

# **Title VI/ Nondiscrimination and ADA Program Implementation Plan**

prepared by

**NORTH DAKOTA DEPARTMENT OF TRANSPORTATION**

Bismarck, North Dakota  
dot.nd.gov

submitted to

**FEDERAL HIGHWAY ADMINISTRATION**

North Dakota Division

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## Table of Contents

I. INTRODUCTION .....	1
II. TITLE VI/NONDISCRIMINATION AND ADA POLICY STATEMENT .....	2
III. STANDARD USDOT TITLE VI ASSURANCES .....	3
IV. ORGANIZATION AND STAFFING .....	12
A. Civil Rights Division Director (CRDD).....	12
B. Title VI Program Administrator .....	12
C. Title VI Specialists .....	13
D. Title VI Program Area Division Directors and District Engineers .....	14
V. PROGRAM AREA REVIEW PROCEDURES .....	15
A. Audit Services Division.....	16
B. Bridge Division.....	16
C. Civil Rights Division .....	17
D. Communications Division.....	21
E. Construction Services Division.....	21
F. Design Division .....	23
G. Drivers License Division .....	26
H. Environmental and Transportation Services Division .....	27
I. Executive .....	29
J. Financial Management Division .....	29
K. Human Resources Division.....	31
L. Information Technology Division.....	32
M. Legal Division.....	33
N. Local Government Division .....	33
O. Maintenance Division .....	34
P. Materials and Research Division.....	34
Q. Motor Vehicle Division .....	35
R. Planning/Asset Management Division.....	35
S. Programming Division .....	37
T. Safety Division .....	37
U. State Fleet Services Division .....	38
V. District Offices.....	39

VI. SPECIAL EMPHASIS PROGRAM AREAS.....	40
VII. SUB RECIPIENT REVIEW PROCEDURES .....	41
A. FHWA .....	41
B. FHWA Review Selection and Procedures .....	42
C. FTA Review Selection and Procedures.....	42
VIII. DATA COLLECTION .....	43
A. NDDOT Public Participation Survey .....	43
IX. TRAINING .....	45
A. Civil Rights Staff and Other NDDOT Employees .....	45
B. Sub Recipients and Stakeholders .....	46
X. EXTERNAL COMPLAINTS OF DISCRIMINATION .....	46
A. External Complaints of Discrimination Process and Form with Instructions.....	46
XI. DISSEMINATION OF TITLE VI INFORMATION.....	47
A. Public Involvement.....	47
XII. LIMITED ENGLISH PROFICIENCY (LEP).....	47
A. Limited English Proficiency Plan .....	47
XIII. ENVIRONMENTAL JUSTICE (EJ) .....	48
A. Environmental Justice .....	48
XIV. REVIEW OF NDDOT DIRECTIVES .....	48
A. Directives .....	48
XV. EXHIBITS .....	48
EXHIBIT A.....	49
NDDOT Organization Chart.....	49
EXHIBIT B.....	51
NDDOT Civil Rights Division Organizational Chart .....	51
EXHIBIT C .....	52
External Complaints of Discrimination Process, Form, Instructions .....	52
EXHIBIT D .....	58
Complainant Consent/Release and .....	58
Notice About Investigatory Uses of Personal Information .....	58
EXHIBIT E.....	60
External Complaints of Discrimination Log .....	60
EXHIBIT F .....	62
Transit Title VI – List of Investigations, Lawsuits, and Complaints .....	62

EXHIBIT G ..... 64  
NDDOT Limited English Proficiency Plan ..... 64  
EXHIBIT H ..... 74  
Title VI and Related Nondiscrimination Authorities ..... 74  
EXHIBIT I ..... 76  
Request For Reasonable Accommodations ..... 76  
EXHIBIT J ..... 79  
Definition of Terms ..... 79

## I. INTRODUCTION

The North Dakota Department of Transportation (NDDOT) is a recipient of federal financial assistance. Title VI of the Civil Rights Act of 1964 requires recipients to comply with various nondiscrimination laws and regulations. Title VI of the Civil Rights Act of 1964 bars discrimination against anyone in the United States because of race, color, or national origin by any agency receiving federal funds.

The broader application of nondiscrimination law is found in other statutes, regulations, and Executive Orders which are detailed in this Title VI/Nondiscrimination and Americans with Disabilities Act (ADA) Program. The Federal-Aid Highway Act of 1973 added the requirement that there be no discrimination based on sex. Age was added in 1975 under the Age Discrimination Act. Disability was added through Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990.

Additionally, the Civil Rights Restoration Act of 1987 defined “program” to make clear that discrimination is prohibited throughout an entire agency if any part of the agency receives federal financial assistance. Thus, sub recipients are required to comply with Title VI and related nondiscrimination laws and regulations.

Title VI was further defined in 1994, Executive Order 12898 – Environmental Justice (EJ), directed federal agencies to identify and address the effects of all programs, policies, and activities on “minority populations and low-income populations.”

In 2000, Executive Order 13166 – Limited English Proficiency (LEP), was also signed into effect requiring federal agencies to assess and address the needs of otherwise eligible limited English proficient persons seeking access to the programs and activities of recipients of federal financial assistance.

Title VI regulations are for the protection of the public in regard to NDDOT’s activities and effects. NDDOT is the primary recipient of federal financial assistance. Sub recipients may include contractors, subcontractors, suppliers, consultants, cities, local governments, transit agencies, or any other entity receiving funds directly from NDDOT.

NDDOT is required to protect the public interest by developing a Title VI/Nondiscrimination and ADA Program for their benefit. Title VI Assurances are the foundation of our commitment to nondiscrimination. This Title VI/Nondiscrimination and ADA Program implementation plan identifies the implementation, compliance, and enforcement policies and procedures NDDOT has developed to ensure compliance with Title VI at all levels.

Title VI and Related Nondiscrimination Authorities are listed in Exhibit H. A Definition of Terms is found in Exhibit J.

## II. TITLE VI/NONDISCRIMINATION AND ADA POLICY STATEMENT

### NORTH DAKOTA DEPARTMENT OF TRANSPORTATION CIVIL RIGHTS DIVISION

Policy 1-1 Title VI/Nondiscrimination and  
Americans with Disabilities Act (ADA)

Original Date: July 11, 2011  
Revised: March 3, 2016

### TITLE VI/NONDISCRIMINATION AND ADA POLICY STATEMENT

Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, and national origin. Specifically, 42 USC 2000d states that "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." In addition to Title VI, there are other Nondiscrimination statutes which include: Section 162(a) of the Federal-Aid Highway Act of 1973 (23 USC 324) (sex), Age Discrimination Act of 1975 (age), and Section 504 of the Rehabilitation Act of 1973/ADA of 1990 (disability). Taken together, these requirements define an over-arching Title VI/Nondiscrimination and ADA Program. Title VI and the additional Nondiscrimination requirements are applicable to programs receiving federal financial assistance due to the Civil Rights Restoration Act of 1987.

There are two Presidential Executive Orders that place further emphasis upon the Title VI protections of race and national origin. Executive Order 12898 ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations. Executive Order 13166 directs recipients of Federal financial assistance that to ensure compliance with Title VI, they must take reasonable steps to ensure that limited English proficiency persons have meaningful access to their programs.

I, as Director of the North Dakota Department of Transportation, am personally committed to and support taking all steps to ensure that no person or groups of persons shall, on the grounds of race, color, national origin, sex, age, disability, limited English proficiency, or income status, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any and all programs, services, or activities administered by NDDOT, its recipients, sub recipients, and contractors.

The NDDOT Civil Rights Division Director is appointed as the Title VI Liaison Officer and ADA Coordinator and is granted the authority to develop, administer, and monitor the Title VI/Nondiscrimination and ADA Program as promulgated.

Further, I sub-delegate and charge the Division Directors and District Engineers with the responsibilities to ensure compliance with Title VI/Nondiscrimination and ADA Program requirements in their respective program areas.

Anyone who believes that he or she has been discriminated against should contact Ramona Bernard, NDDOT Title VI Liaison Officer and ADA Coordinator, NDDOT, 608 E. Boulevard Ave., Bismarck, ND at 701-328-2576. TTY users may call Relay North Dakota at 711 or 1-800-366-6888 (toll free).



\_\_\_\_\_  
Grant Levi, P.E., Director  
North Dakota Department of Transportation

\_\_\_\_\_  
3/4/16  
Date

### **III. STANDARD USDOT TITLE VI ASSURANCES**

The North Dakota Department of Transportation has signed and implemented the U.S. Department of Transportation Standard Title VI Assurances and Non-Discrimination Provisions according to the USDOT Order 1050.2A.

**The United States Department of Transportation (USDOT)**

**Standard Title VI/Non-Discrimination Assurances**

**DOT Order No. 1050.2A**

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

**Statutory/Regulatory Authorities**

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

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

**General Assurances**

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

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

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

**Specific Assurances**

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

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

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

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

By signing this ASSURANCE, the North Dakota Department of Transportation also agrees to comply (and require any sub-recipients, sub-grantees, contractors, successors, transferees, and/or assignees to comply) with all applicable provisions governing the Federal Highway Administration's access to records, accounts, documents, information, facilities, and staff. You also recognize that you must comply with any program or compliance reviews, and/or

complaint investigations conducted by the Federal Highway Administration. You must keep records, reports, and submit the material for review upon request to the Federal Highway Administration, or its designee in a timely, complete, and accurate way. Additionally, you must comply with all other reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.

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

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

By Grant Levi  
Grant Levi, P.E., Director

DATED 2/4/15

**NORTH DAKOTA DEPARTMENT OF TRANSPORTATION  
APPENDIX A OF THE TITLE VI ASSURANCES**

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

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

A

**NORTH DAKOTA DEPARTMENT OF TRANSPORTATION  
APPENDIX B OF THE TITLE VI ASSURANCES**

CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY

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

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

(HABENDUM CLAUSE)

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

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

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

B

**NORTH DAKOTA DEPARTMENT OF TRANSPORTATION  
APPENDIX C OF THE TITLE VI ASSURANCES**

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

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by NDDOT pursuant to the provisions of Assurance 7(a):

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

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

**NORTH DAKOTA DEPARTMENT OF TRANSPORTATION  
APPENDIX D OF THE TITLE VI ASSURANCES**

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

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

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

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

**NORTH DAKOTA DEPARTMENT OF TRANSPORTATION  
APPENDIX E OF THE TITLE VI ASSURANCES**

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

**Pertinent Non-Discrimination Authorities:**

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

E

## IV. ORGANIZATION AND STAFFING

### A. Civil Rights Division Director (CRDD)

The Director of NDDOT established a Civil Rights Division with a Division Director and sufficient staffing to effectively administer its civil rights programs. The CRDD reports to the Director of the Office of Operations. The Director of the Office of Operations reports directly to the Deputy Director of Engineering, who reports directly to the Director of NDDOT. The CRDD has direct access to the Director of NDDOT. See Exhibit A.

The Civil Rights Division is staffed by a CRDD and three Civil Rights Program Administrators for the following programs: Disadvantaged Business Enterprise (DBE), On-the-Job Training (OJT), DBE/On-the Job Training Supportive Services, Contractor Compliance, Labor Compliance, Title VII, and Title VI/Nondiscrimination and ADA. The Civil Rights Division serves as the focal point for equal opportunity compliance by Divisions and Districts statewide. See Exhibit B.

As the chief civil rights administrator for NDDOT, the CRDD was appointed as the Title VI Liaison Officer and ADA Coordinator and provides the NDDOT with the administrative direction necessary to ensure that NDDOT policies and procedures relating to the Title VI/Nondiscrimination and ADA Program are implemented and that its established goals are appropriately attained.

The CRDD is granted the authority to develop, administer, and monitor the Title VI/Nondiscrimination and ADA Program, and also monitors other NDDOT programs, activities, and services for all funding sources including:

1. Provide technical assistance, guidance, and advice to all levels of NDDOT management on the Title VI/Nondiscrimination and ADA Program.
2. Develop and implement procedures for the prompt processing and resolution of External Complaints of Discrimination.
3. Review findings and recommendations of annual division and district and sub recipient Title VI/Nondiscrimination and ADA Program reviews to ensure compliance with 23 CFR 200.
4. The CRDD is fully involved in NDDOT's budget process to ensure that NDDOT has an earmarked budget and appropriation for civil rights enforcement. The CRDD has authority over the funds received for salaries, office resources, equipment, and Title VI enforcement.
5. The CRDD will be responsible for coordination and preparation of the Title VI/Nondiscrimination and ADA Program Implementation Plan along with a Goals and Accomplishment Report that is submitted annually to FHWA.

### B. Title VI Program Administrator

The Title VI Program Administrator's responsibilities include the following:

1. The Title VI Program Administrator, under the direct supervision of the CRDD, will be responsible for the day-to-day administration of the Title VI/Nondiscrimination and ADA Program including:
  - a) Write the Title VI/Nondiscrimination and ADA Program Implementation Plan and the Goals and Accomplishments Report for submission to FHWA by October 1, annually.
  - b) Upon approval by the Federal Highway Administration (FHWA), ensure the dissemination of the Title VI/Nondiscrimination and ADA Program implementation plan to executive

management, Division Directors, District Engineers, Title VI Specialists, sub recipients, consultants, and stakeholders.

- c) Assists CRDD process External Complaints of Discrimination.
- d) Process Requests for Reasonable Accommodations.
- e) Develop and conduct training for Title VI Specialists, NDDOT employees, sub recipients, and stakeholders.
- f) Develop, coordinate, and review materials for dissemination to the public.
- g) Coordinates, monitors, and updates provider services for telephonic interpreters, sign language interpreters, and written translation of materials.
- h) Provide technical assistance and guidance on program requirements to CRDD, Title VI Specialists, sub recipients, and stakeholders.
- i) Conduct annual reviews of divisions and districts. Write reports including findings, recommendations, and if necessary, corrective actions taken or planned for each review.
- j) Provide guidance in conducting sub recipient reviews to assure compliance with the Title VI/Nondiscrimination and ADA Program requirements.
- k) Maintain and update Title VI/Nondiscrimination and ADA Program forms, sub recipient templates, and post to the webpages.
- l) Maintains the Title VI/Nondiscrimination and ADA Program procedures manual.
- m) Appointed as the Title VI Specialist for Civil Rights Division.

### **C. Title VI Specialists**

Title VI Specialists in all of the divisions and districts were appointed to assist in the development and implementation of the NDDOT's Title VI responsibilities. The Department's Division Directors and District Engineers selected one or more Title VI Specialists for each division and district. The individuals selected have responsibilities in their current positions in the divisions and districts, therefore adequate time is being made available for the individuals to carry out the additional Title VI responsibilities.

Small divisions may share a Title VI Specialist with another division. However, there are certain Title VI responsibilities that cannot be handled by one specialist covering both divisions due to lack of detailed knowledge of the other division. Each division will be responsible for providing updated information, annually, on individual division goals and accomplishments. Divisions must separately prepare for their Title VI Annual Review.

