

Civil Rights Related Issues

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What are Civil Rights?

- Enforceable rights, privileges, freedoms, liberties, and immunities accorded **all** inhabitants of a country
- They are guaranteed by the
 - Constitution (13th. & 14th. Amendments);
 - Acts of Congress;
 - Executive Orders;
 - Court Decisions and Treaties
- Denial of, or interfering with, another person's Civil Rights gives rise to action for injury;
- In effect, Civil Rights is about **nondiscrimination, equal treatment, equal impact, and equal opportunity.**

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FHWA's Civil Rights Mission

- To assure fair and equitable treatment of those employed in, benefiting from, or affected by FHWA or the programs, policies and activities of its recipients, subrecipients or contractors



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State Transportation Agencies & Federal-aid Highway Funds

- State Transportation Agencies (STAs) are the principal recipients of Federal-aid Highway Funds
 - "Any State desiring to avail itself of the provisions of this title shall have a State transportation department which shall have adequate powers, and be suitably equipped and organized to discharge to the satisfaction of the Secretary the duties required by this title." (23 CFR 102(a))
- STAs are responsible for construction of all Federal-aid projects
 - "The ST[A] has responsibility for the construction of all Federal-aid projects, and is not relieved of such responsibility by authorizing performance of the work by a local public agency or other Federal agency." (23 CFR 635.102(a))




Delegation of Project Management Activities

- STAs may delegate Federal-aid project administration and management to subrecipients including Local Public Agencies (LPAs)
 - "The State highway department may utilize, under its supervision, the services of well-qualified and suitably equipped engineering organizations of other governmental entities for making surveys, preparing plans, specifications and estimates, and for supervising the construction of any projects." (23 CFR 1.11(b))



LPAs Must Abide By All Federal Requirements

- LPAs are required to carry out their Federal-aid project actions in accordance with all applicable Federal requirements
 - "When the work is to be performed under a contract awarded by a local public agency, all Federal requirements including those prescribed in this subpart shall be met." (23 CFR 635.105(c)(2))



The DBE Program

- **Equal opportunity program designed**
 - to provide **fair opportunity** to small businesses owned by women, minorities and other socially and economically disadvantaged individuals,
 - to **compete** for highway and transit construction contracts funded in part or in full by the Federal government
- **Significant tool in USDOT's efforts**
 - to **remedy the extensive and persistent discrimination** faced by thousands of small businesses owned by women, minorities and other socially and economically disadvantaged individuals, in the nation's construction industry.

DBE Requirements

- **Method of Administration – DBE Program Plan**
- **Goal setting methodology**
 - Statewide goal
 - Race & gender neutral
 - Race & gender conscious
 - Contract goals



Some 2014 DBE Final Rule Updates

- **Forms and Data Collection**
 - **Revised Uniform Certification Application** to remove unnecessary details (telephone numbers and address of applicant's bank)
 - **New DOT Personal Net Worth (PNW) Form**
 - All applicants must use simplified form to document economic status
 - Spouse of a disadvantaged owner involved in the operation of the firm must also submit a PNW form with the application.
 - **New MAP-21 Report**
 - Beginning January 1, 2015, State DOTs must submit to the USDOT Office of Civil Rights information the percentage of DBEs in the state owned by non-minority women, minority women, and men.

Some 2014 DBE Final Rule Updates Contd.

• Submission of Good Faith Efforts

- Bidders/offerors for a DOT-assisted contract with a DBE goal **must** provide DBE information at the time of bid (matter of responsiveness) or no later than 7 days after bid opening (matter of responsibility). The 7 days shall be reduced to 5 days beginning January 1, 2017.
- DBE information submitted includes the North American Industrial Classification System (NAICS) code applicable to the kind of work the DBE will perform on the contract;
- When a non-DBE subcontractor is selected over a DBE, copies of the quotes from each DBE and non-DBE subcontractor is needed.
- The bidder/offerors shall make copies of DBE subcontracts available upon request.

USDOT Prompt Payment & Retainage Policy

- What must recipients do to ensure subcontractors and subconsultants are promptly paid for work performed?
- When are primes required to return retainage?
- Does the prompt payment and release of retainage apply only to DBE subcontractors?



