

# 11. TITLE VI

## PURPOSE OF THIS REVIEW AREA

The recipient must ensure that no person shall, on the grounds of race, color, or national origin, be excluded from participating in, or be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance without regard to whether specific projects or services are federally funded. The recipient must ensure that all transit services and related benefits are distributed in an equitable manner.

## QUESTIONS TO BE EXAMINED

1. Did the recipient develop and submit a Title VI Program?
2. Does the recipient provide meaningful access to Limited English Proficient (LEP) persons?
3. Does the recipient notify the public of its rights under Title VI?
4. Does the recipient implement complaint procedures as described in its Title VI Program?
5. Has the recipient implemented the public participation plan from its Title VI Program in its public participation activities?
6. Does the recipient monitor its subrecipients for compliance with Title VI requirements?
7. Has the recipient conducted the required equity analysis for any new transit facilities sited since the last Comprehensive Review?
8. Has the recipient evaluated fare and major service changes and monitored transit service?
9. Does the recipient include the needs of minorities in planning activities; document that it passes Federal Transit Administration (FTA) funds through to subrecipients without regard to race, color, or national origin; and assure that minority populations are not being denied the benefits of or excluded from participation in FTA-funded programs?

## INFORMATION NEEDED FROM RECIPIENT

### Recipient Information Request

- Most recent Title VI program, if not uploaded to the FTA's Transit Award Management System (TrAMS)
- Listing of Title VI complaints/lawsuits that have occurred since the latest Title VI program submission
- List of transit facilities sited since the last Comprehensive Review and a copy of corresponding equity analyses
- List of transit facilities to be constructed/leased in the upcoming three Federal fiscal years and copy of equity analysis completed or schedule for equity analysis completion
- List of any fare increases or major service changes since the latest Title VI program submission; date of change; and brief description of the change
- Any service equity and/or fare equity analyses conducted since submission of last Title VI program for fare or major service changes
- Any service equity and/or fare equity analyses conducted since submission of last Title VI program for new fixed guideway service, New Starts or Small Starts projects
- Competitive selection or annual program of projects process
- List of all subrecipient applications received during the review period and identify those:
  1. accepted or rejected
  2. applicants that are minority organizations or that serve minority or low-income communities

3. amount of funds allocated

### **Recipient Follow-up**

- Documentation of Language Assistance Plan (LAP) implementation
- Title VI equity analysis for any new transit facilities planned for the next three fiscal years
- Results of monitoring activities that have occurred since the latest Title VI Program submission
- Approval from the recipient's policy-making officials of monitoring results that has occurred since the last Title VI Program submission
- Process for monitoring subrecipients and reviewing subrecipients' Title VI plans, if not included in the Title VI Program
- Title VI plans of subrecipients to be visited during onsite portion of the review
- Efforts within the review period to receive applications from agencies serving predominantly minority and low-income populations
- Record of accepted and rejected applications identifying applicants that are minority organizations or that provide assistance to minority or low-income communities for the current review period
- Documentation of how the state identified the needs of minority communities in the Statewide Transportation Planning process
- Documentation of how the state has included minority communities in the planning process that has occurred since the last Title VI Program submission
- Documentation of how the metropolitan planning organization (MPO) identified the needs of minority communities in the transportation planning process
- Documentation of how MPO has included minority communities in the planning process that has occurred since the last Title VI Program submission

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## **TVI1. Did the recipient prepare and submit a Title VI Program?**

### **BASIC REQUIREMENT**

A recipient is required to prepare and submit a Title VI Program based on the recipient's transit-related characteristics.

### **APPLICABILITY**

All recipients. Note: recipients may fall under multiple threshold categories (i.e., transit provider and State) and must comply with the requirements within the respective category(ies).

### **DETAILED EXPLANATION FOR REVIEWER**

Every three years, all direct recipients must submit a Title VI program that documents their compliance with Title VI requirements. Under FTA C. 4702.1B, certain requirements apply to all fixed-route transit providers. FTA requires that all civil rights programs be uploaded in TrAMS at least 60 days prior to the expiration date of the program. FTA will review plan submissions and recipients must make any revisions required by the FTA's Office of Civil Rights.

A list of the program due dates for FTA recipients is posted on FTA's Civil Rights website.

### **INDICATORS OF COMPLIANCE**

- a. *Did the recipient develop and submit a Title VI Program in FTA's TrAMS?*
- b. *If the recipient submitted a Title VI program and FTA has issued correspondence indicating required revisions, has the recipient made those revisions?*

## **INSTRUCTIONS FOR REVIEWER**

Review the Civil Rights Status screen in TrAMS to determine if the recipient has submitted a Title VI program. Review the date of the latest plan submission to determine if it was uploaded in TrAMS 60 days prior to the previous program's expiration date. If the program has expired or was not uploaded to TrAMS sixty days prior to the previous program's expiration, request documentation from the recipient and/or the FTA regional civil rights officer (RCRO) on requested and/or approved extensions.

Request and review any correspondence from FTA to the recipient on its submission. This includes revision requests and concurrence letters. Even if the program's status in TrAMS is "Concur," the concurrence letter could indicate issues within the plan that require revision and that reviewers will follow up on during the Comprehensive Review. If FTA provided the recipient with comments on the submission, review the recipient's current program to verify that it made the noted revisions or additions.

## **POTENTIAL DEFICIENCY DETERMINATIONS**

The recipient is deficient if it has not submitted a Title VI program or failed to properly submit an updated program 60 days prior to the previous program's expiration date. The recipient is deficient if the current Title VI program has expired and it has not properly submitted a program update or requested and received an extension for its program submission. A program that is submitted to TrAMS in the incorrect program area or under the Recipient Documents section of the recipient's TrAMS profile is not submitted properly. (If it does not appear that the recipient developed a complete plan because it could be categorized as more than one type of recipient per the Title VI Circular, do not make a deficiency, but provide the FTA RCRO with this information so they can follow up with the recipient.)

DEFICIENCY CODE TVI1-1: Title VI program not submitted

SUGGESTED CORRECTIVE ACTION: The recipient must develop and submit a Title VI Program in TrAMS and notify the FTA RCRO once completed.

The recipient is deficient if it received comments from FTA on its Title VI program submission but has not made revisions. (If the recipient revised its program, but it does not appear that those revisions met the intent of FTA's comments, do not make a deficiency, but make the FTA RCRO aware of this for FTA's follow-up).

DEFICIENCY CODE TVI1-2: Revisions to Title VI program not made

SUGGESTED CORRECTIVE ACTION: The recipient must revise and submit its Title VI program in TrAMS and notify the FTA RCRO once completed.

## **GOVERNING DIRECTIVE**

*FTA Circular 4702.1B Chapter II 5. Reporting Requirements*

Title 49 CFR Section 21.9(b) requires recipients to 'keep such records and submit to the Secretary timely, complete, and accurate compliance reports at such times, and in such form and containing such information, as the Secretary may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this [rule].' FTA requires that all direct and primary recipients document their compliance with DOT's Title VI regulations by submitting a Title VI Program to their FTA regional civil rights officer once every three years or as otherwise directed by FTA. The Title VI Program must be approved by the direct or primary recipient's board of directors or appropriate governing entity or official(s) responsible for policy decisions prior to submission to FTA.

*FTA Circular 4702.1B Chapter III 4.b. Upload Title VI Program to TEAM [currently TrAMS]*

Direct and primary recipients must upload their Title VI Program into FTA's Transportation Electronic Award Management (TEAM) system, or other tracking system as directed by FTA. The Title VI Program shall be attached via the paper clip function on the Civil Rights screen, and not attached to a particular

award. Recipients must also notify their FTA Regional Civil Rights Officer via email that they have uploaded their Title VI Program to TEAM. The Title VI Program must be uploaded to TEAM no fewer than sixty calendar days prior to the date of expiration of the Title VI Program.

**TVI2. Does the recipient provide meaningful access to LEP persons?**

**BASIC REQUIREMENT**

A recipient must implement a language assistance plan (LAP) to address the needs of the population it serves.

