



# **TITLE VI: SUBRECIPIENTS' RESPONSIBILITIES**

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**Special Web Conference Presentation**

October 29, 2008

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## This Module will...

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- Provide a concise overview of Title VI;
- Discuss Subrecipients' responsibilities;
- Distinguish between a [sub]recipients and contractors;
- Examine Subrecipients' method of administration.

# TITLE VI/NONDISCRIMINATION REMARKS



***“Simple justice requires that public funds, to which all taxpayers of all races contribute, not be spent in any fashion which encourages, entrenches, subsidizes, or results in racial discrimination.”***

- President John F. Kennedy -



***“Title VI is sound; it is morally right; it is legally right; it is constitutionally right. ... What will it accomplish? It will guarantee that the money collected by colorblind tax collectors will be distributed by Federal and State administrators who are equally colorblind. ... The title has a simple purpose – to eliminate discrimination in Federally financed programs.”***

- U.S. Senator John O. Pastore -



## Poll Pod: Question #1

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- **Is FHWA's Title VI/Nondiscrimination Program limited to the prohibitions of Title VI of the Civil Rights Act of 1964?**



## What is Title VI of the Civil Rights Act of 1964?

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- Federal law that prohibits discrimination on the basis of **race**, **color**, & **national origin** in Federally assisted programs & activities;

- The law specifically states:

“No person in the United States shall on the ground of race, color, or national origin be excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity receiving Federal financial assistance” (42 USC 2000d)



# What is the Civil Rights Restoration Act of 1987?

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- Amended Title VI;
- Restored the original intent of Title VI to **include all programs and activities** of Federal-aid recipients and contractors **whether federally funded or not**;
- Direct response to, and a **rejection of, the 1984 Supreme Court decision in the Grove City College vs. Bell case** (465 U.S. 555)
  - Federal agency nondiscrimination requirements limited to just those areas of the recipient's operation that directly benefited from Federal assistance



# What is FHWA's Title VI Program?

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- Not limited to prohibitions of Title VI of the Civil Rights Act of 1964 (Race, Color, National Origin)
  - Includes other civil rights provisions of Federal statutes and related authorities that prohibit discrimination in programs and activities receiving Federal financial assistance (23 CFR 200.5(p)).



# Other Nondiscrimination or Cross-Cutting Authorities

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- Other Nondiscrimination authorities expanded the reach and scope of Title VI to include:
  - The 1970 Uniform Act (**42 USC 4601**) – (**Persons displaced or property acquired**)
  - Section 504 of the 1973 Rehabilitation Act (**29 USC 790**) - (**Handicap/Disability**)
  - The 1973 Federal-aid Highway Act (**23 USC 324**) – (**Sex**)
  - The 1975 Age Discrimination Act (**42 USC 6101**) – (**Age**)
  - Implementing Regulations (**49 CFR 21 & 23 CFR 200**)
  - Executive Order 12898 on Environmental Justice (**EJ**) – (**Low Income & Minorities**)
  - Executive Order 13166 on Limited English Proficiency (**LEP**) – (**Linguistic Minorities**)



## FHWA's Title VI Program...

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- Assures nondiscrimination on the ground of **race, color, national origin, disability/handicap, sex, age** or **income status** in programs or activities receiving financial assistance, whether those programs or activities are FHWA funded or not.



## What is the Purpose of Title VI ?

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- To ensure that public funds are not spent in a way that encourages, subsidizes, or results in discrimination.



## What is the Intent of Title VI?

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- To **eliminate barriers and conditions** that prevent **minority, low income, LEP,** and **other disadvantaged groups and persons** from receiving access, participation and benefits from Federally-assisted programs, services and activities.



## In effect, Title VI Authorities...

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- Promote fairness and equity in Federally assisted programs and activities;
- Based on the fundamental principle that all human beings are created equal;
- Rooted in the constitutional guarantee that all human beings are entitled to equal protection of the laws;
- Address involvement of impacted persons in the decision-making process.



# Title VI Authorities...

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- **Not threats but opportunities to:**
  - Give serious attention to effects of transportation decisions on human environment;
  - Redeem ourselves of oversights regarding past and lingering disparate actions towards disadvantaged persons.
- **Reminders**
  - Our professional responsibilities
  - Legal, Statutory, Regulatory, Constitutional & Civic duty
  - Fiduciary obligation & Customer service imperative
  - The GOLDEN RULE

# Subrecipients





## Poll Pod: Question #2

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- **Is there a difference between a Recipient/Subrecipient and a Contractor/Subcontractor?**



# Who is a Subrecipient?

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- **A Recipient**

- An entity or person to whom Federal assistance is **directly** extended and thereby subjects them to Title VI compliance obligations (23 CFR 200.5(n))

- **A Subrecipient**

- An entity or person to whom Federal assistance is **indirectly** extended either through a recipient or another subrecipient and thereby subjects them to Title VI compliance obligations (23 CFR 200.5(n))



# Who is a Contractor?

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- **A Contractor/Subcontractor**

- “..any person, corporation, partnership, or unincorporated association that holds a FHWA direct or federally assisted construction contract or subcontract regardless of tier”  
(23 CFR 230.407 (i))
- “One who participates, through a contract or subcontract (at any tier), in a DOT-assisted highway, transit, or airport” (49 CFR 26.5)

