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STATE DOT BEST PRACTICES FOR TITLE VI COMPLIANCE

This digest contains an overview of Federal Transit Administration Title VI requirements for state departments of transportation (DOTs); provides information on best practices for state DOT compliance; and introduces a companion publication, *NCHRP Web-Only Document 147,* which includes a collection of material related to best practices for Title VI compliance for reference by state DOTs. The digest and accompanying collection of reference material were developed by KFH Group, Inc., Bethesda, MD, under subcontract with Cambridge Systematics, Inc., Cambridge, MA, for NCHRP Project 20-65(18).

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SECTION 1 INTRODUCTION

Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, or national origin in programs and activities receiving federal financial assistance. Specifically, Title VI provides that "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" (42 U.S.C. Section 2000d). In accordance with Title VI, federal enabling legislation for transit funding includes the requirement that recipients of federal funds do not engage in discriminatory practices. This includes the requirement that states distribute their federally supported transit services and related benefits in an equitable manner.

State DOT Role in Ensuring Non-Discrimination—Title VI and State Transit Programs

Title VI requires that direct grant recipients and subrecipients provide all services and benefits without regard to race, color, or national origin, including those services provided under Federal Transit Administration (FTA) transit programs. FTA issued Circular 4702.1A in May 2007 to provide the guidance and instructions to states and their grantees needed to comply with the Title VI regulations and to integrate into their transit programs and activities considerations in the U.S. Department of Transportation's (U.S. DOT's) *Order on Environmental Justice* (Order 5610.2 based on Executive Order 12898) and *Policy Guidance Concerning Recipients Responsibilities to Limited English Proficient (LEP) Persons* (70 FR 74087 based on Executive Order 13166).

Title VI requires that state departments of transportation (DOTs) pass-through FTA funds without regard to race, color, or national origin and that minority and low-income populations are not being denied the benefits of or excluded from participation in these programs. The role of the state in ensuring non-discrimination is particularly important because states not only have an obligation to consider civil rights in how they administer their transit programs at the state level, but also are responsible for

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ensuring that recipients who receive federal funds through the state meet civil rights requirements. As the entities responsible for monitoring the use of federal transit funds by local and regional bodies, states must understand the responsibilities of their subrecipients under Title VI.

It is important to note that FTA Circular 4702.1A increased the civil rights responsibilities of state DOTs. Although Title VI of the Civil Rights Act of 1964 has been a law for over 40 years, FTA increased state requirements by mandating the submission of a compliant Title VI Civil Rights Program document by state agencies that receive federal transit funds from FTA, as distinct from the previously required Department of Transportation Title VI Civil Rights Program. In addition, each state must document how it meets federal Title VI requirements and monitors subrecipient compliance with these requirements in their State Management Plan.

A state must ensure that it and its subrecipients comply with Title VI requirements to:

- Ensure that the level and quality of transportation service is provided without regard to race, color, or national origin.
- Identify and address, as appropriate, disproportionately high and adverse human health and environmental effects, including social and economic effects of programs and activities on minority populations and low-income populations.
- Promote the full and fair participation of all affected populations in transportation decision-making.
- Prevent the denial, reduction, or delay in benefits related to programs and activities that benefit minority populations or low-income populations.
- Ensure meaningful access to programs and activities by persons with LEP.

There are considerable variations in the role the state DOTs play in the provision of public transit around the country—variations that affect their requirements under Title VI. All states have some role in administering FTA public transit funds including passing-through funds under the Section 5311, Section 5310, Section 5316, and Section 5317 programs. Many also administer Section 5307 and Section 5309 funds and a handful of states provide transit services directly. Some states administer funds to Metropolitan Planning Organizations (MPOs). However, if an MPO does not receive funds through the state DOT, the state is not responsible for its compliance.

There are key differences in Title VI responsibilities for those states that either provide services directly or administer funds in large urban areas (with populations over 200,000). It is important to recognize that Title VI requirements are tied to the population size and *not to the funding source,* which means that transit grantees in large urban areas have more detailed requirements regardless of the type of grants they receive. This also means that if a state has subrecipients operating transit services in large urban areas, the state will need to monitor the system's compliance with the large urban requirements.

Research Objectives

The goal of this research project was to provide guidance to assist the transit administration divisions of state DOTs as they comply with Title VI requirements. An underlying tenant of this research is that state DOTs should integrate the concept of nondiscrimination into the culture of the organization, incorporate civil rights into daily practices and routines, and help their subrecipients to do the same.

As noted above, when FTA updated its Title VI Civil Rights Program guidance in 2007, the agency increased the civil rights requirements for state DOTs administering FTA-funded transit programs, including the requirement to develop and submit a compliant Title VI Civil Rights Program document that addresses transit programs. The objectives of this research were to identify and document best practices for the following components of a Title VI Civil Rights Program document:

- Notices issued by state DOTs to beneficiaries of their rights under Title VI.
- Steps taken with public outreach and involvement activities to ensure that minority persons have meaningful access to state DOT activities.
- Procedures for filing Title VI civil rights complaints with state DOTs.
- Plans for providing access to meaningful activities and programs for persons with LEP.
- Procedures used to certify that the statewide transportation planning process complies with Title VI.
- Procedures the state DOT uses to pass-through FTA financial assistance in a nondiscriminatory manner.

- Procedures the state DOT uses to provide assistance to potential subrecipients applying for funding in a non-discriminatory manner.
- Procedures the state DOT uses to monitor its subrecipients for compliance with Title VI.

Research Activities

The research team began by exploring the new state requirements under Title VI and identifying existing Title VI practices through an Internet search of the FTA and state DOT websites (searching for best practices information available both to the public and subrecipients). Based on a review of Title VI material from websites, the research team then canvassed the "state of the industry" by surveying state DOT personnel in all 50 states on whether they had Title VI procedures or pieces of a Title VI Program they considered as best practices.

The survey was an attempt to identify states that had best practices they were willing to share with other states. Multiple attempts were made to solicit responses and 13 states completed the survey. Of these, only seven had components of their Title VI Program that they felt were best practices. Others felt that they had practices or procedures in specific areas that were worth sharing, but only four indicated they'd be willing to talk with us further. The survey effort was supplemented by a canvassing of state DOT websites. States that responded to the survey and/or had materials on their websites that looked promising were contacted to obtain further information on individual best practices.

Finally, the study team met with staff in the FTA's Office of Civil Rights to obtain input on where states needed the most guidance and attempt to identify particular states with exemplary programs or individual best practices that would be included in the digest. The result of this research effort is a collection of materials and information that represent, in the view of the research team, best practices for state DOT Title VI compliance.

Key Research Findings

The review of current state DOT Title VI activities and discussions with FTA's Office of Civil Rights concluded that some states have components of a full Title VI Program, but at that time none were completely compliant with the state DOT Title VI requirements. Nonetheless, individual components of a compliance program were identified and included in this digest.

As states develop a transit-oriented Title VI Program to meet FTA requirements, it is recognized that the most effective way to ensure non-discrimination is to make it part of the culture of the agency. Following the guidelines of Title VI should not be seen merely as a legal obligation, but as a sustainable and inclusive way of doing business.

It also should be noted that since Title VI provides the basis for all civil rights requirements, the term Title VI is often used broadly to describe all civil rights requirements. As the direct recipients of federal funds, states must fulfill Title VI, Disadvantaged Business Enterprise (DBE) and Equal Employment Opportunity (EEO) requirements, and monitor subrecipient compliance with these requirements to ensure non-discrimination. This digest addresses only Title VI requirements, including LEP and environmental justice (EJ) considerations, but not DBE or EEO.

In This Digest

The digest is organized in six sections:

Section 1—Introduction
Section 2—FTA Title VI Requirements for State DOTs and Subrecipients
Section 3—Compliance Practices—General Requirements
Section 4—Compliance Practices—Specific State DOT Requirements
Section 5—Compliance Practices—Large Urban Areas with Populations over 200,000
Section 6—Compliance Practices—Reporting Requirements

Readers of this digest are encouraged to begin with Section 2 since it presents a summary of the Title VI requirements applicable to all recipients and subrecipients. For a review of common or best practices, readers can then refer to the section or sections that pertain to them. For example, small urban area or rural providers may only use Section 3.

