

TITLE VI NONDISCRIMINATION IN THE FEDERAL-AID PROGRAM: A SYSTEMATIC MULTIDISCIPLINARY APPROACH

Vermont Agency of Transportation

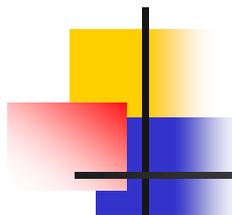
December 6, 2011

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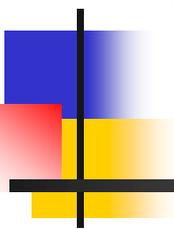
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Learning Outcomes

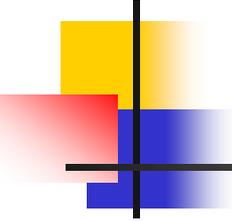
- Define Title VI & other nondiscrimination authorities;
- Recognize roles and responsibilities;
- Discuss elements of a viable Title VI Plan;
- Describe the systematic, multidisciplinary approach;
- Identify & address Title VI issues in program areas;
- Explain handling & processing of Title VI complaints;
- Clarify the what, why, how & uses of data collection;
- Select strategies to prevent discrimination.



TITLE VI is about...

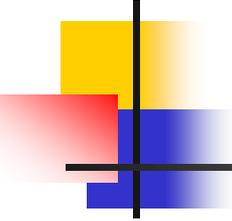
Preventing Discrimination & Assuring Nondiscrimination

(SJ + FF = ND)



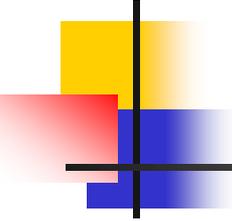
Renewed Emphasis on Title VI Enforcement

- DOJ March 4, 2009 Memo to Agency Senior ARRA Officials and Civil Rights Directors for Federally Assisted programs
 - Federal Agencies & [sub]recipients of FFA must distribute & use ARRA funds in accordance with **all** nondiscrimination mandates including Title VI



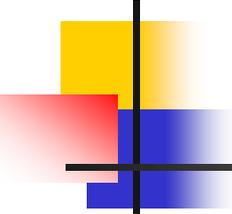
Renewed Emphasis on Title VI Enforcement Continued

- DOJ July 10, 2009 Memo to Federal Agency Directors & General Counsels
 - Strengthening enforcement of Title VI
 - Examine anew all aspects of its compliance program
 - Submit to the CRD for litigation Title VI cases
- FHWA AA for CR's May 27, 2010 Memo to DAs & DFSs reminding them of the critical importance of
 - STAs complying with all nondiscrimination laws and regulations, and
 - [Division Offices] oversight & enforcement responsibilities



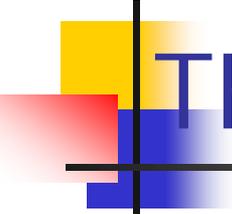
What is Discrimination?

- That **act** (action or inaction), whether intentional or unintentional, through which a person in the United States solely because of distinguishing **protected attributes**, is subjected to **disparate treatment** or **impact**, in any program or activity receiving Federal financial assistance from FHWA under 23 USC.



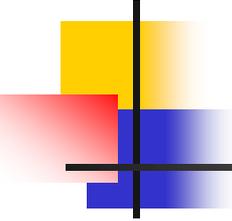
Discrimination is...

- Unlawful behavior;
- Insidious & invidious;
- Latent & patent;
- Prominent feature in transportation activities;
- **Preventing discrimination is everybody's responsibility;**
- Ergo, we should do everything in our power to avoid, minimize, mitigate, or prevent discrimination.



THE 1964 CIVIL RIGHTS ACT- Titles

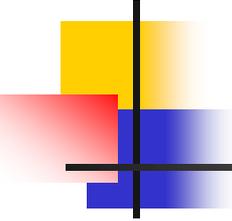
- Title I - Voting Rights
- Title II - Public Accommodation
- Title III - Desegregation of Public Facilities
- Title IV - Desegregation of Public Education
- Title V - Commission on Civil Rights
- **Title VI - Nondiscrimination in Federally Assisted Programs & Activities**
- Title VII - Equal Employment 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



What is Title VI?

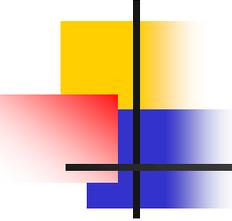
- Federal law
- The essence of the law:

“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 2000d)



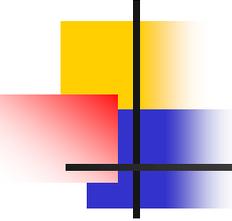
What is the Civil Rights Restoration Act of 1987?

- Direct response to, and a rejection of, 1984 Supreme Court decision in Grove City College vs. Bell case (465 U.S. 555)
- Restored original intent & scope of Title VI to include **all** programs & activities of Federal-aid recipients and contractors **whether federally funded or not.**



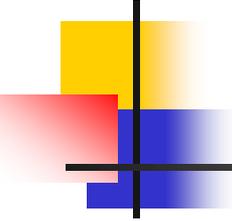
Impact of Title VI

- Touchstone for several nondiscrimination authorities;
- Has far-reaching applicability and coverage
 - not limited to any particular program(s);
 - not restricted to a specific issue(s);
- Title VI issues may emerge at any stage of a project with potentially far-reaching consequences.



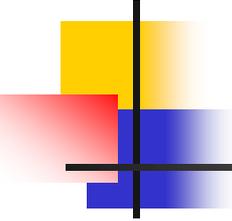
Title VI & Title VII

- Title VI is concerned with **participation**, **benefits**, **services**, and **discrimination arising from implementation** of any program or activity involving Federal dollars;
- Title VII deals exclusively with **[fair] employment and employment-related issues**.



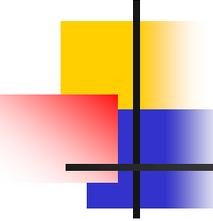
Title VI & Employment

- Employment becomes a Title VI issue when:
 - The **primary purpose** of federal assistance is to provide employment
or
 - **Discrimination in employment** leads to discrimination in services or benefits.



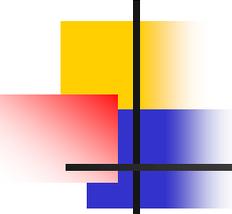
The Federal-aid Program

- Preventing discrimination is governed by Title VI of the 1964 Civil Rights Act
- FHWA's nondiscrimination program is known as the Title VI/Nondiscrimination Program



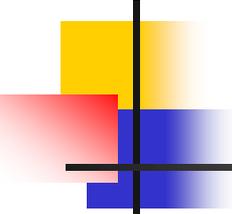
What is FHWA's Title VI Program?

- 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 & Cross Cutting authorities include:
 - The 1970 Uniform Act (**42 USC 4601**)
 - Section 504 of the 1973 Rehabilitation Act (**29 USC 790**)
 - The 1973 Federal-aid Highway Act (**23 USC 324**)
 - The 1975 Age Discrimination Act (**42 USC 6101**)
 - Implementing Regulations (**49 CFR 21 & 23 CFR 200**)
 - Executive Order 12898 on Environmental Justice (**EJ**)
 - Executive Order 13166 on Limited English Proficiency (**LEP**)



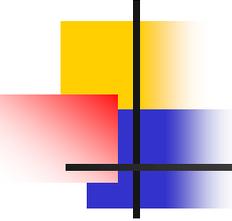
Why Cross-Cutting?

