



## **NORTH CAROLINA** Department of Transportation



# Title VI Training: NCRPO Association

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October 26, 2017

# Nondiscrimination in the Federal-Aid Program

- Nondiscrimination denotes the **absence** of disparate treatment or impact in Federally-assisted programs and activities.
- The Title VI/Nondiscrimination Program is governed by:
  - Title VI of the Civil Rights Act of 1964
  - The 1987 Civil Rights Restoration Act and
  - Other related Nondiscrimination authorities

# Title VI of the Civil Rights Act of 1964

42 United States Code (U.S.C.) § 2000d

- Title VI is federal law and it states:
  - 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.

# The 1987 Civil Rights Restoration Act

42 U.S.C. § 2000d-4a

- Direct response to Grove City College v. Bell, 465 U.S. 555 (1984)
- Restored the original intent of Title VI to include all programs and activities of Federal-aid recipients and contractors whether federally funded or not
- Local, state- or federally-assisted activities of federal-aid RPO/MPOs

# Federal Authorities cont.

- **Related** Nondiscrimination Authorities include:
  - 1973 Federal-aid Highway Act (**sex**)
  - Age Discrimination Act of 1975 (**age**)
  - Section 504 of the 1973 Rehabilitation Act and Americans with Disabilities Act (ADA) of 1990 (**disability**)
  - Uniform Act of 1970 (**persons displaced or property acquired**)
  - Executive Order 12898 on Environmental Justice (**EJ**)
    - US DOT Order 5610.2a and FHWA Order 6640.23A
  - Executive Order 13166 on Limited English Proficiency (**LEP**)
    - US DOT LEP Guidance
  
- Title VI Implementing Regulations:
  - 49 C.F.R. 21 – US Department of Transportation (DOT) Title VI Regulation
  - 23 C.F.R. 200 – FHWA Title VI Regulation

# What is Discrimination?

- Federal Highway Administration (FHWA):
  - That act (action or inaction), whether intentional or unintentional, through which a person in the United States solely because of **race, color, national origin, sex, age, or disability** is subjected to disparate treatment or impact, in any program or activity **receiving** Federal financial assistance from FHWA.

# Title VI Nondiscrimination Agreement

- Agreement between NCDOT and its sub-recipients, signed by the subrecipient
- Developed by NCDOT, OCR, Title VI Program and provided to business units to execute
- Executed by Transportation Planning Branch (TPB)

# Standard USDOT Title VI Assurances

- Agreement between USDOT and its federal-aid recipients
- Must be signed by the recipient (49 CFR § 21.7)
- Executed by TPB
- Monitored by NCDOT, OCR, Title VI Program
- Failure or refusal to furnish required assurance is grounds for termination, refusal to grant or continue Federal financial assistance (49 C.F.R. § 21.13(b)&(c))
- Includes Nondiscrimination Language for Contracts



# Title VI Program Plan

- Internal regulatory document approved by NCDOT Civil Rights Unit
  - Outlines procedures, strategies, and activities used to facilitate and assure nondiscrimination
  - Assists NCDOT in its oversight of your external civil rights program

# Title VI Plan Components

- Description of Programs and Services
- Policy Statement
- Notice of Nondiscrimination
- Nondiscriminatory Program Administration
- Contract Administration
- Complaint Procedures, Form and Log
- Planning Area Population Characteristics

# Title VI Program Components cont.

- Public Involvement\*\*
- Limited English Proficiency (LEP)\*\*
- Environmental Justice Analyses
- Staff Training
- Board Demographics (Non-Elected)
- Record-Keeping and Reports

# Description of Programs and Services

- Detail the programs and services you provide
- Funding Sources / Tables
- Decision-Making Process
  - Advisory Boards and other committees
  - Periodic Meetings and Voting Procedure
  - Organizational Structure and Staffing
- Title VI Coordinator
  - Essential Duties
  - Change of Coordinator

# Programs and Services cont.

- Subrecipients
  - Do you have subrecipients?
    - RPO member agencies are not subrecipients
    - Member agencies are covered by the RPO's Title VI Plan
    - If a member agency receives federal funding from NCDOT or the federal government, it will need a Title VI Assurance and Title VI Program of its own
    - Member agencies must ensure compliance of contractors they use
    - May not absolve self of Title VI obligations by hiring a contractor to deliver assistance to beneficiaries ([DOJ Title VI Legal Manual](#))
- Contractors
  - Signs a contract with contract provisions
    - Not required to have a signed Assurance or develop a Title VI Program
  - Responsible for complying with Title VI Program of RPO with whom they are contracting

# Policy Statement

- Express commitment to Title VI Nondiscrimination obligation
- Signature of Chief Administrative Officer (CAO)
- Circulate throughout organization and to public
- Post or provide in other languages, when appropriate

# Notice of Nondiscrimination

- Disseminate Title VI Notice
- Report a list of places notice is posted, when requested
- Translate in other languages, when appropriate
- Your subrecipients may use your notice

# Nondiscriminatory Administration

- Acknowledgement Form
  - Distributed annually
- New employees
  - Require to sign acknowledgement form



# Nondiscriminatory Administration cont.

- Title VI Coordinator
  - Authority to administer program
  - Trained to implement the program
  - Member of the Lead Planning Agency (LPA)
  - Compliance Review point of contact

# Nondiscriminatory Administration cont.

- **Noncompliance Sanctions**
  - Nonresponsive or Uncooperative
  - Regulated sanctions for noncompliant recipients
    - Suspension or termination of Federal financial assistance
    - Refusal to grant or continue Federal financial assistance

# Nondiscrimination Language for Contracts

- #2 of the Assurances goes in solicitations, Requests for Proposals, etc.:
  - The **Recipient**, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids 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.
  - **Pre-Award Phase**

# Nondiscrimination Language for Contracts cont.

- **Title VI Assurances cont.**

- Appendices A and E go in every contract or agreement executed by your organization
- Appendices B, C and D, apply to specific types of contracts that deal with property
  - NCDOT has decided to include A, B, C, D and E in every contract and agreement with the heading, *“This section shall apply, as applicable,”* used for Appendices B, C and D
- **Post-Award Phase**

# Discrimination Complaints

- Complaint basis:
  - Race, color, national origin, income level, LEP, sex, age, disability
- Consult with NCDOT ECR to determine jurisdiction
- Investigate or forward to NCDOT, as directed
- NCDOT concurrence on decision

# Planning Area Population Characteristics

- Demographic Data Profiles
- Participant Data (Public Involvement)
  - Voluntary Public Involvement Form
- Contact TPB for assistance

# Public Involvement and Outreach

- Ensure public's understanding of its rights
- Outlines dissemination of information to the public
- Summarizes outreach strategies used to engage the public

# Limited English Proficiency (LEP)

- Safe Harbor Thresholds (*written translation*)
  - 5% or 1,000, whichever is less
  - Speaks English “less than very well”
- Four Factor Analysis (*reasonable steps*)
- Language Assistance Plan



# Environmental Justice

- Requires RPO to **identify and address** disproportionately high and adverse effects to minority and low-income groups

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