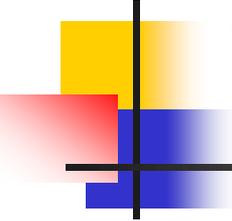


PUBLIC FUNDS FOR PUBLIC BENEFIT: SUBRECIPIENT'S GUIDE TO IMPLEMENT TITLE VI

National Title VI/Nondiscrimination Forum for Local Public Agencies

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This Module will...

- Provide a concise overview of Title VI;
- Discuss Subrecipients guide to assure effective Title VI implementation and enforcement;
- Examine data collection procedures;
- Outline Title VI Complaint process;
- Identify public involvement tools.



What is Title VI?

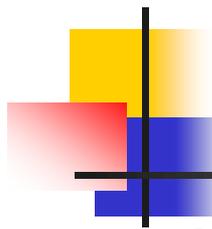
- Federal law
- The essence of the law:

“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)



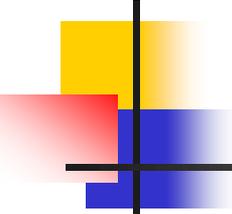
What is the Civil Rights Restoration Act of 1987?

- Direct response to, 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.**



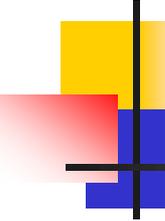
What is FHWA's Title VI Program?

- 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**) **Persons displaced/Property acquired**
 - Section 504 of the 1973 Rehabilitation Act (**29 USC 790**) **Handicap/Disability**
 - The 1973 Federal-aid Highway Act (**23 USC 324**) **Sex**
 - The 1975 Age Discrimination Act (**42 USC 6101**) **Age**
 - Implementing Regulations (**49 CFR 21 & 23 CFR 200**)
 - Executive Order 12898 on Environmental Justice (**EJ**) **Low Income & Minorities**
 - Executive Order 13166 on Limited English Proficiency (**LEP**) **Linguistic Minorities**



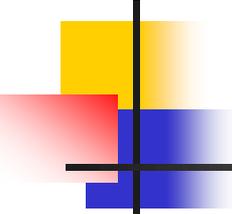
Why Cross-Cutting?

- **Section 504 of the 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.”
- **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.



Implementing Regulations

- **USDOT Title VI Regulations (49 CFR 21)**
 - Prohibited discriminatory actions (21.5)
 - Required assurance (21.7)
 - Compliance information (21.9)
 - Procedure for effecting compliance (21.13)
- **FHWA Title VI Regulations (23 CFR 200)**
 - State Transportation Agency responsibilities (200.9)



Executive Order (EO) 12898

- Presidential mandate to address equity and fairness toward low income and minority persons or population;
- Signed by President Clinton on February 11, 1994
- Directs Federal agencies [[including recipients \(FHWA Order 6640.23\(2\)\(h\)\)](#)] to “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...**”



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 (EO) 13166

- Presidential directive to federal agencies to ensure **meaningful access to services** for LEP people;
- Nondiscrimination authority grounded on Title VI;
- Signed by President Clinton on August 11, 2000
- USDOJ's LEP Guidance pursuant to EO 12250
 - The four factors paradigm



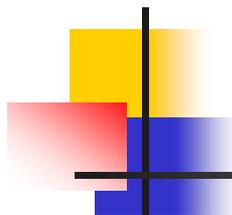
EO 13166 Directs

- 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*)



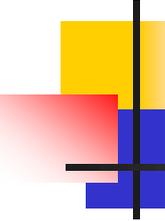
USDOT Response to EO 13166

- USDOT Guidance in Federal Register

- Vol. 66, No. 14, Jan. 22, 2001 &
- Vol. 70, No. 239, Dec. 14, 2005.

- **Purpose**

- Clarify LEP responsibilities of USDOT recipients
- Assist recipients in fulfilling their LEP responsibilities
- **Bottom line:** Assist recipients in complying with their Title VI responsibilities to ensure programs & activities normally provided in English, are accessible to LEP persons



What Is Required Of Recipients?

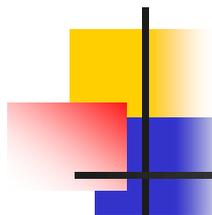
- Sound measures/reasonable steps for meaningful access to programs and activities by LEPs
 - Assessment - Four Factors Analysis/Paradigm
 - Plan of action



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) and cost

LEP Plan of Action: Five Elements

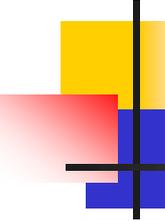


- **Identification** of volume and location of LEPs and LEP Communities
- **Language assistance** measures – Types of languages services available; how to respond to LEP callers; how to respond to LEPs in person; how to respond to written communication; types of documents/info to translate
- **Staff** – 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**



FHWA's Title VI Program...

