



FHWA Title VI Subrecipient Reviews

Compliance Review Procedure & Subrecipient Guidance

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Introduction

Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, or national origin in any program or activity receiving federal financial assistance. Several other federal legal authorities supplement Title VI by extending protections based on age, sex, disability, limited English proficiency, and income status. In addition, the Civil Rights Restoration Act of 1987 clarified Title VI enforcement by mandating that Title VI requirements apply to *all* programs and activities of federal-aid recipients regardless of whether any particular program or activity involves federal funds. Taken together, these laws require recipients and subrecipients of federal funds to ensure all programs and services are delivered to the public equitably and without discrimination.

In accordance with 23 C.F.R. § 200.9(b)(7), the Minnesota Department of Transportation (MnDOT) conducts periodic reviews of entities receiving Federal Highway Administration (FHWA) federal aid to monitor Title VI compliance. This guide refers to those entities as “subrecipients.” Subrecipients may include, but are not limited to, cities, counties, consultants, non-construction contractors, suppliers, universities, colleges, planning agencies, and other recipients of Federal-aid highway funds. Within this guide, subrecipients will find helpful information, including:

1. Relevant legal authorities
2. Overview of the Title VI subrecipient review process
3. Title VI legal requirements
4. Recommended documents and processes to achieve Title VI compliance

This guide is not exhaustive of all aspects of Title VI requirements and MnDOT’s compliance review process. Rather, the purpose of this guide is to familiarize subrecipients with the Title VI review process and to highlight recommendations that MnDOT strongly encourages subrecipients to incorporate into their Title VI programs. Adhering to the recommendations in this guide will not guarantee complete compliance with Title VI requirements. However, subrecipients who make efforts to implement the recommendations found in this guide should improve overall compliance and facilitate a more efficient Title VI review process.

Please note: This guide is intended for informational purposes and does not create new legal protections, rights or requirements. It should not be construed as superseding federal statutes, regulations, or executive orders, including any changes that may be made to those legal authorities. Further, this guide does not cover every situation, and compliance determinations are made on a case-by-case basis.

For additional information or assistance, please contact Byron Millea, 651-366-3315, Byron.Millea@state.mn.us.

Relevant Legal Authorities

MnDOT’s Title VI compliance program is governed by many legal authorities, including, but not limited to, the list below.

Legal Authority	Summary
Title VI of the Civil Rights Act of 1964 , 42 U.S.C. § 2000d <i>et seq.</i>	Prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance.
Federal-Aid Highway Act of 1973 , 23 U.S.C. § 324.	Prohibits discrimination on the basis of sex in programs and activities receiving federal financial assistance.
Age Discrimination Act of 1975 , 42 U.S.C. § 6101 <i>et seq.</i>	Prohibits discrimination on the basis of age in programs and activities receiving federal financial assistance.
Section 504 of the Rehabilitation Act of 1973 , 29 U.S.C. § 794.	Prohibits discrimination on the basis of disability in programs and activities receiving federal financial assistance.
Uniform Relocation Act of 1970 , 42 U.S.C. § 4601 <i>et seq.</i>	Requires fair treatment of persons displaced by federal-aid programs and projects.
Environmental Justice Executive Order (Exec. Order No. 12898, 59 Fed. Reg. 7629 (Feb. 11, 1994).)	Requires federal agencies and federal-aid recipients to identify and address “disproportionately high and adverse human health or environmental effects of its programs, policies and activities on minority populations and low-income populations.”
Limited English Proficiency Executive Order (Exec. Order No. 13166, 65 Fed. Reg. 50121 (Aug. 11, 2000).)	Recipients of federal financial assistance must provide meaningful access to limited English proficiency (LEP) applicants and beneficiaries.
49 C.F.R. Part 21	Nondiscrimination in Federally-Assisted Programs of the Department of Transportation.
23 C.F.R. Part 200	Title VI Program and Related Statutes - Implementation and Review Procedures.

MnDOT Office of Civil Rights Title VI Program

MnDOT's Title VI compliance program operates in accordance with 49 C.F.R. Part 21 and 23 C.F.R Part 200. The program is managed by MnDOT Office of Civil Rights (OCR). However, Title VI compliance requires a collaborative effort between OCR and designated Title VI Liaisons in all MnDOT districts, departments, and offices.

