



# **Title VI**

# **Implementation Plan**

***West Virginia Department of Transportation***  
***Division of Highways***

**Federal Fiscal Year 2023**



## **INTRODUCTION**

The West Virginia Department of Transportation (WVDOT) serves as an umbrella organization for four subsidiary agencies which are directly responsible for different areas of the state's infrastructure, and focuses on its mission of ".....create and maintain for the people of West Virginia, the United States and the world a multi-modal and inter-modal transportation system that supports the safe, effective and efficient movement of people, information and goods that enhances the opportunity for people and communities to enjoy environmentally sensitive and economically sound development". With over 6,000 departmental employees working within the Division of Highways, Division of Motor Vehicles, Division of Multi-Modal Transportation Facilities, and Parkways Authority, WVDOT works diligently to further that mission in a fair and non-discriminatory way. As lead agency within WVDOT, the Division of Highways builds, improves, and maintains West Virginia's roads and bridges, and as a Recipient of federal financial assistance from the Federal Highway Administration (FHWA), is required to comply with Title VI of the Civil Rights Act of 1964, which provides:

***"No person in the United States shall, on the grounds 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 assistance under this title or carried out under this title."***

Title VI served as the model for subsequent non-discrimination laws based on receipt of federal funding, including Title IX of the Education Amendments of 1972 (sex) and Section 504 of the Rehabilitation Act of 1973 (disability). However, each of these laws is accompanied by its own regulations and requirements and is not interchangeable with Title VI.

The United States Department of Justice, as the Federal government's coordinating agency for Title VI, implemented its Title VI program in 28 CFR Part 42 and issued guidance in two main documents: The Title VI Legal Manual<sup>1</sup> and the Complaint Investigation Procedures Handbook.

Title VI authorizes and directs Federal agencies to "enact rules, regulations, or orders of general applicability" to achieve the statute's objectives. The United States Department of Transportation (USDOT) implemented its Title VI program in 49 CFR Part 21. FHWA's regulations can be found in 23 CFR Part 200.

Title VI is further defined by Executive Order 12898 (Environmental Justice) and Executive Order 13166 (Limited English Proficiency):

- Executive Order 12898 – Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.
- Executive Order 13166 – Improving Access to Services for Persons with Limited English Proficiency.

### **I. DISCRIMINATION UNDER TITLE VI**

There are two types of discrimination prohibited under Title VI and its related statutes: (1) disparate treatment (intentional discrimination) and (2) disparate impact/effects. An intent claim alleges that similarly situated persons are treated differently because of their race, color, or national origin.

The second type of discrimination is disparate impact or disparate effects. This type of discrimination occurs when a facially neutral policy, procedure, or practice results in different or inferior services or benefits to members of a protected group. In disparate impact, the focus is on the consequences of a decision, policy, or practice rather than the intent.

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<sup>1</sup> Title VI Legal Manual (Updated), U.S. Department of Justice website, <https://www.justice.gov/crt/fcs/T6manual>



WVDOT's efforts to prevent such discrimination must address, but not be limited to, a program's impacts, access, benefits, participation, services, contracting and training opportunities, investigation of complaints, allocation of funds, and prioritization of projects. It applies to all subdivisions within WVDOT, especially those with a direct effect on the public such as planning, project design, environmental review, right-of-way, construction, traffic operations, and communications.

#### Specific Forms of Discrimination Prohibited

- The denial of services, financial aid, or other benefits provided under a program.
- Distinctions in the quality, quantity, or manner in which a benefit is provided.
- Segregation or separation of persons in any part of the program.
- Restriction in the enjoyment of any advantages, privileges, or other benefits provided to others.
- Differing standards or requirements for participation.
- Methods of administration that directly or indirectly, or through contractual relationships, would defeat or impair the accomplishment of effective non-discrimination.
- Discrimination in any activities or services related to a highway, infrastructure, or facility built or repaired in whole or in part with federal funds.

In addition, WVDOT, as a state agency administering a continuing program which receives federal financial assistance, must establish a Title VI compliance program for all sub-recipients that obtain federal assistance through it.<sup>2</sup>

## **II. KEY DEFINITIONS**

**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, etc.)

**Disparate Impact:** Discrimination that occurs when a facially neutral policy, procedure, or practice results in different or unequal treatment, and such policy or practice lacks a substantial legitimate justification. Under USDOT regulations, recipients may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, or national origin.<sup>3</sup>

**Disparate Treatment:** Intentional discrimination, or disparate treatment, happens when a recipient acts, at least in part, because of the actual or perceived race, color, or national origin of the alleged victims of discriminatory treatment.<sup>4</sup> Discriminatory intent need not be the only motive, but a violation occurs when the evidence shows that the entity adopted a policy at issue "because of", not merely "in spite of", its adverse effects upon an identifiable group."<sup>5</sup> While one must show that the recipient was motivated by an intent to discriminate, the recipient's decision makers do not have to have acted in "bad faith, ill will or any evil motive..."<sup>6</sup>

**Federal Financial Assistance and Federal-Aid:** (49 CFR 21.23(c)) includes:

- (1) Grants and loans of Federal funds;
- (2) The grant or donation of Federal property and interests in property;

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<sup>2</sup> 28 CFR 42.410

<sup>3</sup> 49 CFR 21.5(b)(2)

<sup>4</sup> *Doe ex rel. Doe v. Lower Merion Sch. Dist.*, 665 F.3d 524, 548 (3d Cir. 2011)

<sup>5</sup> *Pers. Adm'r of Mass. V. Feeney*, 442 U.S. 256, 279 (1979)

<sup>6</sup> *Elston*, 997 F.2d at 1406 (quoting *Williams v. City of Dothan*, 745 F.2d 1406, 1414 (11<sup>th</sup> Cir. 1984))



- (3) The detail of Federal personnel;
- (4) The sale and 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
- (5) Any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

**Local Public Agency (LPA) (23 CFR 635.102):** any city, county, township, municipality, or other political subdivision that may be empowered to cooperate with the WVDOT in highway matters.

**Metropolitan Planning Organization (MPO):** The policy board of an organization created and designed to carry out the metropolitan transportation planning process for each urbanized area with a population of more than 50,000 individuals (e.g., the Regional Transportation Council (RTC) of Southern [State])-

- (a) by agreement between the Governor and units of general-purpose local government that together represent at least 75 percent of the affected population (including the largest incorporated city (based on population) as determined by the Bureau of the Census); or
- (b) in accordance with procedures established by applicable State or local law.

**Minority:** WVDOT uses the race and ethnicity categories established by the Office of Management and Budget in its October 30, 1997 Federal Register Notice: *Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity*. The race and ethnicity categories below are included in the definition of "Minority" provided by the Council on Environmental Quality *Environmental Justice Guidance Under the National Environmental Policy Act*, the USDOT Order 5610.2(a), and FHWA Order 6640.23A.

*American Indian or Alaska Native.* A person having origins in any of the original peoples of North and South America (including Central America), and who maintains tribal affiliation or community attachment.

*Asian.* A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.

*Black or African American.* A person having origins in any of the black racial groups of Africa. Terms such as "Haitian" or "Negro" can be used in addition to "Black or African American."

*Hispanic or Latino.* A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race. The term "Spanish origin" can be used in addition to "Hispanic or Latino."

*Native Hawaiian or Other Pacific Islander.* A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific islands.