Each section dealing with compliance practices includes boxes with self-assessment questions that may be of use to states. Exhibit 1 presents an overall self-assessment checklist for states, including both state activities and subrecipient monitoring efforts.

Reference Materials for State DOT Title VI Compliance

Appendices A through M of this digest, a collection of reference materials related to state DOT Title

Exhibit 1 Checklist of state DOT transit program Title VI compliance

State-Level Activities	Subrecipient Monitoring
State Management Plan	
Does the state document how it meets federal Title VI requirements and monitors subrecipient compliance with these requirements in its State Management Plan?	N/A*
Certification and Assurance	
Has the state signed its annual Title VI Certification and Assurance? Does the state have an analytical basis for making this certification? What is that basis?	Does the state have on file from each subrecipient a signed nondiscrimination Certification and Assurance? What is the mechanism used to obtain the certification annually? How does the state monitor the basis for local certification?
Assignment of Responsibility	
Has the state DOT assigned responsibility for the coordination of Title VI/environmental justice assessments related to transit within the agency? What is the relationship of this individual to the statewide or department-wide civil rights function?	Who is responsible for monitoring subrecipients to ensure that they do not discriminate in the provision of service? What is the relationship of this individual to the statewide civil rights function?
Public Notification	
How does the state notify the public of their rights under Title VI? How is the information disseminated? Do these methods go beyond posting on the agency's website?	How does the state ensure that subrecipients are notifying the public of their rights under Title VI?
Does the notice include the statement that the state operates the program without regard to race, color, or national origin; a description of how the public can request additional information; and procedures the public should follow to file a discrimination complaint?	Do subrecipient notices include required elements?
Public Outreach and Involvement	
What measures or practices does the state use to seek out and consider the viewpoints of minority, low-income, and LEP populations in the course of conducting public outreach and involvement activities? Do the measures provide meaningful, early, and continuous opportunities for public involvement?	How does the state ensure that subrecipients seek out and consider the viewpoints of minority, low-income, and LEP populations in the course of conducting public outreach?
Limited English Proficiency and Low Literacy	
What steps has the state taken to ensure meaningful access to the benefits, services, information, and other important portions of its programs and activities for individuals who are LEP? Do these include steps to accommodate persons with low literacy?	Has the state ensured that subrecipients take responsible steps to ensure meaningful access to the benefits, services, information, and other important portions of its programs and activities for individuals who are LEP or low literacy?

Exhibit 1 (*Continued*)

State-Level Activities	Subrecipient Monitoring
Has the state determined what steps are necessary to provide meaningful access based on a "four factor" analysis?	N/A
Does the state have an LEP implementation plan (written or otherwise) that identifies LEP individuals who need assistance, develops language assistance measures, trains staff, provides notice to LEP and low-literacy persons, and provides for monitoring and updating the plan?	N/A
Are vital written documents translated for each eligible LEP language group that constitutes 5% or 1,000 (whichever is less) of the population served or likely affected?	N/A
Complaints	
Does the state have written procedures for investigating and tracking Title VI complaints? Is this information made available to the public upon request?	Do subrecipients have written procedures for investigating and tracking Title VI complaints? Is this information made available to the public upon request?
Does the state maintain a written record of Title VI investigations, complaints, and lawsuits filed with the agency? For each investigation, complaint, or lawsuit, does the record include date filed, a summary of allegations, status, actions, and follow-up/resolution with complainant?	Do subrecipients maintain a record of Title VI investigations, complaints, and lawsuits filed with the agency?
Does tracking allow discrimination complaints to be distinguished from other, non-discrimination complaints?	Does the state have procedures for investigating and tracking Title VI complaints filed against subrecipients and is this information made available to the public upon request?
Planning and Service Equity and Equitable Distribution of Funds	
Has the state developed a mechanism for analyzing whether its services and benefits are distributed in a non-discriminatory manner? What data are collected and analyzed? How are these data used in the planning process?	How does the state monitor that subrecipients distribute service levels, service quality and facilities on an equitable basis? How does the state ensure that changes in services and fare increases do not have a disproportionately high negative impact on low-income and minority populations?
How does the state assist applicants that would serve predominately minority and low-income populations in applying for assistance? Are these efforts documented in the State Management Plan?	N/A
Does the process used by the state to evaluate and select Section 5307, 5310, 5311, 5316, and 5317 projects ensure the fair and equitable distribution of funds to subrecipients that serve predominately minority and low-income populations, including Native American Tribes?	N/A

Exhibit 1 (*Continued*)

State-Level Activities	Subrecipient Monitoring
Does the state submit with its annual Section 5307, 5310, 5311, 5316, and 5317 grant applications a record of approved and rejected funding requests that identifies applicants that are minority organizations or that provide assistance to minority or low-income communities?	N/A
Has the state incorporated an environmental justice analysis into its National Environmental Policy Act (NEPA) documentation of construction projects?	N/A
Staff Training	
Has the state trained its staff on the requirements of Title VI? Is this training provided periodically?	Has the state trained subrecipients on Title VI requirements?
Title VI Program Compliance Reporting	
Has the state's Title VI Program (compliance report) been submitted to the FTA/Compliance Report Office (CRO)? Has it been approved by FTA? If yes, when does the approval expire?	Does the state have a process for collecting subrecipients' Title VI program reports and submitting them to FTA? Have all subrecipients submitted reports? Are they complete?
If the state operates or contracts for service in an urban area of 200,000 or more population, has it met the provisions required of transit operators in large urbanized areas?	N/A

*Not Applicable

VI compliance, are published as *NCHRP Web-Only Document 147,* which can be accessed by searching on the TRB website (www.trb.org) for "NCHRP Web-Only Document 147." Appendix A contains the Internet-based survey conducted as part of the project's research, and Appendix B includes federal and national resources available to meet Title VI requirements. The remaining appendices include example practices or tools and are discussed in more detail throughout this digest. Appendix titles are the following:

- Appendix A: Survey Instrument Sent to Transit Personnel in State DOTs
- Appendix B: Federal Regulations and Resources
- Appendix C: Designation of Title VI Contact
- Appendix D: Notification of Rights
- Appendix E: Training
- Appendix F: Complaint Procedures
- Appendix G: LEP Implementation Procedures
- Appendix H: Overall Title VI Program Updates
- Appendix I: Construction Project Analysis
- Appendix J: Interdisciplinary Approaches
- Appendix K: Planning Tools
- Appendix L: Subrecipient Monitoring
- Appendix M: Subrecipient Reporting

SECTION 2 FTA TITLE VI REQUIREMENTS FOR STATE DOTS AND SUBRECIPIENTS

This section presents an overview of the Title VI requirements for states. The general requirements apply to all states that administer FTA funds. These general requirements are important to state DOTs because they include both requirements for the state as well as actions subrecipient/local transit systems must take, invoking significant monitoring and reporting by state DOTs on subrecipient activities. State DOTs that administer specific programs, states operating or contracting for transit services in geographic areas with at least 200,000 people, and MPOs must meet additional criteria.

General Requirements—Applicable to States and All Subrecipients

All states and their subrecipients of federal funding must have:

- **Certifications and Assurances—**signed Title VI Certifications and Assurances as part of their respective annual grant submissions or agreements. By signing the annual Certifications and Assurances, states and their subrecipients agree to comply with the provisions of Title VI. These assurances imply that grantees will have procedures in place to ensure equitable distribution of services and program benefits.
- **Public Notification—**procedures for notifying the public of Title VI rights and procedures that the public may follow to file a complaint.
- **Public Participation—**procedures for conducting public outreach and involvement activities. States and their subrecipients must undertake steps to ensure that minorities had meaningful access to these activities.
- **Investigation/Complaint/Lawsuit Processes—**written procedures for recording, responding to, and resolving Title VI investigations, complaints, and lawsuits.
- **A Limited English Proficiency (LEP) Plan—** a written plan for providing access to meaningful activities and programs for persons with LEP based on the federal DOT LEP guidance (or copy of the agency's alternative framework for providing access to activities and programs).
- **Title VI Program—**submitted a Title VI Program to FTA's regional Civil Rights Officer once every 3 years. The state's Title VI Program must include the Title VI Programs for their local grantees (subrecipients). To meet this requirement, states often have their subgrantees prepare and submit certain general information and the collection and reporting of this information constitutes their Title VI Program.

