

SUBJECT: THE U.S. DEPARTMENT OF TRANSPORTATION TITLE VI PROGRAM

CHAPTER I – GENERAL

1. PURPOSE

The U.S. Department of Transportation (Department or DOT) distributes substantial Federal financial assistance (FFA) each year for thousands of projects, programs, and activities (projects)¹ operated or initiated by diverse entities, including but not limited to State and local governments. Federal law requires that all entities receiving this FFA ensure nondiscrimination, including equal access to these programs. Specifically, Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d et seq., and DOT Title VI regulations at 49 C.F.R. Part 21, are designed to provide equal opportunity and access in all programs receiving FFA from DOT, by ensuring nondiscrimination on the basis of race, color, or national origin (including limited English proficiency). Equal opportunity connects all people and communities to transportation programs that receive FFA from DOT.

This Order’s overriding objective is to ensure all DOT assisted programs are implemented in compliance with Title VI so that all members of the public enjoy equality of opportunity, regardless of race, color, or national origin (including limited English proficiency).

This Order provides policy direction, practices, and standards to Operating Administrations (OAs)² for establishing and maintaining an enforcement program that ensures Title VI compliance. Additionally, the Order delineates the roles and responsibilities of OAs with respect to overseeing and implementing Title VI, as well as the roles and responsibilities of the Departmental Office of Civil Rights (DOCR) and the Office of the General Counsel (OGC).

2. IMPLEMENTATION

This Order cancels and supersedes DOT Order 1000.12B, dated November 1, 2019, “The Department of Transportation Title VI Program.”

3. AUTHORITY

This Order is issued pursuant to:

- a. Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq.
- b. 49 C.F.R. Part 21

¹ When this Order refers to entities defined in the Civil Rights Restoration Act (CRRA), 42 U.S.C. § 2000d-4a, and is not referring to a DOT grant program, a proposed project, or a specific funded project, the statutory terms “program” or “program or activity” are used to refer to the operations of those entities.

² As defined in the definitions under Section 8 of this Order, the term “Operating Administration” includes both Departmental Offices and Operating Administrations.

- c. Civil Rights Restoration Act of 1987
- d. Executive Order 12250, Leadership and Coordination of Nondiscrimination Laws (November 2, 1980)
- e. 28 C.F.R. Part 42, Subpart F
- f. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (February 11, 1994)
- g. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency (August 11, 2000)
- h. Executive Order 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (January 20, 2021)
- i. Executive Order 14008, Tackling the Climate Crisis at Home and Abroad (February 1, 2021)

4. BACKGROUND

The original DOT Title VI Order was issued in 1977. Since then, DOT’s role in transportation related programs has evolved and grown. Therefore, this Order includes practices and procedures that reflect the development of DOT’s role and will strengthen each OA’s Title VI implementation, and ensure without limitation:

- a. The benefits and services of DOT supported or assisted programs are made available to and are fairly and equitably distributed among beneficiaries without regard to race, color, or national origin (including limited English proficiency);
- b. The location of existing or proposed projects, facilities, or programs and the provision of services involved in the program will not deny access to any person on the basis of race, color, or national origin (including limited English proficiency) and will not further patterns of racial or ethnic segregation; and
- c. The programs do not have a disparate impact on persons or communities on the basis of race, color, or national origin (including limited English proficiency).

5. APPLICABILITY AND SCOPE

This Order applies to all OAs that provide Federal financial assistance authorized under a law administered by DOT, as defined in 49 C.F.R. Part 21. This Order establishes minimum responsibilities of each OA in implementing and enforcing Title VI, a mandate that no person in the United States shall, on the ground of race, color, or national origin (including limited English proficiency), be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program receiving Federal financial assistance from this Department. DOCR has the primary oversight responsibility for ensuring DOT’s civil rights compliance. In addition, this Order emphasizes the responsibility of each OA to affirmatively enforce Title VI in its programs and the “One DOT” commitment to carrying out DOT’s civil rights mission.

Nothing in this Order shall diminish or abrogate the requirements of any DOT regulation, order, or directive established to provide protections against discrimination pursuant to Federal law, to the extent that such requirements are more stringent or contain higher standards. Furthermore, OAs are

not restricted from implementing more stringent Title VI requirements than those specified in this Order, consistent with existing Title VI regulations and other applicable legal authorities.