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



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

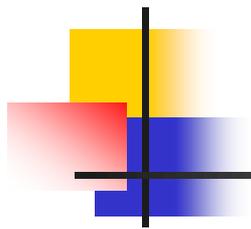
Or

- Eliminate discrimination in Federally financed programs and activities



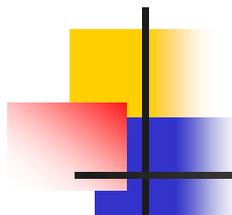
What is the Intent of Title VI?

- To **remove 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.



In effect, Title VI Authorities...

- Promote fairness and equity 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 human beings are entitled to equal protection of the laws;
- Address involvement of impacted persons in the decision-making process.



Who is a Subrecipient?

■ A Recipient (Standard, Primary or Conduit)

- Administrative entity or person to whom Federal assistance is **directly** extended and whose conduct is subject to Title VI/nondiscrimination requirement and compliance obligations (**23 CFR 200.5(n)**)
 - Example: State Departments of Transportation (SDOTs)

■ A Subrecipient (Secondary)

- Administrative entity or person to whom Federal assistance is **indirectly** extended either through a recipient or another subrecipient and whose conduct is subject to Title VI/nondiscrimination requirement and compliance obligations (**23 CFR 200.5(n)**)
 - Examples: Metropolitan Planning Organizations (MPOs), Local Public Agencies/Authorities (LPAs) – Cities, Counties, Villages, Townships, Institutions of Education

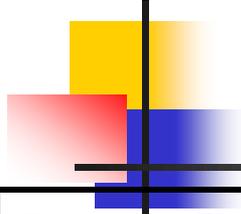


Who is a Contractor?

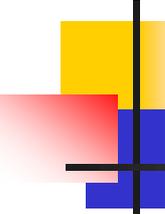
- **A Contractor/Subcontractor**

- “..any person, corporation, partnership, or unincorporated association that holds a FHWA direct or federally assisted construction contract or subcontract regardless of tier”
(23 CFR 230.407 (i))
- “One who participates, through a contract or subcontract (at any tier), in a DOT-assisted highway, transit, or airport” (49 CFR 26.5)

Relationship between a Recipient & Contractor



Recipient/Subrecipient	Contractor/Subcontractor, Consultant, Vendor
<ul style="list-style-type: none"> ■ Provides services 	<ul style="list-style-type: none"> ■ Sells deliverables (goods & services)
<ul style="list-style-type: none"> ■ Signs an Assurance ■ Not necessarily in business to make profit (Usually, public entity) 	<ul style="list-style-type: none"> ■ Signs a Contract with contract provisions ■ In business (buy & sell) to make profit (Operates in a competitive environment)
<ul style="list-style-type: none"> ■ Receives FFA (or paid) whether service is expensed as a deliverable or not 	<ul style="list-style-type: none"> ■ Is paid for a specific deliverable *Receipt of payment with FFA does not establish a recipient/subrecipient relationship
<ul style="list-style-type: none"> ■ Designs a program to meet a broader goal 	<ul style="list-style-type: none"> ■ Provides specific product or service ancillary to a Federal program
<ul style="list-style-type: none"> ■ Is receiving Federal financial assistance 	<ul style="list-style-type: none"> ■ Could become a recipient with provision of [Federal financial] assistance.



Subrecipients Guide To Assure Effective Title VI Implementation

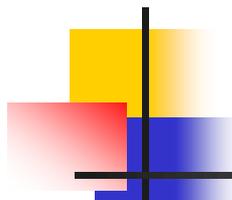
■ 1) Signed Assurance

- *“every [award of, or] application for Federal financial assistance shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to the [award or] application, contain or be accompanied by an assurance that the program will be conducted or the facility operated in compliance with all requirements imposed...” (49 CFR 21.7)*

■ 2) Method of Administration

- (a) All Federal-aid [sub]recipients are required to develop a system of procedures and mechanisms to assure nondiscrimination in all its programs, activities and services, whether Federally-funded or not