Additional State DOT Requirements

In addition to the general requirements, state DOTs must have a process in place to ensure that they are able to evaluate the compliance of subrecipients receiving federal funds:

- **Statewide Transportation Planning.** State DOTs must establish a basis for certifying their compliance with Title VI as part of their statewide planning activities.
- **State Program Administration.** State DOTs must document that they pass-through FTA funds without regard to race, color, or national origin and that minority populations are not being denied the benefits of or excluded from participation in these programs.
- **Providing Assistance to Subrecipients.** State DOTs also must assist their subrecipients in complying with the general reporting requirements.
- **Monitoring Subrecipients.** State DOTs must monitor their subrecipients for compliance with Title VI.
- **Prepare and Submit a Title VI Program.** FTA requires that state DOTs document their compliance with the program-specific requirements, and submit to FTA a Title VI Program that also includes documentation of compliance with the general reporting requirements. This program is submitted once every 3 years.

Additional Requirements for Large Urban Areas

States or subrecipients that provide services in urbanized areas with populations of 200,000 or greater must meet additional guidelines to comply with Title VI. To the extent that state DOTs operate or contract for services or administer transit funds for subrecipients in these large urban areas, the states must also ensure that the following items are addressed by the appropriate agencies:

- **Collect and Analyze Demographic Data.** Race and ethnicity data should be collected and analyzed so agencies can ensure that minority groups are not being discriminated against in the delivery of services that are federally funded.
- **Set System-wide Service Standards.** Agencies must set standards to ensure that service changes are based on objective indicators and not on preferential treatment or discrimination.
- **Set System-wide Service Policies.** Agencies must adopt system-wide service policies that ensure services being provided do not have a

disproportionately disparate affect on minority or low-income populations.

- **Evaluate Service and Fare Changes.** Agencies must evaluate any major service or fare changes to ensure that there will not be a discriminatory impact. Agencies must have a policy for what constitutes a major change.
- **Monitor Transit Service.** The state must conduct triennial reviews to ensure that their policies and services meet Title VI requirements.
- **Prepare and Submit a Program-Specific Title VI Program.** Agencies must submit a Title VI Program to FTA that includes the collection and analysis of demographic data and how system-wide service standards and policies are set. The report should also include reporting on general requirements. This program is submitted once every 3 years, although if prior to submission of an update, the transit agency has not changed its policy, notice to the public, or had a complaint, they only need to submit a statement to this effect in lieu of copies of the original documents.

MPO Requirements

MPOs must establish a basis for certifying their compliance with Title VI as part of their metropolitan transportation planning activities, just as is called for in large urbanized areas. MPOs that receive federal funding through their state DOT should report to the state. MPOs that receive funding directly from the FTA report directly to the FTA. These MPOs should see Chapter II, Part 4 for reporting procedures.

Examples of Compliance Practices

The following sections present practices by which states and their subrecipients reach and maintain compliance, with a focus on state DOT responsibilities. Examples of existing or best practices are presented when possible. This was a challenge because the regulations are relatively new and in the past many state agencies have relied on other divisions such as the Statewide Office of Civil Rights or an office of civil rights within the DOT to ensure their compliance. These offices are often unfamiliar with the requirements for transit program dollars. But, while most state DOTS have yet to develop a program that is fully compliant with the new FTA guidance, pieces of the old programs are still applicable and useful.

SECTION 3 COMPLIANCE PRACTICES—GENERAL REQUIREMENTS

The general requirements covered in this section must be met by all agencies that receive any federal funding including state DOTs and their subrecipients. These requirements are important to state DOTs because they include actions that both the states and their subrecipients/local transit systems must take. Since states pass-through FTA funds, they are required both to assist local systems and to monitor their compliance. States should document how they meet federal Title VI requirements and monitor subrecipient compliance with these requirements in their State Management Plan that is submitted to FTA.

General requirements include:

- Certifications and Assurances
- Public Notification of Rights
- Public Participation and Outreach
- Investigation/Complaint/Lawsuit Processes
- Limited English Proficiency Plan
- Title VI Program—Reporting

The sections below provide a detailed explanation of each requirement as well as examples of how states and local transit providers have met those requirements.

Assign Responsibility for Title VI Compliance

While not required by federal regulations, a good practice is for state DOTs to assign responsibility for compliance with Title VI to a staff position or division within the DOT.

In Practice

The responsibility for compliance with Title VI could be assigned within the state transit unit or to the DOT's Office of Civil Rights. Based on the limited survey results, it appears that often the staff or department responsible for state compliance is different from the staff responsible for ensuring the compliance of subrecipients. If the responsibility for compliance rests within the broader DOT context, it is important that staff be familiar with the specific requirements under FTA Circular 4702.1A (May 2007).

As part of monitoring subrecipient compliance, states may also require that subrecipients identify a contact person within their organization who is responsible for ensuring local agency compliance with

Title VI. For example, the Maryland Transit Administration (MTA) requires that subrecipients identify a contact person for Title VI, EEO, and DBE compliance in their annual grant application. Appendix C in *NCHRP Web-Only Document 147* presents a copy of the form used in the MTA application.

Provide Annual Title VI Certification and Assurance

States and their subrecipients must submit signed Title VI assurances as part of their annual Certification and Assurance package. The state must have on file from each subrecipient a signed nondiscrimination assurance. This nondiscrimination assurance replaced the DOT Title VI and FTA civil rights assurances when FTA instituted the annual Certification and Assurance process in FY95. This assurance must be collected from subrecipients prior to passing-through FTA funds.

It is critical to note that, as the applicant, the state is ultimately responsible for compliance with the FTA Certifications and Assurances even though the project may be carried out in whole or in part by one or more subrecipients. Thus, if subrecipients will be participating in the project, when the applicant submits its FTA Certifications and Assurances, the applicant is also signifying that it will be responsible for compliance, both of itself and of each of its subrecipients, with the provisions of the FTA Certifications and Assurances it has selected.

In Practice

Typically, states obtain the certifications annually with their grant applications but they also can be included in the grant agreement. Certifications and Assurances should also be checked when states conduct on-site compliance reviews with subrecipients.

As an important element of the annual Certifications and Assurances, states and their subgrantees must have an analytical basis for certifying their compliance with Title VI. This can be accomplished in a number of ways. For example, a state could develop a demographic profile of the state that identifies the location of low-income and minority populations, establish a statewide transportation planning process that includes the needs of low-income and minority populations, or develop a process that identifies any imbalances in the benefits and potential negative impacts of transportation investments on low-income or minority populations.

As applied to local subrecipients, this provision requires transit operators to ensure that services, facilities, and benefits are distributed equitably in their community. They must also consider the impact that new services, changes in services, and increases in fares may have on low-income and minority populations. This can be accomplished in a number of ways; these are addressed under transportation planning in Section 4.

State Check: Has the state signed its annual Title VI Certifications and Assurances? What is the analytical basis for making this certification? Do you have on file a signed nondiscrimination assurance from each subrecipient? What is the mechanism used to obtain the certification annually? What basis do subrecipients have for making this certification (e.g., mechanisms for ensuring that new services are distributed equitably, that changes in services and fare increases do not have a disproportionately high negative impact on low-income and minority populations)?

Notify Beneficiaries of Protection under Title VI

The public must be informed of their rights under Title VI. Both states and subrecipients that provide transportation must proactively advertise that:

- The agency operates programs without regard to race, color, or national origin;
- The public can request additional information about the obligations of the recipient or subrecipient; and
- There are procedures that can be taken if a person feels they have been discriminated against.