6. POLICY AND PROCEDURES

Each OA administering Federal financial assistance shall take all measures necessary, consistent with existing law, for their applicants and recipients to implement policies and procedures that effectuate Title VI. OAs shall engage in the notice-and-comment process, as appropriate, to implement the requirements of this Order. During the pendency of such process, OAs shall issue interim guidance.

This Order recognizes the differences in how each OA is structured and allocates Federal financial assistance. Each OA shall tailor its Title VI program, as necessary, to ensure its applicants and recipients fully comply with Title VI. In doing so, an OA should consider, but is not limited to considering, such factors as the size of the Federal financial assistance award, the size and capacity of an applicant or recipient, the potential number of people impacted, and the resources available to applicants and recipients.

DOCR will provide to each OA the technical assistance, education, and training it deems necessary to effectuate Title VI compliance.

7. COORDINATION

- a. In some instances, more than one OA may have jurisdiction over an applicant, recipient, or program. The OAs, working closely with DOCR, shall coordinate their enforcement and compliance efforts to the maximum extent possible, in order to reduce duplication, promote consistency, and build programmatic relationships. DOCR and the OAs should jointly determine the course of action for enforcement and compliance, and not leave the identification of jurisdictional issues solely to the discretion of the applicant and/or recipient.
- b. When concurrent obligations may exist between applicants and/or recipients subject to Title VI, OAs are encouraged to develop practices that promote collaboration and cooperation in pursuing enforcement and compliance efforts.

This Order recognizes that Title VI intersects with other Federal requirements applicable to Federally-funded programs, including but not limited to the National Environmental Policy Act (NEPA), Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, and DOT Order, *Department of Transportation Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*. It is critical to recognize that Title VI imposes statutory and regulatory requirements that are distinct from other obligations. In setting forth Title VI requirements to its applicants and recipients, the OAs shall reconcile the intersectional but distinctive obligations, to the extent possible, to provide applicants and recipients with assistance necessary to ensure compliance with all statutory and regulatory requirements. Ultimately, each OA shall have responsibility for ensuring enforcement and compliance with Title VI, separate and apart from obligations under any other authority.

8. DEFINITIONS

- a. “Affected Community” means that person or persons served or likely to be directly or indirectly impacted by a program receiving Federal financial assistance from the Department.
- b. “Applicant” means a person or entity who submits an application, request, or plan required to be approved by the Secretary, or by a primary recipient, as a condition to eligibility for Federal financial assistance.
- c. “Compliance” means the condition that exists when a recipient of Federal financial assistance has fully implemented all Title VI requirements and there is no evidence of discrimination.
- d. “Director” means the Director of the Departmental Office of Civil Rights (DOCR).
- e. “Discrimination” refers to any action or inaction, whether intentional or unintentional, in any program of a recipient of Federal financial assistance that results in disparate treatment (including retaliation under 49 C.F.R. § 21.11(e)), disparate impact, or perpetuating the effects of prior discrimination based on race, color, or national origin (including limited English proficiency). (See 49 C.F.R. §21.5)
- f. “Disparate impact” refers to a facially neutral policy or practice that disproportionately affects members of a group identified by race, color, or national origin (including limited English proficiency), where the recipient’s policy or practice lacks a substantial legitimate justification or where there exists one or more alternatives that would serve the same legitimate objectives but with less disproportionate effect on the basis of race, color, or national origin (including limited English proficiency).
- g. “Federal financial assistance” or “FFA” includes:
 - (1) Grants and loans of Federal funds;
 - (2) The grant or donation of Federal property and interests in property;
 - (3) The detail of Federal personnel;
 - (4) The sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration, or at a nominal consideration, or at a consideration that is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient; and
 - (5) Any Federal agreement, arrangement, or other contract that has as one of its purposes the provision of assistance.