Division and District Title VI Specialist's responsibilities include the following:

1. Assist the CRDD and Title VI Program Administrator to ensure Title VI, ADA, LEP, and EJ compliance in all of NDDOT's programs, services, and activities including:
2. Prepare and submit annual review information for their division or district program area including:
  - a) Set of questions/answers

- b) Process Review Reports
  - c) Title VI Responsibilities
  - d) Goals with Accomplishments for the past year
  - e) Goals for the coming year
  - f) Sub Recipient review reports
3. Communicate to their respective Division Directors and District Engineers all deficiencies found in the program and promote new concepts to the program.
  4. Receive and report External Complaints of Discrimination to the CRDD for processing.
  5. Report concerns of discrimination issues to the CRDD for guidance.
  6. Collect statistical data and prepare reports necessary to evaluate the effectiveness of compliance with Title VI ADA, LEP, and EJ requirements within their division or district.
  7. Annually conduct pre-award and post-award Title VI reviews of sub recipients.
  8. Title VI Specialist's monitor the progress of the Process Reviews for their division or district to ensure timely completion for their Title VI Annual Review.
  9. Coordinate Title VI awareness training for respective division and district staff members on the Title VI/Nondiscrimination and ADA Program requirements including:
    - a) Include a Title VI/Nondiscrimination and/or Request for Reasonable Accommodations statements in materials advertised or disseminated to the public.
    - b) Collection of demographic data to evaluate effectiveness of compliance with Title VI requirements; analyze demographic data
    - c) Review procedures, guidelines, directives, manuals for Title VI provisions.
    - d) Conducting and writing process reviews.
    - e) Review/monitor contracts and consultant agreements to ensure Appendix A and E of the Title VI Assurances are included, where appropriate.
    - f) Maintain the current telephonic interpreter services poster in all public areas of all NDDOT buildings including division's outlying areas and branch offices.
    - g) Maintain the current Title VI/Nondiscrimination and ADA Program Policy Statement with External Complaints of Discrimination forms, instructions, and process in all public areas of all NDDOT buildings including division's outlying areas and branch offices.

**D. Title VI Program Area Division Directors and District Engineers**

Division Directors and District Engineers responsibilities include the following:

1. Ensure compliance with Title VI/Nondiscrimination and ADA Program requirements in their respective program areas.

2. Maintain knowledge of and adhere to NDDOT's Title VI/Nondiscrimination and ADA Program.
3. Assure prompt reporting, processing, and disposition of Title VI/Nondiscrimination and ADA issues or complaints in their respective program areas and coordinate with the CRDD.
4. Support and assist the Title VI Specialists in their involvement in the program.
5. Assure that practices and procedures involving all programs and activities within their area of responsibility are applied uniformly and equitably in conformance with Title VI/Nondiscrimination and ADA regulations.

## **V. PROGRAM AREA REVIEW PROCEDURES**

NDDOT monitors Title VI compliance by conducting program area reviews. NDDOT has developed a process to conduct Title VI reviews of program areas to determine the effectiveness of program activities. If trends or patterns of discrimination are identified, actions will be taken to correct the violations. These may be identified through reoccurring activities, practices, or similar complaints.

Program area reviews are conducted annually for all pertinent program areas. Pertinent program areas intersect with Title VI, LEP, or EJ. All of NDDOT Divisions and Districts meet this criterion. There are no pre-grant or post-grant approval reviews for NDDOT Divisions and Districts.

Title VI Specialists are required to schedule their division or district Title VI Annual Review by April of each year. Title VI Annual Reviews are conducted during the months of June and July with the Title VI Program Administrator.

Title VI Specialists are required to gather the answers from division and district staff for a set of questions about public access to Title VI information such as the External Complaints of Discrimination process and form with instructions, and ADA information, etc.; interactions with limited English proficiency (LEP) individuals; coordination with tribal governments; public outreach/involvement including women, minorities, LEP, low-income populations; compliance with ADA; contracts and agreements; and employee Title VI awareness and training; and other related information not included in their process reviews.

NDDOT developed a schedule to conduct process reviews for all of NDDOT processes within three years. The schedule lists all division's and district's processes and the year of review. The Title VI Specialist monitors the progress of the process reviews for their division or district to ensure timely completion and submission to Civil Rights for inclusion in the annual Goals and Accomplishments Report.

Process reviews are conducted by division and district staff and reduced to writing in the form of a Process Review Report. The report will identify the date(s) the review was conducted and the name(s) of reviewer(s) who conducted the review. The report states the purpose of the process, a summary of the steps involved, and a list of the project related products. Project related products must be sampled such as file reviews, public participation documentation, environmental document reviews, contracts and/or subcontracts, etc., and filed with the Process Review Report for future reference. The review of the project related data should reflect if the process is being followed and working effectively or if changes could improve the process. If areas of discriminatory practices or areas of concern are identified, the report must state how the discriminatory practice or concern will be corrected and a date when the revisions will be completed. Additionally, the report will identify the name(s) of person(s) who wrote the process review report and date, and the Division Director's or District Engineer's signature along with the date reviewed and signed.

The Title VI Annual Review is conducted by the Title VI Program Administrator. The Title VI Specialist

must submit the answers to the set of questions and process review reports to the Title VI Program Administrator to review ten (10) days prior to the scheduled review. The Program Administrator may request additional information or clarification of the submitted documents.

The annual reviews are held at NDDOT Central Office, via VNDOT, telephone conference, or on-site in the Division or District with the Title VI Specialist. The Division Director or District Engineer may attend and invite other staff as they determine appropriate. The supporting documentation is available for inspection at the reviews. The set of questions with answers is discussed along with the Process Review Reports, and all supporting documentation gathered for the review. Supporting documentation should substantiate the answers to the set of questions such as notices meeting required timeframes, easy access to Title VI information, processing of complaints within required timelines, etc. There is discussion on other questions and concerns that arise including the effectiveness of program activities.

The Title VI Program Administrator prepares a follow-up report for the Division Director or District Engineer including findings and recommendations. If any areas of discriminatory practices and/or areas of concern are identified, recommendations are stated along with a date to complete corrective action.

The following information describes the location of program functions within NDDOT and identifies responsibilities and processes for the divisions and districts.

#### **A. Audit Services Division**

Audit Services Division addresses Title VI compliance matters relating to the completion of internal and external audit projects.

##### **1. Title VI Responsibilities**

- a) The Audit Services Division's primary responsibilities include performing internal and external audits of operations affecting the NDDOT. Internal audits include reviews of internal department operations, annual reviews of physical inventory of NDDOT fixed assets and inventoried materials, and other special investigations that may be requested by management. External audits include reviews of motor carrier programs; consultant engineers indirect cost rates, railroad and utility projects, contracts or other special reviews that may be requested.

#### **B. Bridge Division**

Bridge Division consists of three sections as follows: preliminary engineering and hydraulics, design, and structural management. These sections work together to fulfill all responsibilities of the Division under the direction of the Office of Project Development. Bridge Division's primary responsibilities include the development of project concept reports, hydraulic reports, and environmental documents; design and preparation of plans for the construction and rehabilitation of bridges and drainage structures on the state and federal highway system; inspection, rating, and inventory of bridges on the city, county, state, and federal system; lighting, signal, and high mast foundation design and plan preparation; design and plan preparation of overhead and dynamic message sign structures; drainage investigations; issuance of drainage permits on the city, county, state, and federal system; updating of the Structural Design section and the Hydraulic Studies and Drainage Design sections of the NDDOT Design Manual; and providing technical guidance to districts and consultants. The preliminary engineering and hydraulics section is the only section within Bridge Division that is involved with the public as it relates to Title VI.

##### **1. Title VI Responsibilities**

The preliminary engineering and hydraulics section encourages participation by EJ, LEP, and ADA related populations for all proposed projects through both environmental documentation

and public involvement. Full consideration is given to all persons, regardless of race, color, sex, age, National origin, disability, limited English proficiency, or income status.

a) Environmental Documentation

(1) All federal aid projects require environmental clearance. Environmental documents are used to help obtain this clearance and are addressed through one of three main documents: Environmental Impact Statement (EIS), Categorical Exclusion, or an Environmental Assessment (EA). The type of document used for a project is dependent on the project complexity and potential social, economic, and environmental impacts. The draft project concept report is often the basis for determining the need for environmental documentation and may develop into an EIS or EA upon further study. Based on comments received through solicitation of views and the location of the project, the need and level of public input is determined. Any comments or concerns from all public meetings held are included in the final document. A more detailed description of the NDDOT environmental documentation process is contained within Chapter II, Section 5 of the NDDOT Design Manual.

b) Public Involvement

(1) To ensure decisions are made in the best overall public interest, full consideration is given to all possible adverse economic, social, and environmental effects relating to any proposed project. Public involvement begins in the planning phase and ends after the construction phase. It is intended to assist in the understanding of the proposed project. It is also a tool to encourage input and provides the decision-makers valuable information to be considered in the process. The scope of proposed projects are made known to other jurisdictions and government agencies through solicitation of views letters. This provides an opportunity to comment on the proposed project's impacts determined during the environmental documentation process. In addition, public meetings are held to encourage participation by the public. Citizen and technical advisory groups are also established on complex projects to obtain early public as well as expert involvement and input for proposed projects. The public involvement process is described in more detail within Chapter II, Section 4 of the NDDOT Design Manual.

## C. Civil Rights Division

The Civil Rights Division is comprised of seven programs as follows: Disadvantaged Business Enterprise (DBE), On-the-Job Training (OJT), DBE/On-the-Job Training Supportive Services, Contractor Compliance, Labor Compliance, Title VII/Internal Equal Employment Opportunity, and Title VI/Nondiscrimination and ADA Programs.

### 1. Title VI Responsibilities

a) Title VI/Nondiscrimination and ADA Program

The Civil Rights Division ensures compliance with Title VI of the Civil Rights Act of 1964, related nondiscrimination statutes including Section 504/ADA. NDDOT gives employees, members of the general public, and the FHWA a consistent and easy to understand "roadmap" of the NDDOT's Title VI/Nondiscrimination and ADA Program implementation plan.

(1) The implementation plan is NDDOT's process document outlining our Title VI/Nondiscrimination and ADA Program and includes the required key elements set out by FHWA; fourteen sections describe the requirements of the key elements. The implementation plan is submitted annually to FHWA for approval by October 1.

(a) The Title VI/Nondiscrimination and ADA Program has incorporated ADA/Section 504 program requirements into the implementation plan sections.

b) ADA Transition Plan

Managing and implementing the NDDOT ADA Transition Plan requires a multidisciplinary approach including project development, planning, technical support, and oversight. The CRDD manages these responsibilities with support from multidisciplinary support persons.

- (1) The NDDOT ADA Transition Plan is available on the NDDOT website on the "Title VI/Nondiscrimination and ADA Program" webpage at <http://www.dot.nd.gov/division/civilrights/titlevi.htm>

c) Disadvantaged Business Enterprise Program

- (1) DBE Program Administration Plan outlines and governs the processes, certifications, eligibility reviews, and, construction contract tracking to assure access to highway contracting opportunities for minorities and women-owned businesses. The DBE Program Administrative Process is submitted for approval to FHWA at any time revisions are required by internal process change or as federal rule requires.
- (2) DBE Goal Setting Methodology Process- triennial process that establishes the Department's DBE goal to assure access to highway contracting opportunities for minorities and women-owned businesses.
- (3) External Civil Rights Manual Update and Training – annually update and training project engineers and Department personnel to assure appropriate oversight of DBE and OJT Programs, activities and services.

d) On-The-Job Training Program

- (1) Training Goals – setting goals for the number of minority and females to develop skills and be trained in highway construction trades.
- (2) Trainee Position assignments - based on project dollars, contractors are assigned trainee positions for the purpose of training minorities and females in highway construction trades.

e) Supportive Services/OJT and DBE

- (1) Updates, monitors, and coordinates the DBE Supportive Services contracts to provide assistance to minorities and women owned business enterprises to access NDDOT programs, activities, and services. The reports are sent to FHWA only.
- (2) Updates, monitors, and coordinates the OJT Supportive Services in highway construction trade contracts to provide assistance to minorities and women owned business enterprises to access NDDOT programs, activities, and services. The reports are sent to FHWA only.
- (3) Provides Title VI training to supportive services contractors.

f) Contractor Compliance

- (1) Federal-aid Highway Construction Contractors EEO Report (FHWA 1391-1392)
  - (a) Any prime contractor or subcontractor with a federal-aid contract of \$10,000 or more must complete and submit one FHWA 1391 form with its company-wide employment data for a weeklong period in July annually to the NDDOT. A letter is sent out with instructions and the form to contractors, consultants and District employees three weeks prior to the reporting period. Forms are collected and the data is extracted and compiled into the FHWA 1392 form. Once the 1392 is completed it is signed by the Civil Rights Director and the Office of Operations Director and sent to Federal

Highway Administration along with a written letter explaining the data in comparison to the most recent census data available. The forms are a requirement of Federal Highway Administration for any state transportation department that receives federal funding.

(2) Contractor Compliance Review and Appeal

- (a) The Department is responsible for conducting 10-12 audits of contractors EEO/AA compliance. Any federal aid project bid out of the Department may be reviewed, including county or city projects. The Program Administrator works with project and division staff to choose contractors to be reviewed. The initial slot of candidates is reviewed by the Assistant District Engineers in order to determine if the project is ripe for review in the proper time frame (i.e. peak employment with at least three payrolls). The Program Administrator considers whether there have been complaints of discrimination or compliance issues, and creates a calendar of reviews. All parties are then notified, including the contractor, the project engineer, any consultant engineers and the city or county engineer, if it is a sub recipient project.
- (b) The Program Administrator reviews EEO policies, Affirmative Action plans, workforce utilization, and participation in OJT/DBE programs. Typically, the Program Administrator will conduct a desk audit, and then an Exit Conference is scheduled with the contractor and project and district staff. The Project Engineer inspects the jobsite for evidence of discrimination or segregation and interviews five workers, typically female, minorities or other workers who might be more vulnerable to mistreatment.
- (c) A recommendation is made by the Program Administrator to FHWA that the contractor be found in compliance or noncompliance. The decision on compliance or noncompliance is ultimately made by FHWA. If a contractor is found to be in noncompliance, the contractor is notified through a Show Cause letter and a conference is scheduled to discuss the compliance issues and formulate a corrective action plan. If the contractor cannot be brought into compliance, the matter is referred to the FHWA, who takes formal action against the contractor, up to and including disbarment. At this stage, the contractor is informed of avenues of appeal through the FHWA.

(3) Contractor Compliance Plan

- (a) The Contractor Compliance Plan includes rewrites of the procedures followed by contractors, determine workforce utilization and analysis, and procedures for the Compliance reviews. The Administrator also maintains the Department's Recruitment Tool Kit, which is a guide to minority and female recruitment in the state of North Dakota.