Recipients and subrecipients that provide transit service must disseminate this information to the public through measures that can include, but cannot be limited to a posting on the agency's website. The state and its subrecipients do not need to reference "Title VI of the Civil Rights Act of 1964" in their notification to the public, since most of the public is not aware of this provision.

In Practice

There are a number of ways this requirement can be fulfilled. Ideas for dissemination include comment

cards, posters, and flyers in transit stations. Examples of brochures published by the U.S. Department of Justice that notify the public of their rights can be found at http://www.usdoj.gov/crt/cor/pubs.htm. It is important that the states effectively relay the information because subrecipients may adopt the Title VI notice developed by the recipient.

This notification should be considered a vital document, which means it should be translated into whatever languages are found necessary to be consistent with the DOT LEP guidance.

Appendix D in *NCHRP Web-Only Document 147* includes a number of examples of outreach and communications with the public including examples of Title VI Non-Discrimination Statements on state websites and brochures/pamphlets. Examples of brochure/pamphlet dissemination methods include:

- In Washington, D.C., the District Department of Transportation's civil rights department disseminates a brochure at public meetings.
- In Montana, the state requires transit agencies to put pamphlets on the buses that not only inform riders of their rights, but allow riders to fill out a complaint form right on the bus if they feel they have been discriminated against. The goal is to make sure vehicle operators aren't able to scare system users from filing a report if they feel their rights have been violated.

State Check: Does your state notify residents of their rights under Title VI? How is such notification provided to the public? Do subrecipients notify the public of their rights under Title VI? How do you monitor their performance in this area?

Promote Inclusive Public Participation

One of the principles of Title VI, especially EJ, is to ensure the full and fair participation of all potentially affected communities in the transportation decision-making process. In addition to notifying the public of their rights under Title VI, states and their subrecipients need to actively engage the public in planning transportation projects throughout the process. Transit agencies and state DOTs need to reach out and bring minority and low-income populations to the table.

DOT Order 5610.2 states that, "Procedures shall be established or expanded, as necessary, to provide meaningful opportunities for public involvement by members of minority populations and low-income populations during the planning and development of programs, policies, and activities (including the identification of potential effects, alternatives, and mitigation measures)." The FTA circular includes guidance on promoting inclusive public participation which states, "Recipients and subrecipients should seek out and consider the viewpoints of minority, low-income, and LEP populations in the course of conducting public outreach and involvement activities. An agency's public participation strategy shall offer early and continuous opportunities for the public to be involved in the identification of social, economic, and environmental impacts of proposed transportation decisions."

State Check: Has your state sought out and considered the viewpoints of minority, low-income, and LEP populations in the course of conducting public outreach and involvement activities? Have your subrecipients? How do you monitor subrecipient outreach?

In Practice

FTA's website provides useful tools and examples of methods that can be used to promote inclusive public participation. It emphasizes a few points that are important for all states to address.

First, for public participation to be inclusive, state DOTs must know where disadvantaged people are located. This can be done through mapping and keeping various lists with contact information. Next, there has to be a level of outreach that goes beyond advertising in the local newspaper and regular public meetings. Outreach can be done through conducting in-person community tours, visiting churches and other community organizations, and making sure there is a channel for feedback from community groups.

Finally, states must track and be able to document those public involvement measures taken and methods used to seek out and consider the viewpoints of minority, low-income, and LEP populations in the course of conducting these public outreach and involvement activities. They should also have docu-

mentation that they have monitored their subrecipients for the same inclusive methods.

FTA Circular 4702.1A also discusses some effective practices to promote inclusive public involvement and lists some specific practices, including:

1. Coordinating with individuals, institutions, or organizations and implementing community-based public involvement strategies to reach out to members in the affected minority and/or low-income communities;
2. Providing opportunities for public participation through means other than written communication, such as personal interviews or use of audio or video recording devices to capture oral comments;
3. Using locations, facilities, and meeting times that are convenient and accessible to low-income and minority communities;
4. Using different meeting sizes or formats, or varying the type and number of news media used to announce public participation opportunities, so that communications are tailored to the particular community or population; and
5. Implementing DOT's policy guidance concerning recipients' responsibilities to LEP persons to overcome barriers to public participation.

Examples of state DOT practices training staff on Title VI and public participation requirements are included in Appendix E (see *NCHRP Web-Only Document 147*). For example, California's Division of Transportation Planning works to incorporate community concerns and values into the planning process by using focus groups, public hearings, grant workshops, and Citizen Advisory Committees. They are also providing planning grants to promote Title VI and EJ considerations in communities.

The California DOT also has a training video on its website that is for both Caltrans employees and California Indian communities. The video is free, about 30 minutes long, and aims to inform and engage people about EJ as it applies to the transportation needs of California Indians. This video can be viewed at the following URL: http://www.dot.ca.gov/hq/bep/title_vi/training_video_3_choice.htm.

The Maryland Transit Administration (MTA) offers a compliance monitoring review in the form of a checklist for all local operators that receive federal funding.

Procedures for Handling Complaints

State DOTs and their subrecipients must develop and maintain procedures for handling, investigating, and tracking Title VI complaints. Procedures for how to file a complaint must be made available to the public upon request. Effective processes for handling complaints must include procedures for:

- Receiving,
- Tracking,
- Investigating,
- Responding to Complaints, and
- Record-Keeping.

States and subrecipients do not need to develop separate procedures for investigating and resolving Title VI complaints beyond what procedures have already been established to respond to complaints of discrimination filed on bases not covered under Title VI, or procedures to respond to complaints not related to civil rights.

Receiving, Tracking, Investigating, and Responding to Complaints

The procedures established by states and their subrecipients must include a mechanism to inform the public how complaints can be lodged, how they will be received and tracked, and how they will be investigated and responded to. States also must make sure that recipients are following-up and taking corrective action on Title VI complaints. States must take action if subrecipients are not responding or have a large number of complaints. It is up to the states to resolve Title VI complaints and to tell the FTA regional office when and how complaints are resolved.

Most states have a well-established process and schedule for receiving and acknowledging complaints, determining whether it is appropriate to investigate the complaint, conducting investigations, and issuing determinations. This process can be applied to Title VI complaints.

However, there should be a system in place to identify which, if any, complaints have been filed because the complainant believes that he or she was denied the benefits of, excluded from participation in, or subject to discrimination on the grounds of race, color, or national origin under any program or activity offered by the recipient. Although the complainant may not refer to Title VI in the complaint,

there should be a process to be able to identify and classify this type of complaint as a Title VI complaint. The state should also have procedures for monitoring its subrecipients for this requirement.

FTA Requirements: The first step in developing and maintaining a procedure for tracking complaints is to have a standard method of reporting a complaint. If there is no contact point for civil rights matters, states should assign a staff member to be the contact for all Title VI complaints and to answer questions from subrecipients.

In Practice

Many states include complaint forms on their websites and invite members of the public to lodge complaints if they feel they have been discriminated against. Most also have procedures to investigate and follow-up with complainants.

Tennessee has a system in place that could be useful for other states that need guidance on what steps to take beyond publishing a complaint form. After a person has filed a complaint form in Tennessee, the procedure is as follows:

- A form letter is first sent out to let the person know the complaint has been received.
- A follow-up letter asks them to get in touch so they can discuss the complaint further, usually by phone.
- An assigned investigator uses a standard worksheet that lists the date, the type of complaint (such as race or national origin), when the last compliance review was conducted, and when the next review is scheduled.
- Another letter notifies the complainant that the program will be investigated and that they will be notified of the results.
- The next letter either lets the complainant know that there were violations in the Title VI Program and that efforts are underway to correct them or that the file will be closed because the investigation did not uncover any violations in Title VI.

State complaint procedures and forms can be found in Appendix F (see *NCHRP Web-Only Document 147*).

In addition, FTA Circular 4702.1A includes the process that FTA uses to respond to complaints of discrimination under Title VI and provides an example of a good complaint process that may be useful to state DOTs (see Chapter IX—Complaints).

State Check: Does your state have procedures for investigating and tracking Title VI complaints and is this information made available to the public? How is the public informed? Do your subrecipients have such procedures? Do you monitor their procedures and complaints including follow-up?