**APPLICABILITY**

All recipients

**DETAILED EXPLANATION FOR REVIEWER**

Recipients are required to ensure meaningful access to LEP persons. FTA recipients ensure meaningful access by developing and carrying out a LAP. FTA recipients must develop a LAP to ensure compliance with the requirement. Recipients have considerable flexibility in developing a plan, but at a minimum it must:

- Include the results of the Four Factor Analysis, with a description of the LEP population(s) served
- Describe how it provides language assistance services by language
- Describe how LEP persons are notified about the availability of language assistance
- Describe how it monitors, evaluates, and updates the LAP, and
- Describe how it trains employees to provide timely and reasonable language assistance.

The plan needs to be based on the results of the Four Factor Analysis. FTA will 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 that the recipient is not engaging in discrimination on the basis of national origin.

**INDICATOR OF COMPLIANCE**

- a. *Has the recipient implemented its LAP?*

**INSTRUCTIONS FOR REVIEWER**

Prior to the site visit, review the recipient's LAP, including the Four Factor Analysis, included in its Title VI Program in TrAMS. From those sources, complete the following table for follow-up.

LAP Element	Description in Title VI Plan	Implementation Demonstrated Based on Review	Comments
Languages identified in four factor analysis			
Vital documents to be translated			

LAP Element	Description in Title VI Plan	Implementation Demonstrated Based on Review	Comments
Language assistance training for staff			
Periodic updating and monitoring of LAP			

Request and review examples of language assistance measures that have been implemented, such as translation of vital documents, oral interpretation services, information on how translated materials can be obtained by the public, documentation of language assistance training for staff, and information on how the language assistance plan is monitored and updated periodically. Recipient must also provide information on and be able to articulate how its LAP is incorporated in its public participation plan. Onsite, discuss with the recipient how it implements its LAP. Determine if the LAP is being implemented as detailed in the recipient's Title VI Program.

**POTENTIAL DEFICIENCY DETERMINATION**

The recipient is deficient if it has not implemented its LAP as indicated in its Title VI Program.

DEFICIENCY CODE TVI2-1: Language Assistance Plan implementation deficiencies

SUGGESTED CORRECTIVE ACTION: The recipient must prepare and submit to the FTA RCRO documentation of implementing its LAP.

**GOVERNING DIRECTIVE**

*FTA C. 4702.1B Chapter III.9.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.

**TVI3. Does the recipient notify the public of its rights under Title VI?**

**BASIC REQUIREMENT**

A recipient must provide information regarding its Title VI obligations to the public and apprise members of the public of the protections against discrimination afforded to them by Title VI.

**APPLICABILITY**

All recipients

**DETAILED EXPLANATION FOR REVIEWER**

Recipients and subrecipients shall provide information to the public regarding their Title VI obligations and apprise members of the public of the protections against discrimination afforded to them by Title VI.

Recipients and subrecipients shall at a minimum, disseminate information 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.

FTA C. 4702.1B, Ch.III, Section 5b(1) also includes additional effective practices for notice dissemination for recipients to consider.

The notice shall include:

- A statement that the agency operates programs without regard to race, color, or national origin
- 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
- A description of the procedures that members of the public shall follow in order to file a Title VI discrimination complaint against the recipient

Notices detailing a recipient's Title VI obligations and complaint procedures shall be translated into languages other than English, as needed, and be consistent with the Department of Transportation (DOT) LEP Guidance and the recipient's LAP.

### **INDICATORS OF COMPLIANCE**

- a. Does the recipient disseminate the required Title VI Notice to the public as described in its Title VI Program?*
- b. Is the Title VI Notice translated into languages identified in the recipient's LAP?*
- c. Does the Title VI Notice include all three of the required elements?*

### **INSTRUCTIONS FOR REVIEWER**

Prior to the site visit, review the recipient's Title VI Program in TrAMS to identify how the recipient describes providing the required notification to the public. Review the recipient's website to verify that the Title VI Notice has been posted. On-site, confirm the Title VI Notice is posted in public areas as described in the recipient's Title VI Program. Prior to the site visit, review the recipient's LAP. On-site, verify that the recipient has translated the Title VI notice as described in its LAP.

### **POTENTIAL DEFICIENCY DETERMINATIONS**

The recipient is deficient if it has not disseminated a Title VI Notice as described in its Title VI Program.

DEFICIENCY CODE TVI3-1: Title VI public notification not disseminated

SUGGESTED CORRECTIVE ACTION: The recipient must prepare and submit to the FTA RCRO documentation of having notified the public of its rights under Title VI as described in its Title VI Program.

The recipient is deficient if it does not provide translation of the Title VI Notice consistent with its Language Assistance Plan.

DEFICIENCY CODE TVI3-2: Title VI public notification translation not provided

SUGGESTED CORRECTIVE ACTION: The recipient must prepare and submit to the FTA RCRO translated Title VI notification(s) along with verification that the translated document has been disseminated.

DEFICIENCY CODE TVI3-3: Title VI public notification lacking required elements

SUGGESTED CORRECTIVE ACTION: The recipient must prepare and submit to the FTA RCRO a revised Title VI notification(s) that include all 3 of the required elements.

### **GOVERNING DIRECTIVE**

FTA Circular 4702.1B Chapter III.5. Requirement to Notify Beneficiaries of Protection Under Title VI

Title 49 CFR Section 21.9(d) requires recipients to provide information to the public regarding the recipient's obligations under DOT's Title VI regulations and apprise members of the public of the protections against discrimination afforded to them by Title VI. Recipients shall at a minimum, disseminate information 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.

- b. (2) *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.

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**TVI4. Does the recipient implement complaint procedures as described in its Title VI Program?**

**BASIC REQUIREMENT**

A recipient must make its procedures for filing a complaint available to the public, and investigate, and track Title VI complaints filed against it.

**APPLICABILITY**

All recipients

**DETAILED EXPLANATION FOR REVIEWER**

Recipients shall develop procedures for investigating and tracking Title VI complaints filed against them and make their complaint procedures available to the public. Recipients must also develop a Title VI complaint form, and the form and procedures for filing a complaint shall be available on the recipient's website. The complaint form and procedures shall be translated into languages other than English as identified in the recipient's LAP. FTA requires direct and primary recipients to report complaints and complaint procedures in their Title VI Programs in order to comply with DOT's Title VI regulations.

**INDICATORS OF COMPLIANCE**

- a. *Does the recipient use the complaint form(s) and instructions for filing complaints identified in its Title VI Program?*
- b. *Are the complaint form and instructions available on the recipient's website and at other locations described in its Title VI Program?*
- c. *Are the complaint form and instructions translated into languages identified in the recipient's LAP?*
- d. *Is the recipient processing complaints as described in its Title VI Program and its complaint instruction forms?*

**INSTRUCTIONS FOR REVIEWER**

Prior to the site visit, review the recipient's complaint process in its Title VI Program and the complaint form and instructions for use by the public that were included as part of that process.

Request and review the complaint form and instructions the recipient is currently using. Review the recipient's website and verify that Title VI complaint forms and instructions are on the website and currently being used as provided in its Title VI Program.

Review the recipient's complaint process in its Title VI Program for a description of dissemination of the complaint form and instructions for use by the public. Onsite, verify that the recipient has additionally disseminated the complaint form as described in its Title VI Program.

Prior to the site visit, review the recipient's LAP. On-site, verify that the recipient has translated the complaint form and instructions as described in its LAP.

Review the recipient's Title VI Program for a description of its complaint processing, along with the instructions to the public for filing complaints. Review Title VI complaints received since the last Comprehensive Review to determine if procedures described were implemented for these complaints.

#### **POTENTIAL DEFICIENCY DETERMINATION**

The recipient is deficient if it is not implementing its complaint process in accordance with its Title VI Program.

DEFICIENCY CODE TVI4-1: Title VI complaint process not implemented in accordance with Title VI Program

SUGGESTED CORRECTIVE ACTION: The recipient must prepare and submit to the FTA RCRO evidence that it is using a complaint form, disseminates complaint information, provides translation of the complaint form and instructions, and/or processes complaints as detailed in its Title VI Program. If applicable, provide evidence of staff training to ensure that the process continues to be implemented in accordance with the Title VI Program.

#### **GOVERNING DIRECTIVE**

FTA C. 4702.1B Chapter III 6. Requirement to Develop Title VI Complaint Procedures and Complaint Form

In order to comply with the reporting requirements established in 49 CFR Section 21.9(b), 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 procedures 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.

