

## **CHAPTER 8**

### **TITLE VI AND NONDISCRIMINATION PROGRAM REQUIREMENTS**

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## 8.1 OVERVIEW

The Department is the primary recipient of FAHP funds it then distributes to subrecipients to fund local project priorities. To receive FAHP funds, the LA, 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 FHWA regulations, orders and notices; and the policies and procedures implemented by the Department as outlined in this chapter. LAs must submit the **SCAT** documents through the [GAP](#) system once every three years or at the request of the Department or FHWA (see **Chapter 7.2.2**).

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

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

### 8.2.1 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 (CRRRA)** 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 subrecipients, whether such programs and activities are Federally funded or not. Regardless of the entity or the program receiving Federal-aid funds, all must take steps to prevent discrimination and ensure nondiscrimination in all programs, services, and activities. Thus, all programs, services and activities of LAs participating in LAP must comply with nondiscrimination requirements.

## 8.3 ASSURANCES

The Department will ensure that the LA executes and provides an assurance in the form of the [Title VI/Nondiscrimination Assurance](#) per [49 CFR 21](#) and [23 CFR 200.9\(a\)\(1\)](#). The Title VI/Nondiscrimination Assurance must be executed once every three years or when the agency head changes.

### 8.3.1 Scope of Assurances

Essentially, assurances serve two purposes. First, they provide written commitment from the LA 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 LA or its contractor(s) and consultant(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.

### 8.3.2 Contract Insertions

The ***Title VI/Nondiscrimination Agreement*** contains required contract assertions labeled [Appendices A and E](#). The LA shall ensure that the clauses are included in all contracts and agreements being used to deliver LAP projects. Appendices A and E are incorporated into the [LAP Terms for Federal-Aid Professional Services Contracts \(FDOT Form No. 375-040-84\)](#) and by reference in [Form FHWA-1273, "Required Contract Provisions Federal-Aid Construction Contracts"](#) the latest version of the form is applicable.

## 8.4 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 LAs.

### 8.4.1 Local Agency Responsibilities

- 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 LA'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 8.2.1** of this Chapter and any additional protected classes adopted by the LA at the local level.

- 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 9**). The complaint process(es) may be incorporated into the LAs Title VI Plan.
- Provide a copy of all written complaints (excluding those that are related to employment) alleging race, color or national origin discrimination to the Department or FHWA for review and processing.
- Designate a Title VI/Nondiscrimination Coordinator and publish their name and contact information. Identify this person in your Title VI Plan. This person must have 'easy' access to the LA's chief executive officer due to their role in recording and investigating complaints received by the LA. **Section 8.5** describes the complaint process in further detail.
- Complete and submit the **SCAT** every three (3) years upon the expiration of the Title VI Assurance submitted to the Department or upon request by the Department or FHWA.
- Ensure access to programs, services, and activities to those who are Limited English Proficient (LEP) in compliance with [Executive Order 13166 and related memoranda and directives](#).
- Ensure that LAP 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](#).
- Take action to correct any deficiencies found by the Department or FHWA within a reasonable time period, not to exceed ninety (90) calendar days. The chief executive officer of the LA shall be held responsible for implementing nondiscrimination requirements.

#### 8.4.2 Department Responsibilities

- Review LA SCAT documents to verify that LAs have current signed nondiscrimination assurances, a sufficient nondiscrimination plan, policy statement, and complaint procedure.
- Provide technical and program assistance to those LAs that are unable to demonstrate substantial compliance through the SCAT process.

- Review contract and other documents as required to determine compliance with nondiscrimination requirements.
- Cooperate and assist in FHWA investigations of Title VI or other discrimination complaints filed against LAs, to include docketing complaints, forwarding complaints to the appropriate authority, and conducting site inspections or remediation verification as requested or required.
- Questions related to SCAT submission may be directed to [co-scat@dot.state.fl.us](mailto:co-scat@dot.state.fl.us).

## 8.5 DISCRIMINATION COMPLAINTS

Any person, or any specific class of persons who believes that they have been subjected to discrimination or retaliation prohibited by Title VI and other nondiscrimination authorities may file a complaint. The LA processes the complaint per their posted procedures and also notifies the [FDOT State Title VI Coordinator](#) of any complaints involving LAP projects. 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.

