

Overview of the NDOT/FHWA Civil Rights Program for Local Public Agencies and Subrecipients

"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 financial assistance from DOT, including the Federal Highway Administration."

What is Title VI?

"Title VI" refers to Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.

The Federal Highway Administration (FHWA) and Nebraska Department of Transportation (NDOT) Civil Rights Program also include the following authorities:

The Civil Rights Restoration Act of 1987 clarified the original intent of Congress, with respect to Title VI and other Non-discrimination requirements (The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973), by restoring the broad, institutional-wide scope and coverage of these non-discrimination statutes and requirements to include all programs and activities of the Recipient, so long as any portion of the program is Federally assisted.

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);

Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);

Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;

The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);

The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;

Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

A Note on Recipients and Local Public Agencies / Local Agencies

Although these terms are generally used interchangeably in this document (which assumes that any local agency interested in this material is also a recipient of federal funding), they do have distinct definitions in federal regulation. It is possible to be one but not the other, although many Local Agencies are also Recipients and vice versa.

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. Recipient includes any successor, assignee, or transferee thereof. The term *recipient* does not include any ultimate beneficiary under any such 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.”

Requirements and Responsibilities of Recipients / Local Public Agencies

Signed 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 US Department of Transportation Assurance document is found in [*DOT Order 1050.2A*](#).

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, of course, to prevent discrimination on the basis of race, color, national origin, gender, age, or disability.

The Assurance states that the LPA will insert the required clauses into every contract or agreement subject to the Acts and the Regulations of the Title VI program.

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 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." *49 CFR 21.13(b) & (c)*

Title VI Implementation Plan:

NDOT requires that a Recipient / Local Agency's Title VI Implementation Plan contain the following elements:

1. 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.
2. Required Title VI Assurances. The Local Agency must have procedures in place to ensure that Title VI assurances are included in all Federally-funded contracts, regardless of tier. The general and specific assurances are included in [DOT Order 1050.2A](#).
3. Issue a policy statement, signed by the head of the LPA, which expresses its commitment to the nondiscrimination provisions of Title VI. The policy statement shall be circulated throughout the LPA's organization and to the general public. Such information shall be published where appropriate in languages other than English.
4. Take affirmative action to correct any deficiencies found by the Federal Highway Administration, Nebraska Department of Transportation, or the U.S. Department of Transportation 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 LPA shall be held responsible for implementing Title VI requirements.
5. Designate a coordinator who has a responsible position in the organization and easy access to the head of the LPA. The coordinator shall be responsible for initiating and monitoring Title VI activities and preparing required reports.
6. Develop and implement a community outreach and public education program.
7. Process complaints of discrimination consistent with the provisions contained in this agreement. Investigations shall be conducted by civil rights personnel trained in discrimination complaint investigation. Identify each complainant by race, color, national origin or sex, 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 LPA's report of investigation, will be forwarded to NDOT's Highway Civil Rights Manager within 10 days of the date the complaint was received by the LPA.
8. Collect statistical data (race, color, national origin, sex) of participants in, and beneficiaries of the programs and activities conducted by the LPA.

9. Conduct Title VI reviews of the LPA and subrecipient contractor/consultant program areas and activities. Revise where applicable, policies, procedures and directives to include Title VI requirements.
10. Conduct training programs on Title VI and related statutes.
11. Prepare a yearly report of Title VI accomplishments for the last year and goals for the next year.
 - a. Annual Work Plan
 - Outline Title VI monitoring and review activities planned for the coming year; identify which activities will be accomplished and target date for completion.
 - b. 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 Coordinator and program area personnel have undertaken in monitoring Title VI. Include a description of the scope and conclusions of any special reviews (internal or external) conducted by the Title VI Coordinator.
 - List any major problem(s) identified and corrective action taken. Include a summary and status report on any Title VI complaints filed with the LPA. Include a listing of complaints received against sub-recipients, as well as a summary of complaint and actions taken.

A basic template of a Title VI Implementation Plan can be provided by the NDOT Civil Rights Office and is also located [here](#).

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.

Recipients/Local Agencies must work through a 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. Recipients/Local Agencies 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.

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;

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 Civil Rights Office 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

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.

Recipients/ Public Entities must have:

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.