

INTRO TO TITLE VI REVIEWS



INTRODUCTION

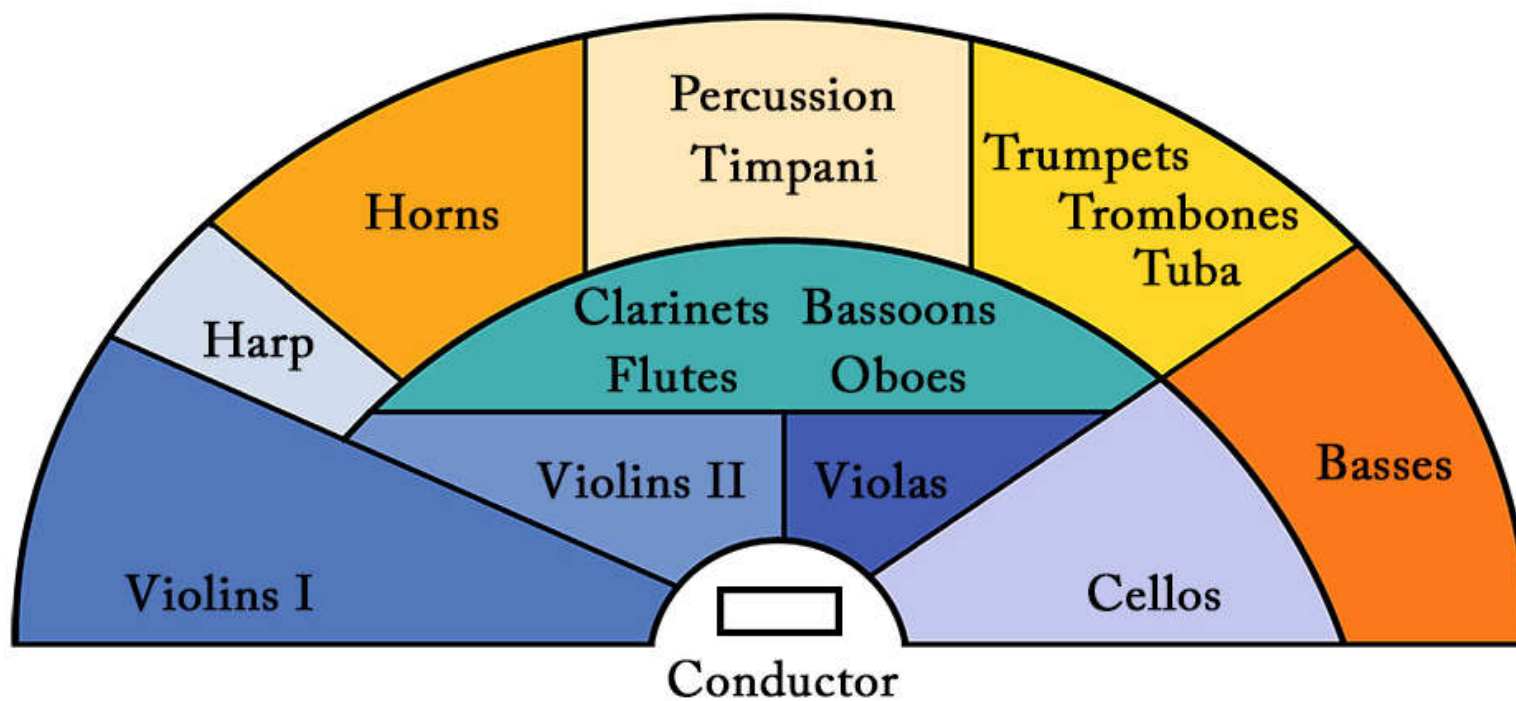
If nondiscrimination is the **goal**; how do we **achieve it**?

Think of a program or process. How do you know it's **working**?

Government agencies are really complicated...



So you need a strategy.



MANAGING RISK

What is...

Stewardship:

Ensuring efficient and effective use and management of highway program funds.