- **The 1970 Uniform Act (42 USC 4601)**
 - Prohibits **unfair and inequitable treatment** of persons displaced or property to be acquired as a result of Federal-aid programs & projects
- **Section 504 of 1973 Rehabilitation Act (29 U.S.C. 790)**
 - “No **QUALIFIED HANDICAPPED PERSON** shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity that receives or benefits from Federal financial assistance.”
- **The 1973 Federal Aid Highway Act (23 U.S.C. 324)**
 - “No person shall on the grounds of **SEX** 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 on under this title.”



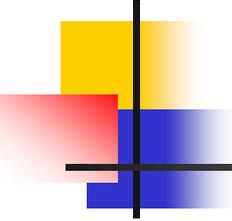
Why Cross-Cutting? Contd.

- **The 1975 Age Discrimination Act (42 U.S.C. 6101)**
 - “No person shall on the basis of **AGE**, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”
- **Executive Order 12898 on EJ**
 - “Each Federal agency shall conduct its programs, policies, and activities [[including those of recipients \(see FHWA Order 6640.23\(2\)\(h\)\)](#)] that substantially affect human health or the environment, in a manner that ensures that such programs, policies, and activities do not have the effect of excluding **persons (including populations)** from participation in, denying **persons (including populations)** the benefits of, or subjecting **persons (including populations)** to discrimination under, such, programs, policies, and activities, because of their race, color, or national origin.”



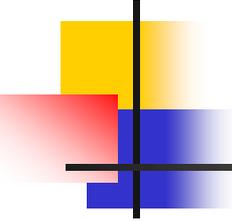
Executive Order 12898 (EJ)

- Presidential mandate to address equity and fairness toward **low income** and **minority** persons/population
- Nondiscrimination authority rooted in Title VI;
- Signed by President Clinton on February 11, 1994



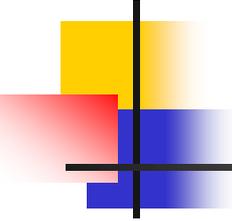
EO 12898 Directs...

- “Each Federal agency shall make achieving EJ part of its mission by **identifying**, and **addressing**, as appropriate, **disproportionately high** and **adverse** human health and environmental effects of its programs, policies, and activities on **minority populations** and **low income populations** in the United States, D.C., Puerto Rico and Marina Islands.”



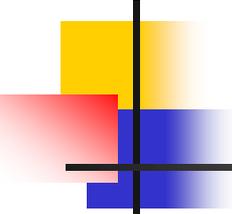
Definition of Effect

- **Adverse**: Totality of significant individual or cumulative human health or environmental effects
- **Disproportionately High**: An effect that:
 - Is predominantly borne by a minority or low income persons/population; or
 - Will be suffered by the minority or low income persons/population...appreciably more severe or greater in magnitude than the adverse effect ... suffered by the non-minority or non low income persons/population



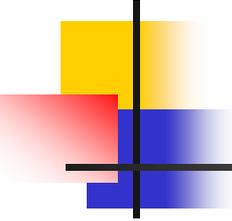
Minority & Low Income Populations

- **Minority** - Black, Hispanic, Asian American, American Indian and Alaskan Native
- **Minority Population** - Any readily identifiable groups of minority persons living in geographical proximity, and geographically dispersed/transient persons similarly affected by a proposed Federal program, policy or activity
- **Low Income** - Person whose household income (Community or group, whose average household income) is at or below US DHHS poverty guidelines



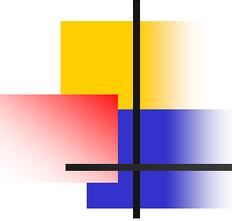
EO 12898...

- Reinforces and reinvigorates Title VI (**Section 2-2**)
- Calls for improved methods in research, data collection, and analysis (**Section 3-3(301)**)
- Triggers a new look at NEPA (**Section 3-3(302)**)
- Encourages participation of impacted citizens in all phases of decision-making (**Section 5-5**)
- Appeals for absence of denial, delay and reduction in benefits to Low Income and Minority persons (**#3 of FHWA's Fundamental EJ Concepts**)



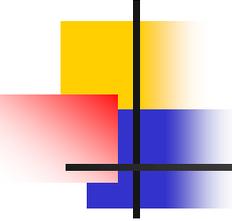
Executive Order 13166 (LEP)

- Presidential directive to federal agencies to ensure people who are LEP have **meaningful access to services**
- Nondiscrimination authority grounded on Title VI
- Signed by President Clinton on August 11, 2000
- USDOJ's LEP Guidance pursuant to EO 12250
 - General principles in development of guidance
 - The four factors paradigm



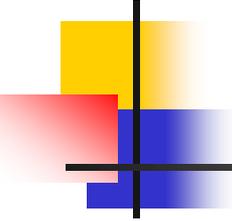
EO 13166 Directs

- Federal agencies to examine their services, develop and implement processes by which LEP persons can meaningfully access those services
- Establish guidance on how recipients can provide meaningful access to LEPs
- Prepare a plan with consistent standards and steps to overcome language barriers on programs and activities
- Ensure stakeholders have “adequate opportunity to provide input.”



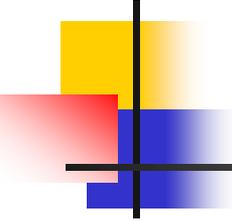
Who is a LEP Person?

- Person who does not speak English as primary language and has limited ability to read, speak, write or understand English
- Failure to provide LEP person services or meaningful access to services [may] constitute national origin discrimination (*Lau v. Nichols, 1974*)



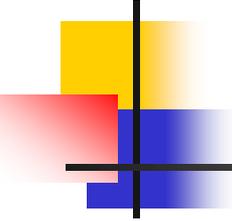
What Is Required Of Recipients?

- Sound measures/reasonable steps for meaningful access to programs and activities by LEPs
 - Assessment - Four Factors Analysis/Paradigm
 - Plan of action



Assessment: Four Factors

- **Demography** – Number and/or proportion of LEPs served and languages spoken in service area
- **Frequency** - Rate of contact with service or program
- **Importance** – Nature and importance of program/service to peoples lives (transportation)
- **Resources** – Available resources, including Language assistance services (limited or wide-ranging)

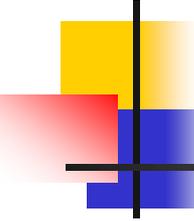


LEP Plan of Action: Five Elements

- **Identification** of volume and location of LEPs and LEP Communities
- **Language assistance** measures:
 - Types of languages services available
 - How to respond to LEP callers and in person
 - How to respond to written communication
 - Types of documents/information to translate
- **Staff** – Knowledge of policy and procedures; linguistic diversity and sophistication; cultural sensitivity and communication skills; training and experience
- **Outreach** measures - Notification methods on special language assistance
- **Monitoring and Evaluation of Efforts**

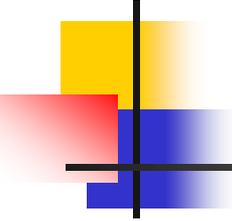
Title VI: The Law Versus Title VI: The Program

| Title VI of CRA of 1964 Coverage | FHWA Title VI/ Nondiscrimination Program Coverage |
|-------------------------------------|---|
| Race | Race |
| Color | Color |
| National Origin (LEP) | National Origin (LEP) |
| | Handicap/Disability |
| | Sex (Gender) |
| | Age |
| | Low Income & Linguistic Minorities |



