MoDOT Title VI Workshop

Introduction

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- George Philips
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- David Dickey
  - Vice-President – Philips & Associates, Inc.
Introduction of Participants

- 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

- **Federal Law** [page 5]
- **Discrimination** [page 6]
- **Environmental Justice** [page 13]
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- **MoDOT Transit Section Fed. Grant Program** [page 30]
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.
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

- **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
Title VI Program

Discrimination

- **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

- **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

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

- **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.
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.

**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 disproportionally high and adverse effects.

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

Environmental Justice

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

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 disproportionally 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

- 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)
- Title VI – Frequently Asked Questions
  [http://www.fta.dot.gov/civilrights/12885.html]
- Environmental Justice Policy Guidance for FTA Recipients
- MoDOT Office of External Civil Rights (link to Title VI)
  [http://modot.org/ecr/index.htm]
- MoDOT Transit Section  transit@modot.mo.gov
  [http://www.modot.org/Multimodal/index.htm]
- TITLE VI and LEP WORKSHOP MATERIALS: [http://www.modot.org/othertransportation/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).

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

FTA Administrator - Title VI Program Highlights

- 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.
Title VI Program
Compliance

COMPLIANCE
Title VI Program Compliance

- 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

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

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

Title VI Program
Compliance

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.


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).

SOURCES: Circular 4702.1B; NYSDOT Subrecipient Reporting Requirements.

Title VI Program
Compliance

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

- 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.

Title VI Program
Compliance

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

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.

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* Role of primary/designated recipient

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

# Title VI Program

## MoDOT Transit Section Federal Grant Programs

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

**MISSOURI RECIPIENTS with TEAM ID**

<table>
<thead>
<tr>
<th>TEAM ID</th>
<th>City or Area</th>
<th>Description</th>
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<tbody>
<tr>
<td>1830</td>
<td>St. Louis</td>
<td>METRO Transit (Bi-State Development Agency)</td>
</tr>
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<td>1825</td>
<td>Columbia</td>
<td>City of Columbia Department of Public Works</td>
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<td>6309</td>
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<td>St. Louis area</td>
<td>East-West Gateway Coordinating Council</td>
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<tr>
<td>1827</td>
<td>Kansas City area</td>
<td>Kansas City Area Transportation Authority (KCATA)</td>
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<tr>
<td>7125</td>
<td>St. Louis area</td>
<td>Loop Trolley Transportation Development District</td>
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<td>1851</td>
<td>Kansas City area</td>
<td>Mid-America Regional Council</td>
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<tr>
<td>1814</td>
<td>statewide</td>
<td>Missouri Department of Transportation (MoDOT)</td>
</tr>
</tbody>
</table>

MoDOT is a designated recipient.

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