**Programs or Programs and Activities (49 CFR 21.23(e)):** all of the operations of any of the following entities, any part of which is extended Federal financial assistance:

- (1) (i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or



- (ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;
- (2) (i) A college, university, or other postsecondary institution, or a public system of higher education; or  
(ii) A local educational agency (as defined in 20 USC 7801), system of vocational education, or other school system;
- (3) (i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship-
  - (A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or
  - (B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or  
(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or
- (4) Any other entity which is established by two or more of the entities described above.

**Recipient (49 CFR 21.23 (f)):** any State, territory, possession, the District of Columbia, or Puerto Rico, or any political subdivision thereof, or instrumentality thereof, 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 financial assistance is extended, directly or through another recipient, including any successor, assignee, or transferee thereof, but such term does not include any ultimate beneficiary.

**Statewide Transportation Improvement Program (STIP):** A statewide prioritized listing/program of transportation projects covering a period of four years that is consistent with the long-range statewide transportation plan, metropolitan transportation plans, and TIPs, and required for projects to be eligible for funding under title 23 USC and title 49 USC Chapter 53.

**Sub-recipient:** A recipient entity that receives federal funding from a Primary recipient (e.g., WVDOT) to carry out a federal program.

**Transportation Improvement Program (TIP):** A prioritized listing/program of transportation projects covering a period of four years that is developed and formally adopted by an MPO as part of the metropolitan transportation planning process, consistent with the metropolitan transportation plan, and required for projects to be eligible for funding under title 23 USC and title 49 USC Chapter 53.





### III. NON-DISCRIMINATION STATEMENT OF POLICY

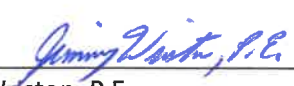
The West Virginia Department of Transportation (WVDOT) and its Cabinet Secretary are committed to full compliance with Title VI of the Civil Rights Act of 1964 and all related regulations, laws, executive orders, and directives. The Cabinet Secretary, as the ultimate responsible person for Title VI compliance, and WVDOT, assures that no person on the grounds of race, color, or national origin will be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any WVDOT service, program, or activity.

Any person who is not an employee of the State of West Virginia and who believes that they have been discriminated against because of WVDOT's programs, policies, or activities, may file a written complaint with the Director of the WVDOT Civil Rights Compliance Division at the address and telephone number listed below:

**Director – Civil Rights Compliance Division**  
**West Virginia Department of Transportation**  
**State Capitol Complex – Building 5**  
**1900 Kanawha Boulevard East**  
**Charleston, West Virginia 25305**  
**Office: 304-558-3931**  
**Fax: 304-558-4236**  
**E-mail: [dot.eeo@wv.gov](mailto:dot.eeo@wv.gov)**

WVDOT's Title VI Program is managed by its Civil Rights Compliance Division Director, who is a member of the Department's Executive Staff and reports directly to the Cabinet Secretary on Title VI issues. The Civil Rights Compliance Division Director will work closely with an interdisciplinary committee of Division Heads to perform the routine data collection/data analysis and process reviews required under Title VI.

WVDOT's Cabinet Secretary is committed to providing the Civil Rights Compliance Division Director with the resources, authority, and responsibility to effectively carry out his/her duties.

  
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Jimmy Wrison, P.E.  
Secretary of Transportation/  
Commissioner of Highways

\_\_\_\_\_  
Date

9/7/22



#### **IV. ORGANIZATION AND STAFFING OF CIVIL RIGHTS COMPLIANCE DIVISION**

##### **Overview**

The Civil Rights Compliance Division (CRCDD) reports directly to WVDOT Deputy Cabinet Secretary and has been established in accordance with federal guidelines. The CRCDD administers and oversees the Department's Title VI, Americans with Disabilities Act (ADA), Disadvantaged Business Enterprise (DBE), External EEO/Contract Compliance, and Labor Compliance Programs. The Director of the CRCDD is the Title VI Coordinator for WVDOT and reports directly to the WVDOT Cabinet Secretary for Title VI matters, as indicated in the attached organizational chart. (See ATTACHMENT 1)

##### **Organization**

**Cabinet Secretary** – The Cabinet Secretary of the WVDOT is responsible for ensuring implementation of the Department's Title VI Plan. The Cabinet Secretary, pursuant to 23 CFR 200.9(a)(3), is responsible for WVDOT's implementation of and compliance with Title VI and provides leadership, guidance, direction, and support for WVDOT's Title VI program.

**Deputy Cabinet Secretary** – Assists the Cabinet Secretary in the implementation of a proactive and comprehensive Civil Rights Program and provides leadership, support, and guidance to the CRCDD.

**CRCDD Director** – The Director of the CRCDD answers directly to the Deputy Cabinet Secretary and Cabinet Secretary on Title VI issues. The CRCDD Director has the responsibility for the strategic direction of WVDOT's Title VI Program including program and activity delivery and oversight evaluation of Title VI program activities and reports, community and interagency coordination, technical guidance and assistance, training, policy development and revision, and coordination of all agency-wide Title VI program implementation and information.

The CRCDD Director's primary functions include the following:

- Oversee, guide, and direct WVDOT's Title VI program.
- Participate in the development of WVDOT's policy and strategic plans to ensure initiatives and goals are consistent with WVDOT's Title VI Program.
- Serve as a liaison between WVDOT and Federal and State officials regarding civil rights issues.
- Work closely with community leaders and other stakeholders to ensure their concerns are heard regarding Title VI issues.
- Monitor, review and evaluate the effectiveness of WVDOT's programs, policies, and activities for Title VI compliance.
- Develop Title VI information for dissemination to the general public and, in languages other than English.
- Monitor the CRCDD staffing level and call resource or program deficiencies to the Cabinet Secretary's attention.
- Provide guidance and instruction regarding compliance reviews and investigations and assist other divisions with Title VI compliance.
- Develop procedures to identify and eliminate discrimination and impediments to non-discriminatory practices where such impediments are found.
- Establish procedures for promptly resolving Title VI deficiency status and reducing to writing the remedial action needed, with a period not to exceed 90 calendar days from the submission of the annual goal accomplishment report.
- Develop and implement procedures for the collection of statistical data (i.e., with respect to race, color, and national origin, of participants in, and beneficiaries of, State highway programs).



- Develop procedures for Title VI compliance reviews of program areas (public relations, environmental planning, project development, right-of-way, traffic operation and control, construction, and research) to determine the program area's effectiveness.
- Prepare or cause to be prepared, annual assurances for FHWA and Title VI activities and accomplishments report.
- Represent WVDOT, at the direction of WVDOT senior leadership, at the West Virginia State Legislature and other official bodies providing expert advice and testimony regarding the highly complex and involved Title VI-related issues.

**Title VI Advisory Committee** – Each of the Title VI program areas has a designated liaison responsible for communicating and coordinating with the CRCD Director or his/her designee in activities impacted by Title VI. These individuals are responsible for monitoring procedures and practices and implementing required policies and practices within his or her respective area(s) of responsibility to ensure WVDOT's programs, policies, procedures, and practices are applied fairly, equitably, and in a non-discriminatory manner in accordance with Title VI and the related non-discrimination laws detailed earlier in this Plan. These individuals provide program activity information to the CRCD Director upon request, and in an annual report. The accomplishment of these requirements is monitored by the supervisor of the responsible individuals through WVDOT's employee performance management program.