Oversight:

Ensuring program and project compliance with laws and regulations.

Risk:

The measurable effect of uncertainty on objectives.

Risk Management:

Process to focus resources, strengthen program management, and improve communication to manage risk.

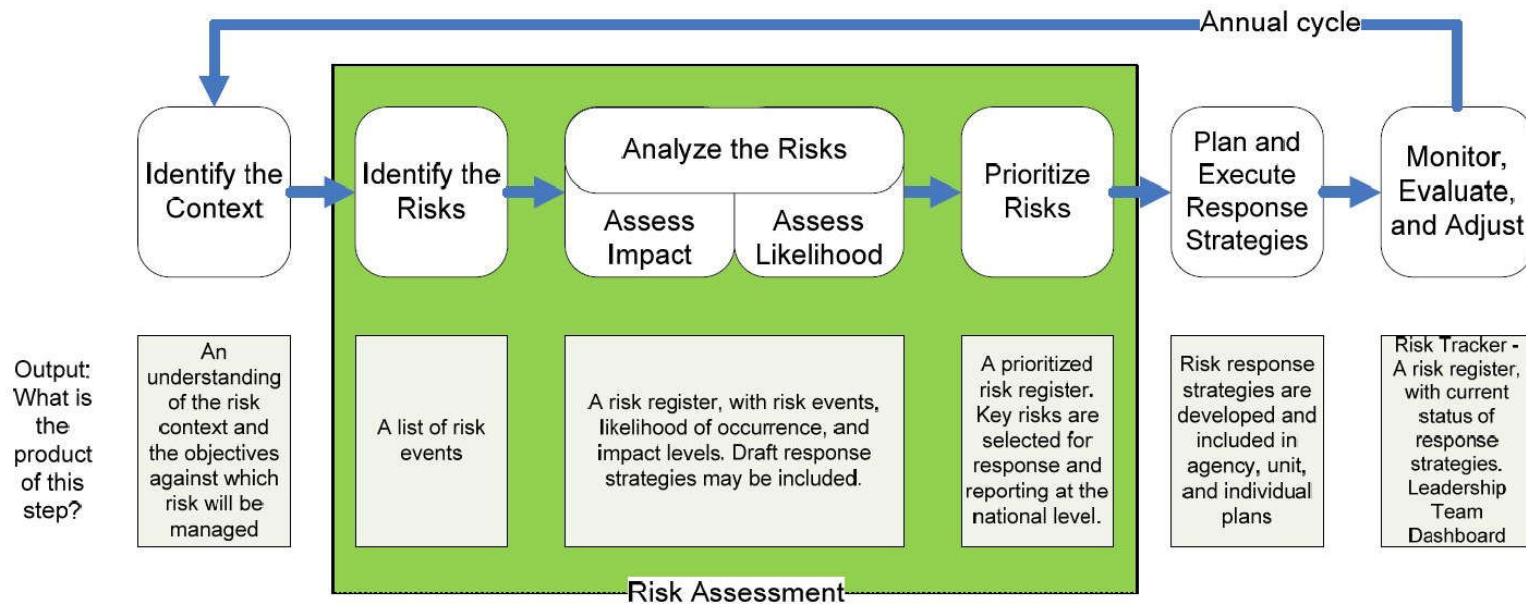
MANAGING RISK

Two main questions:

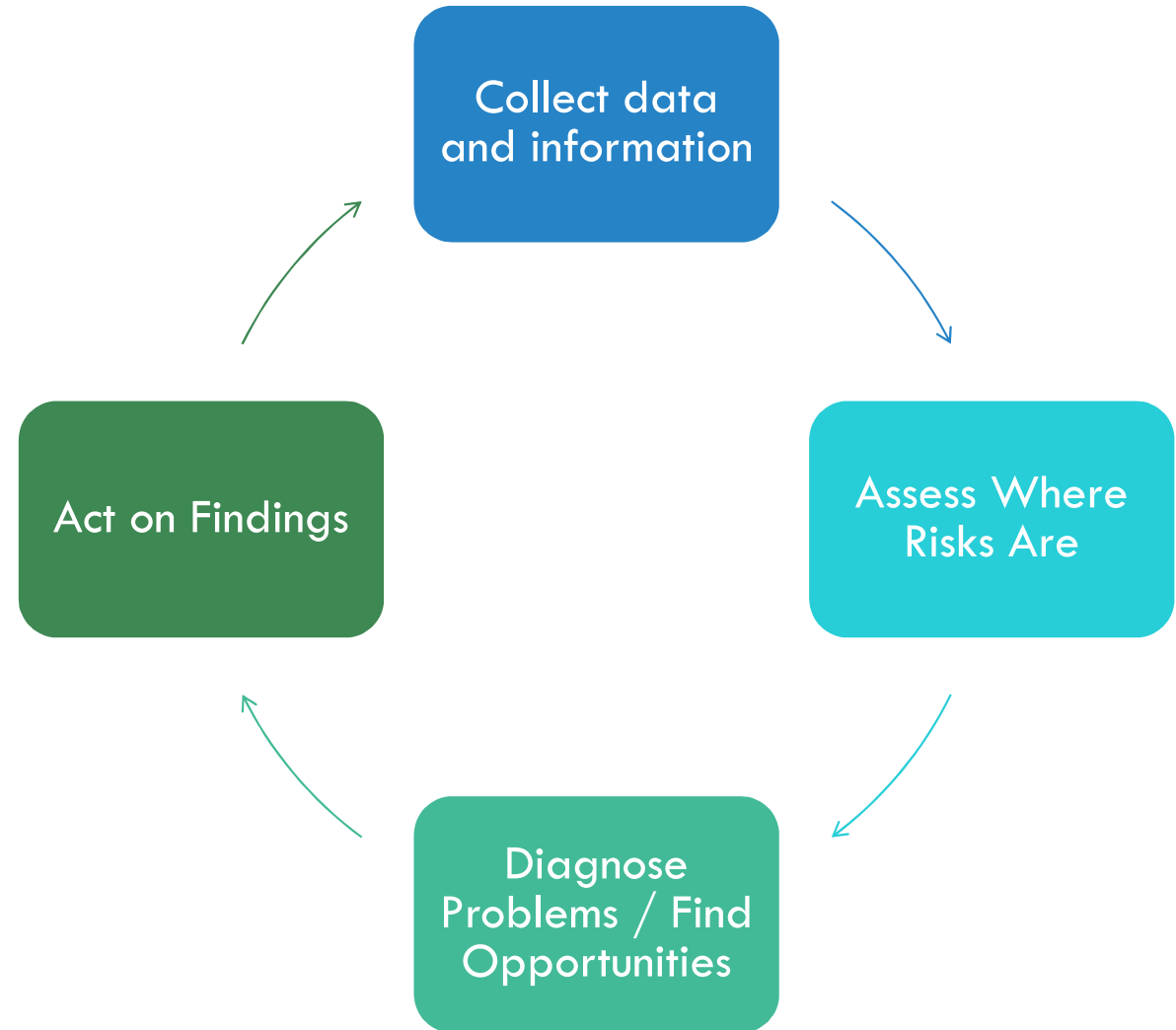
1. How do we assess **what the risks are?**
2. How do we **respond to those risks?**

MANAGING RISK

FHWA Risk Management Process - Overview and Outputs



Risk Management is a Cycle



RISK MANAGEMENT AUTHORITIES

- 1. Uniform Administrative Requirements for Federal Awards (2 C.F.R. Part 200):** the common oversight rules for all federal agencies and recipients.

§ 200.303 - The non-Federal entity must:

(a) Establish and maintain effective **internal control** over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award.

RISK MANAGEMENT AUTHORITIES

1. Uniform Administrative Requirements for Federal Awards (2 C.F.R. Part 200)

§ 200.61 Internal controls.