- h. “Noncompliance” means a failure to meet the requirements of Title VI and the regulations and compliance requests (such as enforcement orders) of the Department issued thereunder.
- i. “Operating Administration” (OA) means the Department’s operating administrations and the Departmental offices in the Office of the Secretary (OST).
- j. “Recipient” may mean any State, territory, possession, the District of Columbia, or Puerto Rico, or any political subdivision thereof, or instrumentality thereof, any public or private agency, institution, or organization, or other entity, or any individual, in any State, territory, possession, the District of Columbia, or Puerto Rico, to whom Federal financial assistance is extended, directly or through another recipient, including any successor, assignee, or transferee thereof, but such term does not include any ultimate beneficiary.
- k. “Title VI program” means the system of requirements, procedures, actions, and sanctions through which the Department affirmatively enforces Title VI and the regulations effectuating it and ensures that discrimination does not occur in connection with programs or activities that receive Federal financial assistance from this Department.
- l. Other terms used in this Order shall have the meaning as defined by statute, regulation, Executive Order, and Federal case law.

9. RESPONSIBILITIES

- a. DOCR is the Department’s “Title VI Coordinator”³ and serves as principal advisor to the Secretary and Deputy Secretary on civil rights statutes and regulations applicable to the Department. *See* 49 C.F.R. § 1.40-41. DOCR is responsible for ensuring Departmental compliance with all civil rights programs, including reviewing and evaluating the OAs’ enforcement of civil rights laws, regulations, and Executive Orders. DOCR acts as the lead office for the Department’s Title VI enforcement, including oversight and guidance for the OAs on complaints, investigations, and resolutions, and responding to policy questions on behalf of the Secretary. DOCR has the responsibility to:
 - (1) Prepare Departmental regulations and issue guidance and program directives to enforce Title VI.
 - (2) Develop, recommend, disseminate, monitor, and enforce Title VI Departmental policies and assist the OAs in establishing and implementing affirmative Title VI programs, policies, and procedures.
 - (3) Review, evaluate, and monitor OA programs relating to Title VI to ensure consistency and program effectiveness, including identifying OA processes for Title VI enforcement and conducting Title VI program evaluation analyses.

³ See 49 C.F.R. § 1.40.

- (4) Monitor compliance with the standard DOT Title VI Assurances and Non-Discrimination Provisions, including the review of any alterations or addenda to the Assurances and Appendices by the OAs.
 - (5) Provide leadership, guidance, training, education, technical assistance, resources, and support to the OAs in executing their Title VI responsibilities.
 - (6) Ensure that all complaints alleging Title VI noncompliance are processed, investigated, and resolved according to the applicable External Civil Rights Complaint Processing Manual.
 - (7) Ensure that each OA, acting through its Office of Civil Rights, appropriately and timely resolves all findings of Title VI noncompliance through informal means whenever possible. If compliance cannot be achieved by informal means, then the OA shall initiate actions to achieve compliance in accordance with 49 C.F.R. § 21.13, 28 C.F.R. § 42.411, and the U.S. Department of Justice (DOJ), DOJ Title VI Legal Manual, Part III.B. at 6 (2017).
 - (8) Coordinate and act as a liaison with other Federal agencies and offices (including different OA offices), and other public and private organizations outside the Department, in coordination with the Office of the General Counsel, to achieve program objectives.
 - (9) Disseminate information and provide meaningful education and training for the public concerning the Department's Title VI program, including, in appropriate situations, the provision of material in languages other than English.
- b. Office of the General Counsel (OGC) is legal advisor to the Secretary and final authority within the Department on questions of law. OGC provides legal advice, support and guidance to DOOCR on its responsibilities under Section 9.a. above, including the interpretation, implementation, and agency enforcement of Title VI, and all actions involving findings of deficiencies that could result in funding terminations or referrals to DOJ for enforcement. OGC will coordinate with the OA Offices of Chief Counsel, as needed, as the Offices provide legal advice, support and guidance to the OAs on responsibilities under Section 9.c below.
- c. Operating Administrations (OAs): Each OA authorized to extend Federal financial assistance, consistent with the DOT Title VI regulations at 49 C.F.R. Part 21 and the Title VI Coordination regulations at 28 C.F.R. § 42, subpart F, shall implement the Title VI Order and issue guidance in accordance with the Order. While each OA's Office of Civil Rights shall provide leadership on the implementation, responsibility for Title VI obligations lies with the entire OA.
- (1) Each OA shall, in administering its Title VI program, identify and examine the programs and activities to which it provides Federal financial assistance, while also assessing its recipients' other activities and structures, to establish guidance, procedures, and requirements that ensure an affirmative and comprehensive Title VI program.