(4) Training

- (a) External Civil Rights (ECR) training contains a section on Contractor Compliance and is provided to NDDOT staff, consultants, cities, and counties annually.

g) Labor Compliance

(1) Davis-Bacon Complaint Process

- (a) The Civil Rights Division is responsible for taking Davis-Bacon complaints, through the Civil Rights Administrator responsible for labor compliance. The District offices typically are responsible for conducting an investigation of the complaint. The Department must make a determination whether the complaint has merit after an investigation. An aggrieved party may appeal to the United States Department of Labor.
- (2) Labor Compliance US DOL Wage Rates
- (a) The Program Administrator publishes wage rate changes to the website and ensures that appropriate wage rate decision are incorporated into bid proposals. If errors are contained in the wage decision, the Program Administrator works with the USDOL to rectify these errors.
  - (b) The Director of Operations considers requests from the Associated General Contractors each year that wage rates for non-union classifications be increased. If the Director concurs with the request, the Program Administrator prepares documents for the USDOL and forwards the request. For union driven classifications, the Program Administrator forwards union contracts to the USDOL and monitors whether a timely wage decision is published as a result of union contracts.
- (3) Training
- (a) The Department publishes the Davis-Bacon Wage and Payroll Requirements Handbook each year to assist contractors in completing Certified Payroll on federal-aid contracts.
  - (b) External Civil Rights (ECR) training contains a section on Labor Compliance and is provided to NDDOT staff and consultants, cities, and counties annually.
- h) Title VII Internal EEO
- (1) State Internal EEO Affirmative Action Plan-employment statistical data
    - (a) The Program Administrator is responsible for preparing the Department's five year Affirmative Action Plan and an Annual Update each year.
    - (b) The Civil Rights Administrator in charge of Title VII program reviews and interprets data.
  - (2) Title VII Internal EEO-Adverse Impact
    - (a) Civil Rights analyzes data on adverse impact in hiring, terminations, promotions, and training; and a determination is made whether adverse impact has occurred.
  - (3) Title VII Internal EEO-Hiring Goals
    - (a) The Program Administrator is responsible for conducting a market availability analysis from available US Census data and comparing this information to internal utilization figures. If underutilization is noted, the Department is responsible for setting hiring goals. These goals are set by the Civil Rights Division, and are approved by Executive management.
  - (4) Title VII Internal EEO-Plan Approval

- (a) The Plan is prepared by the Civil Rights Administrator and forwarded to the Director of the Civil Rights Division. Once the Director approves of the Plan, it is forwarded to FHWA. It is approved by FHWA, with or without changes. After any changes are incorporated, an approval letter is received by the Civil Rights Division, and the hiring goals are published to hiring managers and executive office. At this point, the entire plan is posted to the NDDOT website, so that it is available to members of the general public.

(5) Training

- (a) ECR training contains a section on Title VII Internal EEO and is provided to NDDOT staff, consultants, cities, and counties annually.

**D. Communications Division**

The Communications Division is responsible for disseminating information to NDDOT stakeholders- primarily to the public; to local governments, civic groups and other legislative bodies; and to NDDOT employees.

**1. Title VI Responsibilities**

a) DBE Program

- (1) A communications representative occasionally serves on the DBE Unified Certification Board when it is related to communications or marketing skills. The board reviews applicants for initial certification, annual eligibility review, removal of eligibility, withdrawal requests, expansion of services, and joint recommendations to the Agency Director.

- b) NDDOT informs the public about public meetings and public hearings; submits letters to the editor and newspaper columns; coordinates appearances on local TV, radio talk shows, and media interviews; writes articles on NDDOT's internal Web site; submits ads and notices in newspapers; prepares presentations to various civic and local government groups; sends news releases on key issues and events of public interest; drafts speeches; and produces videos. Additionally, the Communications Division has a Facebook page which allows for another avenue to disseminate information out to the public.
- c) Communications creates and maintains relationships with media across the state. With this type of relationship, NDDOT is better able to communicate both ongoing and time-sensitive messages to the public through the media including use of the Advocacy Distribution List.
- d) The multi-media section develops videos for public hearings, public meetings, employee orientations, and other presentations including incorporating language accommodations on request.

**E. Construction Services Division**

The Construction Services Division administers construction contracts. The division is responsible for highway construction bid openings, contracts, bonds, and contract payments. The division provides services in contractor pre-qualifications, construction scheduling, project staffing, engineering reviews, contractor claims, construction records, DBE program, and other various services. The division also provides technical support for the Construction Automated Records System (CARS) and updates road construction conditions map that affect the traveling public during the construction season on NDDOT's external website.

**1. Title VI Responsibilities**

a) Disadvantaged Business Enterprise (DBE) Program

- (1) The Construction Services Division reviews many apparent low bidders bid differentials, as part of the good faith efforts process, after multiple bid openings. This type of review occurs on projects with Race-Conscious goals, where the goal has not been met. A Construction Services Division staff member serves on the DBE Participation Review Committee which makes recommendations to the Agency Director to award or not to award, on all federally funded projects with a race conscious goal that has not been met.
  - (2) Construction Services Division staff members serve on the DBE Unified Certification Board which reviews applicants for initial certification, annual eligibility review, removal of eligibility, withdrawal requests, expansion of services, joint ventures, review third party challenges, conduct oral interviews, and make recommendations to the Agency Director.
- b) Project Advertising
- (1) The Construction Services Division complies with the North Dakota Century Code, Section 24-02-17, that requires bids for construction work or improvement that exceeds \$20,000, be advertised once by publication at least three weeks prior to the date of the bid opening. The advertisement includes contact information to request reasonable accommodations.
- c) Notice to Bidders
- (1) The division sent out electronic "Notice to Bidders" to inform contractors, subcontractors, suppliers, and other interested parties as to the time, location, and projects to be bid for all bid openings. The Bidders Proposal includes Appendix A and E of the Title VI Assurances.
- d) Addendums
- (1) The division is routinely faced with many revisions and clarifications. The information is posted to the NDDOT website prior to the bid openings. A prebid question and answer forum is developed/available on an as needed basis.
- e) Prequalification
- (1) Contractors must be prequalified to bid on NDDOT projects. The division publishes the list of pre-qualified contractors annually on the website. Contact information is available to those needing accommodations. Prequalification is open to all.
- f) Bid Opening Process
- (1) Bidding procedures for federally-assisted highway construction projects are conducted in a nondiscriminatory manner and are in compliance with the Civil Rights Act of 1964. The NDDOT receives bids through an electronic online system. All of the bid results are then posted on the NDDOT website after the bid openings. Additionally, the NDDOT prints and distributes the bid results to those attending the bid opening in person.
- g) Award of Contract
- (1) The award of contracts, if made, will be to the lowest responsible bidder whose proposal complies with the requirements specified. The awards will be made within 30 days after the bid opening, unless an extension is agreed upon by both parties. All good faith efforts and DBE participation, are reviewed prior to award for both Race-Neutral and Race-Conscious projects.
- h) Subcontracts
- (1) Contractors participating in highway construction contracts for NDDOT may not discriminate in their selection and retention of subcontractors. Required Title VI Contract Provisions (U. S. Department of Transportation, Title 49, Code of Federal Regulations,

Part 21) are incorporated in all federal-aid contracts by the insertion of the U. S. Department of Transportation Form FHWA 1273.

- (2) The contractor shall not subcontract more than seventy percent of the work on any project. The contractor shall not transfer, convey, or otherwise dispose of his or her right, title, or interest therein to any other person, firm, or corporation without the written consent of the NDDOT in accordance with the NDDOT Standard Specifications for Road and Bridge Construction, Section 104.
- (3) The Title VI responsibilities contained in the contract are also attached and made a part of all subcontracts. This attachment is designed to further the provision of equal employment opportunity and nondiscrimination to all persons without regard to their race, color, sex, age, national origin, disability, limited English proficiency, or income status, and to promote the full realization of equal opportunity through a positive, continuous program.

i) Records

- (1) The division is responsible for all initial highway project record administration. Project related records are maintained by the division and are stored in the NDDOT's document management system FileNet.

j) Engineering Special Forces (Pool)

- (1) The division is responsible for administration of the "pool." This includes the recruitment and retention of entry level engineers and engineering technicians that provide support to the engineering divisions and districts. The division works closely with the Human Resources Division on recruitment, selection, and hiring rules and regulations.

## **F. Design Division**

The Design Division's primary responsibilities are to develop environmental documents, hold public meetings and public involvement, design plans and specifications for construction projects on the state and federal highway system; and obtain federal approval; coordinate and conduct all aerial photographs and surveys; coordinate utility relocations; prepare right-of-way plats; maintain the Computer Assisted Drafting and Design (CADD) Program; write and update the Design Manual and Standard Drawings, and the ADA Transition Plan for NDDOT public right-of-way.

### **1. Title VI Responsibilities**

a) DBE Estimates

- (1) Calculate the amount of work possible on construction projects related to DBE participation. This information is forwarded to the Civil Rights Division for DBE goal setting on projects.

b) ADA Accessibility

- (1) The Americans with Disabilities Act (ADA) of 1990 is a civil rights statute that prohibits discrimination against people with disabilities. Designing and constructing pedestrian facilities within the public right-of-way that are not usable by people with disabilities may constitute discrimination.

c) ADA Transition Plan

- (1) ADA accessibility items within the Public Rights of Way are described within the NDDOT ADA Transition Plan, available on the NDDOT website on the "Title VI and Nondiscrimination Program/ADA" webpage at: <http://www.dot.nd.gov/divisions/civilrights/titlevi.htm> The Design Division implements,

monitors and updates Section 2 – “Public Rights of Way” of the NDDOT ADA Transition Plan.

d) Environmental Justice

(1) Environmental justice is a primary element of the environmental documentation process. There are three fundamental environmental justice principles:

- (a) To avoid, minimize, or mitigate disproportionately high and adverse human health and environmental effects, including social and economic effects, on minority populations and low-income populations.
- (b) To ensure the full and fair participation by all potentially affected communities in the transportation decision-making process.
- (c) To prevent the denial of, reduction in, or significant delay in the receipt of benefits by minority and low-income populations.

(2) Environmental concerns are addressed through one of three main documents: Environmental Impact Statement, Categorical Exclusion, or an Environmental Assessment. The type of document used for a project is dependent on the project complexity and expected social, economic, and environmental impacts. A more detailed description of the NDDOT environmental documentation process is contained within Chapter II, Section 2 “Environmental Documentation” of the NDDOT Design Manual.

- (a) The NDDOT environmental documentation process contains environmental justice measures such as public involvement/meetings, social impacts, economic impacts, and low-income and minority living areas impacts.
- (b) NDDOT reviews alternatives within the environmental document to ascertain the effects and impacts on minority groups and low-income neighborhoods.
- (c) The normal procedures begin with land-use studies, social and economic studies, public hearing reactions, environmental statements, and associated feedback. The areas affected are given opportunities to learn and comment on possible alternatives. Minority groups are given consideration during environmental studies by land-use studies, right-of-way investigations, and social and economic studies. Also, meetings are arranged with civic groups, local officials, and individuals who are concerned or involved.
- (d) If low income and/or minority living areas are potentially impacted from any alternate identified in the environmental document, further investigation to the impacts within the environmental document may include:
  - (1) The approximate number of persons by race and families affected by each alternative.
  - (2) The social and economic character of the area through which alternatives pass includes levels of income, whether the area is commercial, residential, or rural, and the approximate number of minority owners of businesses and residences in the area.
  - (3) The racial character of the people employed in the area affected by each alternative.

- (4) Racial and ethnic data may be used to identify possible problem areas and adverse impacts such as relocation difficulties, possible changes in minority income capabilities, mobility, or community cohesion. Assistance for the above-mentioned problems is available through relocation assistance procedures.
- (5) Input from minority groups for planning goals and need.
- (6) Other impacts contained in NDDOT environmental documents include, but are not limited to:
  - Land Use
  - Prime and Unique Farmlands
  - Social
  - Relocations
  - Economic
  - Considerations Relating to Pedestrians and Bicyclists
  - Air Quality
  - Noise
  - Water Quality
  - Wetlands
  - Water Body Modification, Wildlife and Invasive Plant Species
  - Floodplain
  - State Scenic Rivers
  - Threatened and Endangered Species
  - Cultural Resources
  - Hazardous Waste
  - Visual
  - Energy
  - Trees
  - Temporary Construction - The following items should be discussed:
    - Work Zone Traffic Control
    - Project Phasing
    - Detours and Alternate Routes
    - Air, Noise, and/or Water Quality Impacts
    - Adjacent Construction Projects
  - Low Income and Minority Living Areas
  - Section 4(f), 6(f) involvement

e) Public Involvement

- (1) A public meeting is any meeting which the public is encouraged to attend. The meeting will include information about the proposed project as well as time for the public to voice concerns or ask questions. A few types of public meetings are Public Information Meetings, Public Input Meetings, and Public Hearings. A more detailed description of the NDDOT public involvement process is contained within Chapter II, Section 3 "Public Involvement" of the NDDOT Design Manual.
- (2) NDDOT ensures all persons are entitled to participate in public meetings. This is done by advertising the meetings in papers circulated in the area affected by the project or study. Also, news releases are issued to local radio and television stations for coverage in the affected areas. Every effort is made to provide reasonable accommodations when requested if possible. The advertisements list contact persons for reasonable accommodation requests.

- (3) In instances where Indian lands are involved, notices of the public meetings are sent to the Tribal Councils.
- (4) Following public meetings, incoming comments are analyzed and consideration is given to all problems.
  - (a) Public meetings are held in locations reasonably convenient for minority and low income living areas participation. If distances are a factor, the meetings may be held in more than one location.
  - (b) The building in which the public meeting is held in shall be readily accessible to and usable by individuals with disabilities.
  - (c) Avoid holding meetings on Saturday, Sunday, or Wednesday nights, or to avoid conflicts with religious activities
  - (d) Public meetings are advertised in local newspapers and on radio and television stations for coverage in the affected areas. Information may also be sent, by direct mail, to individuals affected.
  - (e) Minorities are invited to attend public meetings through direct mailings to individuals, their organizations, and councils.
  - (f) Questions and objections are analyzed and consideration is given to problems on an equal basis, regardless of race, color, sex, age, national origin, disability, limited English proficiency, or income status.
  - (g) Information regarding relocation assistance requirements is discussed at public meetings.
  - (h) Every effort is made to provide reasonable accommodations when requested. The advertisements list the contact person for reasonable accommodation requests.
  - (i) Sufficient time is allotted to reasonably answer questions of persons attending the public meetings, and the personnel conducting the meeting shall stay for the entire time of the meeting.
  - (j) A public involvement report is prepared by the environmental document author.

## **G. Drivers License Division**

The Drivers License Division represents one-half of NDDOT's front-counter services where a driver's permit, license, renewal, or identification card can be obtained. The division maintains and processes driving records and crash reports, and collects reinstatement fees for suspension-related driving behavior. In addition to the Central Office located in Bismarck, the division provides service at twenty-seven fully automated drivers license sites for customer convenience. The sites are visited by more than a quarter of the state's population each year. The Drivers License Division is comprised of three sections: the Licensing Section, Driver Record Services Section, and Administrative Support Section.

### **1. Title VI Responsibilities**

Title VI Responsibilities are related to the testing and issuance of commercial and non-commercial driver permits, licenses, and renewals; identification cards, driving records, and reinstatement requirements.

- (a) The Licensing Section
  - (1) Implements the federal hazardous materials requirements of the USA PATRIOT Act and the commercial driver license requirements of the Commercial Motor Vehicle Safety Act and the Motor Carrier Safety Improvement Act.
  - (2) Implements identity, testing, and licensing requirements according to state statute.
- (b) The Driver Records Services Section
  - (1) Works with law enforcement, the court system, insurance companies, and employers pertaining to conviction and crash report data.
  - (2) Assists the general public in matters regarding driving records, suspensions, insurance information, reinstatement requirements, and driving privileges.
- (c) The Administrative Support Section
  - (1) Responsible for telephone coverage to handle incoming calls from the general public, courts, law enforcement, and staff.
  - (2) Responsible for opening the mail, receipting, scanning documents, routing, preparing written correspondence, vouchers, and depositing daily receipts.