Title VI

Nondiscrimination in Federally Assisted Programs & Activities

WHY WAS THE TITLE VI PROGRAM ESTABLISHED?

- To prevent illegal discrimination and assure nondiscrimination in the Federal-aid Program.
- PUBLIC FUNDS FOR PUBLIC BENEFIT!



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FHWA TITLE VI POLICY

- It is the policy of the FHWA to assure nondiscrimination in all programs and activities receiving financial assistance from the Federal Highway Administration (23 CFR 200.7)



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THE 1964 CIVIL RIGHTS ACT - Titles

- Title I - Voting Rights
- Title II - Public Accommodation
- Title III - Desegregation of Public Facilities
- Title IV - Desegregation of Public Education
- Title V - Commission on Civil Rights
- Title VI - Nondiscrimination in Federally Assisted Programs & Activities
- Title VII - Equal Employment Opportunity
- Title VIII - Registration and Voting Statistics
- Title IX - Intervention & Procedure after Removal in Civil Rights Cases
- Title X - Establishment of Community Relations Service
- Title XI - Miscellaneous



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What is Title VI?



- Federal law
- The essence of the law:

"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 20006)

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What is FHWA's Title VI Program?

- Not limited to prohibitions of Title VI of the Civil Rights Act of 1964
 - 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 authorities include:
 - The 1970 Uniform Act (42 USC 4601) - **Persons**
 - Section 504 of the 1973 Rehabilitation Act (29 USC 790) - **Disability**
 - The 1973 Federal-aid Highway Act (23 USC 324) - **Sex**
 - The 1975 Age Discrimination Act (42 USC 6101) - **Age**
 - Executive Order 12898 on Environmental Justice - **EJ**
 - Executive Order 13166 on Limited English Proficiency - **LEP**

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FHWA's Title VI Program is...

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



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Title VI - The Law Versus Title VI - The Program	
Title VI of CRA of 1964 Coverage	FHWA Title VI Program Coverage
Race	Race
Color	Color
National Origin (LEP)	National Origin (LEP)
	Handicap/Disability
	Sex
	Age
	Low Income & Minorities

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What is the Purpose of Title VI?

- To ensure that public funds are not spent in a way that encourages, subsidizes, or results in discrimination;
- Title VI therefore bars **intentional** (disparate treatment) and **unintentional** (disparate impacts or effects).



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What is the Intent of Title VI?

- 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.



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RENEWED INTEREST IN TITLE VI ENFORCEMENT

- DOJ Memos & FHWA Efforts

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DOJ MEMOS & FHWA Efforts

- DOJ MEMOS
 - March 4, 2009 Memo to Agency Senior ARRA Officials and Civil Rights Directors for Federally Assisted programs
 - July 10, 2009 Memo to Federal Agency Directors & General Counsels
 - August 19, 2010 Memo to Federal Funding Agency Civil Rights Directors
 - September 8, 2010 Correspondence to DOE's Assistant Secretary For Civil Rights
 - September 27, 2010 memo to Heads of Departments and Agencies Providing FFA
 - July 24 2014 memo to Title VI Civil Rights Staff Across Federal Government
- FHWA Efforts
 - Developing training tools and guidance for consistent implementation internally and externally

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TITLE VI PROGRAM SUMMARY

- Not a threat...
- Beyond a Bureaucratic Exercise

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TITLE VI IS NOT A THREAT

- It is an opportunity
- To give serious attention to the effects of transportation decisions on people & communities
- To redeem ourselves of oversights and negligence regarding past and lingering disparate actions towards "disadvantaged" persons, groups, communities and businesses



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BEYOND A BUREAUCRATIC EXERCISE: WHY TITLE VI IS IMPORTANT TO YOU

- Business and Economic necessity
- Constitutional & Statutory requirement
- Our Professional & Fiduciary responsibility
- Civic duty
- Moral & Ethical imperative - **THE GOLDEN RULE**
- In short, **IT IS THE RIGHT THING TO DO!**



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WORDS OF WISDOM

- Injustice to **ANYONE** is a threat to justice to **EVERYONE!**
- Doing the right thing is always the right thing to do!



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