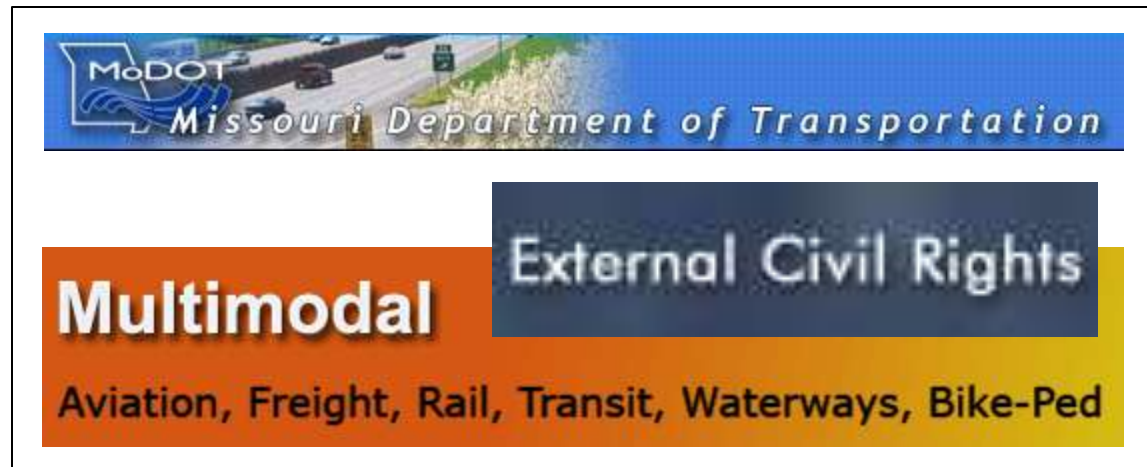


# MoDOT Title VI Workshop

## *Introduction*

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Prepared by  
Philips & Associates, Inc., Program Consultants

November 20, 2013



# *Title VI Program Administration and Staff*

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- **Lester Woods, Jr.**
  - Director – MoDOT External Civil Rights
- **Steve Billings**
  - Administrator of Transit – MoDOT Transit Section
- **Angela Sutton**
  - Intermediate Civil Rights Specialist – MoDOT ECR

## Program Consultants

- **George Philips**
  - President – Philips & Associates, Inc.
- **David Dickey**
  - Vice-President – Philips & Associates, Inc.



# *Introduction of Participants*

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- Your Name**
  - Name of organization** you represent today
  - Tell us a little **about your organization**
    - Description of your **clients**
    - Description of your **transit services**
      - On demand** service or “**rigid demand**” service
      - Fixed route** service
    - Description of your organization’s **role in community**
  - Your role** in your organization
    - Are you responsible for it’s Title VI and/or LEP Plans?
  - Your goals for this workshop** today
-



## ***Title VI Program Outline***

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- Federal Law page 5
- Discrimination page 6
- Environmental Justice page 13
- Source Material page 16
- FTA Administrator: Title VI Highlights page 17
- Compliance page 19
- MoDOT Transit Section Fed. Grant Program page 30



## ***Title VI Program Federal Law***

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**Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000D)** provides that no person in the United States shall, on the basis 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.

*SOURCE: 4702.1B, II-1.*



## ***Title VI Program Discrimination***

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- ❑ **Potential **discrimination** is relevant with regard to routing, scheduling, or quality of transit service.**
  - ❑ Frequency of service, age and quality of vehicles assigned to routes, quality of stations serving different routes, and location of routes must not be determined on the basis of race, color, or national origin.
  - ❑ Title VI's prohibitions are meant to apply to all programs and activities of Federal aid recipients and contractors whether those programs and activities are Federally funded or not.

*DOT 49 CFR 21, Appendix C; Transit Action Network, KC MO; MoDOT ECR, 07/26/12.*



## ***Title VI Program Discrimination***

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- **Discrimination** refers to any action or inaction, in any program or activity of a Federal aid recipient, subrecipient, or contractor that results in **disparate treatment**, **disparate impact**, **disproportionate burden**, or perpetuating the effects of prior discrimination based on race, color, or national origin.

