

Approved:



Department of Transportation

Effective: January 6, 2014

Office: Equal Opportunity

Topic No.: 275-010-010-f

TITLE VI PROGRAM and RELATED STATUTES

Implementation and Review Procedure

PURPOSE:

To establish the process for: (a) implementing the Federal Highway Administration (FHWA) Title VI compliance program under ***Title VI of the Civil Rights Act of 1964*** and other related civil rights laws and regulations; and (b) conducting Title VI program compliance reviews relative to the federal-aid highway program directives.

AUTHORITY: Sections 20.23(4) (a) and 334.048(3), Florida Statutes (F.S.)

SCOPE:

This procedure affects all federally and non-federally funded programs and activities administered by the Florida Department of Transportation (Department) and its sub-recipients.

REFERENCES:

Title VI of the Civil Rights of 1964 (Title 42 United States Code Section 2000d - 2000d-7); Section 324 of the Federal-Aid Highway Act of 1973 (Title 23 U.S.C. Sec. 324); Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Title 42 U.S.C. Sec. 4601 - 4655); Section 504 of the Rehabilitation Act of 1973 (Title 29 U.S.C. Sec. 794); Title II of the Americans with Disabilities Act of 1990 (Public Law 101-336); Age Discrimination Act of 1975 (Title 42 U.S.C. Sec. 6101 - 6107); Federal-Aid Highway Standards (Title 23 U.S.C. Part 109(h)); Civil Rights Restoration Act of 1987 (P.L. 100-259); Executive Order 12250; E.O. 12898; E.O. 13166; Title 28 Code of Federal Regulations Part 35; Title 28 C.F.R. Part 36; Title 28 C.F.R. Part 41; Title 28 C.F.R. Part 42, Subpart C; Title 28 C.F.R. Part 50.3; Title 49 C.F.R. Part 21; Title 49 C.F.R. Part 27; Title 23 C.F.R. Part 200; Title 23 C.F.R. Part 1235; United States Department of Transportation Order 1000.12; USDOT Order 1050.2; Federal Transit Administration Circular 4702.1B; Florida Civil Rights Act of 1992; Civil Rights Chapter 760 Florida Statutes; Title VI Nondiscrimination Program (FDOT Policy # 001-275-006)

DEFINITIONS:

AFFIRMATIVE ACTION (AA) - A good faith effort to eliminate past and present discrimination in all federally assisted programs and to ensure future non-discriminatory practice.

AGE DISCRIMINATION ACT OF 1975 (Title 42 U.S.C. Sec. 6101 - 6107) - Prohibits discrimination based on age. "No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance."

BENEFICIARY - Any person or group of persons (other than states) entitled to receive benefits, directly or indirectly, from any federally assisted program, e.g., relocatees, impacted citizens, communities.

CITIZEN PARTICIPATION - An open process in which the rights of the community to receive information, to provide comments to the government and to receive a response from the government are met through a full opportunity to be involved in the process and to express needs and goals.

CIVIL RIGHTS RESTORATION ACT OF 1987 (P.L. 100-259) - Clarification of the original intent of Congress in *Title VI of the Civil Rights Act, the Age Discrimination Act of 1975*, and *Section 504 of the Rehabilitation Act of 1973*. Restored the broad, institution-wide scope and coverage of the non-discrimination statutes to include all programs and activities of federal-aid recipients, sub-recipients and contractors, whether such programs and activities are federally assisted or not federally-assisted.

COMPLIANCE - That satisfactory condition existing when a recipient has effectively implemented all of the Title VI and related statutory requirements or can demonstrate that every good faith effort toward achieving this end has been made.

DISCRIMINATION - Involves any act or inaction, whether intentional or unintentional, in any program or activity of a federal-aid recipient, sub-recipient, or contractor, which results in disparate (unfavorable) treatment, disparate impact, or perpetuating the effects of prior discrimination based on race, color, national origin, sex, age, religion, familial status, or, in the case of disability, failed to make a reasonable accommodation.