Complaints specifically related to Title VI of the Civil Rights Act (1964) and filed on the basis of race, color or national origin may only be investigated, and findings issued by FHWA. For complaints related to protected classes not specific to Title VI, if at any time a discrimination complaint involving pedestrian or transportation facilities cannot be satisfactorily resolved by the LA, it should forward the entire complaint and investigative file to the FDOT State Title VI Coordinator.

### 8.5.1 Notification to the Florida Department of Transportation

The LA 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.

- Name and contact information of the Complainant, if available.
- Name(s) and contact information of the official(s) alleged to have discriminated.
- Basis of complaint (race, color, national origin, sex, age, disability, religion, family status).
- Date of alleged discriminatory act(s).
- Date of complaint received by the LA Title VI/Nondiscrimination Coordinator.
- A description of the complaint.
- Other agencies (local, State, or Federal) where the complaint has been filed, if applicable.

- An explanation of the actions the LA has taken or is proposing to take to resolve the complaint.

### 8.5.2 Limitation on Local Agency Complaint Processing

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

Further, while LA's are encouraged to investigate and resolve all complaints, those filed in writing and alleging race, color or national origin discrimination may only be investigated and findings issued by FHWA.

### 8.5.3 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 8.5** 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.

### 8.5.4 Interagency Cooperation

Where discrimination complaints are received by or assigned to the Department or FHWA, the LA 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.

### 8.5.5 Complaint Recordkeeping

The LA Title VI/Nondiscrimination Coordinator must maintain a log of all discrimination complaints received, even if unwritten or anonymous. The log includes:

- Names of Complainants, if available.
- Name of LA official or department against which the complaint is filed.
- Basis of complaint (race, color, national origin, sex, age, disability, religion, or family status).
- Dates of alleged discrimination, when the complaint was received by the LA, and

when the Department was notified, if applicable.

- A brief explanation of resolution or referral action, along with the date the matter was resolved or referred.

## 8.6 SUBRECIPIENT COMPLIANCE ASSESSMENT TOOL (SCAT)

The Department has developed the SCAT as a means of determining subrecipient nondiscrimination compliance; helping subrecipients 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 **Chapter 7**. The SCAT information may be used as the basis of random or risk-based reviews by either the Department or FHWA. Additional resources to aid the LA in completing the SCAT are available on the LAP Title VI and Nondiscrimination webpage and the required training class is recorded and posted to the Florida LTAP webpage here: <https://floridaltap.org/localprograms/>.

The SCAT which is filled out and completed in the [GAP](#) database 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 the LA.

- **Question One (1)** requires the LA to provide a copy of the executed Title VI/Nondiscrimination Assurance to the Department as defined in **Section 8.3**.
- **Question Two (2)** requires the LA to provide a web address to their organization's Title VI/Nondiscrimination Plan, policy statement, and complaint filing procedures as defined in **Section 8.4**. This is not your agency's employee (Title VII) related procedures. The Title VI Plan must cover the protected classes identified in **Section 8.2.1** of this Chapter and should also include any additional protected classes adopted by the LA (at the local level).
- **Question Three (3)** requires the LA 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 LA while they prepare the required supporting documents to satisfy each requirement.

- **Question Four (4)** requires the LA to confirm it is complying with the ADA in all aspects of planning, designing, and constructing transportation projects:
  - [FDOT Design Manual \(FDM\)](#)
  - [Florida Greenbook](#)

It is important to note that the LA must comply with the Florida Greenbook on local



roads. The LA must comply with the FDM when designing FAHP projects on the SHS and NHS. Both the Florida Greenbook and the FDM meet or exceed the minimum design standards set forth in the [US Department of Justice ADA Standards \(2010\)](#) and the [US Department of Transportation ADA 2006 Standards for Transportation Facilities \(2006\)](#) and/or the [Public Rights of Way Accessibility Guidelines \(PROWAG\)](#).

This question also requires the LA to confirm compliance with the design exception and/or variation process in instances of technical infeasibility.