OCR's Director is the designated Title VI Coordinator. Authority has been delegated to a Title VI Specialist to carry out the compliance program while reporting directly to OCR's Director. The Title VI Specialist carries out the following responsibilities:

- Providing technical assistance to program personnel and subrecipients.
- Assisting program personnel and subrecipients to correct discriminatory practices or policies and advise OCR's Director of Title VI issues.
- Reviewing documents as needed for compliance with Title VI to ensure procedural safeguards are in place to prevent discrimination.
- Conducting Title VI compliance reviews of program emphasis areas and subrecipients.
- Developing Title VI training material and conducting training sessions and workshops.
- Developing Title VI information for dissemination to the public and, where appropriate, in languages other than English
- Processing Title VI external complaints of discrimination in accordance with the FHWA procedures for processing external complaints of discrimination.
- Drafting and submitting required federal reports.

For more information about MnDOT's Title VI program, please contact Byron Millea, 651-366-3315, Byron.Millea@state.mn.us.

Title VI Subrecipient Review Process Overview

In accordance with 23 C.F.R. § 200.9(b)(7), OCR conducts periodic reviews of subrecipients to monitor Title VI compliance. These reviews ensure Title VI compliance and an opportunity to provide technical assistance to subrecipients. Subrecipients selected for review can expect the process to follow the steps laid out below.

1. Notification

The subrecipient receives a notification letter stating it has been selected for review. The letter includes an itemized list of information and documentation to be submitted to OCR within thirty calendar days.

2. Desk Audit

OCR reviews submitted material. The Title VI Specialist prepares an initial report of findings, including deficiencies requiring corrective action and non-mandatory recommendations to strengthen the subrecipient's Title VI program.

3. On-Site Review

Depending on the findings of the desk audit, OCR may request an on-site review, including inspection of the subrecipient's facilities and interviews with relevant personnel. If an on-site review is necessary, the subrecipient will be notified within 15 calendar days of the acceptance date of all necessary documents.

4. Compliance Review Report

A Compliance Review Report will be issued within 15 calendar days following completion of an on-site review. If no on-site review is conducted, a compliance review report will be issued to the subrecipient within fifteen calendar days of the acceptance date of all necessary documents. The report will detail any identified deficiencies in the subrecipients Title VI program, including a proposed Corrective Action Plan.

5. Corrective Action Review Meeting

The Title VI Specialist will schedule a meeting to review the report and proposed Corrective Action Plan. Subrecipient will have an opportunity to provide input and suggestions regarding the proposed corrective action timeline. However, the proposed corrective actions must be completed within 90 calendar days.

If there are no deficiencies, the Title VI Specialist will determine whether a review meeting is necessary. The Compliance Review Report may provide recommendations for improving the subrecipient's Title VI Program.

6. Follow-Up Monitoring

OCR will determine whether any follow-up monitoring is necessary to ensure on-going Title VI compliance.

Title VI Requirements & Recommendations Overview

Below is a summary of the legal requirements associated with Title VI compliance. In the pages that follow, each requirement will be further explained, including recommendations for achieving compliance with each requirement. MnDOT will assess subrecipient compliance with these requirements during compliance reviews.

Please note: Documentation is a critical element of the compliance monitoring process. It is recommended that policy decisions, compliance procedures, data analysis, compliance actions, and notable outcomes be routinely documented.

To ensure compliance with Title VI, subrecipients must implement a system of policies, procedures and actions prohibiting discrimination, including:

1. Develop a Title VI/Nondiscrimination Policy Statement
2. Develop Public Notice of Rights under Title VI
3. Develop Title VI/Nondiscrimination Assurances
4. Ensure contracts and solicitations contain appropriate portions of the Title VI Assurances
5. Appoint a Title VI/Nondiscrimination Coordinator
6. Conduct program area reviews
7. Develop procedures for processing and tracking external discrimination complaints
8. Provide accommodations for Limited English Proficient Persons
9. Address Environmental Justice in minority populations and low-income populations
10. Ensure nondiscrimination in the public participation process
11. Collect and analyze data to ensure nondiscrimination in programs and activities

In addition, to the above requirements, it is recommended that subrecipients create and regularly update the following documents:

1. Title VI Implementation Plan
2. Title VI Annual Goals & Accomplishments Report

Legal Requirement #1: Title VI Policy Statement

Basic Requirement: Develop a Title VI policy statement committing the agency to nondiscrimination in its programs and activities.

