

## CHAPTER 3 - TITLE VI AND NONDISCRIMINATION PROGRAM REQUIREMENTS

### 3.1 OVERVIEW

The Florida Department of Transportation (Department) is the primary recipient of Federal funds, that it then distributes to sub-recipients to fund local project priorities. In the context of the Local Agency Program (LAP) sub-recipients are defined as a Local Agency and the Local Agency's contractors or consultants. In order to receive Federal funds, the Local Agency and their contractors and consultants must comply with Federal and State nondiscrimination authorities, including the Florida Statutes; US Department of Justice (USDOJ), US Department of Transportation (USDOT) and Federal Highway Administration (FHWA) regulations, orders and notices; and the policies and procedures implemented by the Department as outlined in this chapter. In addition, to maintain LAP Certification, Local Agencies must submit the [Sub-recipient Compliance Assessment Tool \(SCAT\)](#) once every three years or at the request of the Department or the FHWA (see *Chapter 2.2.2*).

### 3.2 TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 AND RELATED STATUTES

23 Code of Federal Regulations (CFR) Part 200 requires that the Department conduct periodic reviews of cities, counties, planning agencies and other recipients of Federal-Aid Highway Program funds to ensure they are complying with Title VI of the Civil Rights Act of 1964 and other nondiscrimination authorities. The Department requires its Local Agencies participating in LAP to both comply and demonstrate compliance with Federal and State nondiscrimination authorities.

#### 3.2.1 Scope of Title VI and other Nondiscrimination Authorities

[Title VI of the Civil Rights Act of 1964 \(Title VI\)](#) states that no person should be excluded from participation in, denied the benefits of, or subjected to discrimination on the basis of race, color or national origin in any program or activity receiving Federal financial assistance. Other authorities such as the *Federal Highway Act of 1973*, *Age Discrimination Act of 1975*, *Americans with Disabilities Act of 1990* and the *Florida Civil Rights Act of 1992* forbid discrimination against anyone on the basis of sex, age, disability, religion, or familial (or marital) status.

The *Civil Rights Restoration Act of 1987 (CRRA)* provided clarification of the original

intent of Congress for Title VI and restored broad institution-wide scope and coverage to all programs and activities of federal-aid recipients and sub-recipients, whether such programs and activities are federally funded or not. Institutions may include schools and colleges, government entities, or private employers. Regardless of the entity or the program receiving Federal-Aid, all must take steps to prevent discrimination and ensure nondiscrimination in all programs, services and activities. Thus, all programs, services and activities of Local Agencies participating in LAP must comply with nondiscrimination requirements, whether or not the individual programs or activities receive Federal funding.

### **3.3 ASSURANCES**

The Department will ensure that the Local Agency executes and provides an assurance in the form of the [Title VI / Nondiscrimination Assurance](#) per [49 CFR 21](#) and [23 CFR 200.9\(a\)\(1\)](#).

#### **3.3.1 Scope of Assurances**

Essentially, assurances serve two purposes. First, they provide written commitment from the Local Agency that no person shall on the grounds of race, color, national origin, sex, age, disability, religion or family status be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program, service or activity conducted by the Local Agency or its Contractor(s), regardless of whether those programs and activities are Federally funded or not. Second, assurances serve as a contract agreement for which remedy may be sought for breach.

#### **3.3.2 Contract Insertions**

The ***Title VI / Nondiscrimination Agreement*** contains required contract assertions labeled [Appendices A and E](#). It is important for the Local Agency to ensure that the clauses are included in all LAP contracts and agreements. Appendices A and E are incorporated into the [LAP Terms for Federal-Aid Professional Services Contracts \(FDOT Form No. 375-040-84\)](#). DOT 1050.2A, Appendices A and E are included in FDOT's Division 1 specification package for a Local Agency's bid document located on the [FDOT Specs on the Web](#) page.

### **3.4 IMPLEMENTATION PROCEDURES (23 CFR PART 200)**

Compliant implementation of Title VI of the Civil Rights Act and other Federal and State nondiscrimination authorities in LAP is a cooperative effort by the Department and its Local Agencies.