FTA Circular 4702.1B Chapter III.5. b. (2) 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.

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#### **TVI5. Has the recipient implemented the public participation plan from its Title VI Program in its public participation activities?**

##### **BASIC REQUIREMENT**

A recipient's public participation plan shall offer early and continuous opportunities for the public, including minority and LEP populations, to be involved in the identification of social, economic, and environmental impacts of proposed transportation decisions.

##### **APPLICABILITY**

All recipients

## **DETAILED EXPLANATION FOR REVIEWER**

Recipients are required to incorporate Title VI and LEP considerations into the recipient's established public participation plan or process. The plan shall explicitly describe the proactive strategies, procedures, and desired outcomes that underpin the recipient's public participation activities. Efforts to involve minority and LEP populations in effective participation in the recipient's decision-making process shall be included in the plan. FTA Circular 4702.1B provides effective practices that recipients may have incorporated into their Title VI Program, such as:

- Scheduling meetings at times and locations that are convenient and accessible for minority and LEP communities
- Employing different meeting sizes and formats
- 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
- 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
- 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

Recipients engaged in planning and other decision-making activities at the local level should consider the principles embodied in the planning regulations and develop and use a documented public participation plan or process that provides adequate notice of public participation activities, as well as early and continuous opportunities for public review and comment at key decision points.

## **INDICATOR OF COMPLIANCE**

- a. Have Title VI considerations been identified in the plan and integrated into the recipient's public participation or outreach activities?*

## **INSTRUCTIONS FOR REVIEWER**

Prior to the site visit, review the recipient's Public Participation Plan submitted as part of its Title VI Program. Request and review the list of public involvement activities conducted since the last Comprehensive Review and a description of the methods used to seek out and consider the viewpoints of minority, low-income, and LEP populations in the course of conducting these public outreach and involvement activities. Review any public participation documents provided in response to the Section 5307 Program Requirements and Technical Capacity-Program Management areas of the review. Onsite, discuss with the recipient any other public participation and outreach plans and processes the agency has documented. Request and review records of activities such as public hearings, planning meetings, and program of projects meetings.

Determine if the recipient incorporated the measures it detailed in its Title VI Program into public involvement events reviewed.

## **POTENTIAL DEFICIENCY DETERMINATION**

The recipient is deficient if it has conducted public outreach activities since the last review but cannot demonstrate that it implemented the public involvement strategies described in its Title VI Program Public Participation Plan.

DEFICIENCY CODE TVI5-1: Title VI Public Participation Plan not implemented

**SUGGESTED CORRECTIVE ACTION:** The recipient must submit to the FTA RCRO a list of public engagement activities anticipated within the next year. The recipient must submit to the FTA RCRO a process for implementing inclusive public participation for upcoming activities in accordance with the Public Participation Plan in its Title VI Program. Reviewers should consult with the RCRO to determine if the documentation of implementation should be either a number of public engagement activities or all activities within a defined timeframe.

## **GOVERNING DIRECTIVE**

*FTA C. 4702.1B Chapter III. 8. Promoting Inclusive Public Participation*

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 engaged in planning and other decision-making activities at the local level should consider the principles embodied in the planning regulations, and develop and use a documented public participation plan or process that provides adequate notice of public participation activities, as well as early and continuous opportunities for public review and comment at key decision points.

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## **TVI6. Does the recipient monitor its subrecipients for compliance with Title VI requirements?**

### **BASIC REQUIREMENT**

A recipient is responsible for ensuring that its subrecipients comply with Title VI requirements.

### **APPLICABILITY**

Recipients with subrecipients

### **DETAILED EXPLANATION FOR REVIEWER**

The recipient is responsible for ensuring that all subrecipients comply with the Title VI requirements. If the subrecipients are not in compliance with all Title VI requirements, then the primary recipient is not in compliance with Title VI. In order to ensure the primary recipient and subrecipient are in compliance with the Title VI requirements, the primary recipient shall undertake the following activities:

- Document its process for ensuring that all subrecipients are complying with the general reporting requirements, as well as other requirements that apply to the subrecipient, based on the type of entity and the number of fixed-route vehicles it operates in peak service
- Establish a timeframe to collect Title VI programs from subrecipients and review programs for compliance. Collection and storage of subrecipient Title VI programs may be electronic, at the option of the primary recipient
- Compile and provide, upon request, a list of all subrecipients

When a subrecipient is also a direct recipient of FTA funds, the entity reports directly to FTA and the primary recipient is not responsible for monitoring compliance of that subrecipient. The supplemental agreement signed by both entities in their roles as designated recipient and direct recipient relieves the primary recipient/designated recipient of this oversight responsibility, with a special caveat for MPOs receiving planning funds through State DOTs.

### **INDICATORS OF COMPLIANCE**

- a. *Has the recipient collected and reviewed subrecipient Title VI Programs?*

- b. *How does the recipient monitor subrecipients to ensure that they are complying with Title VI requirements?*

### **INSTRUCTIONS FOR REVIEWER**

Determine if a recipient has subrecipients by reviewing past Comprehensive Review reports (Description of the Recipient section) and inquiring of the FTA regional office. Request and review a list of subrecipients and contractors and evaluate to ensure that both have been properly designated as such.

Review the recipient's Title VI Program in TrAMS for subrecipient monitoring procedures and tools. Request and review documentation of monitoring activities that the recipient has conducted since the last Comprehensive Review. Determine if the recipient is following its described processes (frequency and type of monitoring) to ensure that subrecipients are complying with the general reporting requirements of FTA's Title VI Circular, as well as other requirements that apply to the subrecipient, based on the type of entity and the number of fixed-route vehicles it operates in peak service, if a transit provider.

For each subrecipient selected for a site visit, review the recipient's records of plan review to determine if the review addressed the required elements. Review the oversight files to ensure that the recipient monitors the subrecipient for implementation of its Title VI plan.

### **POTENTIAL DEFICIENCY DETERMINATIONS**

The recipient is deficient if it does not review the Title VI plans of subrecipients that are not also direct recipients of FTA funds.

DEFICIENCY CODE TVI6-1: Subrecipient Title VI plans not reviewed or not reviewed for required elements

SUGGESTED CORRECTIVE ACTION: The recipient must prepare and submit to the FTA RCRO a schedule for reviewing subrecipients' Title VI Programs along with evidence of its implementation.

The recipient is deficient if it is not conducting oversight of subrecipients' Title VI program requirements (for subrecipients that are not also direct recipients of FTA funds) as described in its Title VI Program.

DEFICIENCY CODE TVI6-2: Insufficient oversight of subrecipients' Title VI programs

SUGGESTED CORRECTIVE ACTION: The recipient must prepare and submit to the FTA RCRO a schedule for, and description of, oversight monitoring for subrecipients' implementation of Title VI requirements along with evidence of its implementation.

### **GOVERNING DIRECTIVE**

#### **FTA C. 4702.1B Chapter III 12. Monitoring Subrecipients**

In accordance with 49 CFR 21.9(b), and to ensure that subrecipients are complying with the DOT Title VI regulations, primary recipients must monitor their subrecipients for compliance with the regulations. Importantly, if a subrecipient is not in compliance with Title VI requirements, then the primary recipient is also not in compliance. a. In order to ensure the primary and subrecipient are in compliance with Title VI requirements, the primary recipient shall undertake the following activities: (1) Document its process for ensuring that all subrecipients are complying with the general reporting requirements of this circular, as well as other requirements that apply to the subrecipient based on the type of entity and the number of fixed route vehicles it operates in peak service if a transit provider. (2) Collect Title VI Programs from subrecipients and review programs for compliance. Collection and storage of subrecipient Title VI Programs may be electronic at the option of the primary recipient. b. When a subrecipient is also a direct recipient of FTA funds, the entity reports directly to FTA and the primary recipient is not responsible for monitoring compliance of that subrecipient. The supplemental agreement signed by both entities in their roles as designated recipient and direct recipient relieves the primary recipient/designated recipient of this

oversight responsibility [with a special caveat for MPOs receiving planning funds through State DOTs as discussed in Chapter VI.3].

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## **TVI7. Has the recipient conducted the required equity analysis for any new transit facilities sited since the last Comprehensive Review?**

### **BASIC REQUIREMENT**

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 on the grounds of race, color, or national origin.