- (2) Recognizing different organizational structures and responsibilities, each OA will collaborate with DOCR to develop and issue specific guidance and training to appropriate OA staff to integrate Title VI into its programmatic functions.
- (3) Each OA shall:
 - (i) Include the required Standard DOT Title VI Assurances, consistent with DOT Order 1050.2A, which outline all race, color, and national origin (including limited English proficiency) nondiscrimination statutory and regulatory authorities to which applicants are subject and with which they shall comply. This document shall include general assurances of compliance with nondiscrimination authorities, as well as any specific assurances the OA deems necessary to ensure an applicant's compliance in all financially assisted activities;
 - (ii) Ensure that appropriate staff with expertise fully implement and ensure compliance with its Title VI program, including conducting investigations of complaints, desk audits, compliance reviews, and other activities to vigorously enforce Title VI;
 - (iii) Within 120 days from the date of this Order, develop and submit to DOCR for approval:
 - 1. The structure, administration, and initial implementation plan for the OA's Title VI program, in accordance with this Order and Title VI coordination regulations at 28 C.F.R. Part 42, Subpart F, relating to each type of FFA that the OA administers; and
 - 2. Draft guidance and/or instruction for requiring all applicants and recipients to take actions necessary to implement the Title VI program.

If an OA has existing standards or guidance that meets this provision, it should be reviewed and updated, if necessary, before being submitted to DOCR for approval.

- (iv) In conjunction with DOCR, develop and conduct periodic training for appropriate staff involved in the development and execution of federally assisted programs and activities, to ensure that staff can effectively determine whether applicants for, or recipients of, Federal financial assistance are complying with Title VI.

CHAPTER II – TITLE VI COMPLIANCE AND ENFORCEMENT STRATEGIES

1. GENERAL

It is the policy of the Department to award and to continue to provide Federal financial assistance only to those applicants and recipients who comply fully with all Title VI requirements. Each OA is responsible for effectively monitoring the performance of each applicant and recipient, to ensure full compliance with Title VI. See 49 C.F.R. Part 21, 28 C.F.R. § 42.406 (Data and information collection), 28 C.F.R. § 42.407(b) (Application review), and 28 C.F.R. § 42.407(c) (Post-approval review).

2. PRE-AWARD REVIEW: TITLE VI ASSESSMENT

During the Pre-Award Review period, each OA must conduct a Title VI Assessment of each applicant for Federal financial assistance. The Title VI Assessment shall be used to determine that the applicant will not use Federal financial assistance to discriminate on the basis of race, color, or national origin (including limited English proficiency). The OA shall not award the Federal financial assistance until the Title VI Assessment is complete and the applicant signs the DOT Title VI Assurance. A current Title VI Plan on file with the OA, as described in (and in accordance with) Chapter II, Section 3, below, may be sufficient to meet the Assessment requirement when an applicant is seeking continuing FFA, so long as the plan is no more than three years old.

Each OA is responsible for notifying applicants that they will undergo a Title VI Assessment, and for collecting from applicants the information necessary to conduct the Title VI Assessment. As part of its Title VI program, each OA shall prepare or update, if necessary, application guidelines that set forth in detail the specific information that must be included in applications to meet the Title VI Assessment requirement prior to the award of Federal financial assistance. DOCR will review these guidelines and may approve, disapprove, or amend them. Each applicant for Federal financial assistance will be provided a copy of these guidelines, with the directive that the Title VI Assessment is part of the application. The OA may tailor these guidelines, considering such factors as the size of the Federal financial assistance award, the size and capacity of an applicant, the potential number of people impacted, and the resources available to an applicant. The OA should assess the following information to determine whether an applicant addresses Title VI in the proposed project that will receive the Federal financial assistance:

- a. Information about the following, including demographic information regarding race, color, national origin, and limited English proficiency of:
 - (1) The affected community;
 - (2) The communities potentially eligible to be served by the proposed project;
 - (3) The communities likely to be benefited or burdened by the proposed project;
 - (4) Where applicable, the owners of property to be taken, and persons or businesses to be displaced, relocated, or adversely affected, as a result of the proposed project currently and/or at some foreseeable time in the future; and