### 3.4.1 Local Agencies will:

- A. Formulate and adopt a Title VI/Nondiscrimination Plan (Plan) that is publicly posted. The Plan includes a policy statement, which expresses commitment to the nondiscrimination provisions of Title VI and other nondiscrimination authorities. The Plan and policy statement shall be circulated throughout the Local Agency's organization and to the general public. For convenience, the Title VI policy statement can also include disability, rather than establishing ADA as a separate policy. For more information and sample documents visit the LAP Title VI webpage and see the [Nondiscrimination Handbook for Local Agencies](#) and the [Sample Title VI/Nondiscrimination Policy and Plan for Sub-Recipients in the Local Agency Program \(LAP\)](#). The Plan must cover the protected classes identified in **Section 3.2.1** of this Chapter and should also include any additional protected classes adopted by the agency.
- B. Have a complaint process to respond to complaints about discrimination based on race, color, national origin, sex, age, religion and family status. For convenience, the complaint process may include disability, rather than establishing a separate disability complaint process (disability and ADA requirements are explained in **Chapter 4**). The complaint process(es) may be incorporated into your Plan.
- C. Designate a Title VI/Nondiscrimination Coordinator and publish their name and contact information. Identify this person in your Plan. This person must have 'easy' access to the agency chief executive officer due to their role in recording and investigating complaints received by the agency. **Section 3.5** describes the complaint process in further detail.
- D. Complete and submit the **Sub-Recipient Compliance Assessment Tool (SCAT)** every three years, generally, in conjunction with certification or upon request by the Department or FHWA.
- E. Ensure access to programs, services and activities to those who are Limited English Proficient in compliance with [Executive Order 13166 and related memoranda and directives](#).
- F. Ensure that Local Agency Program projects or activities do not disproportionately and adversely impact minority or low income populations in compliance with [Executive Order 12898](#) and [FHWA Order 6640.23A](#).

- G. Take action to correct any deficiencies found by the Department or FHWA within a reasonable time period, not to exceed ninety (90) days. The chief executive officer of the Local Agency shall be held responsible for implementing nondiscrimination requirements.

### **3.4.2 The Department will:**

- A. Review Local Agency SCAT documents to verify that Local Agencies have current signed nondiscrimination assurances, a sufficient nondiscrimination plan, policy statement and complaint procedure.
- B. Provide technical and program assistance to those Local Agencies that are unable to demonstrate substantial compliance through the SCAT process.
- C. Review contract and other documents as required to determine compliance with nondiscrimination requirements.
- D. Cooperate and assist in FHWA investigations of Title VI or other discrimination complaints filed against Local Agencies, to include docketing complaints, forwarding complaints to the appropriate authority, and conducting site inspections or remediation verification as requested or required.

## **3.5 DISCRIMINATION COMPLAINTS**

Any person who believes that he or she, or any specific class of persons has been subjected to discrimination or retaliation prohibited by Title VI and other nondiscrimination authorities may file a complaint. Local Agencies follow their posted complaint filing/processing procedures, notifying the [FDOT State Title VI Coordinator](#) for any complaints involving LAP projects. However, if at any time a discrimination complaint involving pedestrian or transportation facilities cannot be satisfactorily resolved by the Local Agency, it should forward the entire complaint and investigative file to the FDOT State Title VI Coordinator. The Department and FHWA are designated nondiscrimination clearinghouses and will either assume jurisdiction for the complaint, or forward it to the appropriate Federal or State authority for further processing.

### **3.5.1 Notification to the Florida Department of Transportation**

Whenever possible, the Local Agency will notify the FDOT State Title VI Coordinator within five (5) calendar days of receiving a complaint involving pedestrian or transportation facilities. If possible, the following information should be included in the notification of complaint.

- A. Name and contact information of the Complainant, if available.
- B. Name(s) and contact information of the official(s) alleged to have discriminated.
- C. Basis of complaint (race, color, national origin, sex, age, disability, religion, family status).
- D. Date of alleged discriminatory act(s).
- E. Date of complaint received by the Local Agency Title VI/Nondiscrimination Coordinator.
- F. A description of the complaint.
- G. Other agencies (state, local or Federal) where the complaint has been filed, if applicable.
- H. An explanation of the actions the Local Agency has taken or is proposing to take to resolve the complaint.