Record-Keeping on Title VI Investigations, Complaints, and Lawsuits

Both states and their subrecipients must keep a list of active investigations, complaints, and lawsuits that allege discrimination by the recipient or subrecipient on the basis of race, color, or national origin. The list must include the following information:

1. The filing date of the investigation, lawsuit, or complaint;
2. A summary of the allegations;
3. The status of the investigation, lawsuit, or complaint; and
4. The response taken by the recipient or subrecipient.

States should require local subrecipients to keep:

- A list of active lawsuits or complaints, including the date the lawsuit or complaint was filed.
- A summary of the allegations, the status of the lawsuit or complaint, and whether the parties to a lawsuit entered into a consent decree.
- A summary of all civil rights compliance review activities conducted in the past 3 years.

Subrecipients should keep files for at least 3 years or longer if required by the state.

In Practice

In Maryland, this process requires immediate notification of the MTA when any investigation, complaint, or lawsuit is initiated. The MTA process also requires subrecipients to report on complaints as part of the annual grant application.

State Check: Does your state have procedures for tracking which complaints may be related to discriminatory practices? Are these reported separately?

Provide Meaningful Access to Limited English Proficient Persons

All states and their subrecipients must take responsible steps to ensure meaningful access to the benefits, services, information, and other important portions of their programs and activities for individuals who are Limited English Proficient (LEP). States and their subrecipients must have an LEP plan that starts with an assessment to identify whether there is a significant LEP population.

Certain recipients or subrecipients, such as those serving very few LEP persons or those with very limited resources may choose not to develop a written LEP plan. However, the absence of a written LEP plan does not obviate the underlying obligation to ensure meaningful access by LEP persons to a recipient's program or activities. Recipients or subrecipients electing not to prepare a written language implementation plan should consider other ways to reasonably provide meaningful access.

LEP Assessment

The DOT LEP guidance advises grantees to determine what steps are necessary to provide "meaningful access" on the basis of four factors: (1) the number and proportion of LEP persons served or encountered in the eligible service population; (2) the frequency with which LEP individuals come into contact with the program, activity, or service; (3) the nature and importance of the program, activity, or service provided by the program; and (4) the resources available to the recipient and costs.

States must document how their agency and subrecipients have analyzed the four factors presented in the DOT LEP guidance and whether they have developed an implementation plan on language assistance.

LEP Plan Implementation

Based on the assessment of need for LEP assistance, states and their subrecipients should develop an implementation plan to address the identified needs of the LEP populations they serve including specific language assistance measures to be taken. The plan should consist of:

1. Identifying the LEP individuals who need language assistance;
2. Providing notice to LEP persons of services available;
3. Providing language assistance measures such as using telephonic and video-conferencing interpretation services;
4. Training staff or hiring bilingual staff to act as interpreters and translators;
5. Formalizing use of qualified community volunteers;
6. Using centralized interpreter and translator services;
7. Using symbolic signs (pictographs);
8. Translating into languages other than English vital written materials, such as applications or instructions on how to participate in a recipient's program, signs in bus and train stations, notices of public hearings and other community outreach, and notices advising LEP persons of free language assistance; and
9. Monitoring and updating the LEP plan.

At a basic level, state DOTs should make vital documents about Title VI, such as what it is, what people's rights are, and how to file complaints available in any languages the LEP assessment showed has a significant population in the study area.

While it is up to individual states to determine what information is considered vital, and how to make it available, states and their subrecipients should be able to handle special requests for materials.

State Check: Has your state taken responsible steps to ensure meaningful access to the benefits, services, information, and other important portions of their programs and activities for individuals who are LEP? What are these steps? Do they include measures to accommodate persons with low literacy? Have your subrecipients also taken steps to ensure access for persons with LEP? How do you monitor this?

FTA Requirements: The FTA considers a significant LEP population as one in which the proportion of persons in the grantee's service area who reported to the 2000 Census that they speak English less than "very well" exceeds the statewide proportions, and/or the grantee's outreach to the community organizations serving LEP persons in their service area determines that there exists a sizable LEP population residing in the service area.

In Practice

The FTA website has some materials on good LEP plans and expects to post additional examples as they become available. States also can work with large urban systems that have successful LEP plans to develop one that works at the state level. New York's Metropolitan Transportation Authority is currently developing an LEP plan that can be used as a best practice, and FTA will post the plan on its website upon completion.

Appendix G in *NCHRP Web-Only Document 147* includes examples of LEP materials. For example, the Indiana DOT's DBE and Title VI website offers information in both English and Spanish. All states could have a link to translation services of some sort, or require subrecipients to do so for local transit systems.

The Washington State DOT translates materials for advertising a project, hearings, meetings, radio and/or TV advertisements in areas where at least 5% of the individuals in an impact area speak a language other than English, and can make translators available. The DOT also assesses what "reasonable accommodations" means in terms of how much material should be published on a case-by-case basis (*1*).

In Federal Fiscal Year (FFY) 2004, California established an LEP protocol pamphlet for DOT employees who encounter the traveling public (*2*). Although this Highway Emergency Language Protocol (HELP) pamphlet was aimed at highway personnel, the idea could be very useful for transit agencies. This pamphlet helped staff communicate with the public in six different languages.

The California DOT offers free videos on its website (*3*). The videos are required by department staff to help the state meet federal requirements, but they are also available for the general public or other agencies. The second video posted on the web page is called "Language Assistance for Limited-English Proficient Persons Your Responsibilities under the Dymally-Alatorre Bilingual Services Act" (*4*).

TriMet in Portland, Oregon, is another large urban system with a thoroughly developed LEP program that states could look to for guidance in developing a more comprehensive state plan. In 2006, TriMet developed a Language Implementation Plan that was phased in over 4 years. The list of goals is broken into six categories:

- Capital Projects and Facilities,
- Legal/Human Resources,
- Marketing and Customer Service,
- Operations,
- Diversity and Transit Equity, and
- Additional Services.

States can take a look at the items covered in TriMet's Language Implementation Plan for their own LEP plans on the FTA website as well as in Appendix G (*5*). Again, these items can be phased in, but regardless of how a plan is implemented, the process should be documented.

The U.S. Department of Commerce, with the U.S. Census, published a Language Identification Flashcard that a driver can show a non-English speaking person in order to figure out what translation services are needed. (Referred to as "I speak" cards, these can be found at http://www.usdoj.gov/crt/cor/Pubs/ISpeakCards.pdf.) Although LEP regulations do not require agencies to provide all materials in all languages, it can aid in the identification of LEP individuals who need language assistance. It is important for an agency to know who to reach out to, even if the number of people with a specific language affiliation is not high enough to require production of materials.

States or subrecipients looking for ideas for drafting an LEP plan or improving an existing plan can check the website at http://www.lep.gov.

Title VI Program Reporting

There are a number of requirements for documenting and reporting how states comply with Title VI requirements and how they monitor their subrecipients. To document compliance, states must prepare and submit their Title VI Program (a.k.a. reporting) every 3 years. Exemptions from this report include recipients who only receive FTA funding through the

FTA's University Transportation Centers Program, National Research and Technology Program, Transportation Cooperative Research Program, Over the Road Bus Accessibility program, or Public Transportation on Indian Reservation programs.

The document must include:

- A summary of public outreach involvement activities;
- The LEP plan;
- Procedures for tracking and investigating Title VI complaints;
- A list of any Title VI investigations, complaints, or lawsuits filed; and
- The notice to the public that the agency complies with Title VI that includes instructions to the public on how to file a discrimination complaint.

States must also submit this information on behalf of their subrecipients every 3 years. Generally this is accomplished by states requiring that subrecipients provide a Title VI Program (report) that contains the above information. If the state or subrecipient policies and procedures remain unchanged since the last submission, in lieu of resubmitting the Title VI Program documents, the state or subrecipient can submit a statement that no major changes have occurred.

FHWA Requirements: FHWA requires recipients of highway funds to prepare annual update reports that cover a number of compliance topics. Therefore, the state DOTs are required to submit Title VI updates annually. This is separate from the Title VI Program required by FTA recipients.