# What is the Relationship between a Recipient & a Contractor?

| Recipient/Subrecipient   | Contractor/Subcontractor, Consultant, Vendor  |
|--|---|
| <ul style="list-style-type: none"> <li>■ Provides services</li> </ul>  | <ul style="list-style-type: none"> <li>■ Sells deliverables (goods &amp; services)</li> </ul>   |
| <ul style="list-style-type: none"> <li>■ Signs an <b>Assurance</b></li> <li>■ Not necessarily in business to make profit (Usually, public entity)</li> </ul> | <ul style="list-style-type: none"> <li>■ Signs a <b>contract</b> with contract provisions</li> <li>■ In business (buy &amp; sell) to make profit (Operates in a competitive environment)</li> </ul> |
| <ul style="list-style-type: none"> <li>■ Receives FFA (or paid) whether service is expensed as a deliverable or not</li> </ul>                               | <ul style="list-style-type: none"> <li>■ Is paid for a specific deliverable</li> <li>*Receipt of payment with FFA does not establish a recipient/subrecipient relationship</li> </ul>               |
| <ul style="list-style-type: none"> <li>■ Designs a <b>program</b> to meet a broader goal</li> </ul>  | <ul style="list-style-type: none"> <li>■ Provides specific product or service ancillary to a Federal program</li> </ul>   |
| <ul style="list-style-type: none"> <li>■ Is receiving Federal financial assistance</li> </ul>  | <ul style="list-style-type: none"> <li>■ Could become a recipient with provision of [Federal financial] assistance.</li> </ul>  |



# What is the Role of [Sub]Recipients in the Administration of Title VI?

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- Federal-aid recipients required to develop a system of procedures and mechanisms (**methods of administration**) to assure nondiscrimination in all its programs, activities and services, whether Federally-funded or not;
- Efforts to prevent discrimination must address
  - **program's impact** upon access, benefits, participation, treatment, services;
  - contracting opportunities, training opportunities;
  - investigation of complaints, allocation of funds;
  - prioritization of projects and
  - the **functions** of planning, project development, design, right-of-way acquisition, construction, and research.



# Methods of Administration

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- Design Methods of Administration to assure compliance with Title VI (49 CFR 21.7(b)(2); DOT Assurance #9)
- Minimum requirements:
  - Public outreach and education plan
  - Training program for State and subrecipients' staff
  - Procedures for processing complaints
  - Procedures for identifying and addressing Title VI issues
  - Program to assess and periodically report on status of Title VI compliance
  - Detailed plans for bringing discriminatory programs into compliance.



## Poll Pod: Question #3

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- **Do Subrecipients have Title VI Responsibilities?**



# Subrecipient Responsibilities

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- Must have an **assurance** (49 CFR 21.7);
- Title VI Program (49 CFR 21.7(b)(2); DOT Assurance #9);
  - Policy Statement
  - Title VI Coordinator and Responsibilities
  - Procedures for assuring compliance
  - Training program
  - Enforcement program
  - Community Outreach & Public Education program
  - Complaints procedures
- **Compliance Reports & Data Collection** (49 CFR 21.9(b))
- **Nondiscrimination requirement for all contracts.**



# Title VI/Nondiscrimination Agreement

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- Assurances
- Implementing procedures
- Complaint procedures
- Sanctions
- Signatures



# What are the Consequences For Noncompliance With Title VI?

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- [Sub]Recipient found in noncompliance;
- Suspension or termination of Federal financial assistance;
- Refusal to grant or continue federal financial assistance;
- Any other means authorized by law
  - Refer to DOJ to enforce Federal law, assurance or contractual obligation
  - Utilize applicable proceedings under state or local law  
(49 CFR 21.13)



# The Multidisciplinary Approach

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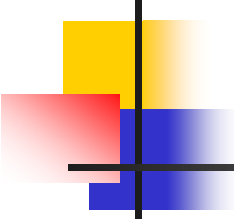
- It is a mechanism or methodology that allows the use of several disciplines to address an issue;
- For our purposes, it is the collaboration and coordination that takes place between the Title VI Coordinator, the leadership, and the respective program areas to address/execute Title VI obligations.



# How Do You Establish A Multidisciplinary Process?

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1. Secure Chief Administrative Officer's (CAO) support;
2. Create a Team involving every program office including CAO or representative;
3. Team meets and establish objective(s);
4. Identify issue/area of vulnerability or need;
5. Analyze issue and prepare plan of action;
6. Formulate strategies & work the plan (Implementation);
7. Establish roles and responsibilities;
8. Assess plan from time to time and make adjustments;
9. Meet periodically and maintain awareness;
10. Evaluate progress/course of action/results.



# Why the Multidisciplinary Approach?

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- 1) “Great achievements are not born from a single vision but a combination of many distinctive viewpoints. Diversity challenges assumptions, opens minds and unlocks our potential to effectively solve any problem we may face.” - anonymous
- 2) It generates synergy
  - Synergy is the interaction of two or more agents or forces so that their combined effect is greater than the sum of their individual effects.



# Strategies

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- To assure nondiscrimination, be proactive.
- At a minimum:
  - Provide training; technical assistance; public education;
  - Community outreach; data collection & analysis.



# Some Specific Strategies

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- Full employment of systematic multidisciplinary approach;
- Maintain proper statistical, income and demographic data;
- Develop public involvement strategies according to situation at hand;
- Create an atmosphere of trust and respect;
- Empower the community by listening, and providing prompt response to inquiries;
- Establish a two-way free and frank line of communication with the public;
- Conduct periodic reviews and evaluations;
- Document, Document, Document.



# Summary

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- FHWA Title VI program is not limited to the prohibitions of Title VI of the Civil Rights Act of 1964;
- There is a difference between a Recipient or Subrecipient and a Contractor or Subcontractor. However, a Contractor could become a recipient if FFA is an aspect of contract or agreement;
- The Subrecipient has Title VI responsibilities contained in its **method of administration** (Plan, Program or Title VI Agreement).



## Open Floor

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- **Questions?**
- **Comments?**
- **Suggestions?**



**THE END**

**THANK YOU!!**

