

TITLE VI PROGRAM 101



U.S. Department
of Transportation

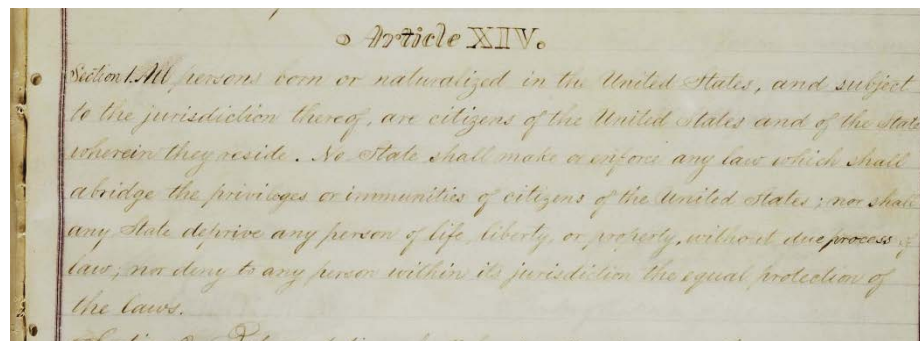
**Federal Highway
Administration**

TITLE VI - INTRODUCTION

What is the law?

“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.”

Title VI of the Civil Rights Act of 1964; 42 U.S.C. § 2000d, et seq.



TITLE VI - INTRODUCTION

What is the law? (cont.)

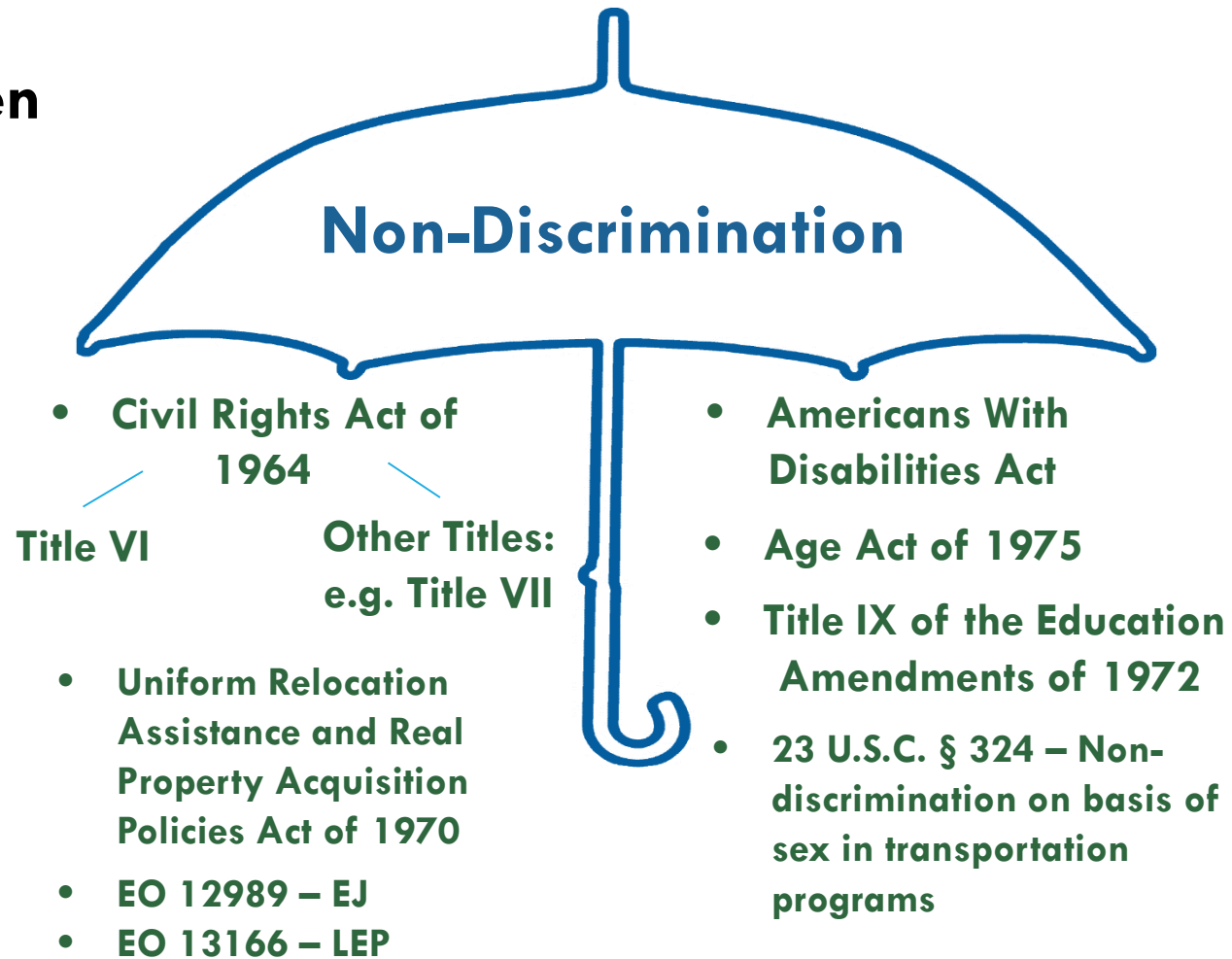
Title VI was model for nondiscrimination laws based on receipt of federal funding, including Title IX of the Education Amendments of 1972 (sex and education) and Section 504 of the Rehabilitation Act of 1973 (disability). **However, each law provides own regulations and requirements and is not interchangeable with Title VI.**