## **H. Environmental and Transportation Services Division**

The Environmental and Transportation Services Division provides support and allied services necessary to carry out the project development activities within North Dakota Department of Transportation (NDDOT). Activities are coordinated with road or structures design units to assure that projects are designed in a timely and cost effective manner while maintaining appropriate sensitivity to environmental and cultural concerns and assuring that affected property owners are treated fairly in conformance with applicable state and federal laws and all applicable rules.

The Environmental and Transportation Services Division is made up of 5 sections; Environmental, Cultural Resources, Right-of-Way, Consultant Administrative Services (CAS), and Technical Services.

### **1. Title VI Responsibilities**

- a) DBE Program
  - (1) Several Environmental and Transportation Services Division staff members serve on the DBE Unified Certification Board which reviews applicants for initial certification, annual eligibility review, removal of eligibility, withdrawal requests, expansion of services, joint ventures, review third party challenges, conduct oral interviews, and make recommendations to the Agency Director.
- b) Environmental Section
  - (1) The Environmental Section is responsible for ensuring nondiscrimination when reviewing, preparing, writing, and applying for permits, wetland delineations, wetland mitigations, and Environmental Assessments (EA), Environmental Impact Statements (EIS), and Categorical Exclusions.
  - (2) Public Involvement
    - (a) The public is informed about environmental concerns at various times throughout the projects.
- c) Cultural Resources Section

- (1) The Cultural Resources Section is responsible for ensuring nondiscrimination when reviewing, preparing, and writing for cultural resource compliance, completing archaeological studies, and Tribal consultation.
- d) Right-of-Way Section
- (1) The Right-of-Way Section is responsible for ensuring nondiscrimination when reviewing, preparing, conducting, and writing for appraisals, appraisal review, relocation, right-of-way acquisition and payments, and mailboxes.
    - (a) Real Estate Appraisers
      - (1) The section seeks, on a continuing basis, qualified minority and female fee appraisers.
      - (2) Through contact with professional appraisal societies, the section maintains a listing of qualified fee appraisers.
      - (3) The section assures, on a continuing basis that selections for fee appraisers are made non discriminately, giving consideration to the following on the complexity of work to be undertaken and skills necessary to provide such services; the individual's experience in appraising the type of property involved; the availability of the appraiser to complete the assignment in the time allowed; and the location and conditions pertinent to the project.
      - (4) The section assures that standards and practices are uniformly applied to all undertakings.
    - (b) Negotiations
      - (1) Title VI assurance is made that everyone is treated equally and has received the amount of the approved valuation for the property. When necessary, because of language barriers, age, or other factors, a representative, interpreter, relative, or friend are used to aid the property owner in understanding NDDOT's proposed action.
    - (c) Relocation Assistance and Advisory Services
      - (1) Documentation is maintained of all relocation assistance activities showing no disparities in interviews to assure nondiscrimination in providing relocation assistance.
      - (2) Relocation services are provided by employees who are able to communicate with the relocatee. When necessary, because of language barriers, age, or other factors, a representative, interpreter, relative, or friend are used to aid the property owner in understanding NDDOT's proposed action.
- e) Consultant Administrative Services (CAS) Section
- (1) The CAS Section is responsible for acquiring consultants and ensuring nondiscrimination when reviewing, administering, preparing, and writing on non-construction contracts for preliminary and construction engineering, research, environmental and archaeological, and right-of-way services.
  - (2) This section utilizes the list of certified Disadvantaged Business Enterprises (DBE) for consultants, provided by the Civil Rights Division.
  - (3) Non-construction contracts developed by CAS Section are reviewed by Legal Division to ensure Appendix A and E of the Title VI Assurances are included.

- f) Technical Services Section
  - (1) The Technical Services Section is responsible for maintaining and developing standard specifications, supplemental specifications, and special provisions for road and bridge construction with the Specifications Committee. The section is also NDDOT's liaison with Tribal governments in developing and negotiating Tribal Employment Rights Ordinance (TERO) agreements for all NDDOT projects located on or partially on Indian Reservations as stated in the Executive Policy Manual II, 13-1.
  - (2) The section provides each newly certified DBE a courtesy copy of the Standard Specifications for Road and Bridge Construction.

## **I. Executive**

The Executive Division is responsible for NDDOT's five offices, which includes 20 Divisions and eight Districts. The five offices are Office of Business Support, Driver and Vehicle Services, and Engineering areas of Project Development, Operations, and Transportation Programs. The eight Districts serve geographical areas of the state: District offices are located in Bismarck, Devils Lake, Dickinson, Fargo, Grand Forks, Minot, Valley City, and Williston.

### **1. Title VI Responsibilities**

- a) Executive Office Policies
  - (1) The Executive Office oversees and directs the divisions and district policies. The policies are intended to define the roles and responsibilities of each division and district. In most instances, the procedures to accomplish these roles and responsibilities are to be included in the division manuals. There are exceptions in cases where a coordination of duties is needed between divisions or when the executive office institutes procedures for the divisions to follow. The manual is intended to provide guidance and consistency. It is not intended to be a contract. The Director may approve exceptions and make changes as necessary to accomplish the mission of the Department.
  - (2) Each division shall have an operating manual to provide the guidance required to accomplish the roles and responsibilities assigned. Divisions are not intended to set policy affecting other divisions, agencies, or the general public in their respective manuals without direction and approval from the appropriate office holder or deputy director.

## **J. Financial Management Division**

The Financial Management Division is responsible for NDDOT's accounting, fiscal reporting functions, budgeting, payroll, procurement, revenue forecasting, central supply, cash management, and the disposal of highway equipment and materials.

### **1. Title VI Responsibilities**

- a) DBE Program
  - (1) Two Financial Management Division staff members serve on the DBE Unified Certification Board which reviews applicants for initial certification, annual eligibility review, removal of eligibility, withdrawal requests, expansion of services, joint ventures, review third party challenges, conducts oral interviews, and make recommendations to the Agency Director.
  - (2) A Financial Management Division staff member serves on the DBE Participation Review Committee which makes recommendations to the Agency Director to award or not to award, on all federally funded projects.
- b) Procurement

- (1) The procurement section is responsible for all non-exempt procurement activities. Some divisions and districts have received specific delegated authority. Delegation varies between the divisions and districts dependent upon need and employee training levels. Authority is specific and unique to the certified individual within the division or district. Authority is not universal. The division and district delegated authority is documented and monitored by the Procurement Liaison.

The majority of purchases the Procurement section makes are state funded. When federal funding is involved, the known guidelines for that funding are followed. The Procurement Section currently includes non-discrimination statements in every formal procurement document.

- (2) Affirmative Action in bid document. The contractor will take affirmative action in complying with all Federal and State requirements concerning fair employment and employment of individuals with disabilities, and concerning the treatment of all employees without regard to discrimination by reason of race, color, religion, sex, national origin, or disability.
- (3) Assistance to Bidders with a Disability in bid document. Bidders with a disability that need an accommodation must contact the Procurement Officer prior to the deadline for receipt of bids so that reasonable accommodations can be made.
- (4) Compliance with Laws, Nondiscrimination and Affirmative Action in bid document. The contractor must, in performance of work under this contract, fully comply with all applicable federal, state or local laws, rules, regulations and policies, including those relating to nondiscrimination, affirmative action, accessibility and civil rights including Title VI of the Civil Rights Act of 1964. The contractor agrees to file all required reports on time, to make required payroll deductions, and to pay all taxes and premiums owed on time, including sales and use taxes and unemployment compensation and workers' compensation premiums. The contractor shall have and keep current at all times during the term of this contract all licenses and permits required by law.
- (5) Assistance to Offerors with a Disability in Request For Proposal (RFP) and Bid documents. Offerors with a disability that need an accommodation should contact the procurement officer prior to the deadline for receipt of proposals so that reasonable accommodation can be made. (This advisory is also in the pre-proposal conference and Best & Final sections.)
- (6) Offeror's Certification in RFP and Bid documents. By signature on the proposal, an offeror certifies that it complies with:
  - Appendix A and E of the Title VI Assurances;
  - North Dakota Administrative Code;
  - All applicable local, state, and federal laws, code, and regulations;
  - The applicable portion of the Federal Civil Rights Act of 1964;
  - The Equal Employment Opportunity Act and the regulations issued by the federal government;
  - The Americans with Disabilities Act of 1990 and the regulations issued by the federal government;
  - All terms, conditions, and requirements set forth in this RFP or Bid;
  - A condition that the proposal submitted was independently arrived at, without collusion;

- A condition that the offer will remain open and valid for the period indicated in this solicitation; and
- A condition that the firm and any individuals working on the contract do not have a possible conflict of interest (e.g. employed by the State of North Dakota).

If any offeror fails to comply with the provisions stated in this paragraph, the State reserves the right to reject the proposal, terminate the contract, or consider the contractor in default.

- (7) Incorporates Appendix A and E of the Title VI Assurances into all sealed bids and proposals.

## **K. Human Resources Division**

The Human Resources Division provides the following services for the department: recruitment and selection, employment records, performance management, workforce development, staffing and salary plans, payroll and benefits, position classifications and essential functions, employment law compliance, workplace investigations, wellness programs, personnel policies, employee recognition programs, and general information to public by telephone or in person.

### **1. Title VI Responsibilities**

The Title VI/Nondiscrimination and ADA Policy Statement poster is located in the Human Resources Division and on a bulletin board right outside of Human Resources Division office.

Human Resources Division follows department-wide policies and procedures in place for all non-engineering contracts and request for proposals.

#### a) Recruitment

- (1) The Department of Transportation advertises vacancies internally and externally at the same time and candidates are considered together. Advertisements were placed on DOT website, Job Service website, and State of ND website; major ND newspapers, trade magazines, various college websites, etc.
- (2) Career Fairs are attended throughout the state to keep NDDOT visible as a potential employer for full time and summer employment. Colleges attended include North Dakota State University, University of North Dakota, Bismarck State College, North Dakota State College of Science, United Tribes Technical College, Turtle Mountain Community College, University of Mary, South Dakota School of Mines & Technology, and University of Minnesota.
- (3) Scholarships are offered in the fields of civil engineering, civil technology, and construction engineering based on Department need and budget. Minorities and females are encouraged to apply and are given preference when awarding.
- (4) Information on NDDOT applicants, by race and sex, is determined for each EEO-4 category and is reported on an adverse impact analysis report each year.
- (5) All requests for application or employment accommodation were individually reviewed and appropriately accommodated.

#### b) Transportation and Civil Engineering (TRAC) & Roadways In Developing Elementary Students (RIDES) was moved to the Design Division.

#### c) Training

- (1) Training is provided for employees of the NDDOT on a wide variety of subjects. The type of training is identified by need from Division Directors and District Engineers, management, and employees.
  - (a) Information on NDDOT participants, by race and sex, is determined for each training session and is reported on an adverse impact analysis report each year.
- d) DBE Program
  - (1) One Human Resources Division staff member serves on the DBE Unified Certification Board which reviews applicants for initial certification, annual eligibility review, removal of eligibility, withdrawal requests, expansion of services, joint ventures, review third party challenges, conduct oral interviews, and make recommendations to the Agency Director.
- e) Workplace Investigation Program
  - (1) Workplace Investigation Process is set out in NDDOT Policy Number 20.2 Human Resources Division. This policy applies to employees and job applicants who file grievances or complaints with the NDDOT. Potential or alleged discrimination issues should be immediately brought to the attention of the Civil Rights Director. Other issues involving employees should be immediately brought to the attention of the Human Resources Director. Guidelines for Conducting a Workplace Investigation have been developed and are monitored and updated by the Civil Rights Division.

## **L. Information Technology Division**

Title VI compliance matters relating to technology-related activities, including the biennial Information Technology Plan; information systems maintenance, design, development, and project management; network and PC support; telecommunications; radio communications; Internet and Intranet Web development, including e-business applications; information processing, technology training, records management; photography; printing; mailing; and building security.

### **1. Title VI Responsibilities**

- a) The division staff is responsible for the continued maintenance and enhancement of over 200 business applications and the development of new applications needed to support state and federal requirements and NDDOT's objectives including Internet and Intranet web development, such as e-business applications including CARS and Map Sales.
- b) The division supports computer hardware and connectivity in eight district offices, 68 section offices, construction field offices, and 27 drivers license testing sites by providing support to resolve problems.
- c) Services provided directly to divisions and districts include mail list management and envelope and label printing, bulk printing and mailing, software support, project management and oversight, and training on new and updated software. Records Management requirements are researched and developed and the Central Office building security policies are implemented.
- d) NDDOT performs monthly accessibility testing of websites that it manages and funds. Any items developed for the websites by the NDDOT are tested prior to release.
- e) ADA accessibility items within communications are described within the NDDOT ADA Transition Plan, available on the NDDOT website on the "Title VI/Nondiscrimination and ADA Program" webpage at: <http://www.dot.nd.gov/divisions/civilrights/titlevi.htm> The Information Technology Division implements, monitors and updates Section 4 – "Communications" of the NDDOT ADA Transition Plan.

- f) DBE Program
  - (1) Several Information Technology Division staff members serve on the DBE Unified Certification Board which reviews applicants for initial certification, annual eligibility review, removal of eligibility, withdrawal requests, expansion of services, joint ventures, review third party challenges, conduct oral interviews, and make recommendations to the Agency Director.

## **M. Legal Division**

The Legal Division provides legal services and advice to NDDOT in all areas, with emphasis on pre-litigation issues; drivers license administration matters; contract development, negotiation, drafting, and administration assistance; review of non-construction and construction-related contract documents; risk management; legislation; and administrative rulemaking.

### **1. Title VI Responsibilities**

- a) Provide the department with legal advice, as necessary and appropriate, in matters relating to Title VI.
- b) Administrative Hearing Officers receive requests for reasonable accommodations for Administrative Hearings and process with guidance from Civil Rights Division.

## **N. Local Government Division**

The Local Government Division administers, coordinates, and allocates funds for county, urban, Transportation Alternatives Program, Metropolitan Planning Organizations (MPO), and transit state and federal-aid programs and projects. The division also provides a liaison between Federal Transit Administration (FTA), FHWA, county and city officials, and NDDOT divisions and districts during project development; assists local entities in preparing their projects for the bid openings; and coordinates the Emergency Relief Program on a statewide basis on behalf of NDDOT.

### **1. Title VI Responsibilities**

- a) Title VI responsibilities - FHWA
  - 1) The reviewing of sub recipients at the county, urban, and MPO level.
  - 2) Ensure public involvement for local projects is carried out as required by our operational guidelines.
  - 3) Ensure Appendix A and E of the Title VI Assurances is included in all applicable contracts.
  - 4) Calculate the amount of work possible on construction projects related to DBE participation on local projects (this information is forwarded to the Civil Rights Division for DBE goal setting on projects).
  - 5) Collect MPO Title VI plans once every 3 years.
- b) Title VI responsibilities - FTA
  - 1) Title VI requirements related to the Transit federal-aid program are reported directly to FTA.
  - 2) Collect, review, and approve sub recipient Title VI Plans once every 3 years.
  - 3) Each year the Transit Section will select a number of transit providers for a compliance review.
  - 4) ADA accessibility items within Transit are described within the NDDOT ADA Transition Plan, available on the NDDOT website on the "Title VI/Nondiscrimination and ADA Program" webpage at <http://www.dot.nd.gov/divisions/civilrights/titlevi.htm> The Local

Government Division implements, monitors and updates Section 5 – “Transit” of the NDDOT ADA Transition Plan.