- **Question Five (5)** requires the LA 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 the LA has not started or has not maintained its ADA Transition Plan the Department offers resources to assist in the development of an ADA Transition Plan. ADA Transitions Plans and available resources are more fully described in **Chapter 9.5.2**.
- **Question Six (6)** requires the LA to enter the name, title, and contact information for its Title VI/Nondiscrimination and ADA Coordinator(s) in the [GAP](#).
- **Question Seven (7)** requires the LA to provide descriptions of Title VI/Nondiscrimination and ADA complaints received during the past three years. This does *not* include employee related complaints covered under Title VII.
- **Question Eight (8)** requires the LA to identify how it advises the public of nondiscrimination policies or other similar information. Electronic or web-based posting alone is insufficient. The LA must also post written information in a publicly accessible location, such as a library, town hall, community center, etc.
- **Question Nine (9)** requires the LA to identify its methods of data collection and review of demographic data when updating processes for public involvement, LEP Plan, and other documents related to Title VI/Nondiscrimination programs. A commonly used resource is the [American Community Survey – Table s1601](#).
- **Question Ten (10)** requires the LA acknowledge “yes” or “no” if the organization has developed a 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 LA’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 LA 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 LAs perform public



involvement, invoke committees or advisory groups, or place staff in community centers or other embedded locations to reach these communities.

The Department uses a rating system of red, yellow, green assigned to each LA based on their responses to the questions on the SCAT tool. The LA's current rating information is displayed in GAP so both internal and external stakeholders have access to the information.

RED	YELLOW	GREEN
Red rating occurs when the LA responds negatively or does not provide the information requested in questions 1-3.	Yellow rating occurs when the LA responds positively to questions 1-3 but information is missing or not provided for questions 4-11.	Green rating occurs when the LA responds positively to all questions and provided the corresponding information.

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 that the Title VI/Nondiscrimination Coordinator and other LA staff may use to update its Title VI/Nondiscrimination Policy and Plan as needed. Updates to the Plan should be completed when data, demographics or needs in the jurisdiction change to require a change in Nondiscrimination program services. It is recommended the LA review its demographic data in line with its Nondiscrimination program goals, not less than triennially.

## 8.7 MINIMUM MONITORING PLAN REQUIREMENTS FOR FEDERAL-AID PROJECTS

As discussed in **Chapter 5.3**, a risk assessment and project specific monitoring plan must be developed prior to the federal award. Federal award date under Department process is considered the Federal Authorization date. **Table 1** contains the minimum Title VI monitoring requirements performed by the Department. Department grant managers may impose additional monitoring requirements for projects based on findings of noncompliance on other projects delivered by the LA in the past, or if current findings of noncompliance occur on active projects.

*Table 1: Minimum Monitoring Requirements for Federal-Aid Projects*

Monitoring Requirement	Requirement Description and Activities	Minimum Frequency Based on Risk Level
SCAT Review	Central Office and FHWA designees review the	Triennially or when

Monitoring Requirement	Requirement Description and Activities	Minimum Frequency Based on Risk Level
	LA's Title VI and Nondiscrimination program. A rating of red, yellow, or green is displayed in GAP. Central Office and District program managers use the rating information to perform risk based oversight and inform the LAP certification process.	triggered by an audit
Title VI Assurance execution	The Title VI Assurance must be executed once every three years or when the chief executive officer changes. The Assurance expiration date is displayed in GAP. District program managers monitor dates in GAP and agency staffing changes and trigger a request for a new assurance when due or as needed.	Triennially or when triggered by staffing change at the LA.
Title VI and Nondiscrimination required contract provisions	Title VI related contract language as specified in this chapter must be incorporated into LA contracts with contractors and consultants. District contract manager reviews LA contracts prior to execution with the consultant or contractor to ensure provisions are incorporated.	All LA contracts executed with consultants and contractors for FA projects are reviewed for compliance. Required contract provisions are identified on the LAP Construction and Professional Services checklists.

## 8.8 SANCTIONS

In the event the LA 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:

- Cancel, terminate, or suspend the LAP Agreement in whole or in part;
- Refrain from extending any further FAHP assistance to the LA with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from the LA;
- Take such other action that may be deemed appropriate under the circumstances, including but not limited to LAP Certification termination, until compliance or remedial action has been accomplished by the subrecipient;
- Refer the case to the USDOT for appropriate legal proceedings.

## 8.9 AUTHORITIES AND RESOURCES

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

[GAP SCAT User Guide for Local Agency Users](#)

[GAP SCAT User Guide for State Employee Users](#)

[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](#)

Local Technical Assistance Program SCAT and ADA training class recordings:

<https://floridaltap.org/localprograms/>