- (5) Where applicable, the present or proposed membership of any planning or advisory body which is an integral part of the program or activity.⁴
- b. Where applicable, the proposed location, and alternative locations, of any facilities to be constructed or used in connection with the proposed project, together with data concerning the composition by race, color, or national origin (including limited English proficiency) of the affected communities surrounding such facilities.
- c. Whether the proposed project will have a disparate impact on the basis of race, color, or national origin (including limited English proficiency). Where a disparate impact is found, OAs shall ensure that mitigation measures are taken and documented to eliminate or minimize the disparate impact. Where a disparate impact cannot be eliminated, OAs shall ensure that the activity will only be undertaken if a substantial legitimate justification for the action exists and is documented and that the activity is the least discriminatory alternative. OAs should encourage each applicant to consider the following factors in determining the impact of the proposed project:
 - (1) To what extent does the applicant demonstrate that the proposed project expands opportunity;
 - (2) If persons or businesses are to be displaced, relocated, or adversely affected, will the displacement be equitably shared by the affected communities;
 - (3) The historical background of the project over time, including its design, construction, and/or modification;
 - (4) Any related preexisting disadvantages impacting the affected community, and any action taken by the applicant or others to alleviate these disadvantages;
 - (5) An analysis of the comparative negative impacts of alternative approaches; and
 - (6) To what extent does the applicant demonstrate that the proposed project has accounted for community input.
- d. Whether the applicant has notified the OA of:
 - (1) Any external lawsuits, investigations, or complaints alleging discrimination on the basis of race, color, or national origin (including limited English proficiency) filed against the applicant or any of its proposed subrecipients within five years of the date of the application, together with an explanation of the status or outcome of each matter;

⁴ The statutory term (i.e., program or activity) is appropriate because the regulatory requirement is intended to apply to the entire CRRA-defined agency. When DOJ amended agency Title VI regulations to incorporate the CRRA definition of “program” and “program or activity,” it kept the broader concept in existing 49 C.F.R. § 21.5(b)(1)(vii) governing planning commissions.

- (2) Any pending application by the applicant or any of its proposed subrecipients for Federal financial assistance to any Federal agency; and
 - (3) Any civil rights compliance review performed or being performed on the applicant or any of its proposed subrecipients by any State, local, or Federal agency within five years of the date of the application, together with a statement of the status or outcome of such review.
- e. Whether the applicant has implemented a plan to conduct Community Participation as outlined in Chapter II, Section 4.

If the OA determines that it needs more information to complete the Title VI Assessment and determine probable compliance,⁵ it shall require that the applicant provide such information to make a determination within 60 days of the request. Failure by the applicant to provide such information in a timely fashion shall be a consideration in the determination of probable noncompliance.⁶

3. FORMULA OR CONTINUING FUNDING PROGRAMS: TITLE VI PLAN

Each OA providing formula or continuing Federal financial assistance shall require that each recipient develop and adopt a Title VI Plan that outlines the recipient's measures to ensure compliance with Title VI, consistent with the DOT Title VI regulation at 49 C.F.R. Part 21, and the Title VI Coordination regulations at 28 C.F.R. § 42, subpart F. Each OA may tailor the content included in the recipient's Title VI Plan, and will notify the recipient which specific projects are covered by these requirements, after considering such factors as the size of the Federal financial assistance award, the size and capacity of a recipient, the potential number of people impacted, and the resources available to a recipient. A current Title VI Plan on file with the OA may be sufficient under this Section 3 so long as the Plan is no more than three years old. The OA should establish requirements for a recipient to include the following information in its Title VI Plan:

- a. Information about the following, including demographic information regarding race, color, national origin, and limited English proficiency of:
 - (1) The affected community;
 - (2) The communities potentially eligible to be served by the program or activity;