## **O. Maintenance Division**

The Maintenance Division is responsible for NDDOT’s implementing of capital improvements of property and facilities; static traffic control devices; safety, and health; budgeting for maintenance operations, capital improvements, and equipment; maintenance specifications; the pavement preservation program; Roadway Weather Information Systems (RWIS); Intelligent Transportation Systems (ITS); load restriction and road condition reports; 511 Traveler information system; living snow fence program; trucking issues; aircraft pool; master equipment operator testing; non-project related right-of-way activities; and emergency response/incident management.

### **1. Title VI Responsibilities**

#### a) Static Traffic Control Devices

- (1) The division develops detailed sign layouts for the districts including internationally recognized symbol signs.
- (2) Administers the Tourism Signing Advisory Committee (TSAC) program, which includes an application process, recommendations, and formal agreement.

#### b) Facilities Management

- (1) Responsible for facilities management activities that include: capital improvements of NDDOT property and facilities, coordination of construction administration, budget, and visitor center/rest area operations. Provides assistance to districts in the maintenance and repair of NDDOT property, facilities, and visitor center/rest area operations to maintain ADA accessibility.
- (2) ADA accessibility items within the Building and Related Site Elements are described within the NDDOT ADA Transition Plan, available on the NDDOT website on the “Title VI and Nondiscrimination Program/ADA” webpage at:  
<http://www.dot.nd.gov/divisions/civilrights/titlevi.htm>. The Maintenance Division implements, monitors and updates Section 3 – “Building and Related Site Elements” of the NDDOT ADA Transition Plan.

#### c) DBE Program

- (1) Several Maintenance Division staff members serve on the DBE Unified Certification Board which reviews applicants for initial certification, annual eligibility review, removal of eligibility, withdrawal requests, expansion of services, joint ventures, review third party challenges, conduct oral interviews, and make recommendations to the Agency Director.

## **P. Materials and Research Division**

The Material and Research Division is responsible for all bituminous testing, locating and analyzing new aggregate sources, collecting and analyzing soil samples, testing laboratory, and NDDOT’s pavement design and research programs.

### **1. Title VI Responsibilities**

#### a) Gravel Prospecting

- (1) Locates and analyzes new aggregate sources. Negotiates gravel pit option agreements with private landowners. These sources are chosen strictly on location, quality, and quantity of the material.

#### b) Pavement Design And Research

- (1) Materials and Research contracts research with ND University System. The university is selected based on qualification.
  - (2) Evaluate potential research using the Research Advisory Committee. Research is selected based on management need.
- c) Testing Laboratory
- (1) Assists in the administration of the Technical Certification Program. This program provides training for NDDOT, contractors, and consultant personnel.

**Q. Motor Vehicle Division**

The Motor Vehicle Division administers all programs relating to the titling and registration of vehicles. The division regulates motor vehicle dealers, interstate motor carriers, mobility-impaired parking privileges, and intrastate household goods carriers. The division serves the public at a central office, thirteen privatized branch offices located throughout the state, and seven county treasurer offices. Branch offices located within the same building as NDDOT's drivers license testing sites are in Bismarck, Carson, Dickinson, Langdon, and Minot.

**1. Title VI Responsibilities**

- a) To provide registration and title services of vehicles.
- b) Regulation of motor vehicle dealers, interstate motor carriers, and intrastate household goods carriers.
- c) Issuance of mobility-impaired parking privileges.
- d) To provide access to services in person, by mail, by fax, by email, and through the Internet.
- e) Five of the branch offices also provide partial registration services to interstate motor carriers, who no longer need to conduct their transactions at the central office.
- f) Dealer enforcement inspectors meet with each new motor vehicle and used motor vehicle dealers each year, via regularly scheduled inspections.

Enforcement efforts from division staff, ensures dealer compliance and dealer relations. Language assistance is provided for all North Dakota Dealers. At present, we have several dealers who speak foreign languages.

- g) Provide Title VI training and technical assistance for all motor vehicle branch office staff. All branch office locations have access to telephonic interpreter services.

**R. Planning/Asset Management Division**

The Planning/Asset Management Division receives federal highway planning and research funds (SPR funds) to conduct a variety of rural and urban highway planning activities. Other activities performed include mapping and cartography, highway-rail grade crossings and signal programs, rail freight assistance programs, roadway data gathering (traffic counts and inventories), traffic operations, enterprise risk management, and the production of study reports and statistics.

**1. Title VI Responsibilities**

- a) The major Planning/Asset Management activities relating to the Title VI requirements are the production of the Long-Range Statewide Transportation Plan (TransAction III), Other State Plans (Freight Plan/Rail Plan), the administration of Transportation Planning Studies, and the management of various contracts.

## Statewide Transportation Plans

- (1) The Statewide Transportation Plan is developed approximately every five years. The other state plans are updated as needed. The plan provides broad strategic direction for collaborative transportation efforts across all modes, the public and private sectors, and governmental jurisdictions. The plans identify the state's mission, vision, goals and initiatives, and strategies for achieving a successful statewide transportation system.
  - (a) Advisory groups may be made up of state agencies, local government representatives, shippers, freight haulers, business leaders, Tribal representatives, and others are formed to make recommendations to the NDDOT Director for plan components. Meetings are conducted throughout the state to gather input from both transportation stakeholders and the public on ideas for improving our transportation system. Inputs from the advisory group, stakeholders, and the public culminate in developing the plan's strategic initiatives. These initiatives provide direction for improving the state's transportation system. The Director ultimately recommends the plan to the Governor for final approval.
  - (b) Protected groups may be identified using the North Dakota State Data Center and the state demographer. If protected groups are involved, these groups are notified through personal contacts in the given area using the department's advocacy distribution list. The advocacy distribution list will be used to disseminate information about public meetings or hearings held in the affected area or throughout the state. This advocacy distribution list includes, but is not limited to, contacts such as social service agencies, advocacy groups, and transportation service agencies throughout the state. News media is also utilized through advertisements and news releases giving pertinent information concerning transportation planning matters.
- (2) Transportation Planning Studies
  - (a) Transportation Planning Studies are done on a "by request" basis. These studies are typically conducted on roadways or corridors. Proposed transportation plans, including alternative location studies, are reviewed by the project manager to determine if protected groups (minority, low income, female, individuals with disabilities, and the elderly) are involved; and if so, those protected groups are identified as such.
  - (b) If applicable and appropriate, public meetings are held in areas where protected groups reside in the affected community as part of the transportation planning study. This allows discussion of the transportation planning activities or plan and receipt of input from low income populations, minorities, females, persons with Limited English Proficiency, and persons with disabilities for the further developing and processing of the activities or plan. Efforts are made to set the time and location of such meetings to be accommodating to those who might attend and to be appropriate with the proper phasing of the study activities.
  - (c) If protected groups are involved, these groups are identified and notified through personal contacts in the given area using the department's advocacy distribution list.
- (3) Consultant Agreements and Contracts
  - (a) Due to limited staff and time constraints, the division hires planning and engineering consultants on an as-needed basis to conduct various transportation studies ranging from spot location studies to development of long-range, statewide transportation plans.

- (b) The consultant administrative services (CAS) section of NDDOT's Environmental & Transportation Services Division maintains a list of consultants who are providing, or who might provide in the future, planning studies and services for NDDOT. The division supplements this list, depending on the type of expertise they are looking for.
  - (c) The Title VI Liaison Officer attempts to identify minority, female, and socially-economically disadvantaged-owned firms, and firms with significant minority and female employment, for inclusion on that list.
  - (d) Procedures for selecting consultants have been established and are set forth in NDDOT's Consultant Administration Services Manual.
  - (e) The Title VI requirements are incorporated in all agreements associated with transportation planning activities and studies.
- b) DBE Program
- (1) One Planning/Asset Management Division staff member serves on the DBE Unified Certification Board which reviews applicants for initial certification, annual eligibility review, removal of eligibility, withdrawal requests, expansion of services, joint ventures, review third party challenges, conduct oral interviews, and make recommendations to the Agency Director.

## **S. Programming Division**

The Programming Division receives federal highway programming and research funds (SPR funds) to conduct a variety of rural and urban highway programs. Other activities performed include traffic operations, preparation for bid openings, authorization of federal funds, and the production of scoping reports.

### **1. Title VI Responsibilities**

- a) The major programming activities relating to the Title VI requirements are the production of the Statewide Transportation Improvement Program (STIP) and the creation of Cost Participation & Maintenance agreements.

Statewide Transportation Improvement Program (STIP)

- (1) Each year, NDDOT prepares the STIP which is a four-year program of transportation improvements using federal highway and transit funds. Improvements include state and county highways, urban streets, roadway safety features, pedestrian facilities, and busing programs. During the draft phase of the STIP, the public is given an opportunity to view the document and provide comment by letter, email, or using the NDDOT website.

- (a) The programming section uses the department's advocacy distribution list to disseminate information about the STIP's public comment process throughout the state.

## **T. Safety Division**

The Safety Division is tasked with advancing roadway safety.

The Data Analysis Section is responsible for the collection, maintenance and analysis of crash data and ancillary data sources pertinent to roadway safety. The section conducts a variety of crash data analysis and is responsible to develop the annual *Crash Summary* which includes a comprehensive analysis of the traffic safety problems in the state.

The Safety Division administers programs that address unsafe driver and occupant behavior. Program areas include impaired driving, seat belt use, child passenger safety awareness, distracted driving, speed, motorcycle safety education, alcohol awareness activities (especially among the state's youth), and other areas as identified through data.

Grants are provided to local law enforcement agencies, community-based organizations, health care organizations, state agencies, and/or other entities to support statewide traffic safety programs.

#### **1. Title VI Responsibilities**

- a) Title VI responsibilities for the Safety Division includes compliance matters related to crash reporting.
- b) Administration of all National Highway Traffic Safety Administration (NHTSA) federal grant dollars.
- c) The development of the state's Highway Safety Plan, the Strategic Highway Safety Plan, and associated projects within the plans.

#### **U. State Fleet Services Division**

The State Fleet Services Division is responsible for managing, operating, maintaining, purchasing, and disposing of the state's licensed motor vehicles. The number of vehicles in the state fleet varies throughout the year from a low of approximately 3,300 to a peak of approximately 3,500, which is based on need, summer programs, and purchasing/disposal patterns. In addition, the division conducts National Safety Council defensive driving training for state employees that use the fleet, manages all insurance programs and the alcohol and controlled substance testing program for all state agency and ND University System Commercial Drivers License (CDL) drivers.

#### **1. Title VI Responsibilities**

- a) Purchasing
  - (1) The division uses the guidelines as set forth by the Office of Management and Budget State Purchasing Office for the procurement of all new vehicles to ensure a fair process of vendor award.
- b) Disposal
  - (1) North Dakota Century Code requires that all surplus equipment be sold by public auction. Therefore the division conducts several surplus vehicle auctions each year that are open to the public. The auctions are advertised on the NDDOT and NDGOV website, every county newspaper, several freely distributed shoppers throughout the state, farming magazines both in print and online, and through radio advertising. The Communications Division assists state fleet to ensure that as many people as possible are reached to give them the opportunity to come and purchase a surplus vehicle. The auctions are held at the Bismarck and Fargo districts and are ADA accessible.
- c) Transportation Needs for State Agencies/Universities
  - (1) The division provides vehicles for the transportation needs of all state agencies and universities. State Fleet keeps several ADA equipped vehicles in the inventory for checkout and/or permanent assignment and informs all of the government agencies and universities to request vehicles as needed so that all special transportation needs are met where possible.
- d) Defensive Driving Training

- (1) The division conducts the National Safety Council defensive driving training for all state employees that use fleet vehicles. The training is held in ADA accessible facilities throughout the state. Reasonable accommodations are made upon request.
- (2) Alcohol and Drug Testing for CDL Drivers
  - (a) The division contracts with a private testing company to manage the alcohol and drug testing program for all state agency drivers requiring a CDL driver's license according to the guidelines as outlined and required in the CFR Part §382.305 Random testing. The contract is with Global Safety Network who administers all testing and random computer generated draws.

## **V. District Offices**

NDDOT operates eight District Offices located across the state. The districts have continuous contact with the public through various duties and responsibilities. Press releases are issued by the NDDOT and district staff are contacted to provide additional information. The districts also partner with cities and counties to work together on transportation issues. In addition, the districts completed yearly inventories of billboards and signs and also works with the public on encroachments, driveway permits, utility permits, the Adopt-a-Highway program, and noxious weed program, and dealing with other right-of-way issues.

### **Bismarck District**

The Bismarck District is located in the south central part of the state and is responsible for 2,800 lane miles of roadway.

### **Devils Lake District**

The Devils Lake District is located in the north central part of the state and is responsible for 2,304 lane miles of roadway.

### **Dickinson District**

The Dickinson District is located in the southwestern part of the state and is responsible for 1,978 lane miles of roadway.

### **Fargo District**

The Fargo District is located in the southeast corner of the state and is responsible for 1,853 lane miles of roadway.

### **Grand Forks District**

The Grand Forks District is located in the northeast part of the state and is responsible for 1,981 lane miles of roadway.

### **Minot District**

The Minot District is located in the northwestern part of the state and is responsible for over 2,300 lane miles of roadway.

### **Valley City District**

The Valley City District is located in the south central part of the state and is responsible for 1,965 lane miles of roadway.

### **Williston District**

The Williston District is located in the northwestern part of the state and is responsible for 1,900 lane miles of roadway.

## **1. Title VI Responsibilities**

- a) District administration staff will provide Title VI support for all maintenance and construction activities. The District administration staff will review cost participation agreements for ADAAG compliance.

- b) District maintenance staff provides the public with winter snow removal according to the Snow Plow Route Priorities, mowing of district right of way, picking up trash along the shoulders, fixing potholes, and removal of dead animals from the roadway. Other responsibilities include:
- Repair concrete and bituminous pavements
  - Seal cracks
  - Repair guardrail
  - Repair signs
  - Remove snow and ice
  - Clean and repair bridges
  - Clean, inspect culverts
  - Maintain drainage systems
  - Maintain rest areas
  - Mow roadsides
  - Vegetation control
  - Keep diary of maintenance activities, events, weather.
  - The shop also maintains State Fleet Vehicles for other agencies.
- c) District construction staff administers state and federal aid highway construction contracts for reconstruction and rehabilitation of major roadways and bridges ensuring standard specifications are met, work is completed correctly and timely, employees are classified and paid properly, payments are made, necessary forms are filed, etc. The staff also monitors Disadvantaged Business Enterprise (DBE) participation at the project level, which includes contractor compliance with the DBE Program and Prompt Payment and Retainage Contract Special Provisions.
- d) The Fort Berthold Indian Reservation is partially located within the Dickinson, Minot, and Williston District borders. Construction staffs assure that requirements of TERO Special Provisions are followed for compliance.
- e) The Spirit Lake and Turtle Mountain Indian Reservations are located within the Devils Lake District borders. Construction staff assures that requirements of TERO Special Provisions are followed for compliance.
- f) The Standing Rock Indian Reservation is located within the Bismarck and Dickinson District borders. Construction staff assure that requirements of TERO Special Provisions are followed for compliance.
- g) The Lake Traverse Reservation is partially located with the Fargo District borders. Construction staff assures that requirements of TERO Special Provisions are followed for compliance.