*SOURCE: Georgia Public Involvement/Public Participation Plan, 2013*

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## ***Title VI Program Discrimination***

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- **Disparate treatment** refers to actions that result in circumstances where similarly situated persons are intentionally treated differently (i.e., less favorably) than others because of their race, color, or national origin.
- Disparate treatment claims require proof of an intent to discriminate against a protected class.
- In order to establish a claim of intentional discrimination, a complainant must show that a particular action was motivated by an intent to discriminate. This usually means presenting evidence of discriminatory statements, and/or a history of discriminatory treatment.

*SOURCE: Transit Action Network, Kansas City MO*





## **Title VI Program** **Discrimination**

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- ❑ **Disparate impact** refers to actions in which the recipient, in violation of agency regulations, uses a neutral procedure or practice that has disproportionate adverse consequences (adverse effects) on members of a group based on race, color, or national creed, and such practice lacks a substantial legitimate justification.
- ❑ Applicable to:
  - ❑ transit providers meeting fixed-route qualifying criteria, and
  - ❑ all transit providers considering additional or new facility locations (as defined in guidance).

*SOURCE: Transit Action Network, Kansas City MO*



## ***Title VI Program Discrimination***

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### **Examples of actions with *potentially disparate impacts*:**

*(have potentially disproportionate **adverse** consequences)*

- ❑ Installing bus shelters on the basis of their potential to generate advertising revenue.
- ❑ Assigning clean-fuel vehicles and facilities to routes that do not serve predominantly minority communities.
- ❑ Implementing service reductions or fare increases that disproportionately affect minority communities.
- ❑ Planning a rail project that through predominantly minority communities but does not include stations in these communities.
- ❑ **Displacement of minority persons** and/or businesses in the site selection and development of a transit maintenance facility.

*SOURCE: Transit Action Network, Kansas City MO*



## **Title VI Program Discrimination**

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### **□ Disproportionate burden:**

- FTA requires applicable transit providers\* to evaluate proposed **service and fare changes** to determine whether low-income populations will share a **disproportionate burden** of **service or fare changes**.

*\* meeting fixed route qualifying criteria*

- Low income populations are not a protected class under Title VI; **however** --
- This **disproportionate burden** requirement is in recognition that transit-dependent populations and minority and low-income populations often overlap.

*SOURCE: Transit Action Network, Kansas City MO ; 4702.1B, IV-11.*



## Title VI Program Discrimination

### When can recipients take actions that have **disparate impacts**?

- In cases when the proposal is supported by a “substantial legitimate justification” (“*TEST ONE*”) **and**
- There are no comparable effective alternative practices that would result in less **disparate impacts** (“*TEST TWO*”).

In any event, the justification for the action must not be a pretext (ploy, ruse, tactic) for discrimination.

Consider potential benefits and **adverse effects**.

Discuss practicable alternatives.

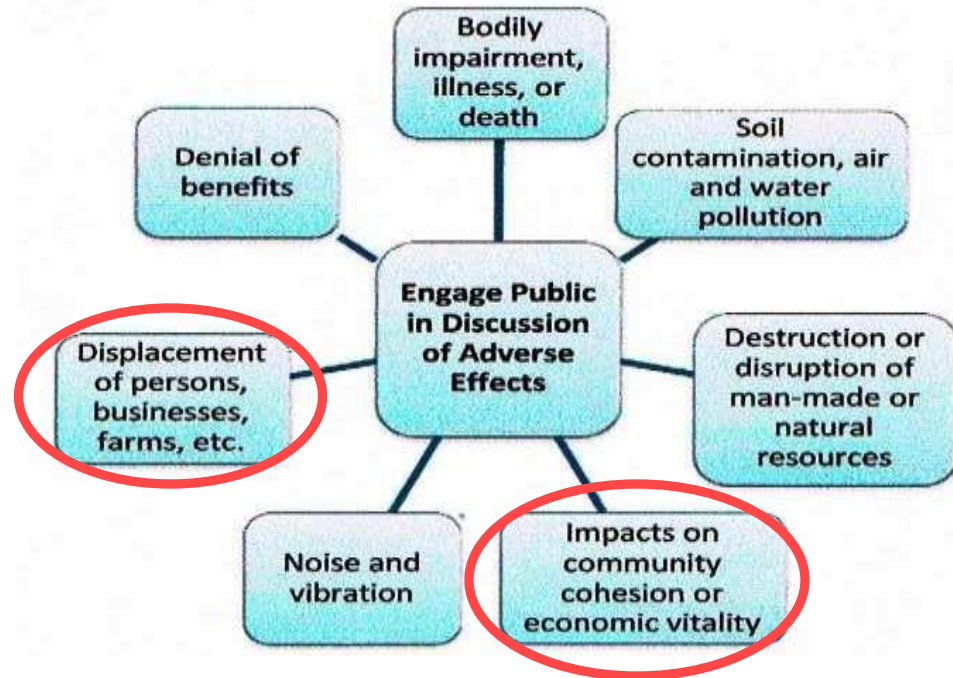
**Include impacted community in discussion.**

Implement practicable alternatives.