**Division Directors** – Division Directors are responsible for familiarizing themselves with the requirements of Title VI and the related non-discrimination laws detailed earlier in this Plan, and for complying with WVDOT's Title VI Program. They are responsible for assuring that issues or complaints regarding Title VI and related statutes are promptly reported to the CRCD Director. They are also responsible for assisting the Civil Rights team members in their efforts to implement Title VI requirements related to their divisions, both internally and externally. The accomplishment of these requirements is monitored by the supervisor of the responsible individuals through WVDOT's employee performance management program.

**District Engineers** – WVDOT's Division of Highways is comprised of ten districts. Each district is served by one District Engineer. District Engineers are responsible for ensuring Title VI compliance within their assigned districts, ensuring that Title VI complaints received in the districts are referred to the CRCD Director, and assist in ensuring that Division of Highways District programs, services, and activities are administered fairly in compliance with Title VI.

**Sub-Recipients** – WVDOT sub-recipients are responsible for ensuring compliance with Title VI in their FHWA-related programs and activities. As discussed later in this Plan, sub-recipient responsibilities include, but are not limited to:

- Maintaining and including signed standard Title VI assurances.
- Collecting relevant data and information for compliance with Title VI.
- Cooperating and communicating with WVDOT regarding WVDOT's monitoring and enforcement activities.
- Participating in Title VI training whenever possible.

## **V. PROGRAM AREA MONITORING AND INTERNAL REVIEW PROCESS**

### **A. Planning Division**

The Planning Division Director has the primary responsibility for ensuring that multi-modal planning and the results of that planning are executed in accordance with Title VI. This process requires consideration of social, economic, and environmental effects of a proposed plan or program on identified groups to avoid biased or discriminatory programs. The Division also monitors the transportation planning activities of the various Metropolitan Planning Organizations (MPO's) to ensure compliance with Title VI.





The accomplishment of these requirements is monitored by the supervisor of the responsible individuals through WVDOT's employee performance management program. The Planning Division will appoint a Title VI Liaison to participate on the Title VI Advisory Committee. The Division's Title VI responsibilities include, but are not limited to, assisting the CRCD Director with the following tasks:

- Implementing methods to collect and analyze demographic information regarding transportation benefits for both the Long-Range Transportation Plan (LRTP) and the Statewide Transportation Improvement Program Plan (STIP).
- Develop data-driven public involvement strategies for engaging minority and limited English proficient persons in transportation decision-making.
- Evaluate the Planning Division's public involvement process and develop strategies to assess the effectiveness of outreach to minorities and limited English proficient persons, including analysis for, and elimination of, potential barriers to participation.
- Ensure that MPO's are in compliance with Title VI during the recertification review process.
- Ensuring that MPO's solicit and consider the views of minority populations in the Transportation Improvement Plan (TIP) process.
- Promptly refer Title VI complaints to the CRCD Director and assist with the investigation of these complaints.
- Monitor Planning's Title VI accomplishments and challenges and fulfil CRCD Director data requests timely.

#### **Title VI Considerations for Internal Review:**

The following items regarding the Planning Division will be periodically reviewed by the CRCD Director as part of WVDOT's internal Title VI review process:

1. The public involvement strategies, programmatic and project-based, used by the Planning Division. This includes written procedures as well as implementation.
2. Data and information regarding specific public meetings, including:
  - a. The number and locations of public hearings/informational meetings held.
  - b. Any handouts distributed at the meetings.
  - c. The approximate number of persons attending the meetings.
  - d. The demographics of the attendees.
  - e. The demographic profiles of the project areas involved.
3. Information regarding any formal or informal comments from minority individuals through public meetings/hearings, how they were recorded and received, and how they were communicated to other Divisions.
4. Data concerning consultant contracts entered into for Planning Division activities, including the award amounts and demographic data on firm ownership.
5. Data and information regarding services requested and/or provided to limited English proficient persons, programmatically as well as per meeting.
6. Demographic data and information regarding the distribution of State and Federal funds in the aggregate for public transportation projects.
7. The process or strategies used to ensure Title VI issues are addressed in the planning process. This includes written procedures as well as implementation of those procedures.
8. Information on coordination to address the needs of individuals with limited English proficiency.
9. Information on coordination to ensure that formal and informal public comments are incorporated into the transportation decision-making process.



10. Data and information regarding MPO certification reviews, including:

- a. Minority population concentrations and issues identified.
- b. Standards, measures, and benchmarks are reasonable to demonstrate significant disparity of impacts in accessibility to and delivery of transportation facilities/services.
- c. Groups provided with various opportunities to meaningfully engage in the regional transportation planning process.
- d. Strategies to address the needs of individuals with limited English proficiency.
- e. Strategies to ensure that formal and informal public comments are incorporated into the transportation decision-making process.

11. Information regarding project prioritization procedures for MPO's as well as rural projects.

12. Title VI complaints received regarding transportation planning or the public involvement process.

13. Data concerning consultant contracts entered into for Planning Division activities, including the award amounts and demographic data on firm ownership.

**B. Engineering Division**

The Engineering Division Director is responsible for assuring that aspects of the design phase and the resulting final design are executed in accordance with Title VI. This process includes solicitation for proposals, consultant selection, preliminary design work, development of alternatives, and final design and requires an effective outreach strategy to solicit and incorporate the input of minority populations into design. The Engineering Division will appoint a Title VI Liaison to participate on the Title VI Advisory Committee. The Division's Title VI responsibilities include, but are not limited to, assisting the CRCD Director with the following tasks:

- Develop data-driven public involvement strategies for engaging minority and limited English proficient persons in transportation decision-making.
- Evaluate the Engineering Division's public involvement process and develop strategies to assess the effectiveness of outreach to minorities and limited English proficient persons, including analysis for, and elimination of, potential barriers to participation.
- Ensure that the scoping process sufficiently considers potential impacts to minority populations.
- Ensure that a reasonable study area is selected regarding community impacts.
- Ensure that adequate mitigation is implemented when potentially disproportionate and adverse effects to minority populations are identified.
- Monitor compliance with Executive Order 13166, Limited English Proficiency, to ensure access and understanding of transportation programs and activities for those with limited English proficiency.
- In conjunction with the Contract Administration Division, ensure that all consultant and subconsultant agreements include Title VI contract provisions.
- Ensure non-discrimination with regard to procurement for consultant design agreements.
- Ensure that Title VI is integrated into the Engineering Division's internal procedures and is reviewed and updated as necessary to maintain Title VI compliance.
- Promptly refer Title VI complaints to the CRCD Director and assist with the investigation of these complaints.
- Monitor Engineering's Title VI accomplishments and challenges and fulfil CRCD Director data requests timely.

**Title VI Considerations for Internal Review:**

The following items regarding the Engineering Division will be periodically reviewed by the CRCD Director as part of WVDOT's internal Title VI review process:



1. The public involvement strategies, programmatic and project-based, used by the Engineering Division. This includes written procedures as well as implementation.
2. Data and information regarding specific public meetings, including:
  - a. The number and locations of public hearings/informational meetings held.
  - b. Any handouts distributed at the meetings.
  - c. The approximate number of persons attending the meetings.
  - d. The demographics of the attendees.
  - e. The demographic profiles of the project areas involved.
3. Information regarding any formal or informal comments from minority individuals through public meetings/hearings, how they were recorded and received, and how they were communicated to other Divisions.
4. Data concerning consultant contracts entered into for Engineering Division activities, including the award amounts and demographic data on firm ownership.
5. Data and information regarding services requested and/or provided to limited English proficient persons, programmatically as well as per meeting.
6. Data and information regarding the demographics of public meeting participation, including comparisons to the relevant population for each project.
7. Information on coordination to address the needs of individuals with limited English proficiency.
8. Information on coordination to ensure that formal and informal public comments are incorporated into the transportation decision-making process.
9. The public involvement strategies used for engaging minority and limited English proficiency populations in transportation decision-making and for reducing participation barriers.
10. A description of the methods used to ensure that issues/concerns raised by minority and limited English proficiency populations were appropriately considered in the transportation decision-making process.
11. The methods for identifying minority populations for Title VI purposes.
12. The number of public hearings/informational meetings held during the design phase and in what locations.
13. Description of Engineering Division internal procedures that illustrate where and how Title VI compliance is integrated.
14. Title VI complaints received regarding transportation planning or the public involvement process.