USDOJ coordinates Title VI for all federal agencies. DOJ regulations in 28 C.F.R. Part 42. Guidance in two main documents: The Title VI Legal Manual and the Complaint Investigation Procedures Handbook.

USDOT implemented its Title VI program in 49 C.F.R. Part 21. FHWA's regulations found in 23 C.F.R. Part 200.

TITLE VI - INTRODUCTION

Relationship between Title VI and Other Civil Rights Laws



TITLE VI - INTRODUCTION

What is the law? (cont.)

Civil Rights Restoration Act of 1987

Rejected 1984 Supreme Court holding in *Grove City College v. Bell* (465 US 555)

“Program or activity” means all of the operations—any part of which is extended Federal financial assistance—of:

- a department, agency, special purpose district, or other instrumentality of a State or of a local government; or
- The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local governmental of the operations of any entity” 42 U.S.C. § 2000d-4a(1).

TITLE VI - INTRODUCTION

What is the law? (cont.)

Civil Rights Restoration Act of 1987 – Caveats

1. If city, county, or other local public agency (LPA) receives FHWA financial assistance through State DOT, then entire road and highway transportation program for LPA covered by Title VI, but not activities unrelated to the road and highway program.

For Title VI to apply to LPA's other programs and activities, LPA would need to receive federal financial assistance from another federal agency. E.g. if city receives funding from (1) FHWA for highways and roads and (2) the U.S. Department of Justice for police training, then Title VI would apply to the city's highways and road and police programs and activities.

TITLE VI - INTRODUCTION

What is the law? (cont.)

Civil Rights Restoration Act of 1987 – Caveats

2. However, if an LPA office receives federal financial assistance funds and then distributes it to other internal departments, the receiving office is covered by Title VI as well as the internal departments.

For example, if a city mayor's office distributes FHWA funding to the city's transportation department, then Title VI applies to the mayor's office and the city transportation department.

TITLE VI - INTRODUCTION

What is the case law?

Alexander v. Sandoval, 532
U.S. 275 (2001)

U.S. Supreme Court Held the Title VI statute does not allow for private lawsuits based on **disparate impact**. The private right of action is only for **disparate treatment**.



TITLE VI - INTRODUCTION

What is the case law? (cont.)

Alexander v. Sandoval

However, the Court recognized federal agencies may pass disparate impact regulations, **which are enforceable under administrative law by those agencies.**

Therefore:

- Persons may file complaints with federal agencies against recipients;
- Federal agencies may initiate compliance reviews; and
- Federal agencies may find recipients non-compliant with Title VI, resulting in potential loss of federal funding.

Why is this important? Recipients have used *Sandoval* to argue federal agencies lack authority (jurisdiction) over disparate impact discrimination.

TITLE VI - INTRODUCTION

What is the law? – Excepted Activities

Title VI generally does not apply to:

1. Employment practices, unless the primary purpose of the federal financial assistance is to provide employment. 49 C.F.R. §21.5(c).
2. Activities of the federal government, itself.

“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.”

Title VI of the Civil Rights Act of 1964; 42 U.S.C. § 2000d, et seq.

TITLE VI - BASICS

Who is protected?