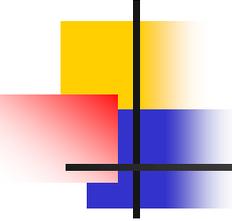
IMPLEMENTING REGULATIONS

- **USDOT Regulations (49 CFR 21)**
- **FHWA Regulations (23 CFR 200)**



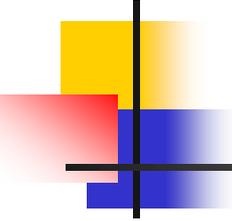
USDOT's Title VI Regulations (49 CFR Part 21)

- Issued June 18, 1970
- Requires **Affirmative Action**;
- Requires recipients' execution of Title VI **Assurance** as condition of Federal aid
- Provides for **sanctions** in the event of noncompliance



FHWA Title VI Regulations (23 CFR Part 200)

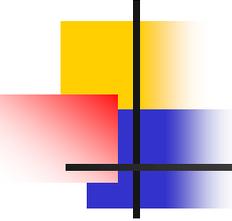
- Issued December 10, 1976
- Requires **assurance**
- State Highway Administration (SHA) to institute **corrective action** to address deficiencies found by FHWA within 90 days
- Identifies **specific actions & activities** to assure compliance



Standard DOT Title VI

Assurances (USDOT 1050.2)

- Obligate recipients to:
 - **Comply with Title VI**
 - **Include Title VI Provisions in its contracts**



Elements of Standard USDOT Assurances

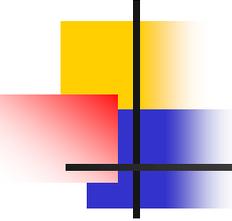
- Appendix A - **All Contracts**
- Appendix A(5)(a&b) - provides for **sanctions for noncompliance** with nondiscrimination provisions of contract
- Appendix B - Deeds Transferring Property
- Appendix C - Deeds, Leases, Permits for further transfer of property acquired, or improved for construction, use of or access to space on, over, or under property acquired

FHWA S Title

VI/Nondiscriminat Program

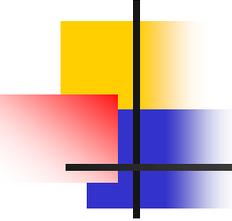
is...

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



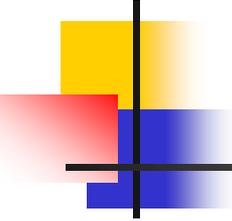
Title VI (Nondiscrimination)

- **Promote nondiscrimination in Federally assisted programs and activities;**
- **Based on the fundamental principle that all human beings are created equal;**
- **Rooted in the constitutional guarantee that all persons are entitled to equal protection of the laws;**
- **Address involvement of impacted persons in the decision-making process.**



Title VI (Nondiscrimination)

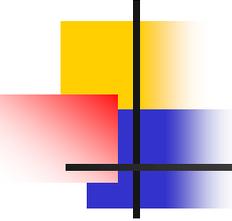
- **Not threats but opportunities;**
 - To **give serious attention to the effects** of transportation decisions on the human environment, especially those of low income, minority & disadvantaged persons;
 - To **redeem ourselves of oversights**, elitism, and negligence regarding past and lingering disparate actions towards disadvantaged persons.



Title VI (Nondiscrimination) Contd.

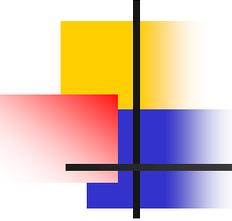
■ **Reminders**

- Our professional responsibilities;
- Civic duty;
- Fiduciary obligation;
- Customer service imperative;
- The GOLDEN RULE



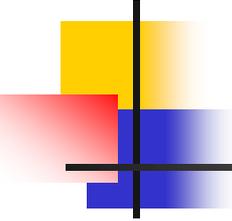
What is the Purpose of Title VI?

- 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)



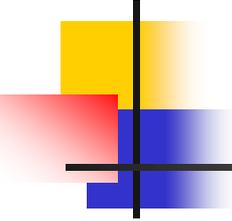
What is the Intent of Title VI?

- 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.



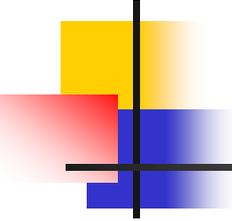
Why is Title VI Important to STA?

- Business & economic necessity;
- Statutory, regulatory & constitutional requirement;
- Social & political obligation;
- Moral & ethical imperative;
- Professional & fiduciary responsibility;
- In short, **IT IS THE RIGHT THING TO DO!**



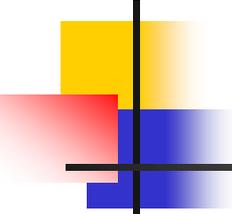
What are the Consequences For Noncompliance With Title VI?

- Found in noncompliance;
- **Suspension or termination** of Federal financial assistance;
- **Refusal to grant or continue federal financial assistance;**
- Any other means authorized by law
 - Refer to DOJ to enforce Federal law, assurance or contractual obligation
 - Utilize applicable proceedings under state or local law
(49 CFR 21.13)



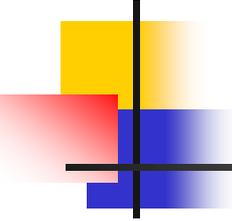
PROGRAM AREAS

- Planning
- Project Development
- Right of Way
- Construction
- Research



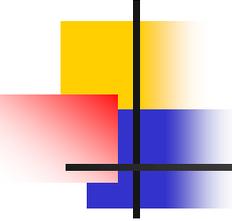
The Planning Process

- Metropolitan and State Plans are required by law;
- Transportation Plan & TIP/STIP;
- Must consider other modes;
- FHWA & FTA input;
- Proactive public involvement;
- Financial Plan - Fiscally constrained;
- Consider Environmental effects;
- No less than 20 years on State & MPO Plans;
- Ongoing activity.



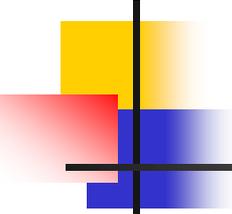
Planning Plans & Projects

- Project genesis should be planning process;
- Federally funded projects in metropolitan areas must be in plans;
- **Focus is mobility, access & community goals.**



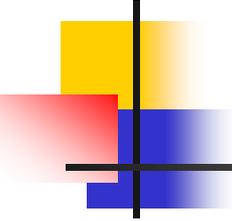
Planning & Public Involvement

- Public Involvement (PI) required at the planning stage to forestall future problems;
- PI is **performance** not process oriented;
- Communication must be a two-way street;
- **Public concerns and views considered in decision making;**
- Plans tailored to fit local conditions;
- Ensure involvement of transportation disadvantaged.



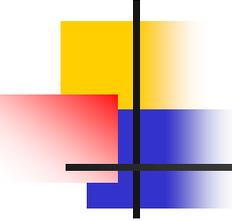
Planning and Title VI Issues

- Effective public involvement and participation process:-
 - Recognition of specific and prominent community issues and circumstances;
 - Availability of mechanisms for eliciting and soliciting minority involvement;
 - Availability of and accessibility to information;
 - Multiple mechanisms for involving public;
 - Accessibility of process.