## **VI. SPECIAL EMPHASIS PROGRAM AREAS**

All NDDOT divisions and districts are on the Title VI Annual Program Areas Review Schedule. NDDOT will utilize the annual review process to identify trends or patterns of discrimination in program areas. If any program areas are identified with trends or patterns of discrimination, the program area will be identified as a special emphasis program area. The annual review process provides for identification, corrective action, continued monitoring, and to determine the effectiveness of program area activities at all levels.

## VII. SUB RECIPIENT REVIEW PROCEDURES

### A. FHWA

NDDOT monitors Title VI compliance by conducting sub recipient program reviews. NDDOT has developed a process to conduct Title VI reviews of sub recipients to determine the effectiveness of program activities.

Division and District Title VI Specialists are responsible to conduct Title VI pre-award and post-award compliance reviews of their program area sub recipients. Reviews will be conducted with local governments, Metropolitan Planning Organizations, and other recipients of federal highway funds.

Pre-award compliance reviews require applicants for federal financial assistance to complete a Sub Recipient Checklist. The checklist identifies all the components necessary to develop a Title VI Plan including EEO and ADA requirements. Additionally, the applicant is provided NDDOT's Title VI/Nondiscrimination and ADA Program Requirements, Guidance, and Templates for Sub Recipients handout to assist them in developing their program. The handout instructs and guides the applicant through the process and provides links to NDDOT's Title VI/Nondiscrimination and ADA Program web page where applicants can locate templates and create their program documents. The templates are updated when program requirements or regulations change, so sub recipients can easily update their program documents when notified by NDDOT of required revisions. The Sub Recipient Title VI/Nondiscrimination and ADA Program information is located at <http://www.dot.nd.gov/divisions/civilrights/titlevi-subrecipients.htm>.

Post award compliance reviews require ten percent or a minimum of one sub recipient per division or district must be reviewed annually. All sub recipients with projects during the reporting period are placed in a pool for random selection. A random number generator is used to select the sub recipients to be reviewed.

The sub recipients selected for review are sent a letter with the date the review will be conducted. Included with the letter is the Pre-Audit checklist listing the information required to be made available for the review.

Desk audits and on-site reviews are conducted on the sub recipients selected for review. The objectives of the review are to review all the components of the sub recipient's Title VI Plan to identify areas of discriminatory practices and/or areas of concern that need to be updated or revised. The Title VI Specialists provide Civil Rights Division copies of the review process from the preparation of the list of sub recipients for random selection through any corrective action and the date it is completed.

The Title VI Review Schedule Sub Recipient Report documents the status of the reviews conducted during the reporting period and is included in the annual Goals and Accomplishments Report.

Title VI Specialists report the results of sub recipient reviews in their Annual Report submitted to Civil Rights Division for reporting in the Goals and Accomplishments Report annually.

NDDOT actively pursues the prevention of Title VI deficiencies and violations and takes the necessary steps to ensure compliance with all program requirements, of its sub recipients of federal highway funds. When irregularities occur in the administration of the federal-aid highway program's operation, corrective action will be taken to resolve Title VI issues. If trends or patterns of discrimination are identified, actions will be taken to correct the violations. These may be identified through reoccurring activities, practices, or similar complaints. When conducting Title VI compliance reviews on its sub recipients, NDDOT will define a remedial action with agreement of FHWA to provide to the sub recipient within a period not to exceed 90 days.

## **B. FHWA Review Selection and Procedures**

### 1. NDDOT sub recipients

- a) All sub recipients will complete a pre-award checklist.
- b) Sub recipients shall be randomly selected for review in the year in which the project is constructed. Ten percent of the available pool or a minimum of one review will be conducted in the year the project is constructed.
- c) If deficiencies are found during the review, the sub recipient shall be reviewed the following year.
- d) Reviews will be conducted by program area Title VI Specialist
- e) The review procedures for sub recipients are as follows:
  - (1) Send written notice of review date
    - (a) Provide list for production of documents
  - (2) Send Notice of Compliance, or
  - (3) Send Deficiency Notice with corrective actions
    - (a) Including a reasonable time not to exceed 90 days after receipt of deficiency notice, to voluntarily correct deficiencies; and possible sanctions.
    - (b) Schedule meeting with recipient within 30 days from receipt of deficiency notice
      - (1) Provide technical assistance and guidance to aid the recipient to comply voluntarily
- f) Failure of recipient to comply within the allotted time frame
  - (1) Notice of Non-compliance identifying specific details of deficiencies
  - (2) NDDOT shall submit to FHWA two copies of the case file and a recommendation that the recipient be found in non-compliance
- g) FHWA shall review the case file for a determination of concurrence or non-concurrence with a recommendation to the NDDOT
- h) Implement FHWA recommendations
- i) Title VI Review Schedules will be maintained documenting the required information as follows:
  - (1) Date Review Notice sent
  - (2) Date Review Conducted
  - (3) Date of Notice of Compliance
  - (4) Date of Notice of Deficiency, if any
    - (a) Date of follow-up review meeting with recipient
    - (b) Date of Notice of Non-compliance
- j) Date of Last Review
- k) Date of Last Review Notice of Compliance

## **C. FTA Review Selection and Procedures**

### 1. NDDOT sub recipients

- a) All sub recipients will complete a pre-award checklist.

- b) Sub recipients shall be randomly selected for review. Ten percent of the available pool or a minimum of one review every three years. Compliance reviews may be conducted more often if deficiencies are found or complaints have been reported.
- c) If deficiencies are found during the review, the sub recipient shall be reviewed the following year.
- d) Reviews will be conducted by Transit staff.
- e) The review procedures for sub recipients are as follows:
  - (1) Send written notice of the review and provide list for production of documents.
  - (2) Issue a compliance report that includes findings of no deficiency, deficiency, or noncompliance.
    - (a) Findings of no deficiency – No corrective action needed with exception to advisory comments. Advisory comments are recommendations that the recipient undertake activities in a manner more consistent with FTA C 4702.1B.
    - (b) Findings of deficiency – Determinations that the recipient has not complied with one or more of the provisions of FTA C 4702.1B. Sub recipient is expected to take corrective actions in response to findings of deficiency, develop a timeline for corrective actions, and report to Local Government Transit Section on its progress.
    - (c) Findings of noncompliance – Determination that the sub recipient has denied persons the benefits of, excluding them from participation in, or subjecting persons to discrimination on the basis of race, color, or national origin. The sub recipient will be considered noncompliant with Title VI. If noncompliance cannot be corrected informally, the sub recipient may be subject to remedial action or proceedings under Chapter VII of FTA C 4702.1B and the DOT Title VI regulations at 49 CFR Sections 21.13, 21.15, and 21.17.
  - (3) Notify sub recipient when it has been determined that the sub recipient has satisfactorily responded to findings, that the review process has ended.
- f) Maintain Title VI Review log documenting the required information as follows:
  - (1) Date Review Notice sent
  - (2) Date Review Conducted
  - (3) Date of Notice of Compliance
  - (4) Date of Notice of Deficiency, if any
    - (a) Date of follow-up review meeting with sub recipient
    - (b) Date of Notice of Non-Compliance
  - (5) Date of Last Review
  - (6) Date of Last Review Notice of Compliance

## **VIII. DATA COLLECTION**

### **A. NDDOT Public Participation Survey**

Data collection ensures that transportation programs, services, activities, facilities, and projects effectively meet the needs of “all persons” without discrimination; i.e., disproportionately benefiting or harming one group over another is a violation of Title VI. Timely and accurate data allows for better decision-making and provides support to the decisions made. Statistical data is collected on race, color, national origin, sex, age, disability, language most frequently spoken at home, public assistance recipient, how you heard about the event, date, city, county, division/district, Project

Control Number (PCN), negotiation or relocation, consultant name, MPO, Transit Agency, and sub recipient status.

Each of the Title VI program areas, as appropriate, will maintain data to be incorporated in the FHWA Title VI Annual Goals and Accomplishments Report. The data gathering process will be reviewed regularly to ensure sufficiency of the data in meeting the requirements of the Title VI/Nondiscrimination and ADA Program Implementation Plan.

Divisions and Districts collect and utilize data from many sources including the U.S. Census, State Agencies, Local Governments, religious organizations, Federal Agencies, non-profit organizations, and consultants, etc.

The Planning/Asset Management and Programming Divisions utilize data in the early stages of highway development to ensure the long-range plans have considered the impacts to the people and the state of North Dakota. Environmental and Transportation Services and Design Divisions ensure highway projects utilize data as they go through a rigorous process considering the demographic and environmental impacts to the project area. The project data is compiled into several documents identifying the impacts and must go through an approval process. The divisions and districts involved in the physical construction of the highway projects continue to consider the relevant data to ensure the public continue to be involved in the highway construction decision making process.

Data is collected and utilized in developing and implementing the Limited English Proficiency Plan. The data sources, identified populations, and program specifics are stated in the LEP Plan. See Exhibit G.

NDDOT developed a major data collection tool; the Public Participation Survey is used to gather demographic data on the participants at public meetings/hearings, and other activities. The intent is to gather a sufficient pool of data to determine whether the NDDOT is reaching all population groups and receiving input in the transportation decision making process.

The public and advocacy groups are informed about the Public Meetings according to the Public Involvement Process found in the NDDOT Design Manual at the following link:  
[http://www.dot.nd.gov/manuals/design/designmanual/chapter2/DM-2-03\\_tag.pdf](http://www.dot.nd.gov/manuals/design/designmanual/chapter2/DM-2-03_tag.pdf)

NDDOT division and consultant staff disseminate the voluntary NDDOT Public Participation Survey (SFN 60149) to all public meeting/hearing/other activity participants.

The survey is used at other events/activities as follows:  
Financial Management Bid Openings  
Training events as appropriate

The surveys are scanned into a data base and displayed on a spread sheet or directly entered on a spreadsheet. The data for each category is transferred onto a data table report. U.S. Census Bureau, American Fact Finder data files are collected at the city level, if available, county level, or service area for the other meetings/hearings/activities. Some North Dakota city and county populations are too small for census reporting. The data of the participants is compared to the U.S. Census data for the project area to help identify underserved populations in each category.

A Public Participation Survey Updated Analysis will be conducted when there is a significant change in the data reported or when projects identify significant impacts to the public during the FHWA funded projects. The updated analysis will be provided in the Goals and Accomplishments report located at <http://www.dot.nd.gov/divisions/civilrights/titlevi.htm> .

A Public Participation Survey Analysis will be conducted on the data reported for FTA funded programs, activities, or services to update Title VI information for FTA programs, services, and activities.

The Public Participation Survey is located on NDDOT Title VI/Nondiscrimination and ADA Program web page under Title VI Forms at <http://www.dot.nd.gov/forms/sfn60149.pdf> . The survey instructions and codes are located on the Title VI/Nondiscrimination and ADA Program web page at <http://www.dot.nd.gov/divisions/civilrights/titlevi.htm> .

## **IX. TRAINING**

### **A. Civil Rights Staff and Other NDDOT Employees**

The Title VI Program Administrator conducts one hour of Title VI training, quarterly, for the Title VI Specialists.

The Title VI Program Administrator provides nine hours of Title VI training for newly appointed Title VI Specialists. Training includes one hour instruction in person followed by three hours of independent study; and one-half hour instruction in person followed by four hours of independent study, and concluding with one-half hour instruction in person. The training materials include CDs/DVDs and handouts and a training program syllabus clearly describing the requirements of each section to be completed including questions to answer and submit midway and at the end of the training. The training covers Title VI, LEP, ADA and Section 504, assistive technology, transit systems, public involvement, and Environmental Justice.

The Title VI Specialists may conduct Title VI training for division and district staff within their areas. Some divisions and districts must remain staffed during business hours, so group training is not feasible. Each NDDOT employee will receive a minimum of one hour of Title VI training per year.

The Civil Rights Division will offer a minimum of one hour of Title VI training to all of NDDOT employees annually. This training may be offered on more than one day to accommodate work schedules.

Title VI Specialists in each division and district are responsible to conduct Title VI training for new employees. A new Employee Title VI Training Syllabus and Checklist is available to assist the Title VI Specialist in fulfilling this responsibility. This available training is an independent study of viewing two 40 minute videos and 15 minute discussion with the Title VI Specialist. Additional question and answer time is provided as needed. The Title VI Specialist may choose to provide Title VI Training to their division or district employees using training materials from previous trainings. The Title VI Program Administrator has recorded CDs/DVDs of previous trainings, presentations, and other materials available. The materials on MYDOT under the Title VI/Nondiscrimination and ADA Program are a good source of training materials, also. Title VI Training records for all NDDOT employees are stored in NDDOT training database.

External Civil Rights training includes a segment on the Title VI/Nondiscrimination and ADA Program and is provided to NDDOT engineers and technicians.

The training provides comprehensive information on the Title VI/Nondiscrimination and ADA Program and its application to program operations, identification of Title VI issues, and resolution of complaints. Scheduled training events may be recorded documenting the training topic, date, time, hours, location, and participants. The Title VI training schedules are reported to FHWA in the annual Goals and Accomplishments Report.

## **B. Sub Recipients and Stakeholders**

Sub recipients and stakeholders can access Title VI training such as the Public Funds for Public Benefit video on Upper Great Plains Transportation Institute, Transportation Learning Network or the FHWA website. Other training materials and resources for training materials can be obtained from NDDOT.

NDDOT developed a Title VI/Nondiscrimination and ADA Program Training Resources web page that is accessible from the Title VI/Nondiscrimination and ADA Program web page located under Resources at <http://www.dot.nd.gov/divisions/civilrights/titlevi.htm> . An assortment of audiovisual and text materials are available on the topics of Title VI, ADA/Section 504; LEP, and Environmental Justice.

NDDOT developed a web page for sub recipients to access information and templates regarding the federal financial assistance approval process and to develop their Title VI/Nondiscrimination and ADA Programs. The Sub Recipient Title VI/Nondiscrimination and ADA Program web page is located at <http://www.dot.nd.gov/divisions/civilrights/titlevi-subrecipients.htm>

NDDOT provides guidance and one-on-one training to applicants for federal financial assistance and sub recipients in developing and updating their Title VI Program as requested or needed.

External Civil Rights training includes a segment on Title VI and is provided to consultants, cities, and counties.

Training and technical assistance is provided to FTA sub recipients through speakers at quarterly meetings, Dakota Transit Association conferences, and information provided on the National Rural Transit Assistance Program (RTAP).

## **X. EXTERNAL COMPLAINTS OF DISCRIMINATION**

### **A. External Complaints of Discrimination Process and Form with Instructions**

NDDOT developed an External Complaints of Discrimination process that provides a prompt process for investigation and dispositions of complaints originating under funding by FHWA or FTA including their regulations or guidance. The External Complaints of Discrimination process and form with instructions (SFN 51795) identifies complaints as based on Title VI of the Civil Rights Act of 1964 (race, color, national origin) or Other Nondiscrimination Statutes/Executive Orders (sex, age, disability, limited English proficiency, or income status). NDDOT has an investigation team that is trained in conducting investigations of internal grievances and complaints. NDDOT will utilize their investigation team to conduct External Complaints of Discrimination filed with NDDOT. See Exhibit C. The Title VI and Related Nondiscrimination Authorities referenced in this process is found in Exhibit H.