In Practice

The researchers found three good examples of overall Title VI Program updates from state DOTS; these examples were from Oregon, Tennessee, and California. While it is not clear that these plans have been reviewed and approved by FTA in their entirety, they are the most complete state Title VI Programs identified. The sections of these documents that pertain to transit are included in Appendix H (see *NCHRP Web-Only Document 147*). In addition, states may find useful the form letter that Tennessee uses to inform subrecipients if their Title VI Program has been accepted or if there are changes they need to make.

State Check: Has your state submitted its Title VI Program report to FTA within the past 3 years? Did it include the required elements? Did it include reports from subrecipients? Were they complete?

Conduct an Analysis of Construction Projects

An EJ analysis must be submitted in order to meet federal requirements for new construction and major rehabilitation or renovation projects. States and subrecipients should integrate the EJ analysis into the National Environmental Policy Act (NEPA) documentation of the construction project. Grantees are not required to conduct EJ analyses of projects where NEPA documentation is not required.

Projects Eligible for a Categorical Exclusion (CE): Recipients documenting a CE will be compliant by submitting the FTA's standard CE checklist.

Projects Requiring an Environmental Assessment (EA) or Environmental Impact Statement (EIS): Recipients preparing an EA or an EIS must include the following:

- A description of the low-income and minority population within the study area affected by the project, and an explanation of the identification of the population.
- A discussion of how minority or low-income populations could be adversely impacted by the project during and after construction.
- A discussion of positive effects the project would have on minority or low-income populations.
- A description of what would be done to mitigate or enhance the resources the project would affect.
- A discussion of the effects that will remain after the project has been completed and why the project did not go further to mitigate them.
- A comparison of mitigation and environmental enhancement actions that affect minority and low-income populations to mitigation and environmental enhancement actions that affect the non-minority and non-low-income population.

In Practice

The Oregon Transportation Commission has a chart for eligibility criteria and prioritization for highway projects, but the format could be useful for transit projects as well (see Appendix I in *NCHRP Web-Only Document 147*).

SECTION 4 COMPLIANCE PRACTICES—SPECIFIC STATE DOT REQUIREMENTS

This section will take a more detailed look at the specific state DOT requirements for Title VI compliance and examples of current state practices for:

- Transportation Planning
- State Program Administration, including
  - Distributing FTA funds in an equitable manner
  - Providing assistance to potential subrecipients
- Monitoring Subrecipients

In addition, states that operate or contract for service in an urbanized service area of 200,000 or more population are also required to comply with the provisions for large urban areas and should refer to Section 5 for more details.

Transportation Planning

States must have procedures in place to ensure that a statewide transportation planning process complies with Title VI. As part of this, states must conduct an EJ analysis when determining the site or location of facilities to ensure avoiding both non-discrimination in locating passenger amenities and a disproportionately high negative effect on minority and low-income populations.

Some of the data from these statewide planning activities is also required for states to meet the general requirements identified in the previous section. The statewide planning requirements are intended to both provide the basis for certifying that the state does not discriminate in administering the federal transit program, and inform the decision-making process as federal transit funds are being distributed.

In Practice

There are three examples in FTA Circular 4702.1A of what a statewide analysis to establish non-discrimination can include. They are:

- A demographic profile of the state that geographically identifies socioeconomic groups, including low-income and minority populations.
- Research that identifies the needs of low-income and minority populations within the state.
- An analytical process that identifies the benefits and burdens of the state's transportation investments for different socioeconomic groups, indicates imbalances, and responds to the analyses (*6*).

The results of this analysis provide state DOTs with the basis for making the decisions necessary to comply with LEP, public notification, and public participation. This planning step lays the foundation for good planning and assuring non-discrimination. FTA recommends that states continually update models and have on-going analyses of demographics and needs. Keeping this information current allows states to decide where to focus funding. By making the process a continuing effort, the data and on-going analyses can become an integrated part of decision-making.

Some states are now addressing Title VI implementation using an interdisciplinary team approach. Two examples of states with this approach are included in Appendix J (see *NCHRP Web-Only Document 147*).

In Practice—Interdisciplinary Team Approach

1. In Tennessee, a Title VI interdisciplinary team is responsible for ensuring that Title VI requirements are being met before any major decisions are made. This team helps with all aspects of Title VI compliance and is composed of program and Title VI specialists, and should be able to provide training, answer specific questions, and keep agencies up-to-date on any changes in requirements.
2. Washington State DOT also uses an interdisciplinary team approach.

In Practice—Planning Tools

There are a number of examples of planning tools used by states and local subrecipients to ensure that federal transit funding is distributed equitably and that transit planning decision-making is not having a disproportionally negative effect on low-income and minority communities. Appendix K in

NCHRP Web-Only Document 147 includes examples of local planning processes and tools that have been used as well as the FTA recommended analysis for proposed service and fare changes under Title VI, EJ, and LEP.

State Check: Has the state developed a mechanism for analyzing whether services and benefits are distributed in a non-discriminatory manner? What data are collected and analyzed? How are these data used in the planning process? Has the state incorporated an EJ analysis into its NEPA documentation of construction projects? How does the state monitor how subrecipients distribute services and facilities and assess the impact of service changes on low-income and minority populations?

State Program Administration

State procedures for selecting Sections 5307, 5310, 5311, 5316, and 5317 projects must ensure that minority organizations or providers that serve primarily minority populations are eligible. Further, states must assist applicants, including those that are minority organizations or that serve primarily minority communities, in applying for assistance. Title VI requires that each state:

- Evaluate and select Sections 5307, 5310, 5311, 5316, and 5317 projects without regard to race, color, or national origin, and
- Identify and assist Sections 5307, 5310, 5311, 5316, and 5317 providers, including those that are minority organizations or that serve minority populations, in applying for assistance.

The state must document the procedures and this is generally accomplished by including a discussion of selection, eligibility, and technical assistance efforts in their State Management Plans.

Equitable Distribution of Funds

Recipients must have procedures in place to ensure that funds were received in a non-discriminatory manner. Ensuring the equitable distribution of funds requires that states evaluate and select Sections 5307, 5310, 5311, 5316, and 5317 projects without regard to race, color, or national origin. Selection procedures may vary by program, but should be documented in State Management Plans.

In Practice—Evaluation and Selection

States typically select their Sections 5310, 5316, and 5317 grantees through a competitive selection process, often on a statewide basis. States generally evaluate the merit of applications using criteria such as the need for the vehicle, coordination efforts, managerial and financial capacity, and the need of the population served. Some states give a slight preference to applicants that serve low-income or minority populations. Several states include representatives of minority organizations, such as the National Association for the Advancement of Colored People, on their selection committees.

Typically, states distribute Section 5311 operating funds to established grantees based on the level of funding these systems have received in previous years. Some states distribute Section 5311 operating funds by formula. They generally distribute capital funds based on the condition, age, and the need for vehicles. In most cases, states bring new operators into the program based on criteria such as the need for services in their area, projected ridership, and managerial and financial capacity. Many states limit eligibility to public entities and few consider race as a factor. States that administer the small urban Section 5307 program usually adopt FTA's methodology for apportioning funds, although this is not required. Any of these methods is acceptable as long as grantees are selected without regard to race, color, or national origin and you have provided adequate opportunity for all applicants.

States may classify applicants as providing service to predominately minority and low-income populations, if the proportion of minority and low-income people in the applicant's service area exceeds the statewide average.

In Practice—Documentation

To document the competitive selection process or annual program of projects (POP), the FTA recommends DOTs include in their State Management Plan a description of the competitive selection process. The annual POP that is submitted to FTA should also show that the methods used to distribute funds are not discriminatory. These procedures must take into account the DOT Order on Environmental Justice.

The selection process should include a description of the criteria used to select transit providers or subrecipients. One way states can distribute Section 5311 funds is by using a formula based on the condition, age, and need for vehicles. As noted above, there are a number of possible criteria that can be used to ensure that funding selection is based on objective standards:

- The need for a vehicle, determined by an objective measure;
- Coordination efforts;
- Managerial and financial capacity;
- Condition of the vehicle being replaced;
- Income of population served; and
- General need of the population of the area served.