Planning and Title VI Issues

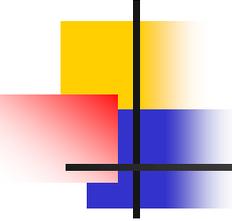
- Consideration of citizen input;
- Equitable provision of transportation facilities and services;
- Coordination with Indian tribal governments;
- Off-setting impacts across investments;
- Conduct reviews for compliance & verification



Planning & Title VI Issues

- **Documentation**

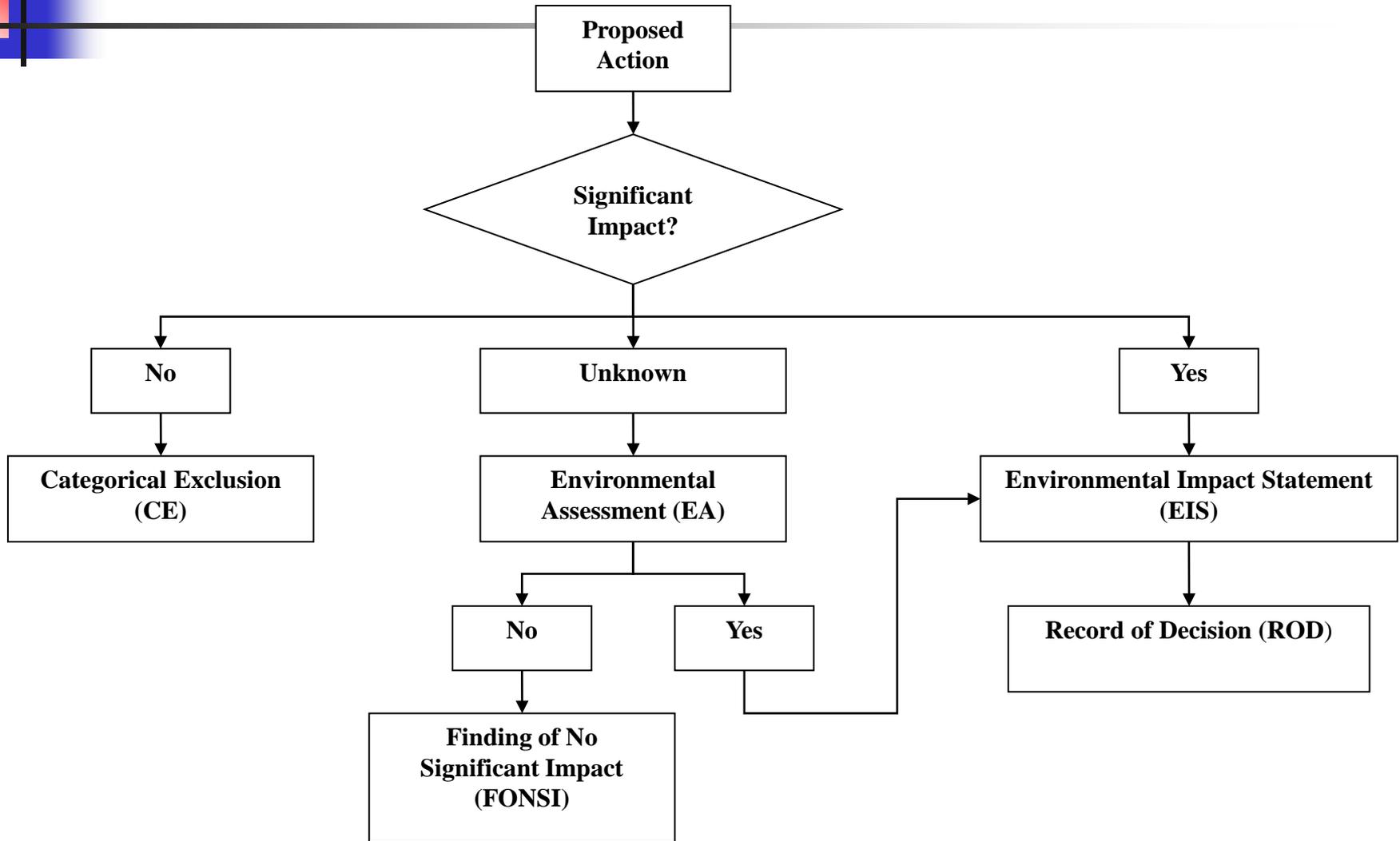
- Community profile
- Ethnic and racial composition
- Income, age, and sex distribution
- Availability of and accessibility to transportation services.

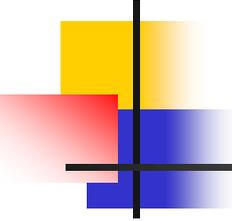


NEPA/Project Development

- Phase that continues where project planning ends;
- Consideration of alternatives & examination of social, economic and environmental (SEE) effects;
- States perform analysis and prepare NEPA documentation with FHWA assistance;
- Open and collaborative;
- Decision making based on public interest;
- Degree of analysis based on potential impacts

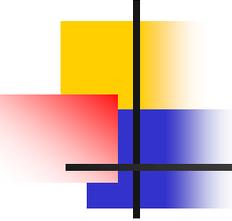
NEPA Environmental Process





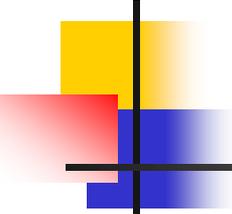
Project Development and Title VI Issues

- **Is public involvement adequate?**
 - Early and continuous;
 - Appropriate community outreach;
 - Feedback to community during the process;
 - Accommodate community input.



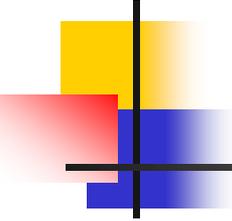
Project Development and Title VI Issues

- **Are public hearing requirements satisfied?**
 - Informal vs. Formal;
 - Open forum public hearing format.



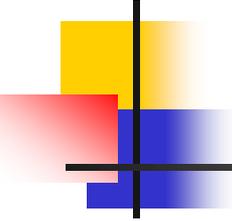
Project Development and Title VI Issues

- **Is there adequate identification of SEE impacts?**
- **Beneficial Impacts:**
 - Increased access to facilities/services;
 - Upgrading affected communities.
 - Positive change in tax base & property values.



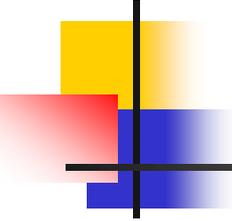
Project Development and Title VI Issues

- Adverse Impacts:
 - Diminished access to facilities/services;
 - Disruption of community cohesion;
 - Disruption of people, business & farms;
 - Negative change in tax base & property values.



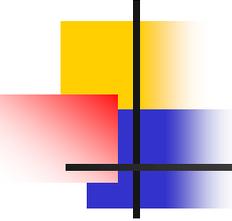
Project Development and Title VI Issues

- **Is there equitable mitigation of SEE impacts?**
 - Sequencing of mitigation (CEQ regulation);
 - Identify in CE, EA, EIS;
 - Commitments in CE, FONSI, ROD are binding.



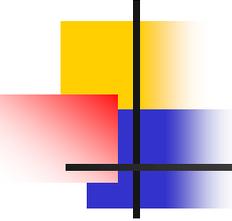
Project Development and Title VI Issues

- Examples of mitigation:
 - Restoration of circulation and pedestrian patterns;
 - Relocation assistance and advisory services, replacement housing and moving payments for displaced families and businesses;



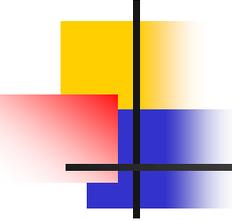
Project Development and Title VI Issues

- Examples of mitigation:
 - Aesthetic and Visual Improvements;
 - Traffic signalization and street lighting improvements;
 - Employment, training, and contracting opportunities;
 - Noise barriers and buffer zones;
 - Landscaping.



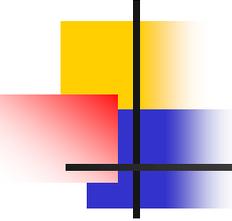
Right-Of-Way (ROW)

- Appraisal/Appraisal Review
 - Provides basis for payment;
 - Estimate of fair market value, an opinion;
 - Fee appraisers may be used;
 - All appraisals must be reviewed.



