

Attachment P – Title VI Requirements for Local Public Agencies

INSTRUCTIONAL MEMORANDUMS To Local Public Agencies



To: Counties and Cities	Date: February 21, 2008
From: Office of Local Systems	I.M. No. 1.070
Subject: Title VI and Nondiscrimination Requirements	

Contents: This Instructional Memorandum (I.M.) provides guidance for a Local Public Agency (LPA) to understand and comply with the requirements of Title VI and related nondiscrimination laws and regulations that are applicable to Federal funding assistance that is passed through the Iowa Department of Transportation (Iowa DOT).

Title VI of the Civil Rights Act of 1964

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

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

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

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

There are some important points to take note of. The Act does not mention a specific race (e.g. Hispanic), color (e.g. Black) or national origin (e.g. Chinese). It prohibits discrimination against *any* race, color or national origin. There is no “reverse discrimination”, only discrimination. For example, denying services to a white male because of race is also discrimination. Also, the Act uses the language...“No person in the United States...” it does not mention citizenship. It applies to all people in the U.S, citizen or not, with regard to any program or activity to which they are otherwise eligible for.

Discrimination

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

The Federal Highway Administration (FHWA) regulations which implement Title VI and the related statutes define discrimination as “That act (or action) whether intentional or unintentional, through which a person in the United States, solely because of race, color, religion, sex, or national origin has been otherwise subjected to unequal treatment under any program or activity receiving financial assistance from the Federal Highway Administration under title 23 U.S.C.” (23 CFR 200.5 (f)).

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

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

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

Related Non-discrimination Authorities

Right-of-way and Property Impacts

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

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

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

Disability

Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794)
The Americans with Disabilities Act (P.L. 101-336)

“No qualified handicapped person shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity that receives or benefits from Federal financial assistance.”

Discrimination because of a mental or physical disability is prohibited. At the time the legislation was initially developed, the term “handicap” was used; however, this has negative connotations. This term originates from the phrase, “cap in hand”, which was used to describe a beggar. As a result, the terms “disabled” or “disability” are preferred.

Sex (Gender)

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

“No person shall on the ground of sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal assistance under this title or carried on under this title.”

Discrimination because of sex (gender) is prohibited.

Age

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

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

Discrimination on the basis of age is prohibited.

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

Non-discrimination requirements have been developed over time as evidenced by the dates listed previously. This I.M. only highlights the major actions that have significance to the transportation community. Non-discrimination efforts of the Federal government have been going on since the time of the Civil War.

Over the course of time the intent of this work became diffused, misinterpreted or misconstrued. The Restoration Act of 1987 clarifies the original intent of Congress in Title VI of the 1964 Civil Rights Act, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and Section 504 of Rehabilitation Act of 1973. This act restores the broad, institution-wide scope and coverage of the non-discrimination statutes to include all programs and activities of Federal-aid recipients, subrecipients and contractors, whether such programs and activities are Federally assisted or not.

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

Limited English Proficiency LEP (Executive Order 13166)

Executive order 13166 is titled, “Improving Access to Services for Persons with Limited English Proficiency,” and was signed by President Clinton on August 11, 2000.

A person is considered to have limited English proficiency (LEP) if they do not speak English as their primary language and if they have a limited ability to read, speak, write or understand English.

Programs and services normally provided in English must be accessible to persons with LEP in order to avoid national origin discrimination that is prohibited by Title VI.

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

Environmental Justice (Executive Order 12898)

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

Environmental Justice (EJ) relates to the human environment and to human health in minority and low income populations. It says in part, "...each Federal agency shall make achieving Environmental Justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations..."

There are three fundamental principles of Environmental Justice:

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

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

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

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

Program Applications and Impacts

Federal Financial Assistance

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

local government, it includes all of the operations of the department to which assistance is extended.

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

What Title VI Does

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

Planning and Programming

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

Typical Assurance Activities:

- Take positive steps to identify impacted groups and to ensure full and fair participation by those groups in the development of the Transportation Improvement Program (TIP).

- Ensure that the planning and programming process results in a program which distributes benefits and mitigates disparate impacts equitably.
- Address complaints and concerns promptly.

Design and Project Development

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

Typical Assurance Activities:

- Identify minority and low income populations and ensure they have the opportunity for meaningful participation in the design process.
- Thoroughly examine design alternatives to ensure that environmental justice considerations are recognized and addressed during route location selection and final design.
- Consistently apply design standards to eliminate, minimize or mitigate adverse impacts among affected groups and to provide equitable levels of service.
- Provide opportunities for Disadvantaged Business Enterprise (DBE) firms on consultant contracts.
- Ensure that facilities are designed in accordance with current ADA accessibility requirements (for more information, refer to [I.M. 1.080](#), ADA Requirements).

Right-of-Way

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

Typical Assurance Activities:

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

Construction

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

Typical Assurance Activities:

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

Consultants and Research

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

Typical Assurance Activities:

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

Female/Minority Participation and DBE Goals

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

Contract goals are often established as part of the DBE program in order for the Iowa DOT to achieve it's

Annual DBE Goal. It is important to note that the DBE program applies only to Federal-aid contracts. DBE contract goals must not be established on non-Federal-aid contracts, unless a disparity study has been conducted to ensure they are warranted.

The Iowa DOT sets goals for construction contracts let through the Iowa DOT. However, for Federal-aid consultant contracts and locally-let Federal-aid construction contracts, the LPA is responsible for setting goals for DBE participation, subject to Iowa DOT review and approval. For more information, refer to [I.M. 3.710](#), DBE Guidelines.

Compliance Actions

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

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

- Recognize that preventing discrimination is everyone's responsibility. Share this I.M. and other non-discrimination information with all staff so they can be aware of the various requirements and work to achieve compliance.
- Ensure the required Standard DOT Title VI assurances, adapted as appropriate, are included in all Federal-aid contracts and subcontracts. A Federal-aid contract is one in which the cost of the work, services, material, etc. obtained by the contract will be reimbursed with Federal funds. To assist LPAs with this compliance action, the Iowa DOT has already incorporated the Standard DOT Title VI assurances into the bidding and contract documents which have been developed for use with LPA Federal-aid construction contracts let through the Iowa DOT.

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

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

“The (name of LPA), in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation issued pursuant to such Act, hereby notifies all (bidders / consultants) that it will affirmatively insure that in any contract entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit (bids / proposals) in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.”

- Recognize and respond to LEP issues. Current guidance from U.S. DOT is available on the Federal Register (FR) at 70 FR 74087 (12/14/05). This includes a four factor analysis to determine the appropriate response, and defines a “safe harbor” for measuring compliance with written translations.
- Address any complaints. Informal reports of discrimination should be investigated and resolved promptly. Formal written complaints against a local government must be forwarded to the Contracts Engineer, Iowa DOT, 800 Lincoln Way, Ames, IA 50010.

Resources and References

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

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

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

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

[Executive Order 12898, Environmental Justice](#)

[Executive Order 13166, Limited English Proficiency](#)

[Americans with Disabilities Act \(ADA\) Questions and Answers](#)

[United States Access Board](#) – A Federal Agency Committed to Accessible Design