Title VI applies to all “persons.” Courts have interpreted the Equal Protection Clause of the Fourteenth Amendment and analogous language in civil rights laws to mean that Title VI protects all persons in the United States.

Applies to direct and indirect effects on those persons.



TITLE VI - BASICS

What is a recipient?

A recipient is an entity that receives financial assistance from a federal agency. The regulations define a recipient as:

“...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.”

TITLE VI - BASICS

What is a recipient? (cont.)

Primary Recipients

Recipient entities that administer a federally-assisted program and are authorized or required to extend federal financial assistance to other recipients. For FHWA, state transportation authorities (STAs) are the most common. **Subject to 49 C.F.R. Part 21 and 23 C.F.R. Part 200.**

Subrecipients

Recipient entities that administer a federally-assisted program and receive federal financial assistance from primary recipients. For FHWA, cities, counties, and MPOs are the most common. **Subject to 49 C.F.R. Part 21.**

TITLE VI - BASICS

Contractors

Private entities under contract with a state, local, or federal entity to perform services or furnish goods. See 2 C.F.R. § 200.330.

Private entities are considered recipients/subrecipients **only if they carry out an inherently governmental function**. E.g. if a firm is awarded a state DOT contract to construct or design a road project, it would not be considered a recipient. However, if a firm carries out policymaking (not merely making recommendations or requesting contract changes), it may be considered a recipient.

TITLE VI - BASICS

Contractors (cont.)

If a contractor is a recipient, then the appropriate Title VI regulations apply.

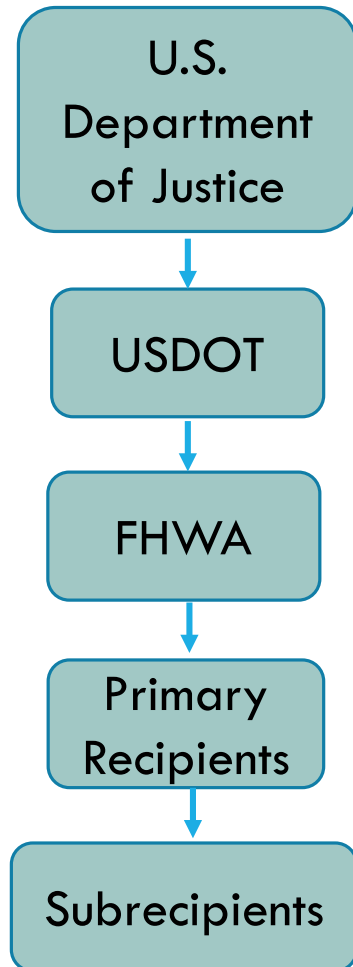
If a contractor is not a recipient, prohibited from discrimination under Title VI through USDOT Order No. 1050.2A. Enforced through contract sanctions by recipients. Also, FHWA may find the recipient in noncompliance if it fails to monitor and enforce Title VI through contract remedies.

Takeaway: most private entities that provide goods and services for FHWA recipients/subrecipients are considered contractors.

Where an entity does not fit squarely into the subrecipient “test,” the federal agency must use its judgment. The regulations stress that the substance of the relationship, rather than the governing instrument (e.g. contract, agreement, etc.) is what matters.

TITLE VI - ROLES AND RESPONSIBILITIES

Coordinating agency for...



...all federal agencies.

...all DOT modes.

...all FHWA recipients.

...all programs and activities, subrecipients and contractors.

...all programs and activities and contractors.

TITLE VI - ROLES AND RESPONSIBILITIES

FHWA – Headquarters Office of Civil Rights

- Provides overall coordination and guidance agency-wide, as well as for the Resource Center, Divisions, and recipients.
- Conducts agency-wide training and coordinates technical assistance.
- Processes and investigates complaints filed against recipients. Issues Letters of Finding.
- Coordinates with Divisions on Title VI reporting from recipients.

TITLE VI - ROLES AND RESPONSIBILITIES

FHWA – Division Offices

- Provide stewardship and oversight for recipients in jurisdiction.
- Approve Implementation Plans and review annual reports.
- Conduct reviews and provide technical assistance
- Coordinate routing of complaints from complainants and recipients.
- Oversee recipient corrective action plans.

State DOTs

- Perform all required actions under 49 C.F.R Part 21 and 23 C.F.R. Part 200.
- Submit annual Plan, assurances, and Report to FHWA Division.
- Conduct internal and external reviews.
- Process Title VI complaints.