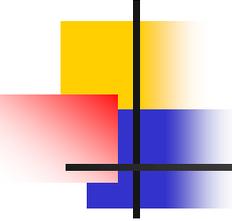
Negotiation

- **Sensitive** - involves direct contact with public;
- Agency required to make **prompt written offer** for full amount believed to be just compensation;



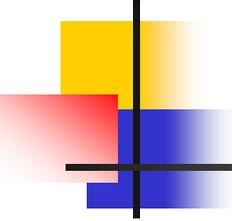
Acquisition

- Agency is required to make every effort to **acquire property by negotiation;**
- **Coercion is strictly prohibited;**
- Condemnation proceedings available if agreement not reached.



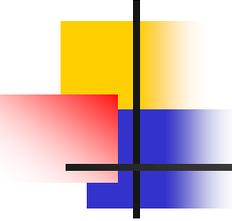
Relocation Assistance & Payments

- Written notices:
 - General information on relocation program;
 - Notice of relocation eligibility;
 - 90 days notice.
 - Relocation services;
 - Replacement dwelling prior to displacement;
 - Replacement housing payments;
 - Moving and related expenses.



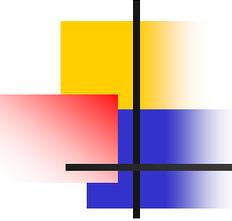
Property Management

- Management of property acquired for highway purposes.
- Activities:
 - Selection of management firms; demolition contractors;
 - Property lease/rental;
 - Disposition of improvements/ROW;
 - Management of airspace.



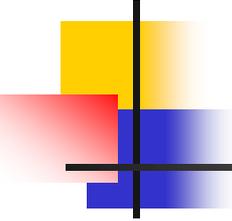
Right-Of-Way & Title VI Issues

- Appraisal/Appraisal Review
 - Use of fee appraisers;
 - Selection of comparables;
 - Adjustments to subjects without bias;
 - Severance/consequential damages;
 - Minimum Payments



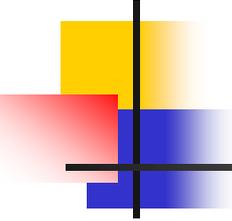
Right-Of-Way & Title VI Issues

- Negotiations/Acquisition
 - Cannot accelerate or advance condemnation;
 - Cannot force or require donations;
 - Cannot offer of less than approved appraised amount.



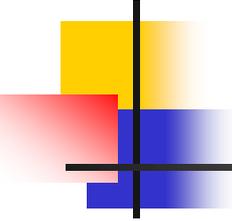
Right-Of-Way & Title VI Issues

- Relocation Assistance and Payments
 - Degree of relocation services provided;
 - Selection of replacement housing;
 - Decent, safe and sanitary inspections;
 - Personal contacts.



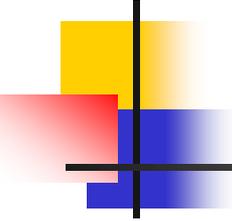
Right-Of-Way & Title VI Issues

- Property Management
 - Selection of contractors/firms;
 - Determination of rent amounts;
 - Procurement of bids;
 - Maintenance of rental property.



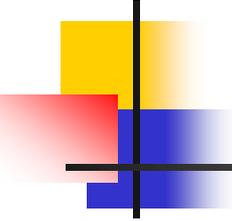
Construction

- Plan preparation, specifications & estimates;
- Letter of authorization to proceed;
- Advertising for bids;
- Contract awards;
- Subcontract approvals;
- Monitoring of work;
- Implementation of mitigation measures;
- Final inspection and acceptance.



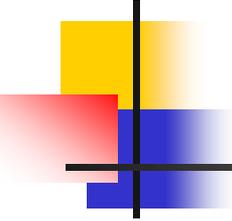
Construction & Title VI Issues

- Incorporation of contract provisions;
- Monitoring/inspection of work by State;
- Impact mitigation:
 - Safety through construction zones;
 - Noise and air impacts;
 - Employment and contracting goals;



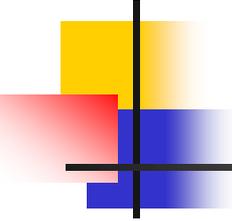
Construction & Title VI Issues

- Prequalification, bonding, licensing requirements.
- Approval of subcontracts;
- Approval of plan changes and supplemental agreements.



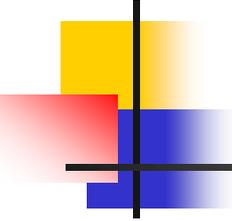
Construction & Title VI Issues

- Assessment of sanctions:
 - Liquidated damages;
 - Withholding payment;
 - Suspension/termination of contract;
 - Decertification.



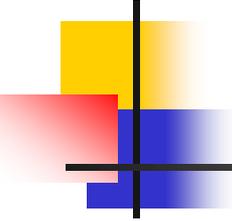
Research

- Proposal/problem statement solicitation;
- Selection of researcher;
- Outreach.



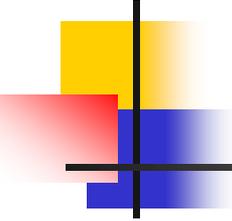
Research and Title VI Issues

- Practice competitive contracting;
- Refrain from using the same:
 - Individual Researcher
 - School
 - Discipline
 - Department
- Include/involve MIHEs;
- Encourage & promote collaborative work.



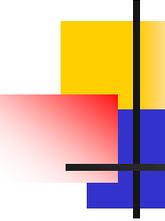
APPROACHES TO IMPLEMENTING TITLE VI

- Traditional Approach
- The Systematic Multidisciplinary Approach
- Establishing a Systematic Multidisciplinary Process



Traditional Approach

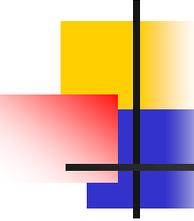
- Compliance-oriented
- Intra-disciplinary
- Absence of systematic interaction or communication;
- Reactive – To Regulation or Issue;
- After-the-fact Reviews
- Prone to complaints;
- Civil Rights Office and/or Specialist overwhelming responsibility;
- Less effective



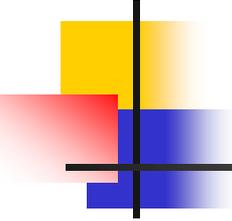
The Systematic Multidisciplinary Approach

- Both inter and intra-disciplinary;
- Interactive and integrative (Team work);
- Continuous and Systematic Communication;
- Preventive not reactive;
- Minimizes chances of complaints, project delays and disruptions;

The Systematic Multidisciplinary Approach contd.

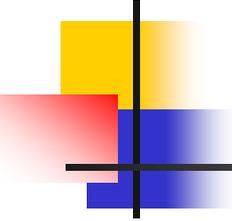


- Promotes positive public perception of governmental agencies and officials – local, state or federal;
- Reduces vulnerability;
- Generates continuous awareness of Title VI & EJ issues;
- Allows Program Area personnel to incorporate Title VI & EJ in daily and routine activities.



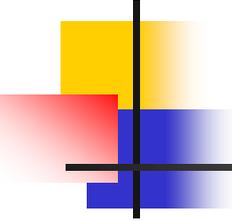
How to Establish A Systematic Multidisciplinary Process

- Secure Chief Administrative Officer's (CAO) support;
- Create a Team involving every program office including CAO or representative;
- Team meets and establish objective(s);
- Identify issue/area of vulnerability or need;
- Analyze issue;
- Prepare plan of action;



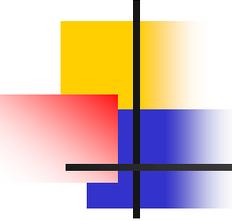
How to Establish A Systematic Multidisciplinary Process contd.