### **APPLICABILITY**

All recipients

### **DETAILED EXPLANATION FOR REVIEWER**

FTA C. 4702.1B describes the requirements for complying with the regulation in 49 CFR Section 21.9(b)(3), which 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.” Locating a facility includes construction or leasing activities. The requirement for an equity analysis applies to projects requiring land acquisition and the displacement of persons from their residences and businesses.

For purposes of this requirement, “facilities” do not include bus shelters, as these are transit amenities and are covered in FTA C. 4702.1B Chapter IV, nor do they include transit stations, power substations, etc., as those are evaluated during project development and the National Environmental Policy Act (NEPA) process. Facilities included in this provision include, but are not limited to, storage facilities, maintenance facilities, operations centers, etc. The recipient is required to complete a Title VI equity analysis during the planning stages 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 must 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.

If a recipient conducted an analysis during the NEPA process, then this can be utilized towards the Title VI equity analysis requirement, as long as the NEPA analysis encompasses the necessary information required in a Title VI equity analysis. However, if a facility exempted from the Title VI equity analysis, due to the assumption it will be analyzed during the NEPA process, does not in fact trigger NEPA (for example, because there are no federal funds in the facility), then said facility will require a Title VI equity analysis.

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
- 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 elements are met. 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.

**INDICATORS OF COMPLIANCE**

- a. *Did the recipient add new transit facilities since the last review? If no, move to the next question.*
- b. *Was the Title VI equity analysis for the site determination or location of facilities completed prior to selection of the preferred site?*
- c. *If an equity analysis was completed, did the recipient include required elements?*

Required Element	Comment
Whether the location of a project would result in a disparate impact on the basis of race, color, or national origin	
Outreach consistent with the LAP and Public Participation Plan (PPP) to persons potentially impacted by the siting of facilities was conducted	
Upon determination of a disparate impact, the Title VI equity analysis compared the equity impacts of various siting alternatives, implementing the least discriminatory alternative	

**INSTRUCTIONS FOR REVIEWER**

Review projects in TrAMS to determine if the recipient has added any new transit facilities. Review responses to real property questions in the Satisfactory Continuing Control review area. Determine if these facilities meet the requirement to conduct a Title VI equity analysis. Request and review documentation on Title VI equity analysis for siting or location of applicable facilities to determine if the analysis took place prior to the preferred site selection.

Request and review any Title VI analysis completed for upcoming facility siting to determine if:

- the recipient considered whether the location of a project would result in a disparate impact on the basis of race, color, or national origin
- the recipient conducted outreach consistent with its LAP and Public Participation Plan (PPP) to persons potentially impacted by the siting of facilities
- upon determination of a disparate impact, the Title VI equity analysis compared the equity impacts of various siting alternatives, implementing the least discriminatory alternative

**POTENTIAL DEFICIENCY DETERMINATIONS**

The recipient is deficient if it is in the planning stages for siting of a facility(ies) for which an equity analysis is required, but has not defined a process to do so.

DEFICIENCY CODE TVI7-1: Title VI equity analysis not conducted for facility site or location

**SUGGESTED CORRECTIVE ACTION:** For a facility still in the process of siting, the recipient must prepare and submit to the FTA RCRO documentation of an equity analysis before proceeding to making a siting decision.

**REVIEWER ACTION REQUIRED:** If this deficiency is made for a facility for which the location has already been determined, the reviewer is to consult with the RCRO and the Regional Counsel to determine the appropriate corrective action(s).

The recipient is deficient if an equity analysis was completed but not in accordance with FTA C. 4702.1B Chapter III.13. for the siting or location of facilities.

DEFICIENCY CODE TVI7-2: Incomplete equity analysis for facility site or location determination

**REVIEWER ACTION REQUIRED:** if this deficiency is made, the reviewer is to consult with the RCRO and the Regional Counsel to determine the appropriate corrective action(s).

### **GOVERNING DIRECTIVE**

*FTA C. 4702.1B Chapter III 13 Determination of Site or Location of Facilities*

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.

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### **TVI8. Has the recipient evaluated fare and major service changes and monitored transit service?**

#### **BASIC REQUIREMENT**

If the recipient is a transit provider that operates 50 or more fixed-route vehicles in peak service and is located in an Urbanized Area (UZA) of 200,000 or more in population, it must evaluate fare and major service changes and monitor transit service.

#### **APPLICABILITY**

Recipients that operate 50 or more fixed-route vehicles in peak service and are located in a UZA of 200,000 or more in population

#### **DETAILED EXPLANATION FOR REVIEWER**

**Fare and major service changes:** Under FTA C. 4702.1B, transit providers that operate 50 or more fixed- route vehicles in peak service and are located in a UZA of 200,000 or more in population shall evaluate major service and any fare and fare media changes (including transfers) and proposed

improvements at the planning and programming stages to determine whether those changes have a discriminatory impact on minority and low-income riders. This requirement does not apply to recipients with fewer than 50 peak period vehicles, although all recipients are still required to comply with Title VI regulations that prohibit disparate impact discrimination and should review their policies and practices to ensure their service and fare changes do not result in disparate impacts on the basis of race, color or national origin.

FTA requires recipients subject to this requirement to develop a definition of a major service change and to conduct a service equity analysis for all major service changes. The updated FTA C. 4702.1B requires written procedures for the conduct of service and fare equity analyses, a disparate impact policy, and a disproportionate burden policy to be part of the Title VI Program. The policies and procedures developed to address the service and fare equity requirement must also discuss when and how a transit agency will assess the compounding effects from prior service and fare changes. (Note: The inclusion of prior service and/or fare changes depends on the nature of the agency, the proximity of the changes, and other specific factors. An agency must determine what will be a reasonable timeframe and analyze for compounding effects.) These policies and procedures require public participation during the development stages and are to be formally adopted once the governing board approves them.

Fare change equity analyses are required for all fare or fare medium changes. A fare and service change equity analysis must be adequate to evaluate if there will be any disproportionately high and adverse effects on minority and low-income riders. The circular provides extensive guidance on how to conduct fare and service equity analyses. FTA C. 4702.1B requires recipients to use tables similar to those found in Appendix K of the circular for service or fare actions that were implemented after April 1, 2013. Any fare or equity analysis conducted needs to be included in the next submission of the recipient's Title VI Program.

Transit providers may use decennial Census data to develop maps and charts until the next decennial Census or they may use American Community Survey (ACS) data between decennial censuses. These maps and charts will help the transit provider determine whether, and to what extent, transit service is available to minority populations within the transit provider's service area. These maps may be prepared using Geographic Information System (GIS) technology, although transit providers without access to GIS technology may prepare the maps in alternative formats.

Upon completion of a service or fare equity analysis, the recipient shall brief its board of directors, top executive, or appropriate governing entity or official(s) responsible for policy decisions regarding the service and/or fare change(s) and the equity impacts of the service and/or fare change(s). The transit provider shall submit documentation such as a board resolution, copy of meeting minutes, or similar documentation as evidence of the board or governing entity or official's consideration, awareness, and approval of the analysis.

This requirement is different from the Section 5307 requirement for public comment for fare increases and major service reductions (see Section 5307 Program Requirements section). Section 5307 requires a public comment process before raising a fare or carrying out a major reduction of transportation service. For purposes of Title VI, recipients to which this requirement applies must perform an equity evaluation for "major service changes" (both increases and reductions), as locally defined, and fare changes (both increases and reductions).

Note: Though the circular delineates the procedures large fixed-route transit providers must undertake when planning a service and/or fare change, all fixed-route transit providers are required by Title VI to ensure that all service and fare changes are equitably undertaken, regardless of the provider's size. Agencies not meeting the higher threshold are still required to have some means to ensure that its service and/or fare changes comply with the protections afforded by Title VI.

**New Starts, Small Starts, other new fixed guideway:** Transit providers that have implemented or will implement a New Start, Small Start, or other new fixed guideway capital project shall conduct a service and fare equity analysis. The service and fare equity analysis will be conducted six months prior to the

beginning of revenue operations, whether or not the proposed changes to existing service rise to the level of “major service change.” All proposed changes to parallel or connecting service will be examined. If the entity that builds the project is different from the transit provider that will operate the project, the transit provider operating the project shall conduct the analysis.