Internal controls means a process, implemented by a non-Federal entity, designed to provide reasonable assurance regarding the achievement of objectives in the following categories:

- (a) Effectiveness and efficiency of operations;
- (b) Reliability of reporting for internal and external use; and
- (c) Compliance with applicable laws and regulations.

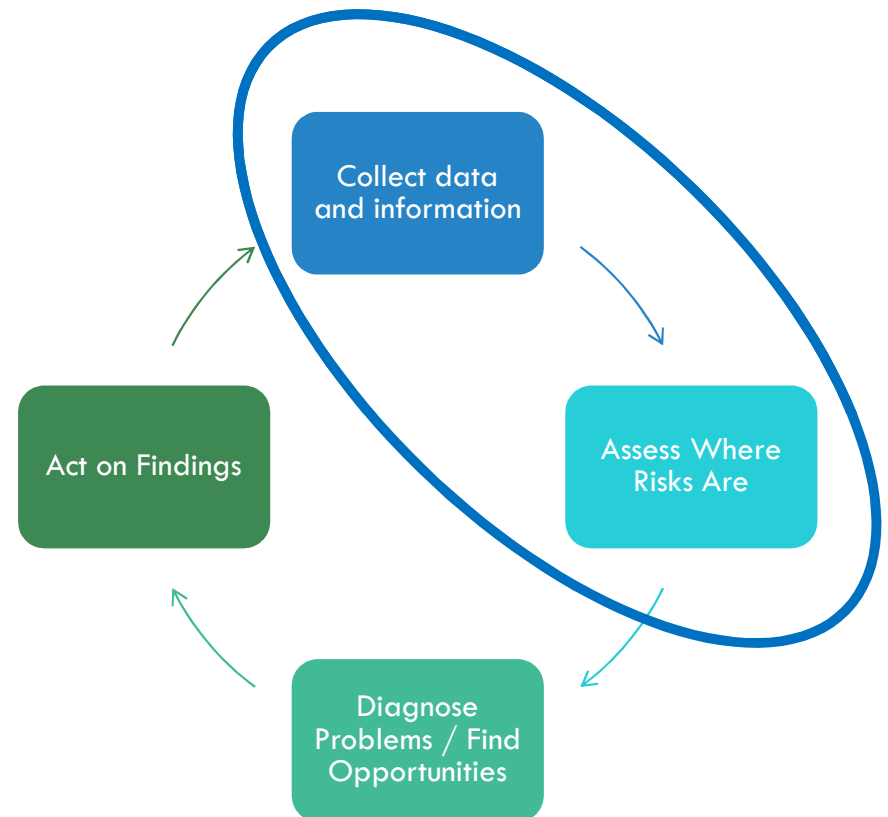
RISK MANAGEMENT AUTHORITIES

2. **DOJ Regulations on Continuing State Programs (28 C.F.R § 42.410)** provides that primary recipient state agencies shall establish a Title VI compliance program for itself *and other recipients* which obtain federal assistance through it.
3. **FHWA Regulations on State Highway Agency (SHA) Title VI Actions (23 C.F.R. § 200.9(b))** setting forth requirements for SHAs to collect information and conduct internal and external reviews.
4. **USDOT Title VI Regulations (49 C.F.R. Part 21)** providing that recipients shall provide methods of administration for the program give a reasonable guarantee of compliance.

ASSESSING RISK

What are the steps in risk assessment?