The processing of External Complaints of Discrimination requires the complainant to complete the Complainant Consent/Release form with a Notice About Investigatory Uses of Personal Information (SFN 60741) and is found in Exhibit D.

All complaints are recorded for FHWA on an External Complaints of Discrimination Complaint Log (SFN 59892) found in Exhibit E or for FTA on the Transit Title VI – List of Investigations, Lawsuits, and Complaints (SFN 60805) found in Exhibit F. A list of Agencies Authorized to Receive and Process Complaints is included as Appendix A to the External Complaints of Discrimination process in Exhibit C.

## **XI. DISSEMINATION OF TITLE VI INFORMATION**

### **A. Public Involvement**

NDDOT disseminates the Title VI/Nondiscrimination and ADA Program internally, via Intranet, to NDDOT employees and externally, via Internet, to sub recipients, contractors, beneficiaries, advocacy groups, and the general public as well as in other formats as requested.

Several documents included in the Title VI/Nondiscrimination and ADA Program are posted on NDDOT's website separately for easy access including the NDDOT Title VI/Nondiscrimination and ADA Program Policy Statement, Standard USDOT Title VI Assurances, External Complaints of Discrimination, Requests For Reasonable Accommodation, and Limited English Proficiency Plan. NDDOT's Title VI/Nondiscrimination and ADA Program web page is at the following location: <http://www.dot.nd.gov/divisions/civilrights/titlevi.htm>

Additionally, NDDOT posts the Title VI/Nondiscrimination and ADA Policy Statement, External Complaints of Discrimination with form/instructions, and the List of Available Languages Over the Phone with "I Speak" cards in many languages in all public areas of NDDOT building's and offices.

NDDOT publishes other Title VI information including announcements of hearings, meetings, and other activities in minority media and in local newspapers having a general circulation in the vicinity of proposed projects. The public and advocacy groups are informed about meetings, hearings, and other activities, programs, and services according to the Public Involvement Process located in the NDDOT Design Manual, Chapter II, Section 3. The process provides notice from early planning to final plans. The Public Involvement Process is locate at [http://www.dot.nd.gov/manuals/design/designmanual/chapter2/DM-2-03\\_tag.pdf](http://www.dot.nd.gov/manuals/design/designmanual/chapter2/DM-2-03_tag.pdf)

NDDOT Transit Section will hold a minimum of four regional meetings based on need and available funding. Transit providers who serve those areas will be required to attend to answer any questions the public may have. Emphasis will be placed on notifying limited English speaking, minority, and low income populations by Solicitation of Views (SOV) letters targeting advocacy groups that service these populations.

Additional notifications to the public may include posting of fliers or brochures at local libraries, community centers, local businesses, local government offices, and places of worship.

## **XII. LIMITED ENGLISH PROFICIENCY (LEP)**

### **A. Limited English Proficiency Plan**

Limited English Proficiency is a term used to describe individuals who are not proficient in the English language. According to the US Census, North Dakota is home to a small number of individuals who are not proficient in the English language. Executive Order 13166, Improving Access to Services for Persons With Limited English Proficiency, August 2000, is directed at implementation of protections afforded by Title VI of the Civil Rights Act of 1964.

NDDOT is committed to providing LEP individuals meaningful access to NDDOT programs, activities, and services through the development and implementation of NDDOT's Limited English Proficiency Plan. NDDOT's Limited English Proficiency Plan was updated in 2016 and will continue to be updated when the next U.S. Census is completed or if a significant change is identified in the number of LEP persons living in a service area. See Exhibit G.

### **XIII. ENVIRONMENTAL JUSTICE (EJ)**

#### **A. Environmental Justice**

A 1994 Presidential Executive Order directed every federal agency to make environmental justice part of its mission by identifying and addressing the effects of all programs, policies, and activities on “minority populations and low-income populations.” In order to comply with this order, NDDOT must appropriately address the concerns of individuals potentially affected by our activities. Those individuals must appropriately be involved in the development of projects that fit harmoniously within their communities without sacrificing safety or mobility. The NDDOT environmental documentation process contains environmental justice measures such as public involvement/meetings, social impacts, economic impacts, and low-income and minority living areas impacts. NDDOT’s “Environmental Documentation” process which includes this requirement is located in the NDDOT Design Manual, Chapter II, Section 2 at [http://www.dot.nd.gov/manuals/design/designmanual/chapter2/dm-2-02\\_tag.pdf](http://www.dot.nd.gov/manuals/design/designmanual/chapter2/dm-2-02_tag.pdf)

NDDOT is collecting minority (race) and low-income population data in addition to the other nondiscrimination population data on the NDDOT Public Participation Survey. The survey requests voluntary disclosure of the five protected races and low-income data by identifying as a recipient of public assistance. The data is analyzed and assists public involvement through outreach activities to identified minority and low-income populations.

The NDDOT External Complaints of Discrimination includes the environmental justice population categories.

### **XIV. REVIEW OF NDDOT DIRECTIVES**

#### **A. Directives**

Pursuant to federal regulations, all NDDOT directives, policies, procedures, and operational guidelines provided to contractors, sub recipients, and internal programs are reviewed as necessary to ensure the required Title VI provisions, state law, and related requirements are included, where applicable by assigned division and district staff.

### **XV. EXHIBITS**

The following pages include ten Exhibits. They are identified as Exhibit A through Exhibit J.

**NDDOT Organization Chart**  
July 12, 2016

To electronically access, click on or go to the following link:

<http://www.dot.nd.gov/divisions/exec/docs/nddot.pdf>

**NORTH DAKOTA DEPARTMENT OF TRANSPORTATION  
ORGANIZATION CHART  
July 12, 2016**

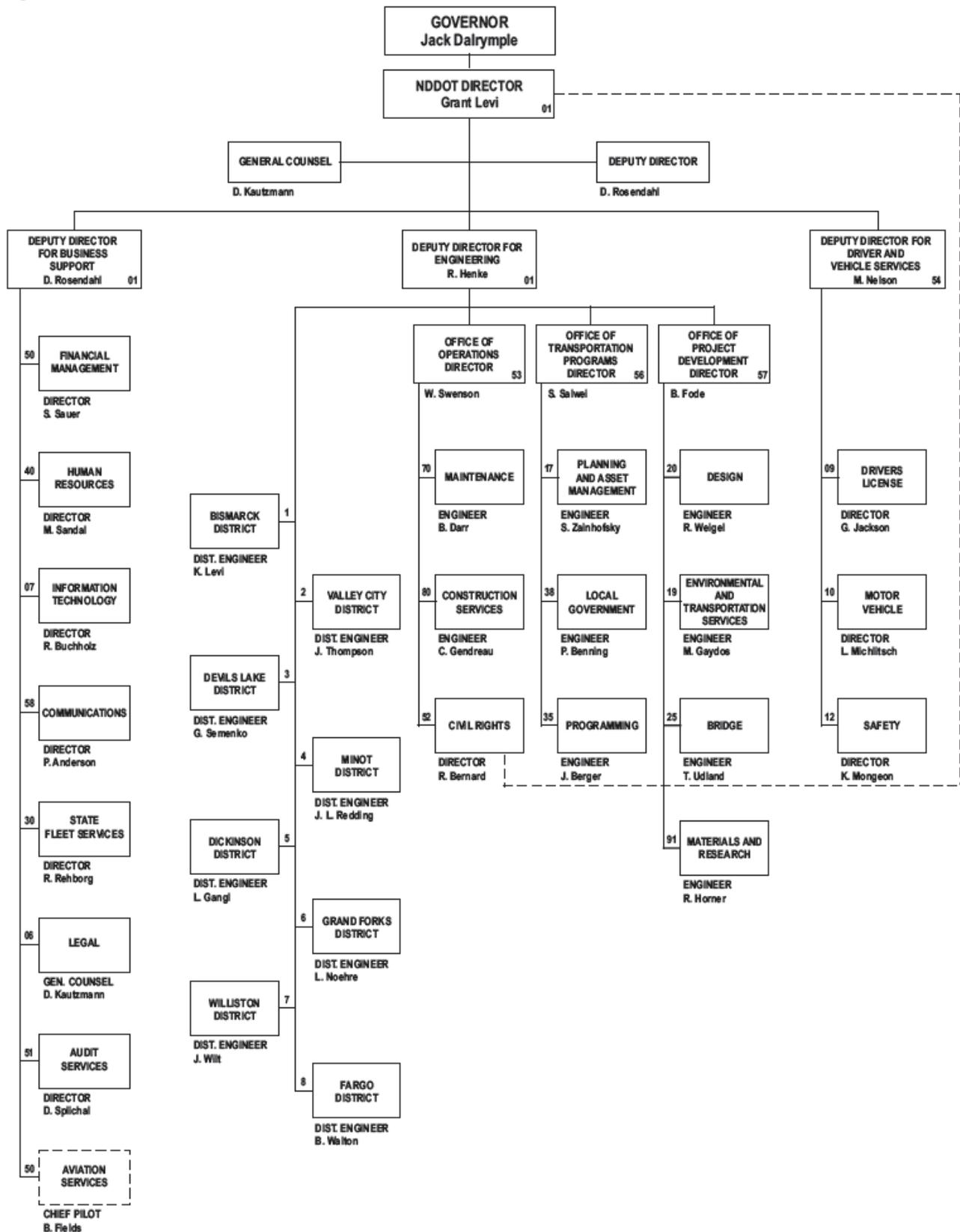


Figure 1- NDDOT - Organization Chart – July 12, 2016

NDDOT Civil Rights Division Organizational Chart

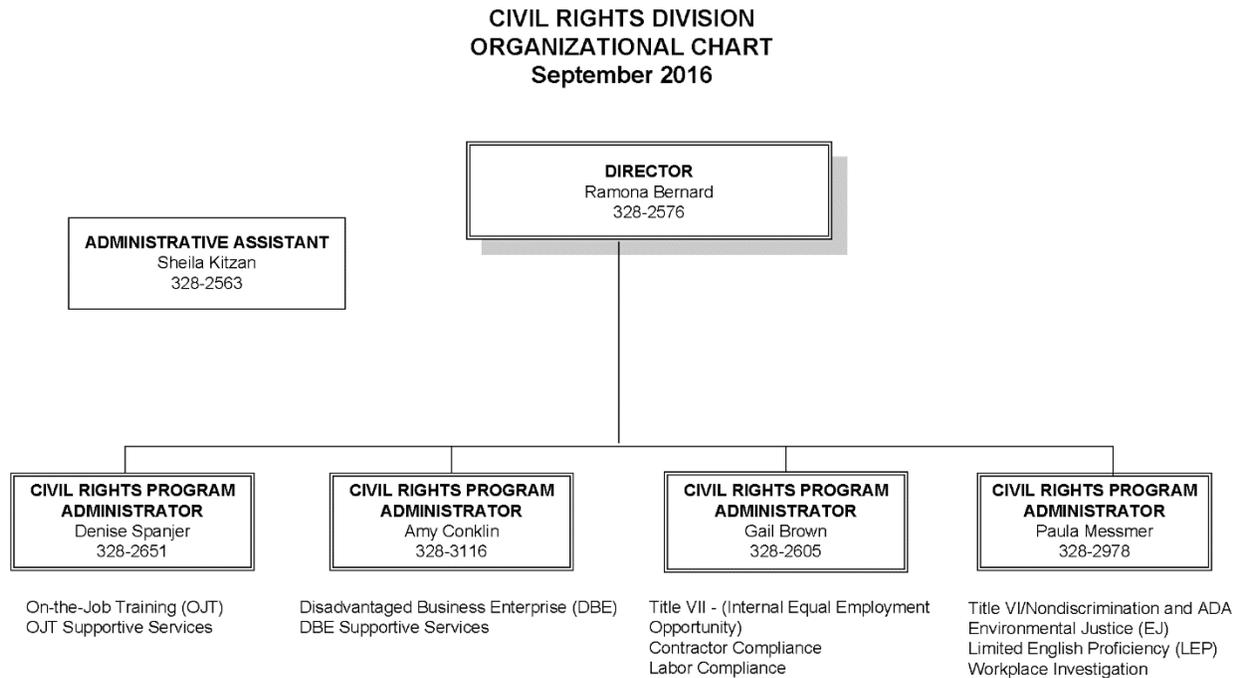


Figure 2 - NDDOT - Civil Rights Division Organizational Chart – September 2016

**External Complaints of Discrimination Process, Form, Instructions**  
North Dakota Department of Transportation, Civil Rights Division  
SFN 51795 (9-2016)

To electronically access SFN 51795, click on or go to the following:

<http://www.dot.nd.gov/forms/SFN51795.pdf>

**EXTERNAL COMPLAINTS OF DISCRIMINATION**

North Dakota Department of Transportation, Civil Rights  
SFN 51795 (9-2018)

**PART I - COMPLAINANT INFORMATION** (Print all items legibly.)

Name		Telephone Number
Mailing Address		Email Address
City	State	ZIP Code

**PART II - CAUSE OF DISCRIMINATION BASED ON**

Check appropriate box(es)

<p><b>Title VI of the Civil Rights Act of 1964</b></p> <input type="checkbox"/> Race <input type="checkbox"/> National Origin <input type="checkbox"/> Color	<p><b>Other Nondiscrimination Statutes/Executive Orders</b></p> <input type="checkbox"/> Sex <input type="checkbox"/> Disability <input type="checkbox"/> Limited English Proficiency <input type="checkbox"/> Age <input type="checkbox"/> Income Status
---	--

**PART III - THE PARTICULARS ARE**

Include names, dates, places, and incidents involved in the complaint.

**PART IV - REMEDY SOUGHT**

State the specific remedy sought to resolve the issue[s].

**PART V - VERIFICATION**

Complainant's Signature	Date
-------------------------	------

**NDDOT Instructions**

**General**

- Instructions provided within this form are not meant to be all inclusive. Any person or group(s) of persons filing external complaints of discrimination are responsible for all procedural requirements contained in NDDOT's External Complaints of Discrimination process.
- Under Title VI of the Civil Rights Act of 1964 or the related statutes and regulations, no person or group(s) of persons shall, on the grounds of race, color, national origin; or sex, age, disability, limited English proficiency, or income status, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any and all programs, services, or activities administered by the North Dakota Department of Transportation. Any person or group(s) of persons who feel they have been discriminated against may file a complaint.
- Complainants **must** include all required information and **must** meet all timeframes as defined in NDDOT's External Complaints of Discrimination process.
- Legible copies of all available pertinent documentation should be attached to this form.
- All inquiries should be directed to the Civil Rights Division, North Dakota Department of Transportation, 608 East Boulevard Avenue, Bismarck, ND 58505-0700, Telephone (701)328-2978, TTY 711 or (800)366-6888 (toll free).

**Part I**

Complete all information in this section.

Figure 3- NDDOT - External Complaints of Discrimination process, form, Instructions (SFN 51795), page 1

## Part II

Check all boxes that apply indicating the basis for the complaint. The discrimination must be based on at least one of the listed categories.

## Part III

State the specific complaint in a manner that clearly identifies the issues upon which the complaint is based.

## Part IV

State the minimum remedy acceptable for resolution of this complaint.

## Part V

Sign and date this section to verify the information contained in Parts I through IV.