⁵ Pursuant to Chapter I, Section 6, each OA shall tailor its Title VI program, as necessary, to ensure its applicants and recipients fully comply with Title VI. The determination of probable compliance under Chapter II, Section 2 is an example of a situation where the exercise of such authority is contemplated. For instance, when an applicant is applying for FFA for a specific project that has been identified, that applicant (i) will need to provide all information in Chapter II, Section 2.a.-c. that is reasonably available at the time of application, (ii) shall "set forth what efforts it has made to obtain the information" (49 C.F.R. § 21.9(c)), and (iii) may supplement any missing information to the OA as it becomes available. In a similar but different scenario, however, when an applicant is applying for FFA in the form of a block grant, or another similar form of FFA, the applicant (i) "shall set forth what efforts it has made to obtain the information" (49 C.F.R. § 21.9(c)) in Chapter II, Section 2.a.-c., and (ii) may be required to provide the information as soon as the specific program or activity or project is identified and that information is reasonably available, which may be after the award of Federal financial assistance. Please note that such situations, and other similar ones involving OA implementation of its Title VI program, can also be addressed and managed through an OA's own Title VI order (that is in accordance with this Order).

⁶ See 49 C.F.R. § 21.13 for additional background on DOT procedures for effecting compliance under Title VI.

- (3) The communities likely to be benefited or burdened by the program or activity;
 - (4) Where applicable, the owners of property to be taken, and persons or businesses to be displaced, relocated, or adversely affected, as a result of the program or activity currently and/or at some foreseeable time in the future; and
 - (5) Where applicable, the present or proposed membership of any planning or advisory body which is an integral part of the program or activity.
- b. Where applicable, the proposed location and alternative locations of any facilities to be constructed or used in connection with the program or activity, together with data concerning the composition by race, color, or national origin (including limited English proficiency) of the affected communities surrounding such facilities.
- c. Whether the program or activity will have a disparate impact on the basis of race, color, or national origin (including limited English proficiency). Where a disparate impact is found, OAs shall ensure that mitigation measures are taken and documented to eliminate or minimize the disparity. Where a disparate impact cannot be eliminated, OAs shall ensure that the activity will only be undertaken if a substantial legitimate justification for the activity exists and is documented and that it is the least discriminatory alternative. OAs should encourage each recipient to consider the following factors in determining the impact of the program or activity:
- (1) To what extent does the program or activity expand opportunity;
 - (2) If persons or businesses are to be displaced, relocated or adversely affected, whether the displacement will be equitably shared by the affected communities;
 - (3) The historical background of the program or activity over time, including its design, construction and/or modification;
 - (4) Any related preexisting disadvantages impacting the affected community, and any action taken by the recipient or others to alleviate these disadvantages; and
 - (5) An analysis of the comparative negative impacts of alternative approaches.
- d. A description of how the recipient will notify beneficiaries of protections provided by Title VI, per 49 C.F.R. § 21.9(d), including:
- a. A Title VI nondiscrimination statement; and
 - b. A description of procedures that members of the public should follow to file a Title VI complaint against the recipient.
- e. Whether the recipient has notified the OA of:

- (1) Any Title VI lawsuits, investigations, or complaints against the recipient or any of its subrecipients within five years of the date of the application, or since the last Title VI program submission, together with an explanation of the status or outcome of each such enforcement activity;
 - (2) Any pending application by the recipient or any of its subrecipients for Federal financial assistance to any Federal agency; and
 - (3) Any civil rights compliance review performed or being performed on the recipient or any of its subrecipients by any State, local or Federal agency within five years of the date of the application, or since the last Title VI program submission, together with a statement of the status or outcome of such review.
- f. Whether the recipient has implemented a plan to conduct community participation as outlined in Chapter II, Section 4 below.

If the OA determines that it needs more information to complete its Title VI Plan review and determine compliance, it shall require that the recipient shall provide such information within 60 days of the request. Failure by the recipient to provide such information in a timely fashion shall be a consideration in the determination of noncompliance.