TITLE VI - ROLES AND RESPONSIBILITIES

Local Public Agencies

- Perform all required actions under 49 C.F.R Part 21 and conform to the State DOT's Title VI compliance procedures.
- Submit annual assurances and requested data and information.
- Collect demographic data and information.
- Route Title VI complaints as directed by the State DOT.



COMPLAINTS

Where are investigative procedures and standards found?

1. USDOJ Title VI Legal Manual:

<https://www.justice.gov/crt/fcs/T6manual>

2. FHWA Questions and Answers for Complaints Alleging Violations of Title VI of the Civil Rights Act of 1964:

<https://www.fhwa.dot.gov/civilrights/programs/titleviqa.cfm>

3. USDOT Title VI Regulations (49 C.F.R. Part 21)

COMPLAINTS

49 C.F.R. § 21.11 Conduct of investigations.

(b) *Complaints.* Any person who believes himself or any specific class of persons to be subjected to discrimination prohibited by this part may by himself or by a representative file with the Secretary a written complaint. A complaint must be filed not later than 180 days after the date of the alleged discrimination, unless the time for filing is extended by the Secretary.

COMPLAINTS

How are complaints routed?

If a complaint is filed against a STA:

- Refer to FHWA Division or Headquarters (HCR)
- HCR investigates & HCR issues Letter of Finding (LOF)
- Division receives notification & copy of LOF

If a complaint is filed against a STA's subrecipient:

- Refer to FHWA Division or Headquarters
- HCR determines jurisdiction and **may** refer to STA for investigation
- STA sends Report of Investigation to HCR
- HCR writes LOF

COMPLAINTS

What are FHWA's options for processing a complaint?

1. Accept: if complaint filed within 180 days, has sufficient information, and concerns matters under FHWA's jurisdiction, then FHWA sends complainant, respondent, and FHWA Division written acceptance
2. Preliminary Review: if unclear whether complaint alleges prima facie case, then FHWA may (1) dismiss or (2) engage in preliminary review to get additional information
3. Procedural Dismissal: if complaint not filed within 180 days, not in writing, and signed, or has other procedural issues, then FHWA will send complainant, respondent, and FHWA Division written dismissal
4. Referral\Dismissal: if complaint procedurally sufficient but (1) FHWA lacks jurisdiction over legal basis or (2) lacks jurisdiction over the public entity, then FHWA will either dismiss complaint or refer it to agency that does have jurisdiction.

TITLE VI PLAN—PROCEDURES

Where do the requirements come from?

23 CFR §200.9(b)(11): **State Highway Administrations (SHAs)** “shall **annually** submit an **updated** Title VI implementing plan to the Regional Federal Highway Administrator for **approval** or **disapproval**.”

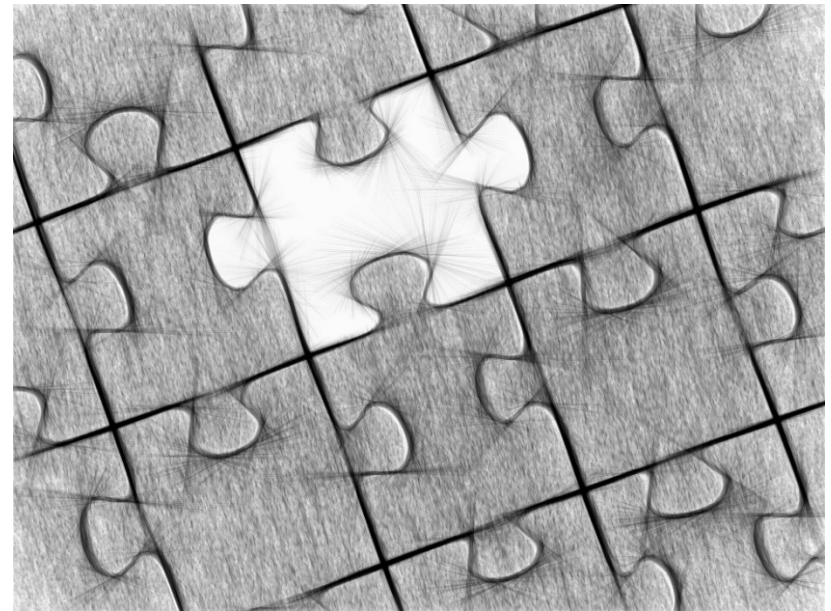
“Annual” means Federal Fiscal Year: SHA submits Plan by **October 1**.