The service equity analysis shall include a comparative analysis of service levels pre- and post- the New Start, Small Start, or other new fixed guideway capital project. The analysis shall be depicted in tabular format and shall determine whether the service changes proposed (including both reductions and increases) due to the capital project will result in a disparate impact on minority populations. The transit provider shall also conduct a fare equity analysis for any and all fares that will change as a result of the capital project. Public outreach held regarding the project will also be included.

**Monitoring:** All recipients that operate fixed-route services must set system-wide service standards and policies necessary to avoid discriminatory service design or operational decisions. Policies must be set for each mode. These standards and policies must address how service is distributed across the transit system and must ensure that the manner of the distribution affords users access to these assets. The standards must be comprehensive and apply agency-wide. Service policies are developed to ensure service design and operational practices do not result in discrimination on the basis of race, color, or national origin. Service policies differ from service standards in that they are not necessarily based on a quantitative threshold.

**INDICATORS OF COMPLIANCE**

- a. *Does the recipient operate 50 or more fixed route vehicles in peak service and is it located in a UZA of 200,000 or more people? If no, move to the next question.*
- b. *If the recipient implemented a fare or major service change since its last Title VI submission, did it conduct an equity analysis in accordance with its Title VI Program?*

<b>Fare and Service Change Elements</b>	<b>Addressed</b>	<b>Not Addressed</b>	<b>Reviewer Comments</b>
The recipient completed an equity analysis during the planning stages for any fare, fare media, or major service change that occurred.			
The recipient implemented its approved Title VI Program major service change, disparate impact, and/or disproportionate burden policy as appropriate for the type of equity analysis required.			
If the equity analysis revealed an adverse effect or a disparate impact, the recipient analyzed alternatives and, if necessary, took steps to avoid, minimize, or mitigate impacts where practicable.			
The recipient briefed the governing body on the results of any equity analysis prior to the approval of any fare, fare media, or major service changes, and received approval for the service and fare equity analysis.			

- c. *If the recipient initiated, or plans to initiate, new fixed guideway service or service under the New Starts or Small Starts programs, did it conduct a service and fare equity analysis as required or when is such an analysis anticipated to be completed?*

<b>Equity Analysis Elements</b>	<b>Addressed</b>	<b>Not Addressed</b>	<b>Reviewer Comments</b>
The analysis was conducted six months prior to the beginning of revenue operations, whether or not the proposed changes to existing service rise to the level of a “major service change” as defined by the transit provider.			
All proposed changes to parallel or connecting service were examined.			
The analysis included a comparative analysis of service levels pre-and post- the New Starts/Small Starts/new fixed guideway capital project.			
The analysis was depicted in tabular format and determined whether the service changes proposed (including both reductions and increases) due to the capital project would result in a disparate impact on minority populations.			
A fare equity analysis was conducted for any and all fares that would change as a result of the capital project.			

- d. *Is the recipient monitoring the service it provides in accordance with its Title VI Program?*

<b>Service Monitoring Element</b>	<b>Addressed</b>	<b>Not Addressed</b>	<b>Reviewer Comments</b>
Conducted the monitoring at least every three years.			
Selected a sample of minority and non-minority routes from all modes of service provided. The sample shall include routes that provide service to predominantly minority areas and non-minority areas.			
Assessed the performance of each minority and non- minority route in the sample for each of the transit provider’s service standards and service policies.			
Compared the transit service observed in the assessment to the transit provider’s established service policies and standards.			
Analyzed any route that exceeded or failed to meet the standard or policy, depending on the metric measured to determine why the discrepancies exist, and take steps to reduce the potential effects.			

e. *Is the recipient monitoring the amenities it provides in accordance with its Title VI Program?*

<b>Amenities Monitoring Element</b>	<b>Addressed</b>	<b>Not Addressed</b>	<b>Reviewer Comments</b>
Evaluated transit amenities policy to ensure amenities are being distributed throughout the transit system in an equitable manner.			
Developed a policy or procedure to determine whether disparate impacts exist on the basis of race, color, or national origin, and apply that policy or procedure to the results of the monitoring activities.			
Briefed and obtained approval from the transit providers' policy-making officials regarding the results of the monitoring program.			
Documented corrective actions to remedy any disparities.			

**INSTRUCTIONS FOR REVIEWER**

Prior to the site visit, review a description of the methodology used to determine the impact of the fare and major service changes in the recipient's Title VI Program and the description of what the recipient considers to be a major service change. Prior to the site visit, review OTrak for the recipient's prior Comprehensive Review report describing service and fares, and compare this with current fare and service information received from the recipient. Conduct an internet search of the recipient for fare or service changes. Review recipient responses regarding fare or service changes implemented since last Title VI program submission. Ask the FTA regional office if there have been any fare or major service changes since the last review. Review documentation related to any service and fare technical assistance provided by FTA. If fare or major service changes have occurred but equity analyses have not been conducted at the planning stage, discuss onsite the reason(s) for this with the recipient.

**Fare and Major Service Changes:** For the latest fare or major service change that was not included in the latest Title VI submission, determine if the required elements were addressed:

**New Fixed Guideway, New Starts, or Small Starts:** Prior to the site visit, determine if the recipient is initiating new fixed guideway service or service under New Starts or Small Starts programs through a review of award applications in TrAMS. Determine the projected start of revenue operations, as this equity analysis is to be conducted six months prior to revenue operations. Discuss with the FTA RCRO if any fare or service equity analysis has been submitted or request the information from the recipient. If not previously reviewed by FTA's Office of Civil Rights, review the Title VI equity analysis to determine if the requirements were addressed.

**Service Monitoring:** Prior to the site visit, review the recipient's Title VI Program in TrAMS for monitoring procedures and results of previous monitoring. Request and review documentation of monitoring that has been conducted since the last Comprehensive Review. Verify that the requirements were addressed.

**Amenities Monitoring:** Prior to the site visit, review the recipient's Title VI Program in TrAMS for monitoring procedures and results of previous monitoring. Request and review documentation of monitoring that has been conducted since the last Comprehensive Review. Verify that the requirements were addressed.

## POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it did not conduct an equity analysis for an applicable fare change or major service change unless it can be demonstrated that none of the service changes constituted “major service changes” for the purpose of Title VI. The recipient is deficient if its procedures are not conducted in accordance with its approved Title VI Program, including its LAP and PPP. If the recipient’s threshold triggering an equity analysis differs from that which triggers public comment under Section 5307 Program Requirements for major service reduction, do not make a deficiency, but provide this information to the FTA RCRO for further follow-up with the recipient.

DEFICIENCY CODE TVI8-1: Impact of fare and/or service changes not adequately examined

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA RCRO an equity analysis for any fare or major service change that occurred since submission of the last Title VI Program. The recipient must also submit to the FTA RCRO revised procedures implemented to ensure that future equity analyses will be conducted as required.

The recipient is deficient if there is no documentation of approval of board of directors, top executive(s), or appropriate governing entity or official(s) responsible for policy decisions regarding the service and/or fare change(s) and the equity impacts of the service and/or fare change(s).

DEFICIENCY CODE TVI8-2: Impact of fare and/or service changes not approved by governing body

SUGGESTED CORRECTIVE ACTION: For completed equity analysis, the recipient must submit to the FTA RCRO documentation that the analysis was approved by the appropriate governing entity or official(s) responsible for policy decisions regarding service and/or fare change(s) and the equity impacts of the service and/or fare change. The recipient must also submit to the FTA RCRO revised procedures implemented to ensure that future equity analyses will be approved by the governing body in advance of implementation or any service and/or fare change.

The recipient is deficient if it has not completed an equity analysis for new fixed guideway or service under New Starts or Small Starts program or the analysis is incomplete. For projects still in the planning process, or not within six months of starting revenue service, the recipient must provide documentation to the FTA RCRO on how it will meet Title VI requirements.

DEFICIENCY CODE TVI8-3: New Starts or new fixed guideway service and equity analyses not completed

SUGGESTED CORRECTIVE ACTION: For projects completed without complete analyses, consult the FTA RCRO to discuss the corrective action.

The recipient is deficient if it cannot document that it has monitored service and amenities at least every three years. The recipient is deficient if the monitoring and analysis does not include required elements.