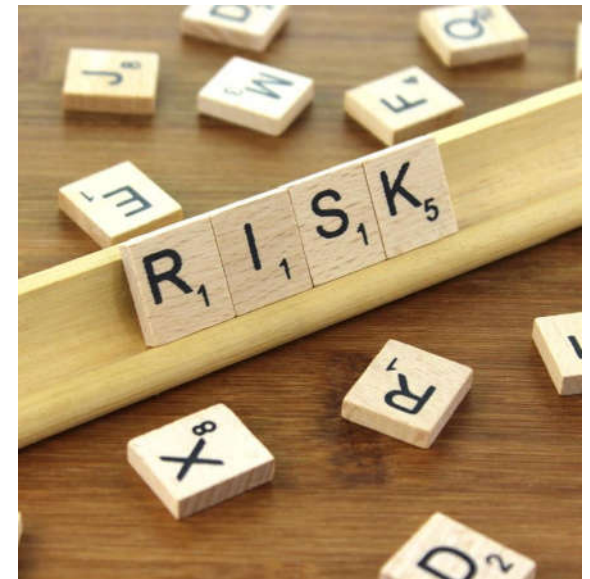
1. Collect data/information.
2. Consult with stakeholders.
3. Analyze risks for impact and likelihood.
4. Prioritize and develop review work plan.



ASSESSING RISK

Questions to ponder on risk assessment:

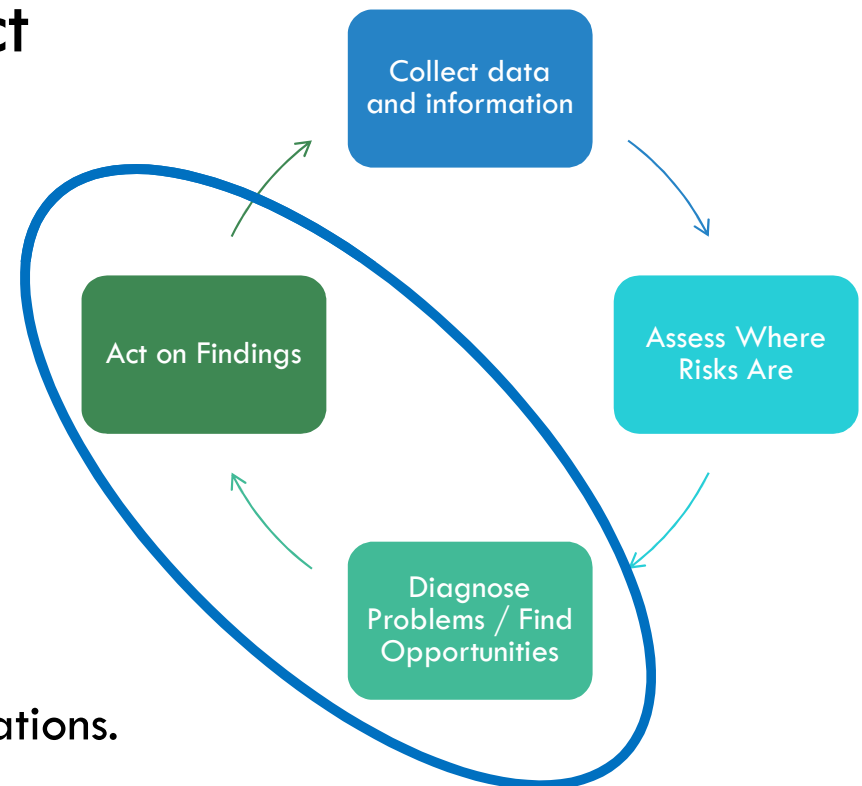
- Data and Information
 - Do you have the data and information necessary?
 - How is it collected and in what forms?
 - How will you codify it?
 - How will you turn subjective information into objective data?
- Where and how do you **contact public**?
- Where and how does the recipient **spend** its funds?
- Have any formal or *informal* **complaints or public comments** been filed?



CONDUCTING REVIEWS

How should recipients conduct reviews?

1. Develop review plan
 - Identify review scope
 - Identify data/information needed
 - Identify interviewees
 - Create schedule
2. Gather and analyze
3. Produce written report with recommendations.



CONDUCTING REVIEWS

What are the strategies for responding to risk?

1. Periodic and/or random reviews
2. Incident-based acquisition of data and information.
3. Systematic acquisition of data and information



CONDUCTING REVIEWS

The basis for...