*SOURCES: Transit Action Network, Kansas City MO ; 4702.1B, III-11.*

## Environmental Justice

- **Potential adverse effects: impact on community.**
- An **environmental justice** discussion of **adverse** effects (see graphic →) includes several effects relevant to **Title VI** discussion of disproportionately high and **adverse effects**.



SOURCE: FTA EJ Circular 4703.1, August 15, 2012



## *Environmental Justice*

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### **Guiding Environmental Justice Principles:**

- ❑ 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.
- ❑ To ensure the full and fair participation by all potentially affected communities in the transportation decision-making process.
- ❑ To prevent the denial of, reduction in, or significant delay in the receipt of benefits by minority and low-income populations.

*SOURCE: FTA EJ Circular 4703.1, August 15, 2012*



## ***Title VI Program Discrimination – Summary***

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### **Types of Discrimination:**

- Disparate treatment
- Disparate impact
- Disparate burden

### **Adverse Effects and Positive Benefits**

- Many public transportation projects involve both adverse effects and positive benefits.
- Whether **adverse effects** will be disproportionately high is dependent on the net results after consideration of totality of the circumstances. Engage the community in discussion.
- In determining whether an alternative is practicable, the social, economic (incl. costs), and environmental impacts of *avoiding the **adverse effect*** should be taken into account.

*SOURCE: FTA EJ Circular 4703.1, August 15, 2012*



## ***Title VI Program Source Material***

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- ❑ **Letter from FTA Administrator regarding Title VI Program**  
<http://www.fta.dot.gov/civilrights/12328.html>
- ❑ **Title VI Requirements and Guidelines for Federal Transit Administration Recipients (FTA Circular 4702.1B)**  
[http://www.fta.dot.gov/legislation\\_law/12349\\_14792.html](http://www.fta.dot.gov/legislation_law/12349_14792.html)
- ❑ **Title VI – Frequently Asked Questions**  
<http://www.fta.dot.gov/civilrights/12885.html>
- ❑ **Environmental Justice Policy Guidance for FTA Recipients**  
[http://www.fta.dot.gov/legislation\\_law/12349\\_14740.html](http://www.fta.dot.gov/legislation_law/12349_14740.html)
- ❑ **MoDOT Office of External Civil Rights (link to Title VI)**  
<http://modot.org/ecr/index.htm>
- ❑ **MoDOT Transit Section**     **[transit@modot.mo.gov](mailto:transit@modot.mo.gov)**  
<http://www.modot.org/Multimodal/index.htm>
- ❑ **TITLE VI and LEP WORKSHOP MATERIALS:** [http://www.modot.org/other\\_transportation/transit/transitapplicationsreportsprograms.htm](http://www.modot.org/other_transportation/transit/transitapplicationsreportsprograms.htm)





## Title VI Program

# FTA Administrator - Title VI Program Highlights

### □ Title VI Programs must have Governing Board (or equivalent) approval.

- If no Board, then approval by upstream governing entity.

*For agencies meeting fixed route qualifying criteria, Governing Board must also provide input regarding the following:*

- *Service and Fare change policy.*
- *Disparate impact and disproportionate burden policies.*
- *Results of any service monitoring.*
- *Results of any service and fare analysis (including proposed change considerations and approval of selected proposal).*

Your board must be aware of your agency's responsibilities under Title VI.