DEFICIENCY CODE TVI8-4: Not implementing Title VI monitoring of service or amenities

SUGGESTED CORRECTIVE ACTION: The recipient must prepare and submit to the FTA RCRO an updated monitoring program, consistent with the procedures in FTA C. 4702.1B, along with evidence of implementation.

The recipient is deficient if there is no documentation of the briefing and approval of its policy-making officials regarding the results of the monitoring program.

DEFICIENCY CODE TVI8-5: Policy-making officials’ review of Title VI monitoring not evident

**SUGGESTED CORRECTIVE ACTION:** The recipient must prepare and submit to the FTA RCRO evidence that it has briefed its policy-making officials on Title VI monitoring conducted, along with a plan to ensure that this briefing occurs for future monitoring efforts.

## **GOVERNING DIRECTIVE**

### *FTA C. 4702.1B Chapter IV.7 Requirement to Evaluate Service and Fare Changes*

This requirement applies only to transit providers that operate 50 or more fixed route vehicles in peak service and are located in a UZA of 200,000 or more in population or that otherwise meet the threshold in the Introduction section of this chapter. These transit providers are required to prepare and submit service and fare equity analyses as described below. Transit providers not subject to this requirement are responsible for complying with the DOT Title VI regulations which prohibit disparate impact discrimination, and therefore should review their policies and practices to ensure their service and fare changes do not result in disparate impacts on the basis of race, color, or national origin. To further ensure compliance with 49 CFR Section 21.5(b)(2), 49 CFR Section 21.5(b)(7), and Appendix C to 49 CFR part 21, all providers of public transportation to which this Section applies shall develop written procedures consistent with this Section to evaluate, prior to implementation, any and all service changes that exceed the transit provider's major service change threshold, as well as all fare changes, to determine whether those changes will have a discriminatory impact based on race, color, or national origin. The written procedures and results of service and/or fare equity analyses shall be included in the transit provider's Title VI Program.

*Exceptions to conducting fare analysis:* "(i) "Spare the air days" or other instances when a local municipality or transit agency has declared that all passengers ride free. (ii) Temporary fare reductions that are mitigating measures for other actions. For example, construction activities may close a segment of a rail system for a period of time and require passengers to alter their travel patterns. A reduced fare for these impacted passengers is a mitigating measure and does not require a fare equity analysis. (iii) Promotional fare reductions. If a promotional or temporary fare reduction lasts longer than six months, then FTA considers the fare reduction permanent and the transit provider must conduct a fare equity analysis.

*Detailed descriptions of what the analyses is to cover is included in the Circular's Chapter IV, Section 7.* Transit providers shall use tables similar to those provided in Appendix K to depict the results of the service and/or fare equity analysis. Transit providers should refer to the checklist and examples in the Appendix for additional technical assistance with service and fare equity analyses. Upon completion of a service or fare equity analysis, the transit provider shall brief its board of directors, top executive, or appropriate governing entity or official(s) responsible for policy decisions regarding the service and/or fare change(s) and the equity impacts of the service and/or fare change(s). The transit provider shall submit documentation such as a board resolution, copy of meeting minutes, or similar documentation with the Title VI Program as evidence of the board or governing entity or official's consideration, awareness, and approval of the analysis." c "Transit providers that have implemented or will implement a New Start, Small Start, or other new fixed guideway capital project shall conduct a service and fare equity analysis. The service and fare equity analysis will be conducted six months prior to the beginning of revenue operations, whether or not the proposed changes to existing service rise to the level of "major service change" as defined by the transit provider. All proposed changes to parallel or connecting service will be examined. If the entity that builds the project is different from the transit provider that will operate the project, the transit provider operating the project shall conduct the analysis. The service equity analysis shall include a comparative analysis of service levels pre-and post- the New Starts/Small Starts/new fixed guideway capital project. The analysis shall be depicted in tabular format and shall determine whether the service changes proposed (including both reductions and increases) due to the capital project will result in a disparate impact on minority populations. The transit provider shall also conduct a fare equity analysis for any and all fares that will change as a result of the capital project.

FTA C. 4702.1B Chapter IV.6 Requirement to Monitor Transit Service

FTA requires these transit providers to monitor the performance of their transit system relative to their system-wide service standards and service policies (i.e., vehicle load, vehicle assignment, transit amenities, etc.) not less than every three years. (Additional details follow in this section of the Circular.)

If a transit provider determines, based on its monitoring activities, that prior decisions have resulted in a disparate impact on the basis of race, color, or national origin, the transit provider shall take corrective action to remedy the disparities to the greatest extent possible, and shall discuss in the Title VI Program these disparate impacts and actions taken to remedy the disparities.

Transit providers shall brief and obtain approval from the transit providers' policymaking officials, generally the board of directors or appropriate governing entity responsible for policy decisions regarding the results of the monitoring program.

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**TVI9. Does the recipient include the needs of minorities in planning activities; document that it passes FTA funds through to subrecipients without regard to race, color, or national origin; and assure that minority populations are not being denied the benefits of or excluded from participation in FTA-funded programs?**

**BASIC REQUIREMENT**

Recipients are required to distribute funding and conduct planning activities in a nondiscriminatory manner.

**APPLICABILITY**

States and MPOs

**DETAILED EXPLANATION FOR REVIEWER**

State DOTs and MPOs shall conduct a non-discriminatory planning process and distribute funding in a non-discriminatory manner. States and MPOs are required to encourage and engage minority communities in the statewide or metropolitan transportation planning processes and to consider the needs and mobility of minority communities in the planning process. To ensure that members of minority communities are provided with full opportunities to participate in the planning process, actions shall be taken to eliminate language, mobility, temporal, and other obstacles to allow these populations to participate fully in the process.

States and MPOs shall provide documentation that FTA funds are passed through to subrecipients without regard to race, color, national origin, and to ensure that minority populations are not being denied the benefits of or excluded from participation in these programs. States and MPOs are required to provide and document assistance provided to potential subrecipients and the procedures used to ensure the equitable distribution of funds to subrecipients that serve predominately minority populations.

**INDICATORS OF COMPLIANCE**

- a. *Did the recipient ensure that members of minority communities are provided with full opportunities to engage in the statewide or metropolitan transportation planning process?*
- b. *Did the recipient ensure that the needs of minority communities are identified in the Statewide or Metropolitan Transportation Planning process?*
- c. *Did the recipient pass through FTA funds to subrecipients as indicated in its Title VI Program?*

- d. *Did the recipient provide assistance to potential subrecipients applying for funding, including its efforts to assist applicants that would serve predominantly minority populations, as described in its Title VI Program?*

### **INSTRUCTIONS FOR REVIEWER**

Prior to the site visit, review the recipient's most recent Title VI Program submission in TrAMS for discussion of the statewide or metropolitan transportation planning process and the procedures it will use to:

- (1) identify the transportation needs of minority populations
- (2) include minority communities in the statewide or metropolitan transportation planning process
- (3) pass through FTA financial assistance to subrecipients in a non-discriminatory manner
- (4) provide assistance to potential subrecipients

Review documentation of statewide or metropolitan planning activities to determine if procedures documented in the Title VI Program for identifying transportation needs of minority communities and including them in the planning process were implemented. This could include actions to eliminate language, mobility, temporal, and other obstacles to allow these populations to participate fully in the process.

Review documentation of activities such as the competitive selection or annual program of projects processes, the latest allocation of funds to subrecipients, and assistance offered for efforts to receive applications from agencies serving predominantly minority and low-income populations, along with the record of accepted and rejected applications identifying applicants that are minority organizations or that provide assistance to minority or low-income communities.

### **POTENTIAL DEFICIENCY DETERMINATIONS**

The recipient is deficient if it is not identifying the needs of minority communities in planning as described in its Title VI Program.

DEFICIENCY CODE TVI9-1: Needs of minority communities not identified in statewide or metropolitan planning process

SUGGESTED CORRECTIVE ACTION: The recipient must prepare and submit to the FTA RCRO evidence that the needs of minority communities are being included in statewide or metropolitan transportation planning process in accordance with FTA C. 4702.1B and its Title VI Program.

The recipient is deficient if it is not implementing procedures for inclusion of minority communities in statewide or metropolitan transportation planning process as described in its Title VI program.