### **C. Technical Support Division**

The Technical Support Division Director is responsible for (1) analyzing the environmental effects and resulting impacts and mitigating measures of planned projects and ensuring they are executed in accordance with Title VI. This process requires consideration of the social, economic, and environmental effects of a proposed project to identify possible discriminatory issues, meeting the identified transportation needs and goals of a community, and ensuring the protection and enhancement of the environment; and (2) assuring that aspects of the design-build process and the resulting final design are executed in accordance with Title VI. This process includes solicitation for proposals, consultant selection, preliminary design work, development of alternatives, and final design and requires an effective outreach strategy to solicit and incorporate the input of minority populations into design. The Technical Support Division will appoint a Title VI Liaison to participate on the Title VI Advisory Committee. The Division's Title VI responsibilities include, but are not limited to, assisting the CRCD Director with the following tasks:

- Develop data-driven public involvement strategies for engaging minority and limited English proficient persons in transportation decision-making.
- Evaluate the Technical Support Division's public involvement process and develop strategies to assess the effectiveness of outreach to minorities and limited English proficient persons, including analysis for, and elimination of, potential barriers to participation.



- Ensure that the scoping process sufficiently considers potential impacts to minority populations.
- Ensure that potential impacts to minority populations are considered in the selection of the type of environmental review for each project.
- Ensure that a reasonable study area is selected regarding community impacts.
- Ensure that adequate mitigation is implemented when potentially disproportionate and adverse effects to minority populations are identified.
- Monitor compliance with Executive Order 13166, Limited English Proficiency, to ensure access and understanding of transportation programs and activities for those with limited English proficiency.
- In conjunction with the Contract Administration Division, ensure that all consultant and subconsultant agreements include Title VI contract provisions.
- Ensure non-discrimination with regard to procurement for consultant design agreements.
- Ensure that Title VI is integrated into the Technical Support Division's internal procedures and is reviewed and updated as necessary to maintain Title VI compliance.
- Promptly refer Title VI complaints to the CRCD Director and assist with the investigation of these complaints.
- Monitor Technical Support's Title VI accomplishments and challenges and fulfil CRCD Director data requests timely.

#### **Title VI Considerations for Internal Review:**

The following items regarding the Technical Support Division will be periodically reviewed by the CRCD Director as part of WVDOT's internal Title VI review process:

1. The public involvement strategies, programmatic and project-based, used by the Technical Support Division. This includes written procedures as well as implementation.
2. Data and information regarding specific public meetings, including:
  - a. The number and locations of public hearings/informational meetings held.
  - b. Any handouts distributed at the meetings.
  - c. The approximate number of persons attending the meetings.
  - d. The demographics of the attendees.
  - e. The demographic profiles of the project areas involved.
3. Information regarding any formal or informal comments from minority individuals through public meetings/hearings, how they were recorded and received, and how they were communicated to other Divisions.
4. Data concerning consultant contracts entered into for Technical Support Division activities, including the award amounts and demographic data on firm ownership.
5. Data and information regarding services requested and/or provided to limited English proficient persons, programmatically as well as per meeting.
6. Data and information regarding the demographics of public meeting participation, including comparisons to the relevant population for each project.
7. Information on coordination to address the needs of individuals with limited English proficiency.
8. Information on coordination to ensure that formal and informal public comments are incorporated into the transportation decision-making process.
9. The public involvement strategies used for engaging minority and limited English proficiency populations in transportation decision-making and for reducing participation barriers.
10. A description of the methods used to ensure that issues/concerns raised by minority and limited English proficiency populations were appropriately considered in the transportation decision-making process. This includes formal and informal records of public comments and integration into environmental documents.





11. The number and type of environmental reviews.
12. The methods for identifying minority populations for Title VI purposes.
13. Data and information regarding the potential impacts on minority populations with regard to:
  - a. Air quality
  - b. Noise
  - c. Community cohesion
  - d. Relocations
  - e. Community services
  - f. Mitigation measures
14. The number of public hearings/informational meetings held during the design phase and in what locations.
15. Description of Technical Support Division internal procedures that illustrate where and how Title VI compliance is integrated.
16. Title VI complaints received regarding the environmental review process, transportation planning, or the public involvement process.

#### **D. Right-of-Way Division**

The Right-of-Way Division Director has the responsibility for assuring that all Right-of-Way functions and the results of those activities are executed in accordance with Title VI. These activities include property appraisals, negotiations with property owners, acquisition of properties, and relocation of people and businesses.

The Chief Right-of-Way Agent will be responsible for implementing any changes that may be necessary to ensure Title VI compliance. The Right-of-Way Division will appoint a Title VI Liaison to participate on the Title VI Advisory Committee. The Division's Title VI responsibilities include, but are not limited to, assisting the CRCD Director with the following tasks:

- Ensure non-discrimination with regard to procurement for appraisers and other right-of-way related agreements.
- Ensure equitable treatment of businesses and persons displaced by highway projects, regardless of race, color, or national origin. This includes appraisals, offers of just compensation, relocation counseling, relocation assistance packages, etc.
- Ensure that necessary steps are taken to overcome language barriers during the right-of-way process regarding limited English proficient persons.
- Develop data-driven public involvement strategies for engaging minority and limited English proficient persons in transportation decision-making.
- Ensure that Title VI compliance is integrated into Right-of-Way Division internal procedures and are reviewed and updated as necessary to maintain compliance during the right-of-way process.
- Promptly refer Title VI complaints to the CRCD Director and assist with the investigation of these complaints.
- Monitor Right-of-Way's Title VI accomplishments and challenges and fulfil CRCD Director data requests timely.

#### **Title VI Considerations for Internal Review:**

The following items regarding the Right-of-Way Division will be periodically reviewed by the CRCD Director as part of WVDOT's internal Title VI review process:





1. Data and information related to the demographics of relocatees and other beneficiaries of the Right-of-Way Division. This includes persons and businesses that receive relocation counseling and who attend informational meetings.
2. Data and information related to the appraisal process, including just compensation offers and supporting documentation.
3. Demographic data on the ownership of consultant firms used in the right-of-way/relocation process. This includes bidders, awardees, and contracts.
4. Efforts made to provide information in appropriate languages and/or number of times interpreters used.
5. Title VI complaints received regarding the right-of-way process, i.e., appraisals, negotiations, relocation assistance, and payments.
6. Significant Title VI accomplishments attained since last Title VI report and Title VI actions planned for the coming year.