That act (action or inaction), whether intentional or unintentional, through which a person in the United States solely because of race, color, national origin, age, sex, disability, religion, or familial status, has been otherwise subjected to unequal treatment, or who has been retaliated against under any program or activity receiving financial assistance from the FHWA under *Title 23 U.S.C.*

EQUAL OPPORTUNITY OFFICE (EOO) - Administers the Department's Title VI Program and Related Statutes, Equal Employment Opportunity Contractor Compliance & On-the-Job (OJT) Program, Title VII Program, Disadvantaged Business Enterprise Program, and all related investigations.

FEDERAL-AID HIGHWAY ACT OF 1973 (Title 23 U.S.C. Sec. 324) - Prohibits discrimination on the basis of sex under any program or activity receiving federal assistance under this Title.

FEDERAL-AID HIGHWAY STANDARDS (23 U.S.C. 109(h)) - Requires that guidelines be designed to assure that possible adverse economic, social, and environmental effects relating to any proposed project on any federal-aid system be fully considered in developing such project, and that the final decisions on the project are made in the best overall public interest, taking into consideration the need for fast, safe and efficient transportation, public services, and the costs of eliminating or minimizing such adverse effects and the following:

- (1) air, noise, and water pollution;
- (2) destruction or disruption of man-made and natural resources, aesthetic values, community cohesion and the availability of public facilities and services;
- (3) adverse employment effects, and tax and property value losses;
- (4) injurious displacement of people, businesses and farms; and
- (5) disruption of desirable community and regional growth.

FEDERAL ASSISTANCE – This includes:

- (a) Any grants and loans of federal funds;
- (b) Any grant or donation of federal property and interests in property;
- (c) Any utilization of federal personnel;
- (d) Any sale or lease of, and the permission to use (on other than a casual or transient basis) federal property or any interest in such property without consideration or at a nominal consideration or at a consideration which is reduced for the purpose of assisting the recipient or in recognition of the public interest to be served by such sale or lease to the recipient; and
- (e) Any federal agreement, arrangement, or other contract which has, as one of its purposes, the provision of assistance.

FORMAL COMPLAINT OF DISCRIMINATION - A written explanation of an event in which a person believes that he or she, or any specific class of persons, has been subjected to discrimination or retaliation prohibited by any of the Civil Rights laws, regulations and Executive Orders listed in the **REFERENCE** section of this procedure, based upon race, color, national origin, sex, age, disability, religion, or familial status.

INFORMAL COMPLAINT OF DISCRIMINATION - A verbal or non-written explanation of an event in which a person believes that he or she, or any specific class of persons, has been subjected to discrimination or retaliation prohibited by any of the Civil Rights laws, regulations and Executive Orders listed in the **REFERENCE** section of this procedure, based upon race, color, national origin, sex, age, disability, religion, or familial status.

NONCOMPLIANCE - A recipient has failed to meet prescribed requirements and has shown an apparent lack of a good faith effort in implementing all of the **Title VI and Related Statutes** requirements.

PERSONS - Where designation of persons by race, color, or national origin is required, the following designations ordinarily may be used: "White not of Hispanic origin," "Black not of Hispanic origin," "Hispanic," "Asian or Pacific Islander," "American Indian or Alaskan Native." Additional subcategories based on national origin or primary language spoken may be used, where appropriate, on either a national or a regional basis.

PROGRAM - Includes any highway project, or activity for the provision of services, financial aid, or other benefits to individuals. This includes education or training, work opportunities, health, welfare, rehabilitation, housing, or other services, whether provided directly by the recipient of federal financial assistance or provided by others through contracts or other arrangements with the recipient.

RECIPIENT - Any state, territory, possession, the District of Columbia, Puerto Rico, or any political subdivision, or instrumentality thereof, or any public or private agency, institution, or organization, or other entity, or any individual in any state, territory, possession, the District of Columbia, or Puerto Rico, to whom federal assistance is extended, either directly or through another recipient, for any program. Recipient includes any successor, assignee, or transferee thereof. The term "recipient" does not include every ultimate beneficiary under any such program.