4. COMMUNITY PARTICIPATION PLAN

Within eight months of the effective date of this Order, (i) each OA shall develop comprehensive community participation requirements (Community Participation Plan) that applicants and recipients⁷ must satisfy as a condition of receiving an award of Federal financial assistance, consistent with the DOT Title VI regulation at 49 C.F.R. Part 21, and the Title VI Coordination regulations at 28 C.F.R. Part § 42, and (ii) all OA Community Participation Plan requirements and a plan for recipient distribution shall be provided to DOCR for review and evaluation. The goal of the Community Participation Plan requirement is to facilitate full compliance with Title VI by requiring meaningful public participation and engagement to ensure that applicants and recipients are adequately informed about how programs or activities will potentially impact affected communities, and to ensure that diverse views are heard and considered throughout all stages of the consultation, planning, and decision-making process. To the extent an OA already requires applicants and recipients to prepare a public participation plan as part of planning or other requirements, the OA may utilize such plans to satisfy the requirements of this Section 4 so long as the plan incorporates the Title VI requirements as provided in this Section 4.

Each OA is responsible for determining how best to apply and scale the Community Participation Plan requirements for its applicants and recipients. An OA should consider, but is not limited to considering, such factors as the size of the Federal financial assistance award, the size and capacity of an applicant or recipient, the potential number of people impacted, and the resources available to applicants and recipients. While individual Community Participation Plan requirements may differ, depending on the considerations and determinations made by each OA, the following are effective

⁷ Sub-recipients may satisfy the requirements under this Section 4 through adopting Community Participation Plan practices of the primary recipient. The primary recipient would in turn certify and assure compliance thereunder to the respective OA.

practices that ensure proactive public engagement and should be included in OA Community Participation Plan requirements, as applicable and to the greatest extent possible:

- a. **Goals and Objectives:** Community Participation goals should be stated, including a description of the proactive strategies, procedures, and desired outcomes. These requirements should advise applicants and recipients to specify at which points in the planning process or ongoing programming they will solicit and secure participation and input from affected communities and how the community responses will be addressed and incorporated into planning and decision-making.
- b. **Identification of Affected Communities:** The affected and potentially affected communities should be identified and engaged, with particular emphasis on racial and ethnic minority communities, including limited English proficient populations, as well as other constituencies historically underserved by transportation programs, such as low-income populations, and others.
- c. **Focused Outreach:** Measures should be included to engage in focused and direct outreach with numerous key stakeholders, advocacy groups, community-based organizations, or other representatives of the affected or potentially affected communities.
- d. **Meaningful Education:** Measures should be implemented to disseminate information and provide education—in clear, plain, and accessible language, including in languages other than English—to affected communities.
- e. **Diverse Communications:** Diverse communication platforms should be utilized to reach the broadest audience, and which shall highlight Title VI obligations and provide OA contact information for the public to share concerns regarding the existing or proposed project receiving Federal financial assistance.
- f. **Comprehensive Engagement:** Inclusive approaches should be utilized to solicit and maximize participation by representatives or members of affected or potentially affected communities in meaningful and robust engagement.
- g. **Meaningful Participation:** Community Participation Plan requirements should be designed to assist applicants and recipients in obtaining meaningful public participation through receipt, documentation, and recording of comments, views, input, and other feedback.

- h. **Accessibility:** Public engagement measures should be, to the maximum extent practicable, free of linguistic, cultural, economic, and historical barriers that impede or prevent effective public participation in the decision-making process. The Community Participation Plan shall ensure full access for persons with limited English proficiency, including with respect to communications, materials, and facilities. The OA may require that applicants and recipients submit a detailed plan for providing language assistance services, both interpretation and translation, to persons with limited English proficiency, consistent with Title VI, Title VI regulations, and the 2005 DOT Limited English Proficiency Policy Guidance, including information on how the applicant or recipient will determine the scope of language assistance services that must be provided to ensure compliance.
- i. **Reported Outcomes:** Applicants and recipients should summarize their compliance with the Community Participation Plan requirements in a narrative statement describing (1) the steps taken to produce meaningful engagement with affected communities, (2) the results of those efforts, and (3) how the affected communities' comments and views are or will be incorporated into the decision-making process. If a decision is made about an existing or proposed project receiving Federal financial assistance, the applicant or recipient shall notify the affected communities of that decision and the underlying reasons, including whether alternatives existed, the substance of such alternatives, and the reasons for their rejection. This notification shall be made using effective communications and in language(s) other than English, consistent with Title VI.
- j. **Recordkeeping:** Applicants and recipients should maintain and make available to the public upon request, the full record of their engagement, including demographics of the attendees at events, comments from affected communities. The narrative record shall be included in the applicant's Title VI Assessment and recipient's Title VI Plan submitted to the OA, in accordance with Chapter II of this Order.