- Formulate strategies & implement the plan;
- Establish roles and responsibilities;
- Assess plan from time to time and make adjustments;
- Meet periodically;
- Maintain awareness;
- Evaluate progress/course of action/results



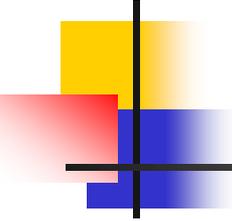
Roles and Responsibilities

- Technical Assistance
- Program Oversight



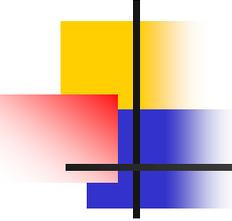
Roles and Responsibilities

- Primary responsibility of Title VI implementation lies with the State Highway Administrations (SHAs);
- Effective execution of the Title VI program is a collaborative effort;
- Program managers should be sensitive, and knowledgeable.



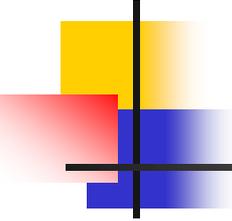
Roles and Responsibilities

- Civil Rights/Title VI Official with Program Personnel provide:
- Technical Assistance
 - Training, Guidelines, Interpretations, Environmental Program Review, Annual Work Plan Preparation, Complaint Procedures, Identification of Title VI Impacts of proposed projects, Identification of mitigation measures, Outreach
- Program Oversight
 - Conduct Title VI Reviews, Determine Title VI Compliance, Review Title VI Plans/Programs, Monitor deficiency Correction, Report Accomplishments & Challenges, Process Complaints



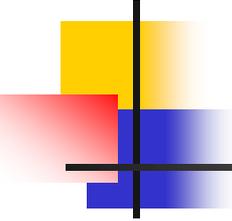
FHWA Headquarters OCR

- Interpret Title VI law, regulations & mandates;
- Provide technical assistance as needed;
- Establish agency wide policy for compliance
 - Directives and direction
- Investigate Title VI complaints of alleged discrimination.



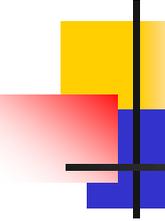
FHWA Resource Center

- Provide training, technical assistance & tools to facilitate understanding and effective implementation;
- Upon request, conduct/participate in Title VI reviews;
- Provide guidance and interpretation of HQ OCR policies and procedures;
- Under HQ OCR direction, conduct Title VI investigations.



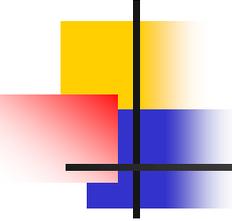
FHWA Division Offices

- Review and approve State Title VI Plans;
- Determine Title VI compliance;
- Conduct Title VI program & on-site reviews;
- Review and comment on Title VI issues in EISs, EAs; and FONSIIs;
- Process complaints of discrimination;
- Provide training and technical assistance.



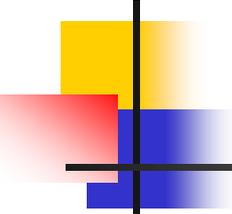
What is Required of [sub]Recipients in Implementing Title VI?

- Federal-aid recipients and subrecipients are required to **develop procedures and mechanisms** ([Methods of Administration](#)) to ensure nondiscrimination in all its programs, activities and services ([49 CFR 21.7\(b\)\(2\)](#); [DOT Assurance #9](#))
- Efforts to prevent discrimination must address, but not be limited to:
 - **program's impact** upon access, benefits, participation, treatment, services, contracting opportunities,
 - training opportunities, investigation of complaints,
 - allocation of funds, prioritization of projects and
 - the **functions** of planning, project development, design, right-of-way acquisition, construction, and research.



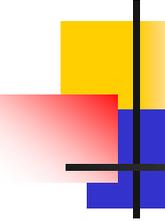
Methods of Administration

- Minimum requirements:
 - Public outreach and education plan
 - Training program for State and subrecipients' staff
 - Procedures for processing complaints
 - Procedures for identifying and addressing Title VI issues
 - Program to assess and periodically report on status of Title VI compliance
 - Detailed plans for bringing discriminatory programs into compliance



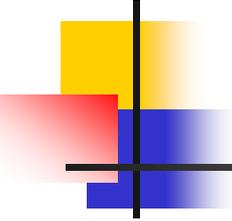
State Transportation Agency Responsibilities

- Signed **Assurance**
- Adequately Staffed **Civil Rights Unit** with Coordinator & Title VI Specialist/Manager
- Approved **Implementation Plan**
- Reports & Training Program
- **Develop Procedures**
 - Complaint investigations, reviews & monitoring process
 - Deficiency resolution; data collection and analysis
- **Conduct Reviews**
 - Programs and special emphasis areas
 - Subrecipients and State program directives
 - Pre-award and post-award/grant applications



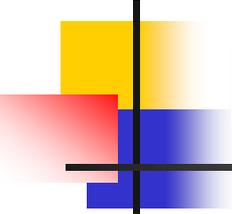
Subrecipients' Responsibilities

- Maintain a signed Title VI assurance
- Retain approved **methods of administration** (Program Implementation Plan)
- Designate a Title VI Manager/Coordinator responsible for managing and monitoring Title VI activities daily
- Take affirmative action to correct deficiency found by recipient within 90 days
- Prepare annual report of Title VI accomplishments for past year and goals for the next year



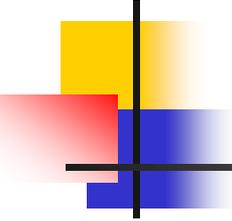
What is the Head of STA's Role in Implementing Title VI?

- Title VI Coordinator/Specialist is the hub for day-to-day administration of Title VI program obligations
- **Head of STA is held responsible for implementing Title VI requirements (23 CFR 200.9(a)(3)).**



Elements of a Viable Title VI Implementation Plan

- **Nondiscrimination Statement of Policy**
 - Express commitment to nondiscrimination obligation
 - Policy signed by Chief Administrative Officer
 - Define Federal financial assistance and recipients
 - Delineate specific forms of discrimination prohibited
 - Specify programs and activities covered by Title VI
 - Policy statement circulated throughout organization and general public
- **Organization and Staffing of Civil Rights Unit**
 - Organization chart showing relationship between CR Unit and head of [highway] agency
 - Organizational chart and description of organization and staff of Civil Rights Unit
 - Outline roles and responsibilities of Title VI-related staff



Implementation Plan

- **Title VI Assurance**

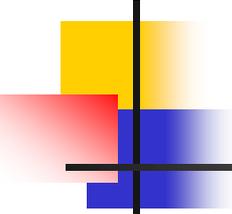
- Include copy of current State's signed Title VI Assurance with appendices

- **Monitoring Process**

- Each program area provides summary of compliance & monitoring responsibilities

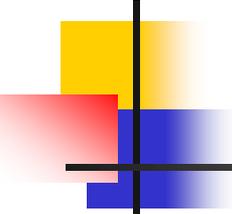
- **Review Process**

- Description of how & when reviews are conducted
 - Program areas; subrecipients, award/grant applications; special emphasis areas and state program directives