Relevant Legal Authority: 49 C.F.R. §21.5(b)

Recommendations:

- Issue a policy statement, signed by the head of the agency, including the following or similar language:

“It is the policy of _____ (Agency Name) that no person shall on the grounds of race, color, national origin, sex, disability, low-income status, or age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in any operation of _____ (Agency Name) as provided by Title VI of the Civil Rights Act of 1964 and related statutes.”
- **NOTE:** The Minnesota Human Rights Act includes a provision that is similar to Title VI. It is located at MN. Stat. 363A.02, Subd. 1(a)(4). The provision includes protected classes not included in the Title VI statement above. Those protected classes are: creed, religion, marital status, sexual orientation, gender identity, or status with regard to public assistance. Local governments should consider whether to incorporate state law nondiscrimination requirements similar to Title VI. The Title VI Plan template
- Circulate the policy internally and to the general public.
- Translate the policy statement into languages other than English as needed according to the four-factor limited English proficiency analysis (see requirement #7)
- Review the policy annually with the head of the agency, re-sign the document, and circulate the updated version.
- **NOTE:** Local governments may have other departments that are subject to Title VI. Therefore, local governments may opt to create a policy covering all federally-funded departments.

Legal Requirement #2: Public Notice of Rights under Title VI

Basic Requirement: Develop a notice informing the general public of their nondiscrimination rights under Title VI and how to file a Title VI complaint.

Relevant Legal Authority: 23 C.F.R § 200.9(b)(12)

Recommendations:

- Ensure notice is posted online and in physical locations accessible to the public.
- Translate the policy notice into languages other than English as needed according to the four-factor limited English proficiency analysis (see requirement #7).
- If Minnesota Human Rights Act protected classes are included in the Title VI Policy Statement, make sure those protected classes are included in the notice.

Legal Requirement #3: Title VI/Nondiscrimination Assurances

Basic Requirement: Maintain a signed copy of the U.S. DOT Standard Title VI Assurances to establish a comprehensive and binding commitment to compliance with Title VI of the Civil Rights Act of 1964 and related nondiscrimination authorities.

Relevant Legal Authority: 49 C.F.R. § 21.7; 23 C.F.R § 200.9(a)(1),(2); U.S. DOT Order No. 1050.2A

Recommendations:

- Read the Title VI Assurances thoroughly to understand requirements.
- Ensure the U.S. DOT Standard Title VI Assurances is signed by the head of the agency at least once every three years or within ninety (90) days of the accession of a new head of agency.
- Construction contractors, consultants, and suppliers are NOT required to sign the U.S. DOT Standard Title VI Assurances.

Legal Requirement #4: Contracts and Solicitations Contain Necessary Title VI/Nondiscrimination Assurance Language

Basic Requirement: Ensure solicitations, requests for proposal, and proposals for negotiated agreements contain the required disadvantaged business enterprise solicitation notification and certain appendices from the Title VI Assurances be inserted into various contracts.

Relevant Legal Authority: 49 C.F.R. § 21.7; 23 C.F.R § 200.9(a)(1),(2); U.S. DOT Order No. 1050.2A

Recommendations:

- Insert the following notification in all solicitations for bids, requests for proposals for work, or material made in connection with all agency programs and, in adapted form, in all proposals for negotiated agreements regardless of funding source:

"The (Title of Recipient), in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award."
- Insert the clauses of Appendix A and E of the Title VI Assurances in every contract or agreement. **Note:** For construction contracts, the appendices do not need to be included in federal-aid contracts that already include the Form FHWA-1273, which references Title VI.
- **Note:** Construction contractors, consultants, and suppliers are NOT required to sign the U.S. DOT Standard Title VI Assurances.
- Insert the clauses of Appendix B of Title VI Assurances, as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a recipient.
- Include the clauses set forth in Appendix C and Appendix D of the Title VI Assurances, as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Recipient with other parties:
 - For the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
 - For the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.

Legal Requirement #5: Title VI/Nondiscrimination Coordinator

Basic Requirement: Appoint a Title VI Coordinator to conduct the agency's Title VI responsibilities and oversight. The Title VI Coordinator must have sufficient authority and access to the head of your agency to ensure compliance.

Relevant Legal Authority: 23 C.F.R. § 200.9(b)(1)

Recommendations:

- Denote Title VI Coordinator on agency organization chart.
- Ensure Title VI Coordinator attends available Title VI training to maintain and improve expertise.
- Create procedures for Title VI Coordinator to conduct periodic meetings with various offices in your agency to monitor Title VI-related activities and compliance. Office may include, but are not limited to:
 - Communications
 - Public Engagement
 - Planning
 - Land Management/Right of Way
 - Contract Administration
- Title VI Coordinator provides periodic reminders and training to key personnel responsible for carrying out Title VI responsibilities.
- Title VI Coordinator identifies internal compliance deficiencies and creates plans for corrective action.