#### **E. Contract Administration Division**

The Contract Administration Division Director has the primary responsibility for assuring that highway-contracting procedures are executed in accordance with Title VI and that highway-construction practices adhere to Title VI requirements. The accomplishment of these requirements is monitored by the supervisor of the responsible individuals through WVDOT's employee performance management program. The Contract Administration Division will appoint a Title VI Liaison to participate on the Title VI Advisory Committee. The Division's Title VI responsibilities include, but are not limited to, assisting the CRCD Director with the following tasks:

- Monitor Federal-aid construction contracts and subcontracts to ensure that they contain all required Title VI provisions and attachments.
- Ensure non-discrimination with regard to on-call contracts and prequalification procedures.
- Ensure the collection of demographic data for firm owners on all contracts regarding bidders/proposers and awardees.
- Identify potential concerns/barriers for prequalification and licensing, within the bounds of state, federal, and local laws and regulations.
- Monitor construction project work to ensure compliance with Title VI requirements.
- Ensure that policies and procedures for monitoring construction activities, reviewing and approving change orders, and inspections are applied in a non-discriminatory manner.
- Administer and enforce the terms of construction contracts in a non-discriminatory manner.
- Ensure that Title VI compliance is integrated into Contract Administration Division internal procedures and is reviewed and updated as necessary to maintain compliance, including the assurance that Appendices A and E of the standard FHWA Assurances for Title VI and Other Nondiscrimination Statutes and Regulations documents are included in all prime contracts/consultant agreements and that prime contractors are ensuring the Appendices are included in all sub-contracts regardless of tier.
- Promptly refer Title VI complaints to the CRCD Director and assist with the investigation of these complaints.
- Monitor Contract Administration's Title VI accomplishments and challenges and fulfil CRCD Director data requests timely.
- Develop data-driven public involvement strategies for engaging minority and limited English proficient persons in transportation decision-making.
- Evaluate the Contract Administration Division's public involvement process and develop strategies to assess the effectiveness of outreach to minorities and limited English proficient persons, including analysis for, and elimination of, potential barriers to participation.



## **Title VI Considerations for Internal Review:**

The following items regarding the Contract Administration Division will be periodically reviewed by the CRCD Director as part of WVDOT's internal Title VI review process:

1. The number of construction contracts awarded and the award amounts.
2. The number of professional services awarded and the award amounts.
3. A demographic breakdown of the business owners for all professional services contracts and on-call lists.
4. Access to all contract documents, including change orders and bids/proposals.
5. Data and information regarding mitigation commitments made during the environmental process and progress toward completion of the commitments.
6. Data and information regarding temporary traffic and pedestrian routing during the course of construction, as well as a demographic profile of the project area.
7. Description of internal procedures that illustrate where and how Title VI compliance is integrated.
8. Title VI complaints received regarding the contracting process and construction process.
9. Data concerning consultant contracts entered into for Contract Administration Division activities, including the award amounts and demographic data on firm ownership
10. Significant Title VI accomplishments attained since last Title VI report and Title VI actions planned for the coming year.

## **VI. INTERNAL MONITORING PROGRAM**

### **Review Plan Development**

WVDOT maintains a robust, risk-based approach to internal compliance. During the fourth quarter of each federal fiscal year, the CRCD Director and Title VI liaisons will meet to discuss potential reviews for the next fiscal year. The group will create a Title VI Review Plan as part of WVDOT's annual Title VI Work Plan to include:

- Review topics
- Review scopes
- Name points of contact in the program offices
- Create a schedule of reviews

After drafting the Review Plan, the CRCD Director will submit the Review Plan to the relevant program office leadership and, when final, submitted to FHWA by October 1 of each year as part of WVDOT's Goals and Accomplishments Report.

When developing its Review Plan, WVDOT will prioritize reviews based on a number of criteria including, but not limited to:

- The magnitude of the activity/program's impacts on the public.
- The size and complexity of the activity/program.
- The available resources necessary to conduct the review.
- The length of the time necessary to conduct the review.
- Any information available regarding current compliance regarding the activity/program.

### **Review Methodology**

Whenever possible, the CRCD Director will ensure its reviews are as comprehensive and efficient as possible. To that end, the CRCD Director's reviews will involve three phases:



1. First, the CRCD Director will conduct a desk audit, which entails a review of all relevant internal policies and procedures. The CRCD Director will create a data and information request in writing that is communicated to the relevant program office Title VI liaisons with a reasonable time to respond.
2. Second, the CRCD Director will assess the implementation of those policies and procedures through a random sampling of results on actual projects or project development activities. The CRCD Director will create a written data and information request for the relevant program office Title VI liaisons with a reasonable timeframe.
3. Finally, the CRCD Director will create a written report of its findings and potential recommendations for WVDOT. The draft report will be sent to the relevant program offices for review. When final, the CRCD Director will submit the report to the WVDOT Cabinet Secretary to implement the recommendations. The CRCD Director will ensure that affected program offices are given a reasonable amount of time to implement any recommendations. After the CRCD Director is satisfied that its recommendations are complete, the CRCD Director will close the review.

## **VII EXTERNAL REVIEW PROGRAM**

WVDOT works to ensure that its sub-recipient MPO's, counties, and cities are in compliance with Title VI to the maximum extent feasible. WVDOT will ensure that:

- All sub-recipients sign the standard *FHWA Assurances for Title VI and Other Nondiscrimination Statutes and Regulations* document and submit the assurances to WVDOT annually.
- If there is a change in the leadership at a sub-recipient, the new CEO will re-sign and resubmit the standard *FHWA Assurances for Title VI and Other Nondiscrimination Statutes and Regulations* document to WVDOT within 30 calendar days of assuming that position.
- All sub-recipients include the Title VI/Nondiscrimination Assurance Appendices A and E in all federal and non-federal contracts.
- All sub-recipients appoint a Title VI/Nondiscrimination Coordinator and provide WVDOT with up-to-date contact information for the Coordinator.
- Sub-recipients comply with WVDOT's complaints procedures.
- Sub-recipients cooperate with WVDOT reviews and data requests.

Each federal fiscal year, as part of WVDOT's Title VI Work Plan, WVDOT will randomly select sub-recipients to review. During this review process, WVDOT will communicate all data requests in writing and provide a written report with potential recommendations when the review is complete.

WVDOT will give the sub-recipient a reasonable amount of time to complete any tasks and close the review when the recommendations are complete.

### **Metropolitan Planning Organizations**

The Metropolitan Planning Organizations (MPO's) are responsible for the transportation planning process within their urbanized areas. Each MPO must develop a four (4)-year Transportation Improvement Program (TIP) and develop and implement an annual Unified Planning Work Program (UPWP). The WVDOT Planning Division assists the MPO's in the transportation planning activities that require Title VI compliance and advises them on Title VI compliance issues.

The following are the MPO's for the State of West Virginia:

- Brooke-Hancock-Jefferson Metropolitan Planning Commission
- Bel-O-Mar Regional Council
- KYOVA Interstate Planning Commission
- Regional Intergovernmental Council



- Wood-Washington-Wirt Interstate Planning Commission
- Morgantown/Monongalia County Transportation Planning Organization
- Hagerstown/Eastern Panhandle Metropolitan Planning Organization
- Fayette/Raleigh Metropolitan Planning Organization

#### **Compliance Monitoring – MPO**

- WVDOT uses the Statewide Long-Range Transportation Plan, the Transportation Systems Projects, Statewide Transportation Improvement Program, the Regional Transportation Plans (RTP), and the Transportation Improvement Plans (TIP) developed by the eight Metropolitan Planning Organizations to monitor strategies and goals of the transportation planning process to ensure Title VI compliance.
- WVDOT monitors the MPO's utilization of demographic information to identify minority populations and examine the distributions of the benefits/burdens of the transportation plans and activities on these groups.
- WVDOT and the MPO's developed public outreach and participation plans that outline processes and strategies to ensure the service equities of the planning data collection and analyses for members on different socio-economic groups.
- WVDOT conducts public meetings and hearings and has numerous boards and committees that are open to participation during the development of plans, programs, and projects that may involve various modes of travel. Federal, state, local government and private industry representatives are included in these processes to improve performance and eliminate participation barriers for minority populations.
- WVDOT monitors MPO compliance with Executive Order 13166, Limited English Proficiency, to improve access and understanding of transportation planning processes for those in the population confronted with language barriers.
- WVDOT's and the MPO's plans contain goals, strategies, and performance measures to assist in identifying and addressing accomplishments and problem areas.
- WVDOT and the MPO's develop travel demand models for the large and small urban areas of the state to analyze travel patterns by demographics.
- Statewide county and Tribal workshops and tours are conducted and allow these groups to participate in the decision-making process.