DEFICIENCY CODE TVI9-2: Minority communities not included in the statewide or metropolitan transportation planning process

SUGGESTED CORRECTIVE ACTION: The recipient must prepare and submit to the FTA RCRO evidence that it has implemented procedures for inclusion of minority communities in planning processes in accordance with FTA C. 4702.1B and its Title VI Program.

The recipient is deficient if it is not passing through funds to subrecipients in a non-discriminatory manner as described in its Title VI Program.

DEFICIENCY CODE TVI9-3: No basis for determining equitable distribution of funds

**SUGGESTED CORRECTIVE ACTION:** The recipient must prepare and submit to the FTA RCRO an assessment of the adequacy of its procedures and, if necessary, an updated plan to ensure funds are used and distributed equitably, consistent with the procedures in FTA C. 4702.1B and its Title VI Program.

The recipient is deficient if it is not providing assistance to potential subrecipients as described in its Title VI Program.

DEFICIENCY CODE TVI9-4: Assistance not provided to potential subrecipients

**SUGGESTED CORRECTIVE ACTION:** The recipient must prepare and submit to the FTA RCRO documentation that it is providing assistance to potential subrecipients, consistent with the procedures in FTA C. 4702.1B and its Title VI Program.

**GOVERNING DIRECTIVE**

*FTA Circular 4702.1B, Chapter V, 2. Requirement to Prepare and Submit a Title VI Program*

States shall include the following information in their Title VI Program: (f) A description of the statewide transportation planning process that identifies the transportation needs of minority populations; (g) A description of the procedures the State uses to pass through FTA financial assistance to subrecipients in a non-discriminatory manner; (h) A description of the procedures the State uses to provide assistance to potential subrecipients applying for funding, including its efforts to assist applicants that would serve predominantly minority populations.

*FTA Circular 4702.1B, Chapter VI, 2. Requirement to Prepare and Submit a Title VI Program*

MPOs shall include the following information in their Title VI Program: (a) (3) A description of the procedures by which the mobility needs of minority populations are identified and considered within the planning process... (c) (2) A description of the procedures the MPO uses to pass through FTA financial assistance to subrecipients in a non-discriminatory manner; (3) A description of the procedures the MPO uses to provide assistance to potential subrecipients applying for funding, including its efforts to assist applicants that would serve predominantly minority populations.

*FTA Circular 4702.1B, Chapter V, 3. Planning*

As part of the planning certification review, FTA/FHWA review State-developed documentation to determine whether States have: c. Ensured that members of minority communities are provided with full opportunities to engage in the Statewide Transportation Planning process. This includes actions to eliminate language, mobility, temporal, and other obstacles to allow these populations to participate fully in the process.

*FTA Circular 4702.1B, Chapter VI, 3. Planning*

As part of the planning certification review, FTA/FHWA review MPO developed documentation to determine whether MPOs have: c. Ensured that members of minority communities are provided with full opportunities to engage in the transportation planning process. This includes actions to eliminate language, mobility, temporal, and other obstacles to allow these populations to participate fully in the process.

*FTA Circular 4702.1B, Chapter V, 4. Requirements for Program Administration*

In order to comply with 49 CFR Section 21.5, the general nondiscrimination provision, States shall document that they pass through FTA funds under the Enhanced Mobility for Seniors and Individuals with Disabilities (Section 5310) program, the Formula Grants for Rural Areas (Section 5311) program, and any

other FTA funds, to subrecipients without regard to race, color, or national origin, and assure that minority populations are not being denied the benefits of or excluded from participation in these programs.

FTA Circular 4702.1B, Chapter VI, 6. Requirements for Program Administration

In order to comply with 49 CFR Section 21.5, the general nondiscrimination provision, MPOs shall document that they pass through FTA funds under any FTA programs (e.g., 49 U.S.C. 5310, Enhanced Mobility for Seniors and Individuals with Disabilities), to subrecipients without regard to race, color, or national origin, and assure that minority populations are not being denied the benefits of or excluded from participation in these programs.

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**ISSUES/AREAS OF CONCERN FOR FTA AWARENESS**

1. Have any oversight reviews, audits, or investigations of the recipient conducted since the last Comprehensive Review (including Title VI Reviews and the most recent Comprehensive Review) identified significant deficiencies, material weaknesses, and/or repeat deficiencies in Title VI?
2. Are any oversight reviews, audits, or investigations scheduled during this Federal fiscal year?
3. Did the recipient experience difficulty resolving or closing any oversight review, investigation, or audit deficiencies related to Title VI?
4. Are any Title VI deficiencies currently open?
5. If a Title VI compliance review is scheduled for the current Federal fiscal year, what information prompted the review?
6. Are any issues related to Title VI indicated in the Oversight Assessment Tool (OAT)?
7. Have Title VI complaints been filed with FTA against the recipient?
8. Has the recipient received Title VI complaints since last Title VI submission?
9. Does the recipient sufficiently identify, investigate, and track complaints?
10. Has the recipient recently reached a threshold triggering additional requirements in Chapter IV of FTA C. 4702.1B (50 or more fixed-route vehicles in peak service/located in a UZA of 200,000 or more in population)?
11. If the recipient is located in a UZA under 200,000 in population and operates 50 or more fixed-route vehicles in peak demand, does it provide any service into an area of 200,000 or more?
12. Does the recipient's threshold triggering service change equity analysis differ from that which triggers public comment under Section 5307 Program Requirements for major service reduction?
13. Is the current Title VI Plan that the recipient is implementing the one that was approved by FTA?
14. Does the recipient appear to have sufficient resources for effective implementation of its Title VI plan?
15. Do the recipient's complaint procedures appear to afford the public due process for resolving complaints?

16. For facility siting, if the recipient identified disparate impacts in the selected location, did the analysis include a substantial legitimate justification for selecting that site over other sites considered, and why the alternative locations were not sufficient?
17. Does the recipient take sufficient steps to ensure meaningful access to the benefits, services, information, and other important portions of its programs and activities for LEP persons?
18. Does the recipient train employees to provide timely and reasonable language assistance?
19. Does the recipient appear to ensure inclusive public participation of minority and LEP populations into its public participation procedures?
20. Do the recipient's system-wide service standards for each fixed-route mode of service appear to be sufficient to avoid discriminatory service design or operational decisions?
21. Did background research or site visit observations reveal any potential issues or concerns about the recipient's Title VI Program or its implementation not covered previously in this section?

## **REFERENCES**

1. 2 CFR Parts 200 and 1201, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards"
2. 49 CFR Part 21, "Nondiscrimination in Federally-assisted Programs of the Department of Transportation--Effectuation of Title VI of the Civil Rights Act of 1964"
3. FTA Circular 4702.1B "Title VI Requirements and Guidelines for Federal Transit Administration Recipients"
4. FTA Circular 4703.1 "Environmental Justice Policy Guidance For Federal Transit Administration Recipients"
5. Federal Register: April 15, 1997 (Vol. 62, Number 72, pp. 18377-18381) "U.S. Department of Transportation (US DOT) Order to Address Environmental Justice in Minority Populations and Low-Income Populations"
6. Executive Order 13166 August 11, 2000: "Improving Access to Services for Persons with Limited English Proficiency"
7. Federal Register: December 14, 2005 (Vol. 70, Number 239, pp. 74087-74100) "US DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons"
8. Civil Rights Restoration Act of 1987

## **USEFUL WEBLINKS**

1. FTA Title VI Page
2. FTA Civil Rights Training Materials
3. FTA Civil Rights Video Training Series
4. US DOT Limited English Proficiency (LEP) Guidance
5. Language Access Assessment and Planning Tool for Federally Conducted and Federally Assisted Programs

6. Title VI Frequently Asked Questions
7. US Census American FactFinder “Percent of Specific Language Speakers in the Region” (S1601)