In Practice—Reporting on Grantee Selection Results

States must submit annually with their grant applications a record of approved and rejected funding requests that identifies which applicants would use the funding to provide assistance to predominantly minority or low-income populations. The state may submit a list of every accepted and rejected applicant or may submit totals, such as total applications received, total applications rejected, total applications from minority and low-income providers received, and total applications from minority and low-income providers rejected. The designation of an applicant as serving low-income or minority populations can be done as part of the annual grant application.

State Check: Does the process used to evaluate and select Sections 5307, 5310, 5311, 5316, and 5317 projects ensure the fair and equitable distribution of funds to subrecipients that serve predominately minority and low-income populations (including Native American Tribes)? Does the state submit with its annual Sections 5307, 5310, 5311, 5316, and 5317 grant applications a record of approved and rejected funding requests that identifies applicants that are minority organizations or that provide assistance to minority or low-income communities?

Provision of Technical Assistance

As part of the grant application process, states routinely provide technical assistance to applicants for Sections 5307, 5310, 5311, 5316, and 5317 funds. It is important that states provide this assistance to applicants serving low-income and minority communities and that technical assistance to current and potential applicants is provided in a non-discriminatory way.

In Practice

Technical assistance can be, and is, provided by states in a variety of ways. At a minimum, state DOTs provide assistance to grant applicants by phone, but most also conduct meetings throughout their states to introduce potential applicants to the programs. Some will provide on-site assistance in completing applications, especially to first-time applicants. As part of this process, states should provide outreach to targeted organizations located in and serving low-income and minority communities. The outreach efforts may consist of sending annual notices to targeted organizations and placing notices regarding the availability of assistance in newspapers, including those serving minority communities. Technical assistance can come in the form of phone calls, site visits, or conducting workshops on how to apply for funds.

The State Management Plan should include a description of the procedures the agency has in place to assist potential subrecipients in applying for grants. States should document efforts to assist applicants that would serve predominantly minority and low-income populations. The FTA also emphasizes ensuring equitable distribution to Native American Tribes. States are allowed to give a slight preference to applicants that serve minority populations.

State Check: How does the state assist applicants that would serve predominately minority and low-income populations in applying for assistance? Are these efforts documented in the State Management Plan?

Monitoring Subrecipients

Part of the state-specific reporting requirements deals with monitoring subrecipients. In order for states to comply with Title VI requirements, subrecipients of Sections 5310, 5311, 5316, and 5317 programs must be in compliance, and it is the responsibility of

the state to monitor whether they are. States are not compliant if their subrecipients are not compliant (*7*).

States should document their monitoring process for ensuring that all subrecipients are complying with the general reporting requirements. In addition, if the state finds it necessary (i.e., there is a complaint of discrimination), the state can request that subrecipients who provide transportation services verify that their level and quality of service is provided on an equitable basis. In these cases, states can request that subrecipients develop system-wide service standards and verify that service provided to predominantly minority and low-income communities meets these standards.

States should describe how they monitor subrecipients for compliance with Title VI and a summary of the results of this monitoring in their Title VI plan. State Management Plans should include both a discussion of the assignment of monitoring responsibility as well as monitoring procedures.

In Practice

The assignment of responsibility for monitoring subrecipients to ensure that they do not discriminate in the provision of service differs among the states. Typically, the transit units that administer the FTA-funded programs monitor subrecipients, but often the DOT department-wide civil rights office provides them with technical assistance.

In practice, states generally require subrecipients to report annually (perhaps in their grant application) or quarterly that they are complying with Title VI. Other methods of monitoring include on-site visits, training, documentation reviews, checklists, annual grant applications, and Certifications and Assurances.

The most prevalent method of monitoring subrecipient compliance with Title VI is through subrecipient reporting (on Title VI activities and complaints). This self-reporting generally is done in conjunction with the annual grant application, but is often verified by states during on-site visits to the subrecipients. As an added element, some states have a policy that if a Title VI complaint is received, an on-site visit is triggered. Some states take a multi-faceted approach to confirm that subrecipients are in compliance. For example, the Maryland Transit Administration requires that local transit systems develop a written process, report on complaints, and identify a staff member designated to deal with Title VI as part of their annual grant application.

Other examples of subrecipient monitoring procedures and tools are presented in Appendix L. Examples of subrecipient reporting requirements are included in Appendix M. (See *NCHRP Web-Only Document 147* for Appendices L and M.)

State Check: Who at the state is responsible for monitoring subrecipients to ensure that they do not discriminate in the provision of service? What is the relationship of this individual to the state's or the department's civil rights function?

Staff Training

While not a specific requirement, states should train their staff and the staff of subrecipients regarding Title VI requirements. As with monitoring, assistance can be performed by the civil rights department in the DOT as opposed to someone in the department administering the grant. Common methods for providing assistance to subrecipients include:

- Outreach programs to ensure that local systems know they have to comply with Title VI regulations,
- Phone assistance,
- Websites,
- Training, and
- E-mail alerts if there is a change in the Title VI Program guidelines.

In Practice—Staff Training

1. In California, the training videos discussed in the monitoring section of this digest that help incorporate the public into the planning process also double as training for staff, keeping them up-to-date on Title VI considerations. This helps staff do a better job with questions from both the public and subrecipients.
2. The Michigan DOT offers links to Washington and California Title VI procedures on its website. The easy-to-find links are a great way to help answer questions and get ideas on how other areas are fulfilling their Title VI obligations.

Some examples of training activities were included in Appendix E (see *NCHRP Web-Only Document 147*).

State Check: Has the state trained its staff and the staff of subrecipients on the requirements of Title VI? Is this training provided periodically?

Preparing and Submitting a Title VI Program

In addition to the reporting requirements in the General Requirements section, FTA also requires that state DOTs document their compliance with the program-specific requirements and submit to FTA a Title VI Program that also includes documentation of compliance with the general reporting requirements. As with the general reporting, this program is submitted once every 3 years.

State DOTs must document that they comply with Title VI with regard to:

- Conducting statewide transportation planning,
- Administering the program, and
- Monitoring procedures and results.

If a DOT has not altered its procedures, the agency can submit a statement to this effect in lieu of copies of the original documents when the triennial review is due. It must be submitted before the deadline.

In Practice

The Tennessee DOT has a checklist of transit providers categorized by whether they serve rural or urban areas and the date of their last submittal.

State Check: Has the state's Title VI Program (compliance report) been submitted to the FTA/Compliance Report Office for the region? Has it been approved by FTA? If yes, when does the approval expire? Does the state have a process for collecting subrecipient reports and submitting them to FTA?

SECTION 5 COMPLIANCE PRACTICES—LARGE URBAN AREAS WITH POPULATIONS OVER 200,000

FTA recipients of transit funds in large urbanized areas (with populations over 200,000) must meet six requirements in addition to the general requirements that all federal funding recipients must meet. If the state directly operates or contracts for services in a service area of 200,000 or more in population it must meet these requirements. The best examples of how these requirements can be met are found within the FTA Circular 4702.1A and the appendix to 49 CFR 21. Since the large urban area compliance practices are not applicable to most state DOTs, no best practices were identified under this research.

It should be noted that while these "large urban" requirements do not apply to Section 5310, Section 5316, or Section 5317 grantees, they would apply to any public transit grantee that operates in a service area with populations of 200,000 or more; the requirements are tied to the service area population size, not the funding sources. In the event that states administer FTA funding for subrecipients in such an area, the state is responsible for ensuring that the subrecipient complies with the following requirements.

Collect and Analyze Demographic Data

In the same way that state DOTs are responsible for analyzing demographics and knowing where needs lie, large urban areas also must be able to show the extent to which members of minority and low-income groups are beneficiaries of programs receiving federal funding.