*SOURCES: 4702.1B, III-11; FTA Admin. May 2013; FTA overview 11/5/12.*



## **Title VI Program**

### **FTA Administrator - Title VI Program Highlights**

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- ❑ **Must develop a robust Public Engagement Plan.**
  - ❑ Public engagement includes community meetings, surveys, focus groups, public hearings, and the like.
  - ❑ Develop **written process** describing **strategies, procedures, and outcomes** for **ongoing public participation activities** facilitating awareness of agency (and **policies for change considerations**).
  - ❑ Provide education and highlight Title VI components.
  - ❑ Seek out information regarding experience of limited English proficient (LEP) persons in agency service area.
- ❑ **Must provide **Disparate Impact Analysis** for any new facilities (including analysis of all “siting” alternatives before selection of preferred site).**

*SOURCES: 4702.1B, III-5; FTA Administrator May 2013.*



**Multimodal**

**External Civil Rights**

Aviation, Freight, Rail, Transit, Waterways, Bike-Ped

# ***Title VI Program Compliance***

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## **COMPLIANCE**



## ***Title VI Program Compliance***

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- Title VI Program *Objectives* for FTA recipients
- Title VI Program *Requirements* for FTA recipients
- MoDOT responsibilities
- FTA responsibilities
- Recipient non-compliance and available sanctions
- Timeline for recipients
- MoDOT Transit Section Federal Grant Program



## ***Title VI Program Compliance***

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### **Title VI Program Objectives for FTA recipients:**

- Ensure that the level and quality of public transportation service is provided in a nondiscriminatory manner.
- Promote full and fair participation in public transportation decision-making without regard to race, color, or national origin.
- Ensure meaningful access to transit-related programs and activities by persons with limited English proficiency (LEP).

*SOURCE: Circular 4702.1B, II-1.*



## ***Title VI Program Compliance***

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### **Title VI Program Requirements for FTA recipients:**

- ❑ All FTA recipients must submit a Title VI Program every three years.
- ❑ All FTA recipients must comply with Program reporting requirements of Title VI Circular 4702.1B.

*SOURCES: Circular 4702.1B; NYSDOT Title VI Checklist for Subrecipients*

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## ***Title VI Program Compliance***

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### **Title VI Program Requirements for FTA recipients:**

- ❑ For all recipients, the Title VI Program must be approved by the recipient's board of directors or appropriate governing entity or official responsible for policy decisions, and recipient must submit documentation of such action.
- ❑ First time applicants must provide information on any previous Title VI activity including compliance history, as well as any applications for other Federal assistance.
- ❑ All FTA recipients that are fixed route transit providers\* must conduct a Title VI assessment when major changes in service or fares are made.

*\* meeting fixed route qualifying criteria*

*SOURCES: Circular 4702.1B, III-1 (4.); Christopher MacKechnie, 2012.*



## Title VI Program Compliance

### Title VI Program Requirements for FTA recipients:

- ❑ All FTA recipients must document, investigate and respond to any Title VI complaints made from the public.
- ❑ All FTA recipients must make available its Title VI complaint log (on *semi-annual basis*) and evidence of Title VI training.
- ❑ *Observed, historical complaint types:*
  - ❑ *Intentional discrimination (disparate treatment)*
  - ❑ *Complaints arising from inconsistent application of policies and/or procedures; and/or funding.*
  - ❑ *Negative experience due to lack of resources.*
  - ❑ *Displacement of persons/businesses (disparate impact).*

Complaint filing/tracking processes are included in Title VI General Requirements.

SOURCES: Circular 4702.1B; NYSDOT Subrecipient Reporting Requirements.





## ***Title VI Program Compliance***

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### **MoDOT responsibilities include:**

- ❑ Provide **technical assistance** to recipients, consultants.
- ❑ Conduct **reviews** of Title VI Programs of recipients.
  - ❑ **Triennial reviews** corresponding to FTA timeline.
  - ❑ Verify and/or obtain from all recipients complaint log (semi-annually), evidence of Title VI training.
  - ❑ Verify and/or obtain policy/procedure changes; public outreach and involvement activities (annually) *from agencies meeting fixed route qualifying criteria.*
  - ❑ Conduct **Title VI compliance reviews** as necessary.
- ❑ Follow up on **Title VI complaints, investigations, lawsuits**, when necessary.