RETALIATION - Intimidating, threatening, coercing or discriminating against an individual because he/she made a complaint, testified, assisted or participated in any manner in an investigation, proceeding, or hearing.

SECTION 504 OF THE REHABILITATION ACT OF 1973 (Title 29 U.S.C. Sec. 794) - Provides that "no qualified handicapped person shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, be subjected to discrimination under any program or activity that receives or benefits from federal financial assistance."

SUB-RECIPIENT - Any sub-grantee, contractor, sub-contractor, transferee, assignee, or successor in interest in the program.

TITLE VI - Refers to ***Title VI of the Civil Rights Act of 1964***, which 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.”

TITLE VI EFFECTIVENESS REVIEW – a specific review conducted annually in every program area of every district. This review is part of the Department’s Title VI Quality Assurance Review process. These reviews ensure consistency and effectiveness of nondiscrimination measures in each program area.

TITLE VI PROGRAM and Related Statutes - The system of requirements developed to implement ***Title VI of the Civil Rights Act of 1964***. References in this procedure to Title VI requirements and regulations shall not be limited to only ***Title VI of the Civil Rights Act of 1964***. Where appropriate, this term also refers to the civil rights provisions of other federal statutes provided in the **REFERENCE** section of this procedure to the extent that they prohibit discrimination on the grounds of race, color, national origin, sex, age, disability, religion, familial status or retaliation in programs receiving federal financial assistance of the type subject to ***Title VI*** itself.

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970 (Title 42 U.S.C. Sec. 4601-4655) – Prohibits unfair and inequitable treatment of persons displaced or whose property will be acquired as a result of federal and federal-aid programs and projects.

1. ROLES AND RESPONSIBILITIES

The following personnel located in the Districts and Central Office have responsibility for implementing the Title VI Program and Related Statutes requirements and related Departmental activities:

1.1 STATE TITLE VI COORDINATOR

1.1.1 Designated person in the Equal Opportunity Office who is responsible for monitoring and administering the Department’s Title VI Program and Related Statutes in accordance with Federal guidelines. This includes:

- (A) Ensuring the Title VI Assurance is updated and signed by the Secretary of Transportation;
- (B) Monitoring Title VI and Related Statutes activities in the Department;

- (C) Providing Title VI and Related Statutes training for the Districts and Central Office;
- (D) Submitting the Department's ***Title VI Program and Related Statutes Implementation Plan*** to FHWA annually;
- (E) Developing Title VI and Related Statutes information for dissemination to the public (where necessary, in languages other than English);
- (F) Preparing an annual accomplishment and goals report for submission to the FHWA by November 1 of each year;
- (G) Investigating formal complaints of discrimination under Title VI and Related Statutes filed against the Department's sub-recipient's on Highway Programs, and forwarding recommendations to the FHWA for a final determination. Coordinating with the FHWA on all Title VI and Related Statutes formal complaints of discrimination filed against the Department on Highway Programs;
- (H) Coordinating with the Federal Transit Administration and Federal Aviation Administration, on all formal complaints of discrimination under Title VI and Related Statutes filed against the Department and its sub-recipients on Transit, Aviation, and^[M1] safety programs;
- (I) Providing technical assistance to the Districts and Central Office;
- (J) Developing, preparing, and maintaining the Department's ***Title VI Program and Related Statutes*** non-discrimination policy, procedure, and forms;
- (K) Conducting annual Quality Assurance Reviews (QARs) of Districts' compliance with the ***Title VI Program and Related Statutes*** procedure. These QARs will also review specific areas of each District's Program Areas as part of required Title VI Effectiveness Reviews;
- (L) Monitoring the following program areas to ensure compliance with the Title VI Program and Related Statutes requirements: Aviation, Seaports, and Transit. Maintaining records of correspondence sent from these offices regarding Title VI and Related Statutes compliance;
- (M) Reviewing environmental documents such as Environmental Impact Statements and Environmental Assessments for potential discriminatory or disproportionate effects on project populations.