1. Periodic and/or random reviews
2. Incident-based acquisition of data and information.
3. Systematic acquisition of data and information

Comes from...

Periodic compliance reviews. The Secretary shall from time to time review the practices of recipients to determine whether they are complying with this part. 49 C.F.R. § 21.11(a).

Complaints. Any person who believes himself or any specific class of persons to be subjected to prohibited discrimination may by himself or by a representative file with the Secretary a written complaint. 49 C.F.R. § 21.11(b).

Investigations. The Secretary will make a prompt investigation **whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply.** 49 C.F.R. § 21.11(c).

CONDUCTING REVIEWS

What's the difference between investigations and reviews?

Investigations	Suspected Violations in the Absence of a Complaint	Periodic Reviews
<p>49 C.F.R. § 21.11(c)</p> <p>"... whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply..."</p>	<p>e.g., newspaper articles, interviews, reports by advocacy groups, or other information</p>	<p>49 C.F.R. § 21.11(a).</p> <p><i>"from time to time...review the practices of recipients"</i></p>

CONDUCTING REVIEWS

What's the difference between investigations and reviews?

Answer: not much

Reasons For Investigations

- Person or Group Complains
- Suspected Violations

Reasons For Compliance Reviews

- Agency Required To Conduct Pre-award and Post-award Compliance Reviews by Regulations
- Suspected Violations
- Consolidation of Individuals Complaints

CONDUCTING REVIEWS



Review Techniques – two questions to answer for your orchestra:

1. Is everyone reading the right music?
2. Is everyone playing the music well?

CONDUCTING REVIEWS

1. Is everyone reading the right music?

Desk Audit

Collection and review of documentary material, including manuals, SOPs, and training materials – whether public or not.

[What do we say we do?]

2. Is everyone playing the music well?

“Field” Audit

Collection and review of real-world implementation materials from executed projects and programs.

[What do we actually do?]

CONDUCTING REVIEWS

Example Review Analysis Methods:

1. **Threshold or Representation analysis** compares demographics to actual distribution of benefit/burden (e.g. project alternative route selection)
2. **Barrier analysis** to test whether practices have a disproportionate, adverse impact, acting as a barrier to participation (e.g. venue for public meetings).
3. **Selection analysis** to determine whether the selection rate for one demographic group of beneficiaries is lower than other groups (e.g. selection of consultants).

CONDUCTING REVIEWS – HYPOTHETICAL 1

Hypothetical:

An consultant appraiser approaches a State DOT Right of Way employee at a conference with concerns that she is on the “on call” list for an LPA but has never received a contract. She does not wish to file a complaint, but wanted to voice her concerns.

CONDUCTING REVIEWS – HYPOTHETICAL 1

1. Collect What Data and Information?

- On Call list, selectees over 12 months, demographic data
- Policies and procedures

2. What kind of analysis?

- Practical Significance test for Disparate Impact

3. What follow up actions?

- Create plan to change policies or procedures

CONDUCTING REVIEWS – HYPOTHETICAL 2

Hypothetical:

State DOT released a draft Environmental Impact Statement for Project X. Some African-American residents in the Project study area contacted the State to say they had no idea the project was happening and had no opportunity to offer comments or receive information.

CONDUCTING REVIEWS – HYPOTHETICAL 2

1. Data Collection:

- American Community Survey (ACS) or Decennial Census data of neighborhood and project area
- Survey form information from public meeting attendees

2. Information collection:

- Public Involvement Plan (PIP)
- Actual media outreach and community dissemination
- Interviews with staff

CONDUCTING REVIEWS – WRAP UP

How to get started?

Create a review plan with

- Your purpose and objectives: questions to answer.
- Relevant legal bases.
- Scope of review: timeframes, documentation needed, projects.
- Likely interviewees.

1. Gather data and information.
2. Draft a written report with potential recommendations.
3. Follow up on recommendations.