Legal Requirement #6: Program Area Reviews

Basic Requirement: Conduct reviews of program areas to determine whether those areas are effective in carrying out their Title VI responsibilities.

Relevant Legal Authority: 23 C.F.R. § 200.9(b)(5) and (6)

Recommendations:

- Determine primary program areas, which may include, but are not limited to:
 - Public engagement and communications
 - Right of way
 - Planning
 - Contracting/Procurement

- Create a written process for conducting reviews periodically. Some examples of processes include:
 - Surveys of program areas asking whether they are meeting various Title VI requirements
 - Interviews with program area leaders
 - Review of documentation in program areas that pertains to Title VI requirements

- Document program areas reviews, including:
 - Date of review
 - How review was conducted
 - Any identified deficiencies to be corrected
 - How and when the identified deficiencies were corrected

Legal Requirement #7: External Discrimination Complaint Procedures

Basic Requirement: Utilize procedure provided by MnDOT and to process and track discrimination complaints.

Relevant Legal Authority: 23 C.F.R § 200.9(b)(3)

Recommendations:

- MnDOT has created a procedure to be used by all local governments for FHWA Title VI complaints. The procedure is available in the [Template Title VI Plan](#).
- Procedures include:
 - Eligible protected classes
 - Filing time limit of 180 days from the date of the last alleged discrimination
 - Point of contact and contact information
 - Various methods for submitting the complaint (email, mail, fax, online submission form, etc.)
 - Others agencies to which complaints can submitted (MnDOT and FHWA)
- Create a complaint form, including:
 - Name of complainant
 - Complainant contact information
 - Basis of discrimination (race, color, national origin, sex, age, disability, other)
 - Details of alleged discrimination, including dates and witnesses
 - Requested outcome or remedy
 - Signature and date
- Determine whether the complaint form needs to be translated into alternative language, as needed according to the four-factor limited English proficiency analysis (see requirement #7).
- Ensure the general public has access to the complaint procedures and related forms.
- Ensure relevant agency staff are familiar with the complaint procedures and related forms.
- Maintain a list of external discrimination complaints and lawsuits. List should be centrally maintained by the Title VI Coordinator and information for each complaint or lawsuit should include:
 - Date complaint filed,
 - Date complaint was forwarded to MnDOT
 - Project number (if applicable)
 - Name of complainant
 - Name of respondent (your agency or a subrecipient)
 - Disposition (i.e. what was the outcome?)
 - Notes and recommendations

Legal Requirement #8: Accommodations for Limited English Proficient (LEP) Persons

Basic Requirement: Take reasonable steps to reduce language barriers that can preclude meaningful access by LEP persons to your agency's programs and services.

Relevant Legal Authority: 23 C.F.R § 200.9(b)(12); Exec. Order No. 13166, 65 Fed. Reg. 50121 (Aug. 11, 2000);

Recommendations:

- Review [U.S. Dept. of Transportation, Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficient \(LEP\) Persons.](#)
- Complete the [four-factor analysis](#) to determine reasonable actions needed to ensure meaningful access for LEP persons (See also requirement #10 regarding data collection and analysis).
- Create a language access plan based on your agency's four-factor analysis that identifies:
 - LEP populations your agency serves
 - Types of public engagement your agency conducts and related language access considerations
 - "Vital documents" to translate or include notices of available language access assistance
 - Language access resources your agency will utilize
- Maintain a preferred vendor list or contract in place for qualified oral and written language translation service providers.
- Discuss language access with community stakeholders representing LEP communities and inquire whether their needs are being met.
- Periodically meet with public engagement and communications staff to ensure language access is being provided appropriately.

Legal Requirement #9: Addressing Environmental Justice Issues

Basic Requirement: Ensure fair treatment and meaningful involvement of minority and low income populations regarding implementation and enforcement of environmental laws, regulations and policies.

Relevant Legal Authority: Exec. Order No. 12898, 59 Fed. Reg. 7629 (Feb. 11, 1994)

Recommendations:

- Ensure that environmental justice principles are included in all stages of program planning, development, and implementation by proactively seeking input from minority and low income populations.
- Take meaningful steps to engage underserved communities, including outreach to local leaders and advocacy groups to better connect with environmental justice populations.
- Ensure low-income populations, as defined in Executive Order No. 12898, is included in your agency's demographic data analysis (See requirement #11). Local governments may also create a more locally appropriate definition of "low-income" based on available data.