5. **TITLE VI COMPLAINT OR POSSIBLE VIOLATIONS INVESTIGATION PROCEDURES**

- a. **Title VI Investigation:** Each OA shall follow the External Civil Rights Complaint Processing Manual for all Title VI complaints received and all investigations initiated at the OA's discretion based on other indicators of possible noncompliance with Title VI.
- b. **Notification of the Assistant Attorney General:** The Director, with the prompt prior concurrence of OGC, shall promptly notify the Assistant Attorney General for Civil Rights at the U.S. Department of Justice of every finding of noncompliance resulting from an investigation or compliance review.

6. OA COMPLIANCE REVIEWS

Compliance reviews, consistent with the DOT Title VI regulations at 49 C.F.R. Part 21, are an essential means of affirmatively ensuring enforcement of Title VI. Compliance reviews can be accompanied by the OA's ongoing engagement with recipients in order to collaboratively identify and resolve Title VI-related concerns through technical assistance, education, and training. As with other components of this Order, coordination between and among OAs should be considered, where appropriate.

- a. **Compliance Procedures:** Compliance reviews shall be conducted by the OA Office of Civil Rights, with assistance from DOOCR as necessary, to determine a recipient's Title VI compliance. To the extent an OA already conducts compliance reviews, the OA may utilize such compliance reviews to satisfy the requirements of this Section 6 so long as the compliance review incorporates the Title VI requirements as provided in this Section 6.
- b. **Criteria:** OAs may use any combination of the following factors for selecting recipients for compliance reviews:
 - (1) Consideration of the size of the recipient, the demographic diversity of its beneficiaries, and the period of time since a recipient's last review;
 - (2) Consideration of the number of all Title VI lawsuits, complaints, or investigations filed against the recipient;
 - (3) A recipient submitting an incomplete or insufficient Title VI Plan;
 - (4) Title VI findings or recommendations resulting from prior technical assistance, reviews, or investigations that have not been sufficiently resolved or implemented;
 - (5) Pre-existing disadvantages resulting from prior discriminatory practices that have not been fully ameliorated; and
 - (6) Other information indicating a possible failure to comply with Title VI.
- c. **Scope:** Compliance reviews will assess the following information:
 - (1) The recipient's documented efforts to meet the Title VI requirements (including the Community Participation Plan) and guidance issued by the OA; and
 - (2) Other information that is necessary to determine that the recipient is complying with Title VI.
- d. **Results of Compliance Review:** The OA shall summarize the compliance review's findings and prepare a compliance report. For findings of disparate impact discrimination, reviews of recipients with an active complaint alleging disparate impact or a history of complaints or violations, or at the request of DOOCR, the OA will provide the draft compliance report to DOOCR for comment. DOOCR will provide comment

within two weeks of receipt of the draft, or otherwise forgo the opportunity to comment. If DOCR comments, the OA will revise the final draft as necessary and then transmit the finalized compliance report to the recipient, with a copy to DOCR. If findings of deficiency exist in the final compliance report, the recipient will be required to take corrective action, develop a timeline for compliance, and report on its progress to the OA on a timely basis. OAs shall update DOCR (with respect to these select compliance reports) on the recipient's progress on a quarterly basis, through data, narrative, or other means. Once an OA determines that the recipient has satisfactorily responded to the compliance review's findings, it shall inform DOCR, which will then confer with the OA on its determination. When DOCR and the OA concur that the recipient has satisfactorily responded to the compliance review's findings, the OA shall inform the recipient that the review process has ended and release the recipient from further reporting based on the compliance review. The OA may follow a compliance review with additional reviews as necessary and inform DOCR of such steps and any outcome.

- e. **Effecting Compliance:** Consistent with DOT's Title VI regulations, if a recipient fails to take appropriate corrective action in response to findings of deficiency in the report, the OA and DOCR, with the prior concurrence of OGC, may initiate proceedings that could result in action taken by DOT to suspend, terminate, or refuse to grant or continue Federal financial assistance to a recipient, or may make a referral to the U.S. Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States or any assurance or other contractual undertaking.



Pete Buttigieg
Secretary of Transportation