that employs 50 or more persons (or a recipient with 15 or more employees) shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part, including any investigation of any complaint communicated to it alleging its noncompliance with this part or alleging any actions that would be prohibited by this part. The public entity shall make available to all interested individuals the name, office address, and telephone number of the employee or employees designated pursuant to this paragraph.

Adoption of Grievance Procedures: from 28 CFR 35.107(b)

A public entity that employs 50 or more persons (or a recipient with 15 or more employees) shall adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by this part.

Self-Evaluation: from 28 CFR 35.105

(a) A public entity shall, within one year of the effective date of this part, evaluate its current services, policies, and practices, and the effects thereof, that do not or may not meet the requirements of this part and, to the extent modification of any such services, policies, and practices is required, the public entity shall proceed to make the necessary modifications.

(b) A public entity shall provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the self-evaluation process by submitting comments.

(c) A public entity that employs 50 or more persons shall, for at least three years following completion of the self-evaluation, maintain on file and make available for public inspection:

(1) A list of the interested persons consulted;

(2) A description of areas examined and any problems identified; and

(3) A description of any modifications made.

(d) If a public entity has already complied with the self-evaluation requirement of a regulation implementing section 504 of the Rehabilitation Act of 1973, then the requirements of this section shall apply only to those policies and practices that were not included in the previous self-evaluation.

Transition Plan: from 28 CFR 35.150(d)

(1) In the event that structural changes to facilities will be undertaken to achieve program accessibility, a public entity that employs 50 or more persons shall develop, within six months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. A public entity shall provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the development of the transition plan by submitting comments.

A copy of the transition plan shall be made available for public inspection.

(2) If a public entity has responsibility or authority over streets, roads, or walkways, its transition plan shall include a schedule for providing curb ramps or other sloped areas where pedestrian walks cross curbs, giving priority to walkways serving entities covered by the Act, including State

and local government offices and facilities, transportation, places of public accommodation, and employers, followed by walkways serving other areas.

(3) The plan shall, at a minimum --

(i) Identify physical obstacles in the public entity's facilities that limit the accessibility of its programs or activities to individuals with disabilities;

(ii) Describe in detail the methods that will be used to make the facilities accessible;

(iii) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(iv) Indicate the official responsible for implementation of the plan.

(4) If a public entity has already complied with the transition plan requirement of a Federal agency regulation implementing section 504 of the Rehabilitation Act of 1973, then the requirements of this paragraph shall apply only to those policies and practices that were not included in the previous transition plan.