1.2 DISTRICT TITLE VI COORDINATOR

1.2.1 Appointed personnel by each District Secretary and Florida's Turnpike Enterprise Executive Director, or his/her designee, who is responsible for monitoring and reporting Title VI and Related Statutes activities within each District/Office program area and ensuring overall compliance with the ***Title VI Program and Related Statutes*** at the District/Office level. The District Title VI Coordinator's Title VI responsibility is designated in their position description. The selection of the District Title VI Coordinator should be based upon: ability to have easy access to the District Secretary, Florida's Turnpike Enterprise Executive Director, or his/her designee; ability to have adequate overview of all program areas; and ability to coordinate and implement needed changes relating to the Title VI Program and Related Statutes. District Title VI Coordinator responsibilities include:

1.2.2 Resolving informal (verbal or non-written) Title VI and Related Statutes issues within their respective District. Notifying State Title VI Coordinator and appropriate District management within five (5) calendar days of receipt of informal issues;

1.2.3 Referring complainants to the State Title VI Coordinator in the event the Title VI and Related Statutes issue is not satisfactorily resolved within the District, or if the complainant files a formal (written) complaint;

1.2.4 Monitoring the Title VI Program and Related Statutes in their respective Districts, including the Department's sub-recipients, and providing all necessary information to the State Title VI Coordinator;

1.2.5 Randomly attending a minimum of one (1) public meeting/hearing per quarter to monitor the opportunity for citizen participation and compliance with the Title VI Program and Related Statutes;

1.2.6 Providing quarterly reports, within thirty (30) calendar days after each quarter, to the State Title VI Coordinator. (See ***Form No. 275-010-11, Title VI Quarterly Report***);

1.3 DISTRICT TITLE VI PROGRAM AREA OFFICER

1.3.1 Appointed personnel in each District Planning, Environmental, Design, Right-of-Way, Construction, Maintenance, Local Agency Program, Public Information, Research Center and Public Transportation office, who are responsible for assisting the District Title VI Coordinator with monitoring and implementing the Title VI Program and Related Statutes in their respective program areas. The District Title VI Program Area Officers' responsibility is designated in their position description. The District Title VI Program Area Officer responsibilities include:

- 1.3.2** Advising the District Title VI Coordinator and respective District management of Title VI and Related Statutes issues;
- 1.3.3** Ensuring Title VI and Related Statutes requirements are included in policy directives, procedures, contracts, and program manuals;
- 1.3.4** Attempting to resolve informal (verbal or non-written) Title VI and Related Statutes issues within their respective program area. Advising the District Title VI Coordinator, and appropriate District management within five (5) calendar days of receipt of informal issues;
- 1.3.5** Referring complainants to the District Title VI Coordinator in the event the Title VI and Related Statutes issue is not satisfactorily resolved within the program area, or if the complainant files a formal (written) complaint;
- 1.3.6** Monitoring the Title VI Program and Related Statutes in their respective program areas, including the Department's sub-recipients, and providing all necessary information to the District Title VI Coordinator.

2. TITLE VI AND RELATED STATUTES COMPLAINT PROCESS

The following informal and formal process will be used to resolve Title VI and Related Statutes complaints of discrimination consistent with the Federal Highway Administration's External Complaint of Discrimination Processing procedures.