#### **Annual Review:**

A biannual review of the MPO's will be conducted under the direction of the CRCDD Director to include:

- Strategies used to ensure that all components of the transportation planning process comply with Title VI.
- Demographic profile of each MPO's metropolitan planning area that includes identification of minority populations.
- Process used by each MPO to identify the needs of populations and the demographic information used to assess the distribution of benefits across those populations.
- Process used by each MPO to identify the needs of minority populations and the demographic information used to assess the distribution of benefits across those populations.
- The process used by each MPO to assess the benefits/burdens of transportation system investments on minority populations on an analytic basis and the data source and tools used to support that analysis.
- Whether a public involvement strategy for engaging in minority populations in transportation decision-making is in place for each MPO and the steps being taken to eliminate participation barriers.
- Examination of the public involvement process, whether it is evaluated and whether there have been efforts to improve performance, especially relative to minority populations.





- Examination of what efforts have been made to engage minority populations in the public outreach effort and whether the public outreach effort utilizes media targeted to underserved groups.
- What procedure each MPO has established for using issues/concerns raised by minority populations in the decision-making process.
- The demographics of attendees at public meetings/hearings as well as information regarding all aspects of public involvement to include advertising and limited English proficiency access.
- Data and information regarding Title VI training for internal staff and LPA's.
- Review of each MPO's internal Title VI complaint procedure/policy.
- Procedures regarding the coordination of complaints filed with the MPO or the member LPA's.
- Whether annual report submitted by each MPO included any significant actions planned for the coming year.
- Review of each MPO's significant Title VI accomplishments for the review period and Title VI actions planned for the upcoming biannual period.

### **VIII. COMPLAINT DISPOSITION PROCEDURES**

The following procedures cover complaints filed under Title VI of the Civil Rights Act of 1964 and the Civil Rights Restoration Act of 1987. Any person who believes they, or any specific class of persons, to be subjected to prohibited discrimination may by themselves or by a representative file with a written complaint.<sup>7</sup> A complaint must be filed not later than 180 days after the date of the alleged discrimination, unless the time for filing is extended by the FHWA. WVDOT will ensure that all complaints are sent to the appropriate authority for disposition.

Complaints alleging violations of Title VI by the WVDOT should be filed in writing directly with the following FHWA agencies:

Federal Highway Administration  
West Virginia Division  
154 Court Street  
Charleston, West Virginia 25301

Federal Highway Administration  
Office of Civil Rights  
HCR-20, Room E81-320  
1200 New Jersey Avenue, SE  
Washington, DC 20590

Complaints alleging violations of Title VI filed against a sub-recipient to WVDOT (e.g., city, county, college or university, contractor, consultant, etc.) may be filed in writing with WVDOT at:

West Virginia Department of Transportation  
Civil Rights Compliance Division  
State Capitol Complex – Building 5  
1900 Kanawha Boulevard East  
Charleston, West Virginia 25305

Additionally, complaints filed against sub-recipients to WVDOT may be filed with FHWA or the U.S. Department of Justice at:

Federal Coordination and Compliance Section – NWB  
Civil Rights Division  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

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<sup>7</sup> 49 CFR 21.11(b)





**NOTE:** Additional information regarding the Title VI complaint process will be made available to the public via WVDOT's website at: [www.transportation.wv.gov](http://www.transportation.wv.gov)

Complaint and investigation files are confidential and will be maintained by WVDOT. The contents of such files will only be disclosed to appropriate WVDOT personnel and federal authorities in accordance with Federal and State laws. WVDOT will retain files in accordance with records retention schedules and all Federal guidelines.

#### **IX. PROCESS TO IDENTIFY/ELIMINATE DISCRIMINATION**

WVDOT reviews its programs for trends and patterns of discrimination from multiple sources:

- Outreach activities – internal and external input and feedback
- Compliance reviews
- Referrals from Title VI liaisons

Similarly, we address the discriminatory practices with a multi-faceted approach.

- With complaints, we use the investigative process to determine whether there has indeed been discriminatory action.
  - If we find no discrimination under Title VI, we try to help the complainant understand why we arrived at that finding.
  - If we find discrimination may have occurred, we analyze whether it was intentional or unintentional.
  - We evaluate options for redress of discriminatory practices.
  - We work with contractors to develop and implement an effective Corrective Action Plan.
- Training is a key tool we use to address discriminatory trends or patterns.
  - We provide training to the sub-recipient or contractor engaged in the apparent discriminatory behavior to ensure that the trend or pattern does not continue.
  - We provide Title VI training to as many different audiences as possible, internal and external, to reduce the occurrence or likelihood of discrimination. That training includes a component that details the history and reason for the law to help those antagonistic to the law and its purpose to find it more acceptable. We believe that reduces the occurrence of discrimination.
  - We use of examples, stripped of any identifying information, or behavior or practices we have observed that we believe to be potentially discriminatory with the contractor community, This has been effective in letting them know that we are cognizant of those potentially discriminatory trends and patterns and they are advised not to engage in them.
- We are continually monitoring our programs and projects to identify any instances of discrimination, at the earliest point.

#### **X. LIMITED ENGLISH PROFICIENCY**

As part of its compliance with Title VI, WVDOT must ensure that Limited English Proficiency (LEP) individuals have meaningful access to WVDOT programs and activities. As such, WVDOT has developed procedures, in accordance with USDOT guidance, to effect compliance regarding LEP.<sup>8</sup> LEP individuals are those individuals for whom English is not their primary language and have a limited ability to speak, read, write, and understand English.

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<sup>8</sup> Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficient (LEP) Persons, 70 Fed. Reg. 74087 (Dec. 14, 2005), <https://www.gpo.gov/fdsys/pkg/FR-2005-12-14/html/05-23972.htm>



Failure to provide meaningful access to such individuals may result in national origin discrimination, which is prohibited by Title VI. While designed to be a flexible and fact-dependent standard, the starting point is an individualized assessment that balances the following four factors:

1. The number or proportion of LEP persons eligible to be served or likely to be encountered by a program, activity, or service.
2. The frequency with which LEP individuals come in contact with the program.
3. The nature and importance of the program, activity, or service provided by the WVDOT to people's lives.
4. The resources available to WVDOT and costs.