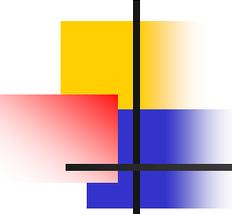
Implementation Plan

- **Procedures for Assuring Compliance & Enforcement**
 - Community outreach and public education procedures
 - Opportunity for public input;
 - Efforts to ensure participation by traditionally underserved
 - Public education of rights and obligations
 - Training program for staff and subrecipients
 - Procedures for processing complaints
 - Procedures for identifying and addressing Title VI issues
 - Detailed plan for bringing discriminatory programs into compliance
 - Procedures and methods for data collection and analysis



Implementation Plan

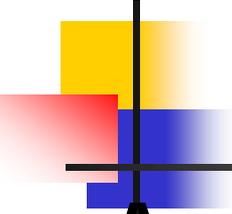
- **Disadvantaged Business Enterprises (DBE)**
 - Procedures to ensure that DBEs are afforded opportunity to participate in Federal-aid programs and activities
 - How DBEs will be selected
 - Methodology for setting DBE goals and achievement
 - Application for Federal financial assistance “to include an affirmative action program for minority [DBE] contract participation.” (USDOT Order 1000.12 or Title VI Desk Reference, Section 4-E-92-94)
- **Required Title VI Contract Provisions**
 - Procedures to ensure Title VI provisions are included in all Federally-funded contracts regardless of tier (Appendix A of USDOT Order 1050.2)



Implementation Plan

■ **Accomplishment Report**

- List major accomplishments made regarding Title VI since the last plan update, and goals for the next year
- Include instances where Title VI issues were identified and discrimination prevented
- Indicate activities and efforts the Title VI Specialist and program area personnel have undertaken in monitoring Title VI
- Include a description of the scope and conclusions of any special reviews conducted by the Title VI Specialist
- List any major problems identified and corrective actions taken
- Include a summary and status report on any Title VI complaints filed with the State/FHWA/USDOT/USDOJ.



Implementation Plan

■ **Annual Work Plan**

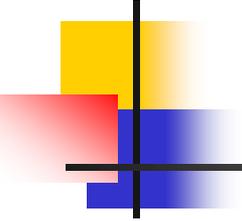
- Outline Title VI monitoring and review activities planned for the coming plan year
- State by whom each activity will be accomplished and target date for completion

■ **State Procedures, Manuals and Directives Applicable to the Federal-aid Program**

- List all procedures, manuals, and directives the State uses which are applicable to the Federal-aid highway program and Title VI

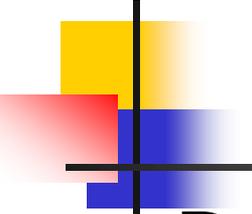
■ **Other Relevant Elements**

- Introduction/Overview/Background
- Approach to Title VI implementation & glossary of definitions
- Nondiscrimination Authorities & Resources



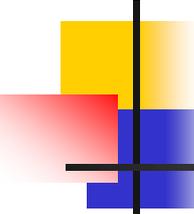
Title VI Complaints of Discrimination

- **What is a Complaint?**
 - An allegation of wrongdoing for which **attention**, **resolution**, **redress** or any other corrective action may be sought;
 - Formal or informal, written or unwritten
 - Usually a violation of certain law, provision, statute, regulation, policy, Executive Order, etc.



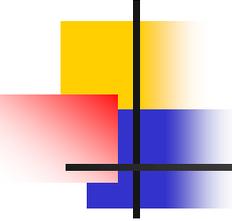
Title VI Complaints of Discrimination Contd.

- **Determining if Complaint has standing**
 - Is it about exclusion from participation, denial of benefits or plain discrimination?
 - Is complainant of a protected class?
 - Is there an alleged ground(s)?
 - Is program Federally funded; respondent a recipient?
 - Is complaint timely – within 180 days?
- **If Complaint against STA**, FHWA investigates or contract for investigation
- **If Complaint against subrecipient**, contractor or subcontractor, FHWA may defer to STA to schedule and conduct investigation



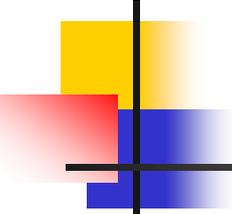
Processing Title VI Complaints

- 1) Recipient receives and reviews complaint
- 2) Recipient forwards complaint to FHWA
- 3) HCR reviews complaint for Prima Facie case
 - Complainant is member of a protected group/class
 - Complainant harmed by some decision
 - Similarly situated persons of a different group were not or would not be harmed under similar circumstances
- 4) HCR determines jurisdiction and issue(s)
 - FHWA may determine at this point whether to dismiss complaint
 - **FHWA IS THE ONLY ENTITY THAT CAN DISMISS TITLE VI COMPLAINTS WITHIN ITS JURISDICTION**



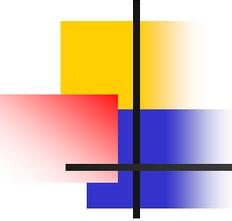
Processing Title VI Complaints

- 5) Resolution
 - Every effort to pursue resolution of complaint will be made throughout the process
- 6a) Complaint investigation
 - Contact complainant
 - clarify issue(s)
 - explain investigative process
 - Submit letters
 - Acceptance letter to complainant
 - Notification/Request for information to respondent



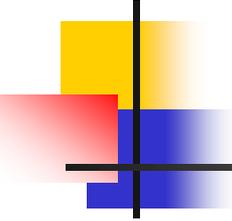
Processing Title VI Complaints

- 6b) Complaint investigation
 - Identify applicable laws, regulations, or mandates
 - Identify other program official(s) that may be involved in the investigation and establish roles and responsibilities
 - Conduct investigation
 - Analyze findings and prepare report of findings



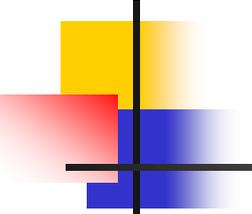
Processing Title VI Complaints

- 7) Forward investigative report with findings and recommendations to HCR for Final Agency Decision (FAD)
- 8) HCR reviews investigative report
- 9) HCR prepares FAD
 - **FHWA IS THE ONLY ENTITY THAT CAN ISSUE FADs FOR TITLE VI COMPLAINTS WITHIN ITS JURISDICTION**
- 10) FAD forwarded to complainant & copies to respondent and Division



Data Collection

- Term used to describe the process of preparing and collecting data
- Data includes
 - Information
 - Statistics
 - Facts
 - Figures
 - Numbers
 - Records



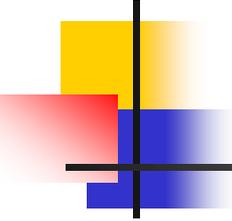
Why Collect Data?

- **REGULATORY REQUIREMENT**

23 CFR 200.9(b)(4)

Develop Procedures For Data Collection

- Develop procedures for the collection of statistical data (race, color, sex, **age, disability**, and national origin) of participants in, and beneficiaries of State highway programs, i.e., relocatees, impacted citizens and affected communities.



Regulatory Requirement Contd.

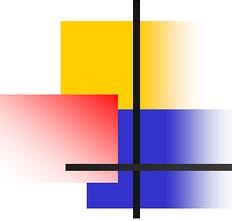
- **49 CFR 21.9(b)**

- Assure Compliance**

- “Each recipient shall keep such records and submit to the Secretary timely, complete, and accurate compliance reports at such times, and in such form and containing such information, as the Secretary may determine to be necessary to enable him **to ascertain whether the recipient has complied or is complying** In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations”

- Determine if FHWA Financial Assistance is Reaching Communities and Populations**

- “In general recipients should have available for the Secretary racial and ethnic data showing the extent to which members of minority groups are beneficiaries of programs receiving Federal financial assistance.”