2.1 INFORMAL (VERBAL OR NON-WRITTEN) COMPLAINTS

- 2.1.1** District Title VI Coordinators and District Title VI Program Area Officers are encouraged to resolve informal (verbal and non-written) issues internally within their respective District. If the issue has not been satisfactorily resolved through informal means, or if at any time the person(s) desires to file a formal (written) complaint, the respective District Title VI Coordinator will refer the Complainant to the State Title VI Coordinator who will advise the Complainant of the formal process for filing a complaint. All formal complaints received by the Department's District offices will be referred immediately to the State Title VI Coordinator for processing. The State Title VI Coordinator will advise the District Title VI Coordinator and respective District management of all formal complaints of discrimination accepted for investigation.
- 2.1.2** The District Title VI Coordinator will advise the State Title VI Coordinator and appropriate District management within five (5) calendar days of receipt of the informal issue(s). The following information will be included in every notification to the State Title VI Coordinator:

- (A) Name, address, and phone number of the complainant;
- (B) Name(s) and address(es) of respondent;
- (C) Basis of complaint (race, color, national origin, sex, age, disability, religion, familial status or retaliation);
- (D) Date of alleged discriminatory act(s);
- (E) Date Title VI and Related Statutes issues were received by the District Title VI Coordinator or District Title VI Program Area Officer;
- (F) Statement of the Title VI and Related Statutes issue(s);
- (G) Explanation of the actions the District Title VI Coordinator or District Title VI Program Area Officer took or proposed to resolve the Title VI and Related Statutes issue(s).

2.1.3 Within ten (10) calendar days of receipt, the District Title VI Coordinator will acknowledge receipt of the issue(s), inform the Complainant of action taken or proposed action to address the issue(s), and advise the Complainant of other avenues of redress available, such as the EOO.

2.1.4 Within sixty (60) calendar days of receipt, the District Title VI Coordinator will conduct and complete a review of the informal issue(s) and based on the information obtained, will render a recommendation for action in a report of findings to the appropriate District management.

2.1.5 Within ninety (90) calendar days of receipt, the District Title VI Coordinator will notify the Complainant in writing of the District management's decision, for the proposed disposition of the matter. The notification will advise the Complainant of his/her right to file a formal complaint with the EOO, if he/she is dissatisfied with the decision of the District management. The District Title VI Coordinator will also provide the State Title VI Coordinator with a copy of this decision and Report of Findings.

2.1.6 Each District Title VI Coordinator will maintain a log of all informal issues received by the District. The log will include the following information:

- (A) Name of complainant;
- (B) Name of respondent;
- (C) Basis of complaint (race, color, national origin, sex, age, disability, religion, familial status or retaliation);

- (D) Date informal issue(s) were received by the District;
- (E) Date respective District notified the State Title VI Coordinator of the informal issue(s); and
- (F) Explanation of the actions the District management took or proposed to resolve the issue(s)

2.2 FORMAL (WRITTEN) COMPLAINTS

2.2.1 Persons Eligible to File

Any person who believes that he or she, or any specific class of persons, has been subjected to discrimination or retaliation prohibited by any of the Civil Rights authorities listed in the **REFERENCE** section of this procedure, based upon race, color, national origin, sex, age, disability, religion, or familial status may file a written complaint. The complaint may be filed by the affected person or a representative and must be provided in writing.

2.2.2 Time Limits for Filing

A formal complaint must be filed no later than 180 calendar days after the following:

- (A) The date of the alleged act of discrimination; or
- (B) The date when the person(s) became aware of the alleged discrimination; or
- (C) Where there has been a continuing course of conduct, the date on which that conduct was discontinued or the latest instance of the conduct.

2.2.3 Form of Formal Complaints

Complainants may use **Form No. 275-010-10, Title VII/ Nondiscrimination Complaint** to submit a complaint to the EOO or some other format as long as the alternative format includes the following information:

- (A) A written explanation of what has happened, signed by the complainant(s) or by the complainant(s) representative(s);
- (B) The Complainant's name, address, and telephone number;
- (C) The basis of the complaint (race, color, national origin, sex, age, disability, religion, familial status, or retaliation);

- (D) The respondent's name, address, and telephone number; and
- (E) Sufficient information to understand the facts that led the complainant(s) to believe that discrimination has occurred and when the event complained of occurred.