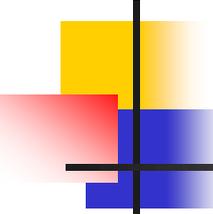
*“The Recipient shall provide for such **methods of administration** ...to give **reasonable guarantee** that it, other recipients, sub-grantees, contractors, subcontractors, transferees, successors in interest, and other participants of Federal financial assistance under such program will **comply with all requirements** imposed or pursuant to the Act, the Regulations and this assurance” (USDOT Assurance #9); see also **49 CFR 21.7(b) and 23 CFR 200.5(p)***



Guide Continued

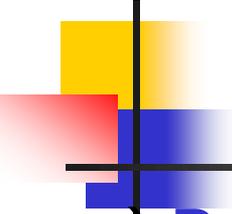
Method of Administration

- **2(b) Minimum Requirements for Methods of Administration**
 - Public outreach and education plan (49 CFR 21.9(d))
 - Training program for State and subrecipients' staff (23 CFR 200.9(b)(9))
 - Procedures for processing complaints (23 CFR 200.9(b)(3))
 - Procedures for identifying and addressing Title VI issues (23 CFR 200.9(b)(11))
 - Program to assess (review) and periodically report on status of Title VI compliance (23 CFR 200.9(b)(5)(6) & (7))
 - Detailed plans for bringing discriminatory programs into compliance (49 CFR 21.13 & 23 CFR 200.11)
 - Data collection procedures and methods (49 CFR 21.9(b) & 23 CFR 200.9(b)(4)).



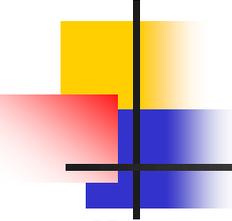
3) Title VI Implementation Plan/Program

- **a) 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
- **b) Designate Title VI Coordinator or Specialist**
 - Outline role(s), responsibilities and authority
 - Manage the day-to-day administration of program
 - Knowledge of Title VI authorities, implementation and application



Implementation Program

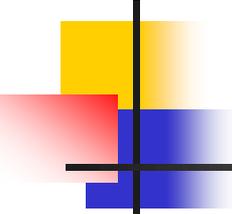
- **c) Procedures for Assuring Compliance & Enforcement**
 - Community outreach and public education plan
 - Opportunity for public input;
 - Efforts to ensure participation by traditionally underserved
 - Public education of rights and obligations
 - Training program for staff and subrecipients
 - Procedures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



Implementation Plan

■ d) **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.



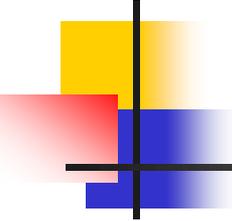
Implementation Plan

- e) **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

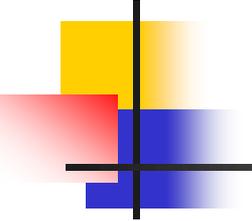
- f) **Required Title VI Contract Provisions**

- Procedures to ensure Title VI provisions are included in all Federally-funded contracts regardless of tier (**Appendix A of USDOT Order 1050.2**)
 - Nondiscrimination in selection and retention of subcontractors; procurement of materials and leases of equipments
 - Nondiscrimination in notification of Title VI obligation to each potential subcontractor or supplier
 - Nondiscrimination in employment practices
 - When employment is primary objective of Federal assistance
 - Discrimination in employment results in discrimination in service provided by Federally-assisted programs



Implementation Program

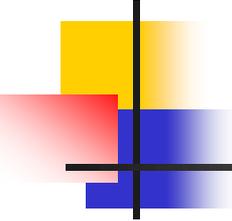
- g) **Disadvantaged Business Enterprises (DBE)**
 - Procedures to ensure that DBEs are afforded opportunity to participate in Federal-aid programs and activities
 - How DBEs will be selected
 - Methodology for setting DBE goals and achievement
 - Application for Federal financial assistance “to include an affirmative action program for minority [DBE] contract participation.” (USDOT Order 1000.12 or Title VI Desk Reference, Section 4-E-92-94)



Enforcement Procedures

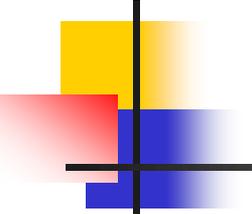
- FHWA noncompliance procedures (**49 CFR 21.13**)
 - Recipient found in noncompliance;
 - Suspension or termination of Federal financial assistance;
 - Refusal to grant or continue federal financial assistance;
 - Any other means authorized by law
 - Refer to DOJ to enforce Federal law, assurance or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

- Sanctions to be applied by State DOT to subrecipients and contractors
 - Appendix A of Standard USDOT Assurance



Data Collection

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



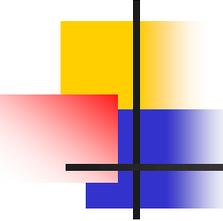
Why Collect Data?