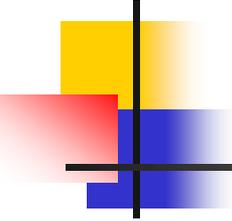


Regulatory Requirement Contd.

- **49 CFR 21.9(d)**

- Information to Beneficiaries and Participants**

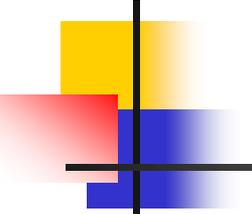
- “Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the **provisions** of this part and its **applicability** to the program under which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the Secretary finds necessary to **apprise** such persons of the **protections against discrimination** assured them by the Act and this part.”



Why Collect Data Continued?

- In the event of litigation or complaint....
- Monitor performance of nondiscrimination program
- Provide basis for decision or decisionmaking
- Maintain adequate **documentation...**
- **Data must be accurate, timely, current, sufficient and complete to be useful**

What Data Sources Should be Utilized?



- Census data
 - Good starting point
 - Susceptible to change
 - Should not be the only source
- State Education Departments
 - School districts
- Community-based Organizations
- Community Leaders
- Geographic Information Systems (GIS)
- Local [data collecting] Agencies
- Planning Organizations

What Data Should Be Collected?

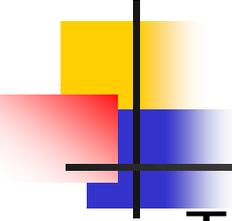
USDOJ Directive (28 CFR 42.406(b))

- Manner in which services are provided by program;
- Population eligible to be served based on race, color, national origin...
- Data regarding covered employment, including use or planned use of bilingual employees to work with beneficiaries unable to speak or understand English;
- Location of existing or proposed facilities and information regarding whether the location will have the effect of denying access because of...
- Present or proposed membership, by race, color, national origin..., in any planning or advisory body that is an integral part of the program;
- Where relocation is involved, the requirements and steps used or proposed to guard against unnecessary impact on persons on the basis of race, color or national origin...

Additional Data To Be Collected

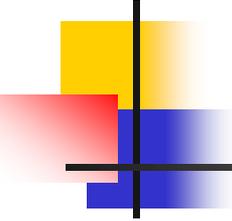
FHWA

- Allocated funds/other financial assistance, when & to whom;
- Demographic profile of communities;
- Owners of property [to be] taken, and persons or businesses to be relocated or adversely affected by race, color, national origin...;
- Lawsuits filed (including status) against applicant or recipient alleging discrimination based on protected categories;
- Brief description (including status) of applications to other federal agencies for assistance, and other federal assistance provided;
- Statements on compliance reviews
- Complaints - How processed and or determined
- Training and technical assistance provided & attendance records



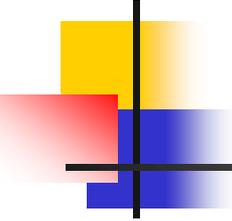
What Are Some Uses of Data?

- To identify:
 - Impacts and persons/businesses impacted
 - Transportation needs of all persons/groups within plans or project area
 - People to include in the decision making process
 - Leaders/“Champion(s)” for various modes and transportation options



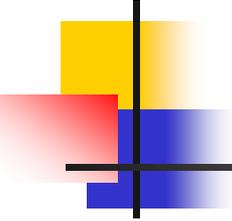
Uses of Data Contd.

- Identify:
 - Strategies and options to address impacts
 - Strategies to disseminate information
 - Ways of avoiding disparate treatment and impact
 - Alternatives to modes and locations and types of facilities (transit, light rail, van and carpooling, HOV lanes, etc.)
 - Priorities for investments
 - Sources for financing investments



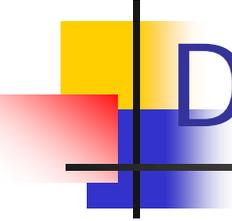
DOCUMENTATION

- Principal Types
- Examples



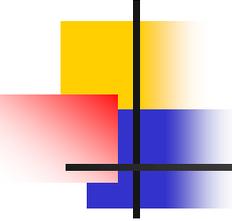
Documentation

- Critical in demonstrating that Title VI/EJ monitoring and compliance are taking place.
- In general:
 - Routine correspondence;
 - Program & on-site review reports;
 - Training & technical assistance records;
 - Disseminated information;
 - Demographic data;
 - Complaints log.



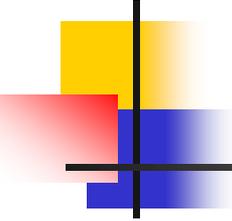
STRATEGIES FOR PREVENTING DISCRIMINATION

- Systematic Multidisciplinary Approach
- Training and Workshops
- Reviews
- Outreach & Public Involvement
- Data Collection & Analysis
- Documentation



Strategies

- To assure nondiscrimination, be proactive.
- At a minimum:
 - Provide training; technical assistance; public education;
 - Community Outreach; data collection & analysis
- Some Specific Considerations
 - Full employment of systematic multidisciplinary approach;
 - Frequent Title VI training;
 - Regular/periodic TEAM meetings;
 - Periodic reviews and evaluations;

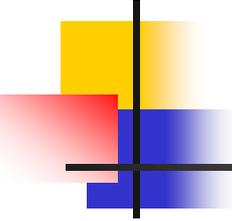


Strategies contd.

- Develop public involvement strategies according to situation at hand;
- Create an atmosphere of trust and respect;
- Empower the Community by listening, and providing prompt response to inquiries;
- Establish a two-way free and frank line of communication with the public;
- Maintain proper statistical, income and demographic data;
- Document, Document, Document.

EPILOGUE

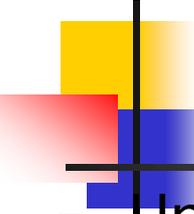




WORDS OF WISDOM

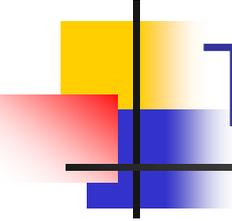
- “We should not pretend to understand the world only by the **intellect**; we apprehend it just as much by **feeling**. Therefore the judgment of the intellect is, at best, only the half of truth, and must, if it is honest, also come to an understanding of its inadequacy.”

----- C. J. Jung



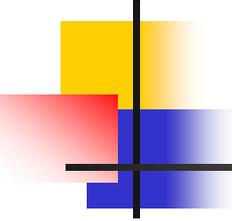
WORDS OF INSPIRATION

- Until the philosophy which holds one race superior and another inferior is finally and permanently discredited and abandoned;
- Until there are no longer first class and second class citizens of any nation;
- Until the color of a man's [woman's] skin is of no more significant than the color of his [her] eyes;
- Until basic human rights are equally guaranteed to all without regard to race, [color, national origin, sex, age, disability];
- Until that day, the dream of lasting peace, world citizenship, and the rule of international morality, will remain a fleeting illusion to be pursued but never attained.
- -----The late Emperor Haile Selassie 1, California, 2/28/68



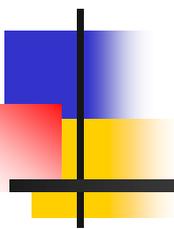
The Nondiscrimination Formula

■ $SJ + FF = ND$



Review of Learning Outcomes

- **Define** Title VI & other nondiscrimination authorities;
- **Recognize** roles and responsibilities;
- **Discuss** elements of a viable Title VI Plan;
- **Describe** the systematic, multidisciplinary approach;
- **Identify** & address Title VI issues in program areas;
- **Explain** handling & processing of Title VI complaints;
- **Clarify** the what, why, how & uses of data collection;
- **Select** strategies to prevent discrimination.



THE END

THANK YOU!!!