Plan represents policies and procedures for implementation in **next Fiscal Year**: e.g. Plan submitted on **October 1, 2017** is a **Federal Fiscal Year 2018** Plan.

TITLE VI PLAN—FHWA REVIEW

What does FHWA look for?

1. Completeness / Timeliness
 - a. Are all of the 23 CFR 200.9(b) areas covered?
 - b. Is all of the information (e.g. assurances, staff) up-to-date?
 - c. Was the Plan submitted by October 1st for the federal fiscal year?

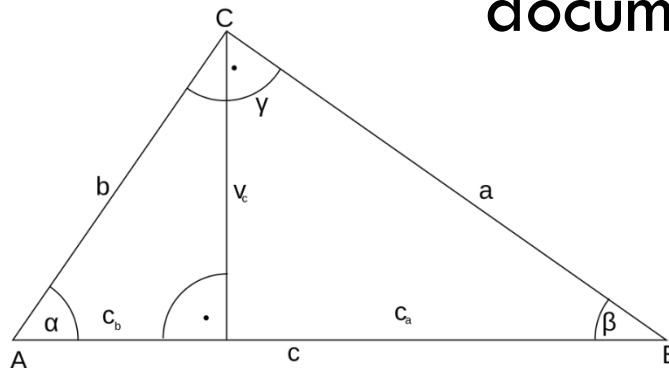


TITLE VI PLAN—PUBLIC CONSIDERATIONS

What does the public need from your Plan?

1. Ease of use

- a. Plain language.
- b. Table of contents.
- c. Glossary.
- d. Points of contact.
- e. Sufficient information in the Plan vs. links to external documents.



TITLE VI PLAN—PUBLIC CONSIDERATIONS

2. Access

- a. Available on public website and prominently displayed?
- b. Available via links from other public documents (manuals, brochures, etc.)?
- c. Vital portions translated into languages other than English following LEP Plan?



TITLE VI PLAN—ELEMENTS

What are the essential elements of a Plan?

1. Standard USDOT Title VI Assurances.
2. Organization & Staffing.
3. Program Area Review Procedures.
4. Sub-recipient Review Procedures.
5. Data Collection.
6. Training.
7. Complaint Procedures.
8. Dissemination of Title VI Information.
9. Limited English Proficiency.
10. Review of STA Directives.
11. Compliance & Enforcement Procedures.

TITLE VI PLAN—ELEMENTS

1) Signed Assurances

Attach the latest Assurances—signed by head of SHA—including Appendices (**USDOT Order 1050.2A, April 2013**).

Signed each year.



23 CFR 200.9(a)(1)

49 CFR 21.7

USDOT Order 1050.2A

TITLE VI PLAN—ELEMENTS

2) Organization & Staffing of Civil Rights Unit

- Include a description of the relationship between the **Civil Rights Unit and the head of SHA.**
- A **description of the Civil Rights Unit** along with an organizational chart.
- Designate an **Agency Title VI Program Coordinator.**
- Outline the **roles and responsibilities** of the Title VI Coordinator, Title VI Specialist/Manager & staff.
- A **delegation of authority and responsibilities** to appropriate Bureau/Division Managers.

TITLE VI PLAN—ELEMENTS

3) Procedures for conducting reviews of program areas

Describe pertinent **program areas** and the Title VI **responsibilities** of each program area and the process for conducting **yearly reviews**. The process should define:

1. The **types** of reviews and their objectives;
2. What **activities** will be reviewed for the program;
3. What **data** will be sought from the program area(s);
4. How the **data obtained** will be analyzed; and
5. How will the review determine **effectiveness**.

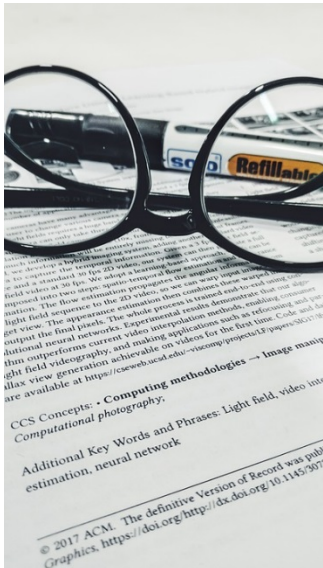
SHAs should include how they will determine the effectiveness of each program areas' activities.