*SOURCE: Circular 4702.1B, VIII-1; Georgia Title VI Self-Survey.*



## ***Title VI Program Compliance***

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- ❑ FTA may request information other than that required by FTA Circular 4702.1B from a recipient in order for FTA to investigate complaints of discrimination or to resolve concerns about possible noncompliance with DOT's Title VI regulations.
  - ❑ Upon a finding of noncompliance after a review or complaint investigation, Board Resolution has to be submitted showing Board approval of Remedial Action Plan.
- ❑ The FTA Office of Civil Rights conducts periodic discretionary compliance reviews of recipients of FTA funding to determine their compliance with FTA Circular 4702.1B, "Title VI Program Guidelines for Federal Transit Administration Recipients."
- ❑ Compliance reviews also provide technical assistance and make recommendations regarding corrective actions, as deemed necessary and appropriate.

*SOURCE: [fta.dot.gov/civilrights/12328\\_5463.html](http://fta.dot.gov/civilrights/12328_5463.html); FTA Overview, Oct. 2012.*

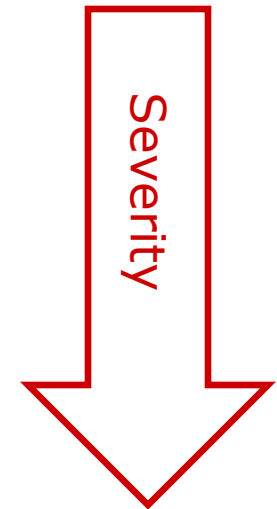
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# Title VI Program Compliance

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## Recipient noncompliance and available sanctions:

- ❑ Federal informal action
  - ❑ Preferred mechanism
- ❑ Federal corrective action plan
- ❑ Federal funding termination
  - ❑ Federal government can terminate funding for actual or threatened non-compliance.
  - ❑ Hearing rights.

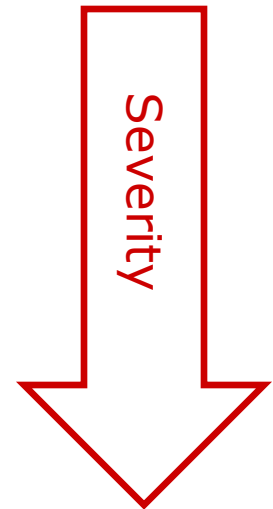


## Title VI Program Compliance

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### Recipient noncompliance and available sanctions:

- State informal action.
  - Preferred mechanism.
- State corrective action plan.
- Financial penalties for “responsible entities.”
  - Withhold funding.
  - Sanctions including possible re-possession of grant-funded equipment or vehicles.






# Title VI Program Compliance

## MoDOT timeline\* for recipients:

- Initial submission of triennial Title VI Program Plans to MoDOT Transit Section by March 31, 2014.

Nov 2013	Dec 2013	Jan 2014	Feb 2014	Mar 2014
				

\* Role of primary/designated recipient

SOURCE: Circular 4702.1B, VIII-1.



## Title VI Program

# MoDOT Transit Section Federal Grant Programs

FTA Program ( <a href="http://fta.dot.gov/grants">fta.dot.gov/grants</a> )	
5307	Urbanized Area Formula Funding Program
5309	Capital Investment Program (includes New and Small Starts projects)
5310	Transportation for Elderly Persons and Persons with Disabilities
5311 5311(f)	Formula Grants for Non-urban and Intercity Bus Providers
5316	Job Access and Reverse Commute Program (urban and rural allocations)
5317	New Freedom Program (expanded mobility options for persons with disabilities)



# Title VI Program

## MoDOT Transit Section Federal Grant Programs

- All **recipient Title VI programs** must be submitted to TEAM designate.
- **Designated recipients** and FTA use the TEAM system to manage the grants after awards.

↓  
**Transportation  
 Electronic  
 Award  
 Management  
 System**

TEAM ID		MISSOURI RECIPIENTS with TEAM ID
1830	St. Louis	METRO Transit (Bi-State Development Agency)
1825	Columbia	City of Columbia Department of Public Works
6309	Jefferson City	City of Jefferson
3087	Joplin	City of Joplin
1828	Springfield	City of Springfield City Utilities
1897	St. Joseph	City of St. Joseph
1898	St. Louis area	East-West Gateway Coordinating Council
1827	Kansas City area	Kansas City Area Transportation Authority (KCATA)
7125	St. Louis area	Loop Trolley Transportation Development District
1851	Kansas City area	Mid-America Regional Council
1814	statewide	Missouri Department of Transportation (MoDOT)

MoDOT is a **designated recipient.**

*SOURCES: fta.dot.gov/grants; FTA 4702.1B Quick Reference; MoDOT Transit Section*