- **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.

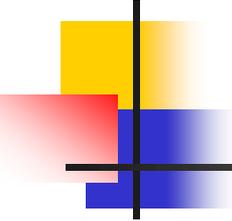
- **49 CFR 21.9(b)**

- **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.”

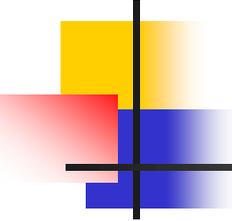


Regulatory Requirement Contd.

- **49 CFR 21.9(d)**

- Information to Beneficiaries and Participants**

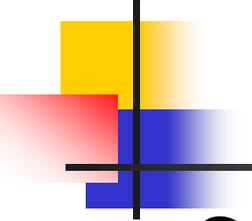
- “Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the **provisions** of this part and its **applicability** to the program under which the recipient receives Federal financial assistance, and make such information available 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?

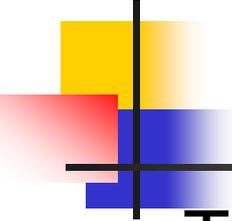
USDOJ Directive (28 CFR 42.406(b))

- 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

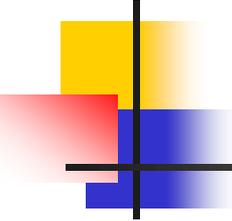
FHWA

- Allocated funds or other financial assistance, when and 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



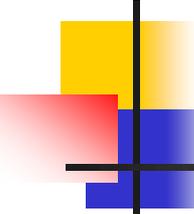
What Are Some Uses of Data?

- 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



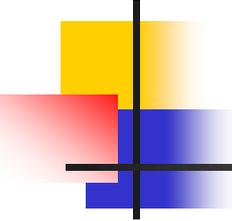
Uses of Data Contd.

- 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



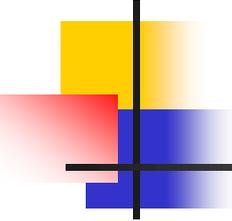
Processing Title VI Complaints

- 1) Receive and review complaint (Recipient)
- 2) Forward to FHWA HCR
- 3) HCR Review for Prima Facie Case (HQ)
 - 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 determine jurisdiction and issue(s)
- 5) Approaches to resolve complaint
- 6) Complaint investigation



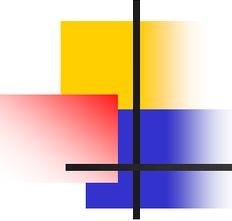
Processing Title VI Complaints

- 7) Investigative report with findings and recommendations forwarded to HCR for FAD
- 8) HCR reviews investigative report
- 9) HCR prepares FAD
- 10) Letter of FAD forwarded to complainant



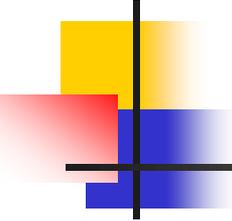
Public Involvement

- Process by which interested and affected individuals or entities are consulted and included in decision making process
- Public Involvement process
 - Information dissemination (timely and relevant)
 - Consultation (Honest and open exchange)
 - “Stakeholder” participation (collaborative engagement)



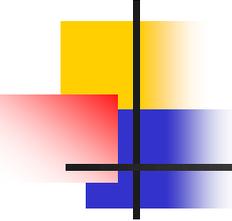
Public Involvement Values

- Mutual Trust and Respect
- Honesty and Integrity
- Effective Communication
- Transparency – Visibility and Openness
- Inclusion
- LOVE



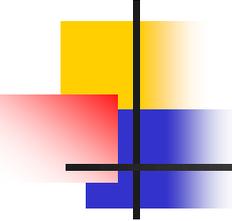
Public Involvement Tools

- Surveys; Community task forces
- Neighborhood and community advisory groups
- Publications; meetings, information notices
- Flyers; comments and responses on plans
- Meeting sign-in sheets; Internet; tweeter
- Telephone contacts; press releases & notices
- Neighborhood gazettes and bulletins



Summary

- Provide a concise overview of Title VI;
- Discuss Subrecipients guide to assure effective Title VI implementation and enforcement;
- Examine data collection procedures;
- Outline Title VI Complaint process;
- Identify public involvement tools.



Open Floor

- **Questions?**
- **Comments?**
- **Suggestions?**



THE END

THANK YOU!!!