Legal Requirement #10: Ensuring Nondiscrimination in Public Engagement

Basic Requirement: Ensure your agency's public engagement activities are accessible and do not discriminate based on race, color, national origin, sex, disability, or low-income status.

Relevant Legal Authority: 49 C.F.R. § 21.5; 23 U.S.C. § 324; Exec. Order No. 12898, 59 Fed. Reg. 7629 (Feb. 11, 1994); Exec. Order No. 13166, 65 Fed. Reg. 50121 (Aug. 11, 2000); 29 U.S.C. § 794

Recommendations:

- Whenever practical to do so, provide survey questions to participants of public engagement activities covering demographic indicators.
- Maintain a log of your agency's public engagement activities, including documentation (i.e. meeting agendas, presentations, language access resources provided, etc.).
- Comply with basic requirements regarding environmental justice (See requirement #8) and data collection and analysis (See requirement #10) to ensure your agency makes appropriate accommodations for protected class populations in its service area.
- Ensure public engagement and communications staff have received Title VI training and are familiar with your agency's Title VI processes, including language access and complaint procedures.

Legal Requirement #11: Collecting and Analyzing Data

Basic Requirement: Develop and implement procedures for the collection of statistical data (race, color, religion, sex, national origin, disability and income status) of participants in, and beneficiaries of, your agency's programs and activities.

Relevant Legal Authority: 23 C.F.R. § 200.9(b)(4); Exec. Order No. 12898, 59 Fed. Reg. 7629 (Feb. 11, 1994); 29 U.S.C. § 794

Recommendations:

- Utilize reliable data sources to complete a demographic profile of your service area, and update the profile periodically. Data sources may include, but are not limited to:
 - [U.S. Census Data](#)
 - [American Community Survey](#)
 - [EPA EJSCREEN](#)
 - [MPCA Environmental Justice Map](#)
 - [Minnesota Compass](#)
 - [Minnesota State Demographic Center](#)
 - [Minnesota Department of Education \(Primary Home Language Data\)](#)
- Analyze agency operations and determine internal data sources available (public engagement, planning, right of way, contract administration, etc.).
- Whenever practical to do so, provide survey questions to participants of public engagement activities covering demographic indicators.
- Utilize data to determine whether public engagement is reaching all demographics and communities in your service area, and make adjustments to public engagement strategies accordingly.

Recommendation #1: Title VI/Nondiscrimination Plan

Basic Requirement: Develop and maintain a Title VI Plan explaining how Title VI compliance is implemented throughout your agency's programs and activities.

Relevant Legal Authority: 23 C.F.R. § 200.9(b)(11)

Recommendations:

- The Title VI Plan should contain the following elements:
 - Title VI/Non-Discrimination Policy Statement
 - Agency organization structure and staffing, including an organization chart
 - Primary program areas with Title VI responsibilities and related Title VI procedures
 - Title VI complaint procedures and forms
 - Data collection procedures for internal and external sources (most recent analysis as attachment)
 - Description of public participation strategies for reaching underserved communities
 - Limited English proficiency and language access
 - Public Notice of Rights under Title VI (include translated versions, if necessary)
 - Signed Title VI Assurances (as an attachment)
- Update plan annually and review with agency leadership and key offices.
- [Template Title VI Plan](#)

Recommendation #2: Annual Title VI Goals and Accomplishment Report

Basic Requirement: Develop and maintain a report identifying Title VI goals for the upcoming year and accomplishments from the prior year.

Relevant Legal Authority: 23 C.F.R. § 200.9(b)(10)

Recommendations:

- Title VI Goals and Accomplishments Report should contain the following elements:
 - Reviews conducted of primary program area Title VI procedures
 - Complaints received and processed
 - Training received related to Title VI or related civil rights areas
 - Training provided related to Title VI or related civil rights areas
 - Summary of data collected and analyzed
 - Summary of public engagement activities and success reaching underserved communities
 - List of translations and interpretation services provided (date, type of language access provided, language needed, service used, notes about service)
 - Goals for the upcoming year related to Title VI compliance. Goals should be specific and achievable within the year. Long-term goals may be noted as well.
- Update report annually and review with agency leadership and key offices.
- [Template Goals and Accomplishments Report](#)