### **3.5.2 Limitation on Local Agency Complaint Processing**

Because laws may impose time limits on a Complainant's right to file discrimination complaints in State or Federal courts, at no time should the Local Agency's processing of pedestrian or transportation facility complaints extend beyond ninety (90) days without advising the FDOT State Title VI Coordinator.

### **3.5.3 Employment Discrimination Complainants Excluded**

Employment Discrimination Complaints under *Title VII of the Civil Rights Act of 1964*, as amended or other equal employment laws are specifically excluded from **Section 3.5** and should not be provided to the Department unless specifically requested, or if the primary objective of the financial assistance received is to provide employment ([42 U.S.C. 2000d-3](#)). Contact the FDOT State Title VI Coordinator for additional information.

### **3.5.4 Interagency Cooperation**

Where discrimination complaints are received by or assigned to the Department or FHWA, the Local Agency must fully cooperate with the ensuing investigation. This includes, but is not limited to, adhering to deadlines for production of information; making

project or program information available for inspection; cooperating with onsite visits and witness interviews; and engaging in conciliation or resolution conferences, where recommended.

### **3.5.5 Complaint Recordkeeping**

The Local Agency Title VI / Nondiscrimination Coordinator must maintain a log of all discrimination complaints received, even if unwritten or anonymous. The log should include:

- A. Names of Complainants, if available.
- B. Name of Local Agency official or department against which the complaint is filed.
- C. Basis of Complaint (race, color, national origin, sex, age, disability, religion or family status).
- D. Dates of alleged discrimination, when the complaint was received by the Local Agency and when FDOT was notified, if applicable.
- E. A brief explanation of resolution or referral action, along with the date the matter was resolved or referred.

## **3.6 Sub-Recipient Compliance Assessment Tool**

The Department has developed the Sub-Recipient Compliance Assessment Tool (SCAT) as a means of determining sub-recipient nondiscrimination compliance; helping sub-recipients understand their nondiscrimination responsibilities; and assisting the Department in planning future training and technical assistance. SCAT Tools must be completed as a condition of LAP Certification and each triennial Recertification as explained in **LAP Manual Chapter 2**. The Assessments may be used as the basis of random or risk based reviews by either the Department or FHWA. Additional resources to aid your agency in completing the SCAT are available on the LAP Title VI and Nondiscrimination webpage. In addition, a twelve (12) minute Computer Based Training Course is offered on the LAP webpage that provides an overview of the SCAT process. [LAP Sub-Recipient Compliance Assessment Tool Computer Based Training \(Course No. BT-15-0009\)](#)

The SCAT has eleven (11) questions. The first three (3) questions must be answered in full and all supporting documentation completed before the Department will enter into a LAP Agreement with your agency.

- **Question One (1)** requires the Local Agency to provide a copy of the executed Title VI / Nondiscrimination Assurance to the Department as defined in **Section 3.3**.
- **Question Two (2)** requires the Local Agency to provide a web address to their organization's Title VI / Nondiscrimination Plan, policy statement, and complaint filing procedures as defined in **Section 3.4**. This is not your agency's employee (Title VII) related procedures. The Plan must cover the protected classes identified in **Section 3.2.1** of this Chapter and should also include any additional protected classes adopted by the agency.
- **Question Three (3)** requires the Local Agency to certify that it constructs or improves curb ramps pursuant to the **DOJ/DOT Technical Assistance Memo**.

The next eight (8) questions are required for compliance, but the Department under some conditions may proceed with entering into a LAP Agreement with the Local Agency while that agency prepares the required supporting documents to satisfy each requirement.