#### **XI. ACCOMPLISHMENT REPORT**

By October 1<sup>st</sup> of each year, WVDOT's Civil Rights Compliance Division will provide the FHWA West Virginia Division Office with a report of Title VI accomplishments for the past year and goals for the next year.<sup>9</sup> The report will include:

##### **Accomplishments**

1. Internal Reviews: A summary of internal reviews conducted, the results, and any actions taken as a result.
2. External Reviews: A summary of the external (sub-recipient) reviews conducted, the results, and any actions taken as a result.
3. Training: A list of all Title VI training given by WVDOT, the topics covered, and the number of attendees.
4. Complaints: A summary of all complaints received by WVDOT, and the outcomes for those complaints.
5. Interdisciplinary Meetings: A summary of all meetings and issues raised by WVDOT's Title VI Liaisons.

##### **Goals**

1. A description of the reviews planned for the next year (both internal and external).
2. A description of any training sessions planned (both internal and external).
3. Any other Title VI related activities WVDOT intends to undertake for the year.

#### **XII. PROCESS TO RESOLVE DEFICIENCIES IDENTIFIED BY FHWA**

Despite our best efforts, we will sometimes fall short of the expectations established by Title VI and the implementing regulations. This is especially the case given our very limited staffing. In those cases, we will work with FHWA to clearly identify the causes of the deficiency and establish a timeframe for correcting the deficiency.

#### **XIII. INTERNAL MONITORING PROGRAM**

**Data Collection/Data Analysis/Internal Reporting:** WVDOT does not have a central, integrated data collection or information management system.

**Process Reviews:** Most division/program areas have process reviews included in the Program Monitoring area above. However, for the divisions or program areas not included above, we have provided the process review guidance below:

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<sup>9</sup> 23 CFR 200.9(b)(10)



1. Maintenance (Operations) will ensure that the prioritization process to determine when and where repaving will occur, litter pick-up will occur, grass cutting will occur, tree trimming will occur, and guardrail replacement will occur is not discriminatory in its application. Written and telephonic contacts regarding maintenance issues from the public will be monitored by the Title VI liaison for trends/patterns.
2. Traffic Engineering will evaluate the feasibility of adapting 511 Architecture (traffic information) and Variable Message Signs to more than one language if the Limited English Proficiency Four-Factor Analysis identifies the need.
3. Finance will ensure that all FHWA-funded Project Agreements contain the Title VI/Nondiscrimination paragraph as directed by the *FHWA Assurances for Title VI and Other Nondiscrimination Statutes and Regulations*.

#### **XIV. LIST OF ATTACHMENTS**

- **ATTACHMENT 1:** WVDOT Organizational Chart
- **ATTACHMENT 2:** Standard USDOT Title VI Assurances
- **ATTACHMENT 3:** WVDOT Limited English Proficiency Policy Statement
- **ATTACHMENT 4:** Title VI Complaint Form



## **ATTACHMENT 1: WVDOT Organizational Chart**



[illegible]

Date \_\_\_\_\_

W. H. R.

**Anthony Winston, P.E.**  
Secretary of Transportation/  
Commissioner of Highways



## **ATTACHMENT 2: Standard USDOT Title VI Assurances**



## The United States Department of Transportation (USDOT) Standard Title VI/Non-Discrimination Assurances

### DOT Order No. 1050.2A

The West Virginia Department of Transportation/Division of Highways (herein referred to as the "Recipient"), **HEREBY AGREES THAT**, as a condition to receiving any Federal financial assistance from the U.S. Department of Transportation (DOT), through Federal Highway Administration (FHWA), is subject to and will comply with the following:

#### Statutory/Regulatory Authorities

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 C.F.R. Part 21 (entitled Non-discrimination In Federally-Assisted Programs Of The Department Of Transportation-Effectuation Of Title VI Of The Civil Rights Act Of 1964);
- 28 C.F.R. section 50.3 (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964);

The preceding statutory and regulatory cites hereinafter are referred to as the "Acts" and "Regulations," respectively.

#### General Assurances

In accordance with the Acts, the Regulations, and other pertinent directives, circulars, policy, memoranda, and/or guidance, the Recipient hereby gives assurance that it will promptly take any measures necessary to ensure that:

*"No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity," for which the Recipient receives Federal financial assistance from DOT, including the FHWA."*

The Civil Rights Restoration Act of 1987 clarified the original intent of Congress, with respect to Title VI and other Non-discrimination requirements (The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973), by restoring the broad, institutional-wide scope and coverage of these non-discrimination statutes and requirements to include all programs and activities of the Recipient, so long as any portion of the program is Federally assisted.

#### Specific Assurances

More specifically, and without limiting the above general Assurance, the Recipient agrees with and gives the following Assurances with respect to its Federally assisted Federal-Aid-Highway Program:

1. The Recipient agrees that each "activity", "facility", or "program", as defined in §§ 21.23(b) and 21.23(e) of 49 C.F.R. § 21 will be (with regard to an "activity") facilitated, or will be (with regard to a "facility") operated, or will be (with regard to a "program") conducted in compliance with all requirements imposed by, or pursuant to the Acts and Regulations.
2. The Recipient will insert the following notification in all solicitations for bids, Requests For Proposals for work, or material subject to the Acts and Regulations made in connection with all Federal-Aid Highway Programs and, in adapted form, in all proposals for negotiated agreements regardless of funding source:



*"The West Virginia Department of Transportation/Division of Highways, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award."*

3. The Recipient will insert the clauses of Appendix A and E of this Assurance in every contract or agreement subject to the Acts and the Regulations.
4. The Recipient will insert the clauses of Appendix B of this Assurance, as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Recipient.
5. That where the Recipient receives Federal financial assistance to construct a facility, or part of a facility, the Assurance will extend to the entire facility and facilities operated in connection therewith.
6. That where the Recipient receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the Assurance will extend to rights to space on, over, or under such property.
7. That the Recipient will include the clauses set forth in Appendix C and Appendix D of this Assurance, as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Recipient with other parties:
  - a. for the subsequent transfer of a real property acquired or improved under the applicable activity, project, or program; and
  - b. for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.
8. That this Assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the Assurance obligates the Recipient, or any transferee for the longer of the following periods:
  - a. the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or
  - b. the period during which the Recipient retains ownership or possession of the property.
9. The Recipient will provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he/she delegates specific authority to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Acts, the Regulations, and this Assurance.
10. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Acts, the Regulations, and this Assurance.



By signing the ASSURANCE, the West Virginia Department of Transportation/Division of Highways also agrees to comply (and require any sub-recipients, sub-grantees, contractors, successors, transferees, and/or assignees to comply) with all applicable provisions governing the West Virginia Department of Transportation/Division of Highways, USDOT, and FHWA access to records, accounts, documents, information, facilities, and staff. You also recognize that you must comply with any program or compliance reviews, and/or complaint investigations conducted by the West Virginia Department of Transportation/Division of Highways, FHWA, and USDOT, or its designee in a timely, complete, and accurate way. Additionally, you must comply with all other reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.

West Virginia Department of Transportation/Division of Highways gives this ASSURANCE in consideration of and for obtaining any Federal grants, loans, contracts, agreements, property, and/or discounts, or other Federal-aid and Federal financial assistance extended after the date hereof to the recipients by the U.S. Department of Transportation under the Federal-Aid Highway Program. This ASSURANCE is binding on West Virginia, other recipients, sub-recipients, sub-grantees, contractors, subcontractors and their subcontractors, transferees, successors in interest, and any other participants in the Federal-Aid Highway Program. The person(s) signing below is authorized to sign this ASSURANCE on behalf of the Recipient.

West Virginia Department of Transportation/Division of Highways

by



Jimmy Wriston, P.E.