TITLE VI PLAN—ELEMENTS

4) Subrecipient Review Procedures

Describe the process for conducting reviews of the SHA's sub-recipients. The process should define:

1. A **schedule** or **amount** of reviews anticipated per year;
2. The **types** of reviews and their objectives;
3. Where and when the **outcome** of the reviews will be reported;
4. What **activities** will be reviewed; and
5. How will the review determine **effectiveness**.



23 CFR 200.9(b)(7)

TITLE VI PLAN—ELEMENTS

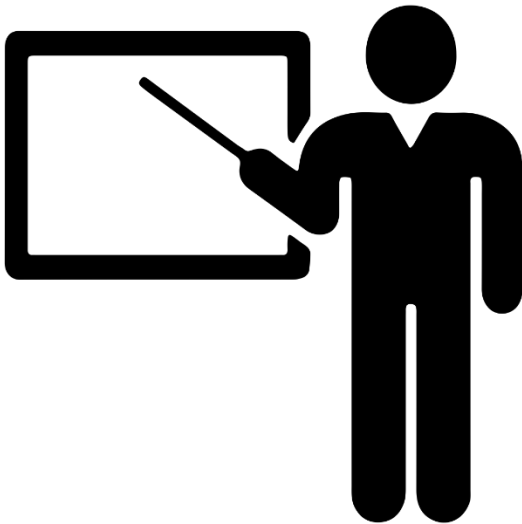
5) Data Collection Process

- Describe how the SHA collects data, what data is collected, and how the data is to be analyzed.
- The SHA must collect Title VI Program-related data on an on-going basis. The data collected needs to be directly related to the specific processes in a Program Area.
- E.g. SHA Right-of-Way may not discriminate against eligible persons in making relocation payments and in providing relocation advisory assistance (49 CFR Part 21, Appendix C to Part 21(a)(2)(ii)). SHA's Plan describes how it collects data on race, color, national origin for relocates and other beneficiaries and review for potential disparate impacts.

TITLE VI PLAN—ELEMENTS

6) Training

Describe **how** and **when** members of the SHA Civil Rights **staff**, Title VI **liaisons**, and other **employees** within the agency will be **trained** on Title VI Program requirements and responsibilities.



Include training for **subrecipients** and stakeholders—how and **when** training will be conducted.

23 CFR 200.9(b)(9)

TITLE VI PLAN—ELEMENTS

7) Complaint Procedures

Describe the SHA's **procedures** for prompt processing, investigation, and resolution of Title VI Program **complaints** received by the SHA. Procedures must include:

- A description of the complaint process identifying how and where a complaint would be filed, with which department or person, and all applicable timeframes.
- A statement that investigations will be conducted by personnel trained in compliance investigations.
- A description of the process by which the SHA will track the complaints and keep the required data for each complaint received.
- Procedures by which each complaint received by the SHA, along with the SHA report of investigation will be sent to the FHWA Division Office in the required 60 day time period.

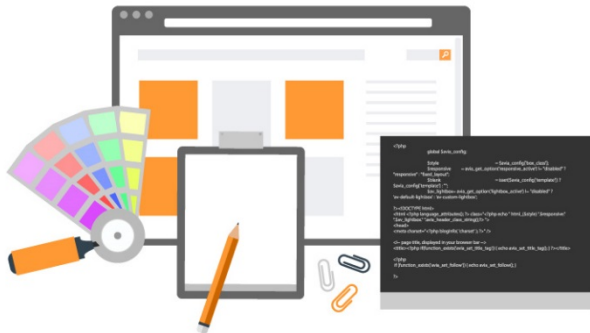
TITLE VI PLAN—ELEMENTS

8) Disseminate Title VI Information:

Describe SHA's processes and procedures to:

- **Elicit and solicit** public participation and involvement.
- **Educate** the public of their Title VI program rights in the Transportation decision-making process.

Include the **tools, techniques, and strategies** to involve and educate public including LEP persons.



TITLE VI PLAN—ELEMENTS

9) Limited English Proficiency

Describe how the SHA reaches persons with Limited English Proficiency. This is often codified in a LEP Plan.

- Conduct Four Factor Analysis (See USDOT guidance at 70 FR 74087, 74091 (December 9, 2005)).
- Perform a self-assessment to determine which personnel interact with members of the public.
- Identify LEP Populations statewide using US Census data and American Survey data www.census.gov/acs/www/.