2.2.3.1 Complaints filed in alternate formats from persons with disabilities will be accepted. The complaint may be filed on a computer disk, by audio tape, or in Braille. If the complainant(s) is/are unable to write and cannot have someone write out the complaint or cannot tape it, the State Title VI Coordinator will write out the allegations provided over the telephone by the complainant(s) and send the complaint to him or her for signature. The complainant(s) will be asked in what format he or she would like written documents sent to him or her; generally, complaints should be sent in the format in which the complaint was received from the complainant(s).

2.2.3.2 Complaints in languages other than English will be translated and responded to in the language in which they were sent, to the greatest extent possible.

2.2.3.3 Complaints received by fax or e-mail will be acknowledged and processed in accordance with this procedure.

2.2.3.4 Complaints received by phone will be reduced to writing and provided to the complainant(s) for confirmation or revision before processing.

2.2.3.5 The complainant(s) will be provided with a Notice of Investigatory Uses of Personal Information, which outlines the complainant's rights and protections during an investigation. The complainant(s) will also be provided with a Complainant Consent/Release Form, which requests the complainant's consent to release information about the complainant's identity during the course of the investigation.

2.2.4 Agencies Authorized to Receive Formal Complaints

Formal complaints should be submitted either to the Department or to the Federal Highway Administration (FHWA), Federal Transit Administration (FTA), Federal Aviation Administration (FAA), and the U.S. Department of Justice (DOJ).

2.2.5 Processing Formal Complaints

2.2.5.1 Responsibilities

- (A) Complaints filed with the Department in which the Department is named as the respondent, will be forwarded by the State Title VI Coordinator to

the FHWA, FTA, FAA, or the Federal Motor Carrier Safety Administration (FMCSA) for processing.

- (B) Complaints filed with the Department's sub-recipients will be forwarded by the respective District Title VI Coordinator to the State Title VI Coordinator for processing.
- (C) Complaints filed against the Department's sub-recipients on Highway Programs will be processed and investigated by the State Title VI Coordinator in accordance with the FHWA approved complaint procedures as required under 23 CFR Part 200.
- (D) Complaints filed against the Department's sub-recipients on Transit and Aviation safety programs will be forwarded by the State Title VI Coordinator to the appropriate Federal Civil Rights office.

2.2.5.2 Investigative Report Review and Issuance

Complaints processed by the EOO will be investigated by the State Title VI Coordinator and a copy of the complaint, together with a copy of the EOO's report of the investigation, will be forwarded to the FHWA within sixty (60) calendar days of the date the complaint was received by the EOO for review and issuance. An extension of an additional sixty (60) calendar days may be granted by the FHWA, Director Office of Civil Rights for justifiable reasons.

2.2.5.3 Final Agency Decisions

- (A) All final agency decisions and dismissals will be issued by the FHWA, FTA, FAA, U.S. Department of Transportation, or U.S. Department of Justice, including all Title II ADA decisions.
- (B) The State Title VI Coordinator will notify the respective District Title VI Coordinator of all final agency decisions and dismissals issued by the FHWA, FTA, FAA, USDOT, or USDOJ.

2.2.5.4 Records

The State Title VI Coordinator will maintain records of formal complaints filed with the EOO, identifying each complaint by race, color, national origin, sex, age, disability, religion, familial status, or retaliation. The record should contain:

- (A) The complaint;
- (B) The agency with which the complaint was filed;

- (C) The date the complaint was filed;
- (D) The investigative plan;
- (E) The investigative report;
- (F) The complaint disposition and date; and
- (G) Other pertinent information.

3. TRAINING

To effectively implement and sustain the Title VI Program and Related Statutes, mandatory training will be provided by the EOO. This training shall be:

- (A) Conducted during QARs or as needed;
- (B) Provided to District Title VI Coordinators, District Title VI Program Area Officers and Central Office.

4. FORMS

The following forms are available from the Department's Forms Library:

- Form No. 275-010-10, Title VI/ Nondiscrimination Complaint Form
- Form No. 275-010-11, Title VI Quarterly Report