Secretary of Transportation/  
Commissioner of Highways

DATED





## APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, FHWA, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurement of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the FHWA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
  - a. withholding payments to the contractor under the contract until the contractor complies; and/or
  - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.





## **APPENDIX B**

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of Assurance 4:

NOW, THEREFORE, the U.S. Department of Transportation as authorized by law and upon the condition that the West Virginia Department of Transportation/Division of Highways will accept title to the lands and maintain the project constructed thereon in accordance with 23 U.S. Code § 107, the Regulations for the Administration of the Federal-Aid Highway Program, and the policies and procedures prescribed by the FHWA of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the West Virginia Department of Transportation/Division of Highways all the right, title and interest of the U.S. Department of Transportation in and to said lands described in Exhibit A attached hereto and made a part hereof.

### **(HABENDUM CLAUSE)**

**TO HAVE AND TO HOLD** said lands and interests therein unto the West Virginia Department of Transportation/Division of Highways and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the West Virginia Department of Transportation/Division of Highways, its successors and assigns.

The West Virginia Department of Transportation/Division of Highways, in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]\* (2) that the West Virginia Department of Transportation/Division of Highways will use the lands and interests in lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended [, and (3) that in the event of breach of any of the above-mentioned non-discrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said land, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this instruction].\*

(\*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to make clear the purpose of Title VI.)



## APPENDIX C

### CLAUSES FOR TRANSFER OF ALL REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE ACTIVITY, FACILITY, OR PROGRAM

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the West Virginia Department of Transportation/Division of Highways pursuant to the provisions of Assurance 7(a):

- A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with land"] that:
  - 1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Non-discrimination covenants, the West Virginia Department of Transportation/Division of Highways will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.\*
- C. With respect to a deed, in the event of breach of any of the above Non-discrimination covenants, the West Virginia Department of Transportation/Division of Highways will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the West Virginia Department of Transportation/Division of Highways and its assigns.\*

(\*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)



## APPENDIX D

### CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY, OR PROGRAM

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by the West Virginia Department of Transportation/Division of Highways pursuant to the provisions of Assurance 7(b):

- A. The (grantee, licensee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, "as a covenant running with land") that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.
- B. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above Non-discrimination covenants, the West Virginia Department of Transportation/Division of Highways will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.\*
- C. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, the West Virginia Department of Transportation/Division of Highways will there upon revert to and vest in and become the absolute property of the West Virginia Department of Transportation/Division of Highways and its assigns.\*

(\*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)



## APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

### **Pertinent Non-Discrimination Authorities:**

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, or national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs and activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures Non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations.
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English Proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq.).



## **ATTACHMENT 3: WVDOT Limited English Proficiency Policy Statement**





**WEST VIRGINIA DEPARTMENT OF TRANSPORTATION  
LIMITED ENGLISH PROFICIENCY POLICY STATEMENT**

The West Virginia Department of Transportation (WVDOT) will provide meaningful access to all of its programs and services for persons with Limited English Proficiency. Title VI of the Civil Rights Act of 1964, as amended, and its implementing regulations state, in part:


*"No person in the United States shall on the grounds 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 -42 U.S.C §200d."*

The United States Supreme Court has interpreted national origin discrimination to include civil rights violations against individuals who have limited proficiency in the English language. A person who can speak, read, understand, or write a language other than English, but does not speak English or who is limited in the ability to effectively use and communicate in the English language, is covered under this requirement.

The Civil Rights Act applies equally to all individuals, entities, and organizations receiving Federal funding, either directly or indirectly, on WVDOT's federally funded projects, including contractors, subcontractors, and other agency recipients.

It is the role and responsibility of every WVDOT employee to reasonably provide appropriate language assistance, including oral language interpretation and translation of written materials, to all individuals with limited English proficiency. WVDOT will not charge a fee for any such assistance or require the use of family members and/or friends as interpreters. WVDOT will ensure that all affected entities receiving Federal transportation funds, e.g., contractors, subcontractors, public transits, etc. will also provide such assistance to individuals identified as having limited English proficiency.

West Virginia Department of Transportation/Division of Highways

by   
Jimmy Wriston, P.E.  
Secretary of Transportation/  
Commissioner of Highways

DATED 9/7/22



**U.S. Census Bureau State and County Quick Facts**  
**Language other than English Spoken at, percent of person 5 years+**  
**2016 – 2020**

**West Virginia: 2.5%**

<u>County</u>	<u>Percent</u>		<u>County</u>	<u>Percent</u>
Barbour	2.1		Marshall	2.0
Berkeley	4.8		Mason	1.1
Boone	0.3		Mercer	2.4
Braxton	0.4		Mineral	2.4
Brooke	2.2		Mingo	0.7
Cabell	2.7		Monongalia	7.5
Calhoun	1.5		Monroe	1.1
Clay	0.7		Morgan	1.3
Doddridge	1.1		Nicholas	1.7
Fayette	1.3		Ohio	2.5
Gilmer	4.9		Pendleton	1.1
Grant	2.3		Pleasants	2.8
Greenbrier	2.8		Pocahontas	0.9
Hampshire	0.9		Preston	2.3
Hancock	1.2		Putnam	1.7
Hardy	5.5		Raleigh	3.5
Jackson	0.8		Randolph	1.3
Jefferson	5.9		Ritchie	2.3
Kanawha	2.3		Roane	1.0
Lewis	1.6		Summers	1.3
Lincoln	0.6		Taylor	1.5
Logan	0.3		Tucker	1.0
McDowell	1.7		Tyler	0.8
Marion	1.9		Upshur	1.0
Harrison	1.4		Wayne	1.2
Webster	0.0		Wetzel	0.4
Wirt	2.7		Wood	1.8
Wyoming	0.5			



## **ATTACHMENT 4: Title VI Complaint Form**



**WEST VIRGINIA DEPARTMENT OF TRANSPORTATION  
CIVIL RIGHTS COMPLIANCE DIVISION**

**TITLE VI COMPLAINT FORM**

*In accordance with Title VI of the Civil Rights Act of 1964 and the Civil Rights Restoration Act of 1987 complaints may be filed by any person who believes they have been excluded from participation in, been denied the benefits of, or otherwise subjected to discrimination under any WVDOT program or activity based on race, color, or national origin. To begin the process, please complete the following form with as much information as you can provide. If portions of the form are incomplete, WVDOT may not be able to process your complaint.*

Name: \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP Code: \_\_\_\_\_

Daytime Phone: \_\_\_\_\_ E-Mail: \_\_\_\_\_

Please provide the basis upon which you believe your complaint is based (select all that apply):

Race: \_\_\_\_\_ Color: \_\_\_\_\_ National Origin: \_\_\_\_\_

Please provide the name and address of the subrecipient/respondent (company) and any alleged discriminating official(s) or person(s) who you believe discriminated against you:

\_\_\_\_\_  
\_\_\_\_\_

If discriminating person or official is unknown, please provide as much information as possible regarding the individuals involved:

\_\_\_\_\_  
\_\_\_\_\_

Description of incident including date incident occurred (attach additional pages if needed):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**NOTE:** *If you elect to file a complaint with WVDOT, it must be submitted in writing, signed, and dated, within 180 days of the alleged discriminatory act (or latest occurrence).*

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Please mail completed complaint form and any attachments to:

Director – Civil Rights Compliance Division  
West Virginia Department of Transportation  
State Capitol Complex – Building 5  
1900 Kanawha Boulevard East  
Charleston, West Virginia 25305