TITLE VI PLAN—ELEMENTS

10) Review of STA Directives

SHA must describe process of reviewing directives for potential Title VI implications. SHA must also describe process for reconciling issues if directives have Title VI implications.

E.g. SHA Civil Rights Office determines directive requires changes to comply with Title VI. Recommendation sent to department head for source of material. SHA leadership codifies changes.

TITLE VI PLAN—ELEMENTS

11) Compliance and Enforcement Procedures

Describe how trends or patterns of discrimination are identified and eliminated.

Describe how compliance reviews of sub-recipients are conducted and how compliance is determined and enforced.

OTHER OPTIONAL ELEMENTS

Introduction; Policy Statement; Overview; or Background

Glossary of terms; list of acronyms

Special Emphasis Program Areas

Nondiscrimination Authorities & Resources

Related SHA policy resources

TITLE VI PLAN—OPTIONAL ELEMENTS

Introduction/Overview/Policy Statement:

An Introduction or Overview can help the public and employees understand the Title VI program and the purpose of the Title VI Plan.

SHAs may wish to include an express commitment to Title VI.

in·tro·duc·tion (in/trə duk/shən), *n.* **1.** the act of introducing or the state of being introduced. **2.** a personal presentation of one person to another. **3.** a preliminary part, as of a book, musical composition, or the like, leading up to the main part. **4.** an introductory treatise: *an introduction to botany*. **5.** an act or instance of inserting. **6.** something introduced. **1400**; ME *introduccion* < L *introduction-* (s. of *tiō*). See **INTRODUCE**, **-TION**]
—**Syn.** **3.** **INTRODUCTION**, **FOREWORD**, **PREFACE** material given at the front of a book to explain or introduce it to the reader. A **FOREWORD** is part of the book's matter and is usually written by someone other than the author, often an authority on the subject of the book.

TITLE VI PLAN—OPTIONAL ELEMENTS

Special Emphasis Program Areas:

Definition: area for which the FHWA Office of Civil Rights (HCR) has identified a need for special attention by the SHA.

Identification of a Special Emphasis Program Area will be on a case by case basis for each individual state DOT.

If a need is identified, the Division should contact HCR and a determination will be made whether or not to designate a program area as a special emphasis area.

When HCR approves such designation, it will clearly communicate the program area and specific requirements by written letter to SHAs through Division offices.

IMPLEMENTATION PLAN WRAP-UP

- Plan should have a submittal date on it.
- States should post approved Plan on public website.
- The Plan should be a Standard Operating Procedure of how the State is carrying out its program year to year, not just a document collecting dust.
- Division may “conditionally approve” Plan with changes to be made in upcoming year with prior written approval of HCR.
- States should submit a Plan even if the changes from last year are relatively minor.
- No “Update and Accomplishments Report.” SHAs have a Plan and a separate Goals and Accomplishments Report.

GOALS AND ACCOMPLISHMENTS REPORT - PROCEDURES

- 23 CFR §200.9(b)(10): SHAs “[p]repare a yearly report of Title VI **accomplishments** for the past year and **goals** for the next year.”
- No statutory submittal date – only “yearly.” Division must establish submittal time with State. However, submittal **earlier in FY is likely more useful** for Divisions.
- FHWA **does not approve** Goals and Accomplishments Reports. Divisions use information to monitor progress.
- FHWA advises **against** SHAs combining the Implementation Plan with the Report.
- There is **not** a current requirement that the Goals and Accomplishment report be submitted to HCR. (this could change in the future).

GOALS AND ACCOMPLISHMENTS REPORT - CONTENT

Accomplishments must include:

- 1. Program Area Reviews** Number of reviews, results, and actions taken.
- 2. Subrecipient Reviews** Number of reviews, results, and actions taken.
- 3. Training** Number of trainings, topics covered, audience, number of attendees, and follow up (if any).
- 4. Title VI Complaints/
Corrective Action
Plans** Summary for each complaint with current status and/or a detailed report of ongoing or completed activities for a CAP
- 5. Special Emphasis
Programs** Only if applicable, review results and actions taken.

GOALS AND ACCOMPLISHMENTS REPORT - CONTENT

Goals should include:

1. Number of reviews planned for the next year (both Program Area Reviews and Subrecipient reviews);
2. Number and description of training sessions planned (both internal and external); and
3. Any other Title VI related goals the SHA anticipates for the upcoming year.