Exhibit 11.1

Requirement	Transit Providers that operate fixed-route service	Transit Providers that operate 50 or more fixed-route vehicles in peak service and are located in a UZA of 200,000 or more in population	States	Metropolitan Planning Organizations
General Requirements in Chapter III	Required	Required	Required	Required
Set system-wide standards and policies	Required	Required	Required if fixed route service provided	Required if MPO is a <i>direct recipient</i> and provides fixed route service
Collect and report data	Not required	Required: <ul style="list-style-type: none"> <li>• Demographic and service profile maps and charts</li> <li>• Survey data regarding customer demographic and travel patterns</li> </ul>	Required of all States: <ul style="list-style-type: none"> <li>• Demographic profile and maps of the State showing minority populations</li> <li>• Analysis charts of distribution impact of State and Federal transportation funds</li> <li>• Analysis of disparate impacts of funding distribution</li> </ul>	
			Required if fixed route service provided and meets the peak vehicle and UZA threshold: <ul style="list-style-type: none"> <li>• Service profile maps and charts</li> <li>• Survey data regarding customer demographic and travel patterns</li> </ul>	
Evaluate service and fare equity changes	Not required	Required	Required if fixed route service provided and meets the peak vehicle and UZA threshold	Required if fixed route service provided and meets the peak vehicle and UZA threshold

Requirement	Transit Providers that operate fixed-route service	Transit Providers that operate 50 or more fixed-route vehicles in peak service and are located in a UZA of 200,000 or more in population	States	Metropolitan Planning Organizations
Monitor transit service	Not required	Required	Required if fixed route service provided and meets the peak vehicle and UZA threshold	Required if fixed route service provided and meets the peak vehicle and UZA threshold
Planning	Not required	Not required	Required	Required
Subrecipients	Monitoring required, unless subrecipient is also a direct recipient	Monitoring required, unless subrecipient is also a direct recipient	Required: <ul style="list-style-type: none"> <li>• Procedures to pass through funding in non-discriminatory manner</li> <li>• Procedures to provide assistance to potential subrecipients</li> </ul> Monitoring required, unless subrecipient is also a direct recipient	Monitoring required, unless subrecipient is also a direct recipient Required if MPO is a <i>primary recipient</i> . <ul style="list-style-type: none"> <li>• Procedures to pass through funding in non-discriminatory manner</li> </ul> Procedures to provide assistance to potential subrecipients
Program Administration	Not required	Not required	Required	Required

**Exhibit 11.2**

The chart below summarizes the required elements for contents of a Title VI Program based on recipient category.

<b>Type of Transit Provider</b>	<b>Title VI Program Contents</b>
Demand Responsive Transit Provider	<ul style="list-style-type: none"> <li>• A copy of the recipient’s Title VI notice to the public</li> <li>• 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</li> <li>• A list of any public transportation-related Title VI investigations, complaints, or lawsuits filed with the recipient since the time of the last submission</li> <li>• A public participation plan (PPP) 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</li> <li>• A copy of the recipient’s plan for providing language assistance to persons with limited English proficiency, based on the DOT LEP Guidance</li> <li>• For 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, 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</li> <li>• 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</li> <li>• If the recipient has constructed a facility, such as a vehicle storage facility, maintenance facility, operation center, etc., a copy of the Title VI equity analysis conducted during the planning stage with regard to the location of the facility</li> </ul>
Fixed Route Transit Provider	<ul style="list-style-type: none"> <li>• All elements listed above for Demand Responsive Transit Providers</li> <li>• System-wide service standards, including vehicle load, vehicle headway, on time performance, and service availability for each mode</li> <li>• System-wide service policies, including transit amenities and vehicle assignment for each mode</li> </ul>

Type of Transit Provider	Title VI Program Contents
<p>Fixed Route Transit Provider that operates 50 or more fixed route vehicles in peak service and is located in an Urbanized Area (UZA) of 200,000 or more in population; or has been placed in this category at the discretion of the Director of Civil Rights in consultation with the FTA Administrator</p>	<ul style="list-style-type: none"> <li>• All elements listed above for Fixed Route Transit Providers and Demand Responsive Transit Providers</li> <li>• A demographic analysis of the transit provider's service area. This shall include demographic maps and charts completed since submission of the last Title VI Program that contains demographic information and service profiles</li> <li>• Data regarding customer ridership demographics and travel patterns, collected from passenger surveys</li> <li>• Results of the monitoring program of service standards and policies and any action taken, including documentation (e.g., a resolution, copy of meeting minutes, or similar documentation) to verify the board's or governing entity or official(s)'s consideration, awareness, and approval of the monitoring results</li> <li>• A description of the public engagement process for setting the "major service change policy," disparate impact policy, and disproportionate burden policy</li> <li>• A copy of board meeting minutes or a resolution demonstrating the board's or governing entity or official(s)'s consideration, awareness, and approval of the major service change policy and disparate impact policy</li> <li>• Results of equity analyses for any major service changes and/or fare changes implemented since the last Title VI Program submission</li> <li>• A copy of board meeting minutes or a resolution demonstrating the board's or governing entity or official(s)'s consideration, awareness, and approval of the equity analysis for any service or fare changes required by the circular</li> </ul>
<p>States</p>	<ul style="list-style-type: none"> <li>• A copy of the recipient's Title VI notice to the public</li> <li>• 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</li> <li>• A list of any public transportation-related Title VI investigations, complaints, or lawsuits filed with the recipient since the time of the last submission</li> <li>• 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</li> <li>• A copy of the recipient's plan for providing language assistance to persons with limited English proficiency, based on the DOT LEP Guidance</li> <li>• For 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, 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</li> <li>• Narrative or description of efforts the recipient uses to ensure subrecipients are complying with Title VI, as well as a schedule of subrecipient Title VI Program submissions</li> <li>• If the recipient has constructed a facility, such as a vehicle storage facility, maintenance facility, operation center, etc., a copy of the Title VI equity</li> </ul>

Type of Transit Provider	Title VI Program Contents
	<p>analysis conducted during the planning stage with regard to the location of the facility</p> <ul style="list-style-type: none"> <li>• A demographic profile of the state that includes identification of the locations of minority populations in the aggregate</li> <li>• Demographic maps that overlay the percent minority and non-minority populations as identified by Census or American Community Survey data at Census tract or block group level, and charts that analyze the impacts of the distribution of State and Federal funds in the aggregate for public transportation purposes, including Federal funds managed by the State as a designated recipient</li> <li>• An analysis of impacts identified in the demographic maps that identifies any disparate impacts on the basis of race, color, or national origin, and, if so, determines whether there is a substantial legitimate justification for the policy that resulted in the disparate impacts, and if there are alternatives that could be employed that would have a less discriminatory impact</li> <li>• A description of the statewide transportation planning process that identifies the transportation needs of minority populations</li> <li>• A description of the procedures the State uses to pass through FTA financial assistance to subrecipients in a nondiscriminatory manner</li> <li>• A description of the procedures the State uses to provide assistance to potential subrecipients applying for funding, including its efforts to assist applicants that would serve predominantly minority populations</li> </ul>
MPO	<ul style="list-style-type: none"> <li>• A copy of the recipient's Title VI notice to the public</li> <li>• 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</li> <li>• A list of any public transportation-related Title VI investigations, complaints, or lawsuits filed with the recipient since the time of the last submission</li> <li>• 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</li> <li>• A copy of the recipient's plan for providing language assistance to persons with limited English proficiency, based on the DOT LEP Guidance</li> <li>• For 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, 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</li> <li>• 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</li> <li>• If the recipient has constructed a facility, such as a vehicle storage facility, maintenance facility, operation center, etc., a copy of the Title VI equity</li> </ul>

Type of Transit Provider	Title VI Program Contents
	<p>analysis conducted during the planning stage with regard to the location of the facility</p> <ul style="list-style-type: none"> <li>• A demographic profile of the metropolitan area that includes identification of the locations of minority populations in the aggregate</li> <li>• A description of the procedures by which the mobility needs of minority populations are identified and considered within the planning process</li> <li>• Demographic maps that overlay the percent minority and non-minority populations as identified by Census or ACS data, at Census tract or block group level, and charts that analyze the impacts of the distribution of State and Federal funds in the aggregate for public transportation purposes, including Federal funds managed by the MPO as a designated recipient</li> <li>• An analysis of impacts that identified any disparate impacts on the basis of race, color, or national origin, and, if so, determines whether there is a substantial legitimate justification for the policy that resulted in the disparate impacts, and if there are alternatives that could be employed that would have a less discriminatory impact</li> <li>• A description of the procedures the MPO uses to pass through FTA financial assistance to subrecipients in a nondiscriminatory manner</li> <li>• A description of the procedures the MPO uses to provide assistance to potential subrecipients applying for funding, including its efforts to assist applicants that would serve predominantly minority populations</li> </ul>