In Practice

There are multiple ways of collecting and analyzing the relative benefits and burdens associated with transit programs that are realized by different socioeconomic groups, as suggested in FTA Circular 4702.1A. FTA notes that agencies can choose one or more of the following options:

- **Option A: Demographic and service profile maps and charts.** This option would allow agencies to show where transit service exists by using maps showing demographics, and specifically where any minority and low-income populations are clustered, and their location in relation to transit services offered.

  Maps and charts should be redone after decennial Census and before proposed service reductions or eliminations. Additional guidance can be found in FTA Circular 4702.1A.
- **Option B: Survey information on customer demographics and travel patterns.** Agencies can collect demographic information and travel patterns from riders. The FTA recommends the following questions:
  - Information on the rider's race, color, and national origin

- Whether the rider speaks or understands English "not well" or "not at all"
- Information on the rider's income or income range
- The mode of transit service most frequently used
- The frequency of transit usage
- The typical number of transfers made
- The fare payment type and media most frequently used (if applicable)
- Rider's access to an automobile

These can be integrated into routine customer surveys and collected routinely by the agency. Agencies should translate the surveys into other languages when necessary to comply with DOT LEP guidelines.

- **Option C: Locally developed alternative.** Agencies can modify and develop their own procedures to analyze demographic data as long as it meets Title VI requirements.

Set System-Wide Service Standards

Locally planned changes in services, facilities, and policy must not result in discrimination against any segment of the community. Service and facilities planning must take into consideration the potential impact on minority and low-income populations. For example, service cuts should not result in a relatively higher loss of service for minority or low-income communities, while service expansions should serve low-income and minority communities as well as other communities.

In order to verify and track non-discrimination, operators of transit services must have service standards to ensure that discriminatory service design or operations decisions are avoided.

In Practice

While operators are free to adopt additional or other service standards, the FTA suggests setting quantitative standards on indicators such as vehicle load; headway; on-time performance; distribution of transit amenities (newer, nicer, etc.); and service availability or distribution. These standards allow agencies to document and ensure that minority or low-income groups are not being discriminated against.

Set System-Wide Service Policies

Like setting system-wide standards, the object of this effort is to set service policies in a manner that does not lead to disparate impacts on minority or low-income populations. This requirement differs from setting system-wide service standards in that policies are not necessarily quantifiable.

In Practice

FTA Circular 4702.1A gives examples of policies regarding vehicle assignment and transit security:

- **Vehicle Assignment—**Agencies could assign vehicles based on:
  - Age of vehicle—so that the age of vehicles at each depot doesn't exceed the system-wide average
  - Type of vehicle—so that popular routes and peak periods could be served by higher capacity vehicles
  - Level of emissions—in a way that could reduce emissions per bus at each depot
- **Transit Security—**When deciding how to disperse transit security measures throughout a system, policies should be based on criteria such as where data show there is a higher level of criminal activity or other objective information. Policies regarding the search and observation of suspicious activity should ensure that surveillance is conducted without regard to race, color, or national origin.

Evaluate Service and Fare Changes

To the extent that states operate or contract for services or directly fund transit services in large urban areas, states must evaluate any major service or fare changes to ensure that there will not be a disproportionate disparate impact on minority or low-income populations. The state or local subrecipients must have a policy for what constitutes a major change.

In Practice

When contemplating a change, the state or its subrecipients should assess the effects of the proposed fare or service change on minority and low-income populations, and the alternatives available for people affected by the proposed change. The state or its subrecipients should be able to describe how adverse effects will be mitigated, minimized, or offset, and determine whether proposals would have a disproportionately high and adverse effect on minority or low-income populations.

If a state chooses to develop its own method for assessing proposals for fare or service changes, a description of the methodology must incorporate the items mentioned above.

Monitor Transit Service

Again, to the extent that states operate or contract for services or directly fund transit operators in large urbanized areas, the state must monitor that services provided meet Title VI requirements. While monitoring is required every 3 years, it is highly recommended that states periodically monitor service more frequently.

In Practice

Four possible methods that states can use to monitor services are included in Chapter V of FTA Circular 4702.1A:

- **Option A: Level of service methodology—** reviewing the level of service (miles, hours) provided to various demographic groups throughout the service area compared to established service policies. This can be based on a sample of bus routes and fixed-guideway routes.
- **Option B: Quality of service methodology—** reviewing the quality of service (frequency, major destinations served, travel time, cost per trip) provided to various demographic groups throughout the service area. This can be based on a sample of Census tract or Traffic Analysis Zone (TAZ) data, but should include zones where minority and low-income residents reside.
- **Option C: Title VI analysis of customer surveys—**comparing customer satisfaction survey responses from individuals who identify themselves as members of minority groups and/or in low-income brackets with other respondents.
- **Option D: Locally developed alternative—** modifying the above or developing their own procedures to monitor transit services to ensure compliance with Title VI.

Prepare and Submit a Title VI Program

Recipients of Section 5307 funds must submit a report to the FTA that includes information much like state DOT requirements. They are:

- A copy of the demographic analysis for the service area. Maps, charts, customer surveys, and information on travel patterns should be included.
- A copy of system-wide service standards and polices.
- A copy of the evaluation of fare or service changes that were found to be major.
- A copy of the results of monitoring done by the state.

If the items in the above list have not been changed since the last triennial review Title VI Program report, an agency can submit a statement saying that the items have not changed, in lieu of sending a full report to eliminate redundancy.

SECTION 6 COMPLIANCE PRACTICES—REPORTING REQUIREMENTS

This section summarizes the items in the previous chapters that must be reported to the FTA. These reporting requirements have been reformatted from Appendices A, B, and C of FTA Circular 4702.1A. The U.S. DOT's Title VI regulations at 49 CFR 21.9(b) state that, "Each recipient shall keep such records and submit to the Secretary timely, complete, and accurate compliance reports at such times and in such form and containing such information as the Secretary may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this part."

In accordance with this provision, FTA requires that states submit a compliance report (also known as its Title VI Program) to the FTA Civil Rights Officer for their region once every 3 years. The state Title VI Program documents compliance with both the general and program-specific requirements in FTA Circular 4702.1A. These requirements are discussed in more detail in Sections 3, 4, and 5.

State Check: Has your state submitted a Title VI Program that includes general requirements for the state and subrecipients, as well as state-specific program reporting? Has the state's Title VI Program been approved by FTA? If yes, when does the approval expire?

General Reporting Requirements—State and Subrecipients

States must keep required Title VI general reporting information on file for both the state program and for subrecipients. This includes:

- **Notification of Title VI rights—**a copy of a notice to the public that covers Title VI and procedures for filing a discrimination complaint.
- **Inclusive public participation—**a summary of public outreach and involvement activities that includes how minority and low-income populations had meaningful access to activities.
- **Title VI complaint procedures—**a copy of the procedures for filing a complaint.
- **Record of Title VI investigations, complaints, and lawsuits—**a list and description of active lawsuits, and a statement of the status and outcomes.
- **Access to services by persons with LEP—**an LEP Plan or a description of how the agency provides access to activities and programs for LEP populations.

State-Specific Program Reporting

When the state has collected the Title VI plans from subrecipients and has determined that obligations from the general requirements for all grantees have been satisfied, the state must also submit the following information in the Title VI report:

- **Statewide Planning Activities—**a copy of the procedures used to certify that the statewide planning process complies with Title VI.
- **Program Administration—**a description of the procedures the agency uses to pass-through federal funds to ensure nondiscrimination and a description of procedures for offering assistance to potential and current subrecipients.
- **Subrecipient Monitoring—**a description of compliance monitoring procedures and the results.

Large Urban Area Reporting

Finally, state agencies operating or contracting for service in urban areas with 200,000 population or more or administering the funding for transit agencies that serve such areas are responsible for ensuring that the following information is a part of the Title VI report that is submitted:

- **Demographic data—**demographic maps and charts.
- **Service standards—**system-wide service standards.
- **Service policies—**system-wide policies.
- **Equity evaluation of service and fare changes—**an analysis of impacts on minority and low-income populations for any significant service or fare changes.
- **Service monitoring—**a discussion of monitoring results. This could be based on the level of service, quality of service, analysis of customer surveys, or a locally developed monitoring procedure.

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