- **Question Four (4)** requires the Local Agency to identify the standards utilized to design LAP projects that are in compliance with at least one of the following: [US Department of Justice ADA Standards \(2010\)](#) and [US Department of Transportation ADA 2006 Standards for Transportation Facilities \(2006\)](#), the [Public Rights of Way Accessibility Guidelines \(PROWAG\)](#), the [Department Design Manual](#), and the [Florida Greenbook](#).
- **Question Five (5)** requires the Local Agency to acknowledge “yes” or “no” if they have developed and posted an ADA Transition Plan for accessibility of pedestrian facilities within the public rights of way. This is a requirement of all government agencies with fifty or more employees, *without* respect to funding [see **28 CFR 35.105** and **150(d)**]. ADA Transition Plans must be publicly posted and updated periodically. If an agency has not started or has not maintained its ADA Transition Plan the Department offers resources to assist in the development of a Plan. ADA Transitions Plans and available resources are more fully described in **Chapter 4.5.2**.
- **Question Six (6)** requires the Local Agency to enter the name, title, and contact information for its Title VI/Nondiscrimination and ADA Coordinator(s) in the Local Agency Program Information Tool (LAPIT).
- **Question Seven (7)** requires the Local Agency to provide descriptions of Title VI/Nondiscrimination and ADA complaints received during the past three years. This does *not* include employee related complaints.

- **Question Eight (8)** requires the Local Agency to identify how it advises the public of nondiscrimination policies or other similar information. Electronic or web-based posting alone is insufficient. The agency must also post information in a publicly accessible location, such as a library, town hall, community center, etc.
- **Question Nine (9)** requires the Local Agency to identify its methods of data collection and review of demographic data when updating processes for public involvement, Limited English Proficiency Plan, and other document related to Title VI/Nondiscrimination programs.
- **Question Ten (10)** requires the Local Agency acknowledge “yes” or “no” if the organization has developed a Limited English Proficiency Plan (LEP) for providing language services to those who do not speak English. In accordance with Executive Order 13166 written plans must include a four-factor analysis of data acquired from the US Census Bureau (and other sources) of LEP populations in your jurisdiction. The LEP may be incorporated into the agency’s Title VI / Nondiscrimination Plan (as described in **Question 2**) or may be a standalone document. The Sample Nondiscrimination Policy and Plan for Local Agencies includes a description and example of the four-factor analysis.
- **Question Eleven (11)** requires the Local Agency to identify how it provides outreach to and solicits input on programs and activities from communities or groups that represent minority, low income, elderly, and disabled persons. Most agencies perform public involvement, invoke committees or advisory groups, or place staff in community centers or other embedded locations to reach these communities.

In addition to the Handbook and sample plans provided on the LAP Title VI webpage, FHWA and the Department also provide a [Triennial Title VI Program Review Tool for Local Government](#). This document provides targeted questions and helpful tips the Title VI/Nondiscrimination Coordinator and other Local Agency staff may use to update its Title VI / Nondiscrimination Policy and Plan as needed.

### 3.7 SANCTIONS

In the event the Local Agency fails or refuses to comply with the terms described in this Chapter and the referenced authorities, the Department may take any or all of the following sanctions:

- A. Cancel, terminate, or suspend the LAP Agreement in whole or in part;
- B. Refrain from extending any further assistance to the Local Agency under

- LAP with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from the Local Agency;
- C. Take such other action that may be deemed appropriate under the circumstances, including but not limited to Certification termination, until compliance or remedial action has been accomplished by the Sub-recipient;
  - D. Refer the case to the U.S. Department of Transportation for appropriate legal proceedings.

### **3.8 AUTHORITIES AND RESOURCES**

All resources referenced in this Chapter may also be accessed through the [LAP Website](#).

[Sub-recipient Compliance Assessment Tool \(SCAT\)](#)

[Appendices A and E](#)

[Nondiscrimination Handbook for Local Agencies](#)

Handbook Attachment A, LAP Nondiscrimination [Authorities and Resources](#)

Handbook Attachment B, [Title VI / Nondiscrimination Assurance](#)

Handbook Attachment C, [Sample Nondiscrimination Policy and Plan for Local Agencies](#)

Handbook Attachment D, [Sample Disadvantaged Business Enterprise \(DBE\) Statement](#)

[Triennial Title VI Program Review Tool for Local Government](#)

[LAP Sub-Recipient Compliance Assessment Tool Computer Based Training \(Course No. BT-15-0009\)](#)