## External Complaints of Discrimination

### A. Introduction

NDDOT's External Complaints of Discrimination process is consistent with Federal Highway Administration's (FHWA) Procedures Manual for Processing External Complaints of Discrimination and the Federal Transit Administration's (FTA) Title VI complaint procedures filed under Title VI of the Civil Rights Act of 1964 and related statutes, the Americans with Disabilities Act of 1990, and/or Section 504 of the Rehabilitation Act of 1973. The nondiscrimination statutes, regulations, Executive Orders (E.O.), directives, and other references are available upon request.

### B. Agencies Authorized to Receive Complaints

Complaints may be submitted to one of the following: NDDOT, FHWA, FTA, the United States Department of Transportation (USDOT), or the United States Department of Justice (USDOJ). See Appendix A.

### C. Persons Eligible To File

Any person or any specific class of persons, by themselves or by a representative, that believe they have been subjected to discrimination or retaliation prohibited by Title VI of the Civil Rights Act of 1964 (Title VI) and related statutes, Section 504 of the Rehabilitation Act of 1973 (Section 504), or Title II of the Americans with Disabilities Act of 1990 (ADA) may file a complaint.

### D. Filing a Complaint

1. A complaint is a written or electronic statement concerning an allegation of discrimination that contains a request for the receiving office to take action. Complainants should complete and sign NDDOT's External Complaints of Discrimination form (SFN 51795) and file by mail, fax, in person, or e-mail. A complaint should contain at least the following information:
  - a) A written explanation of what has happened;
  - b) A way to contact the complainant;
  - c) The basis of the complaint, i.e., race, color, national origin; or sex, age, disability, income status, or limited English proficiency;
  - d) The identification of the respondent, i.e., agency/organization alleged to have discriminated;
  - e) Sufficient information to understand the facts that led the complainant to believe that discrimination occurred; and,
  - f) The date(s) of the alleged discriminatory act(s).
2. While the above indicates a complaint should be in writing and signed, NDDOT will accept complaints in alternate formats from persons with disabilities, upon request.
  - a) Upon request to NDDOT, the complaint may be filed on a compact disk (PDF, word document, or audio recording are all acceptable formats) or in Braille.
3. The complainant may contact NDDOT for assistance in filing a complaint.

NDDOT will consider every request for reasonable accommodation to provide

- accommodation for people with disabilities
- language interpretation for people with limited English proficiency (LEP) and
- translation of written material necessary to access NDDOT programs and information
- To request accommodations, complainants may contact the Civil Rights Division, NDDOT at (701)328-2978 or [civilrights@nd.gov](mailto:civilrights@nd.gov). TTY users may use Relay North Dakota at 711 or (800)366-6888.

**E. Timeframes For Filing a Complaint**

1. Complaints must be filed within 180 calendar days of the last date of the alleged discrimination, unless the time for filing is extended. The filing date of the complaint is the earlier of:
  - a) The postmark of the complaint, or
  - b) The date the complaint is received by any agency authorized to receive complaints. See Section B.
2. To request an extension for filing a complaint, contact the agency that received the complaint. See Appendix A.

**F. Complaints Received by NDDOT**

1. Complaints filed under Title VI in which NDDOT is named as the respondent will be forwarded by NDDOT to FHWA Division Office, who will determine which federal agency has jurisdiction and forward the complaint to the appropriate agency for investigation.
2. FHWA Jurisdiction
  - a) Title VI Complaints against NDDOT will be investigated by HCR or a team comprised of Division Office and Resource Center personnel. The North Dakota FHWA Division Office will notify NDDOT of the investigation and provide the Letter of Finding (LOF) after completion of the investigation.
  - b) Title VI complaints filed directly with NDDOT against its sub recipients or contractors will be forwarded by NDDOT to FHWA Division Office who will determine if the complaint will be processed by NDDOT in accordance with the FHWA approved complaint procedures under 23 CFR 200.9(b)(3).
  - c) Complaints filed under the Section 504/ADA with NDDOT will be forwarded by NDDOT to FHWA Division Office who will determine if the complaint will be investigated by NDDOT in accordance with 49 CFR 27.13(b).
  - d) The FHWA Division Office may allow NDDOT to conduct a Title VI or Section 504/ADA investigation against a local entity as follows:
    - 1) The complaint will be reviewed within 10 calendar days of receipt to determine whether it contains all the necessary information required for acceptance.
    - 2) If the complaint is complete and no additional information is needed, the complainant will be sent a letter of acceptance along with the Complainant Consent/Release form (SFN 60741) and the Notice About Investigatory Uses of Personal Information fact sheet.
    - 3) If the complaint is incomplete, the complainant will be contacted in writing or by telephone to obtain the additional information. The complainant will be given 15 calendar days to respond to the request for additional information.
    - 4) If the complainant fails to respond to repeated requests for additional information needed to process the complaint, a notification letter will be sent to the complainant informing complainant that the case file has been returned to FHWA Division Office for a final decision.
3. FTA Jurisdiction
  - a) FTA may allow NDDOT to conduct Title VI investigations against a sub recipient.

Figure 5 - NDDOT – External Complaints of Discrimination, process (SFN 51795), page 3

- 1) The complaint will be reviewed within 10 business days to determine whether it contains all the necessary information required for acceptance.
- 2) If the complaint is complete and no additional information is needed, the complainant will be sent a letter of acceptance along with the Complainant Consent/Release form (SFN 60741) and the Notice About Investigatory Uses of Personal Information fact sheet.
- 3) If the complaint is incomplete, the complainant will be contacted in writing or by telephone to obtain the additional information. The complainant will be given 10 business days to respond to the request for additional information.
- 4) If the investigator is not contacted by the complainant or does not receive the additional information within 15 business days, or if the complainant no longer wishes to pursue their case, the NDDOT can administratively close the case.
- 5) After the investigator reviews the complaint, NDDOT will issue a closure letter or a letter of finding (LOF).

**G. Complainant is Represented by an Attorney**

Complainants represented by an attorney should provide a letter of representation.

**H. Timeframes for Investigations by NDDOT and FHWA**

1. If directed by FHWA Division Office to investigate a Title VI Complaint, NDDOT is required to follow the timeframes in 23 CFR 200.9(b)(3) as follows: A copy of the complaint, together with a copy of the NDDOT's report of investigation shall be forwarded to the FHWA Division Office within 60 calendar days of the date the complaint was received by NDDOT.
2. If directed by FHWA Division Office to investigate a Section 504/ADA complaint, FHWA Division Office and NDDOT shall forward a copy of the complaint, together with a copy of the report of investigation within 90 calendar days of receipt of the complaint from FHWA Division Office.
3. FHWA Division Office attempts to complete investigations within 180 calendar days.
4. If directed by FTA to investigate a Title VI Complaint, NDDOT is required to follow the FTA C 4702.1B to comply with reporting requirements of 49 CFR 21.9(b). The investigation information is recorded on the Transit Title VI - List of Investigations, Lawsuits, and Complaints (SFN 60805) and included in the Title VI/Nondiscrimination and ADA Program submitted to FTA every three years. Although, FTA regulations do not specify a timeframe for the investigation of Title VI complaints, the NDDOT attempts to complete investigations within 90 calendar days of receipt of the complaint from FTA.

**I. Dismissals**

1. The FHWA HCR has delegated authority for dismissing or rescinding Title VI complaints; and Section 504/ADA complaints processed by FHWA.

**J. Letters of Finding (LOFs)**

1. The FHWA HCR has delegated authority for issuing LOFs for all complaints processed by the FHWA.
2. The FTA has delegated authority for issuing LOFs for Title VI complaints processed by FTA.
3. NDDOT has delegated authority for issuing LOFs for Title VI complaints processed by NDDOT against FTA funded sub recipients.

**K. Appeals**

1. LOFs issued by the FHWA are administratively final.
2. LOFs issued by the FTA are administratively final.
3. Closure letters or LOFs issued by NDDOT under FTA jurisdiction on Title VI complaints may be appealed to FTA within 15 calendar days after the date of the closure letter or the LOF.

**APPENDIX A**  
**Agencies Authorized to Receive and Process Complaints**

**North Dakota Department of Transportation**

Civil Rights Division  
608 E. Boulevard Ave.  
Bismarck, ND 58507-0700

Phone: (701)328-2576  
Fax: (701)328-0343  
TTY: 711 or (800)366-6888  
E-mail: [civilrights@nd.gov](mailto:civilrights@nd.gov)

**FHWA**

North Dakota Division Office  
4503 Coleman St. N., Suite 205  
Bismarck, ND 58503

Phone: (701)250-4204  
Fax: (701)250-4395  
E-mail: [NorthDakota.fhwa@dot.gov](mailto:NorthDakota.fhwa@dot.gov)

**Federal Transit Administration (FTA)**

Office of Civil Rights  
Attention: Complaint Team  
East Building, 5<sup>th</sup> Floor - TCR  
1200 New Jersey Ave., SE  
Washington, DC 20590

Phone: (888)446-4511

**Federal Transit Administration (FTA)**

Civil Rights  
FTA Region 8  
Bryon Rogers Building  
1961 Stout Street, Suite 13301  
Denver, CO 80294-3007

Phone: (303)363-2400

**United States Department of Transportation**  
**(USDOT)**

FHWA Headquarters Office of Civil Rights  
1200 New Jersey Avenue, SE (HCR-40)  
8th Floor E81-314  
Washington, DC 20590

Phone: (202)366-0693  
Fax: (202)366-1599  
TTY: (202)366-5132  
E-mail: [CivilRights.FHWA@fhwa.dot.gov](mailto:CivilRights.FHWA@fhwa.dot.gov)

Nichole McWhorter, Coordination and Compliance

Phone: (202)366-1396  
E-mail: [nichole.mcwhorter@dot.gov](mailto:nichole.mcwhorter@dot.gov)

**USDOJ - Race, Color, National Origin**  
**Complaints**

Federal Coordination and Compliance Section  
NWB

Civil Rights Division  
U.S. Department of Justice (USDOJ)  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530

Phone: (888)848-5306 (English and Spanish)  
(202)307-2222 (voice)  
(202)307-2678 (TDD)  
E-mail: None published

**USDOJ - ADA Complaints**

US Department of Justice (USDOJ)  
950 Pennsylvania Avenue, NW  
Civil Rights Division  
Disability Rights Section 1425 NYAV  
Washington, DC 20530

Fax: (202)307-1197  
E-mail: [ADA.complaint@usdoj.gov](mailto:ADA.complaint@usdoj.gov)  
ADA Information Line: (800)514-0301(voice) or  
(800)514-0383 (TTY)  
Main Section Telephone Number:  
(202)307-0663 (voice and TTY)

Figure 7 – NDDOT - External Complaints of Discrimination, process (SFN 51795), page 5.

## Complainant Consent/Release and Notice About Investigatory Uses of Personal Information

**COMPLAINANT CONSENT/RELEASE  
(EXTERNAL COMPLAINTS OF DISCRIMINATION)**

North Dakota Department of Transportation, Civil Rights  
SFN 60741 (5-2016)

Name			
Mailing Address	City	State	ZIP Code
Complaint Number(s) if known:			

*Please read the information below, check the appropriate box, and sign this form.*

I have read the Notice About Investigatory Uses of Personal Information by the North Dakota Department of Transportation (NDDOT). As a complainant, I understand that in the course of an investigation it may become necessary for NDDOT to reveal my identity to persons at the organization or institution under investigation. I am also aware of the obligations of NDDOT to honor requests under the Freedom of Information Act and North Dakota Century Code 44-04-18. I understand that it may be necessary for NDDOT to disclose information, including personally identifying details, which it has gathered as a part of its investigation of my complaint. In addition, I understand that as a complainant I am protected by NDDOT's regulations from intimidation or retaliation for having taken action or participated in action to secure rights protected by nondiscrimination statutes enforced by NDDOT.

**CONSENT/RELEASE**

<p><input type="checkbox"/> <b>CONSENT</b> - I have read and understand the above information and authorize NDDOT to reveal my identity to persons at the organization or institution under investigation. I hereby authorize the NDDOT to receive material and information about me pertinent to the investigation of my complaint. I understand that the material and information will be used for authorized civil rights compliance and enforcement activities. I further understand that I am not required to authorize this release, and do so voluntarily.</p> <p><input type="checkbox"/> <b>CONSENT</b>- The respondent named in this complaint may receive a copy of my complaint upon request.</p> <p><input type="checkbox"/> <b>CONSENT DENIED</b> - I have read and understand the above information and do not want NDDOT to reveal my identity to the organization or institution under investigation, or to review, receive copies of, or discuss material and information about me, pertinent to the investigation of my complaint. I understand this is likely to impede the investigation of my complaint and may result in the closure of the investigation.</p>	
Signature	Date

Figure 8 – NDDOT - Complainant Consent/Release form (SFN 60741), page 1.

**NOTICE ABOUT INVESTIGATORY  
USES OF PERSONAL INFORMATION  
(External Complaints of Discrimination)**

**Enclosure 2**  
SFN 60741  
Page 2 of 2

NOTICE OF COMPLAINANT/INTERVIEWEE RIGHTS AND PRIVILEGES

Complainants and individuals who cooperate in an investigation, proceeding or hearing conducted by North Dakota Department of Transportation (NDDOT) are afforded certain rights and protections. This brief description will provide you with an overview of these rights and protections.

- A respondent may not force its employees to be represented by the respondent's counsel nor may it intimidate, threaten, coerce or discriminate against any employee who refuses to reveal to the respondent the content of an interview. An employee does, however, have the right to representation during an interview with NDDOT. The representative may be the respondent's counsel, the employee's private counsel, or anyone else the interviewee authorizes to be present.

- The laws and regulations which govern NDDOT's compliance and enforcement authority provide that no respondent or other person shall intimidate, threaten, coerce or discriminate against any individual because he/she has made a complaint, testified, assisted or participated in any manner in an investigation, proceeding, or hearing conducted under NDDOT's jurisdiction, or has asserted rights protected by statutes NDDOT enforces.

- Information obtained from the complainant or other individuals which is maintained in NDDOT's investigative files may be exempt from disclosure under the Privacy Act, the Freedom of Information Act (FOIA), or North Dakota Century Code (NDCC) 44-04-18 if release of such information would constitute an unwarranted invasion of personal privacy.

The law governing personal information submitted to any State agency, including the NDDOT is NDCC 44-04-18.

NDCC 44-04-18 protects individuals from misuse of personal information held by the NDDOT. The law applies to records that are kept and that can be located by the individual's name or social security number or other personal identification system. Persons who submit information to the state should know that:

- NDDOT is required to investigate complaints of discrimination on the basis of race, color, national origin, sex, disability, age, and, in some instances, religion against respondents of Federal financial assistance. NDDOT also is authorized to conduct reviews of federally funded respondents to assess their compliance with civil rights laws.

- Information that NDDOT collects is analyzed by authorized personnel within the agency. This information may include personnel records or other personal information. NDDOT staff may need to reveal certain information to persons outside the agency in the course of verifying facts or gathering new facts to develop a basis for making a civil rights compliance determination. Such details could include the physical condition or age of a complainant. NDDOT also may be required to reveal certain information to any individual who requests it under the provisions of NDCC 44-04-18. (See below)

- Personal information will be used only for the specific purpose for which it was submitted, that is, for authorized civil rights compliance and enforcement activities. Except in the instances defined by NDCC Chapter 44-04, NDDOT will not release the information to any other agency or individual unless the person who supplied the information submits a written consent. One of these exceptions is when release is required under NDCC 44-04-18. (See below)

- No law requires a complainant to give personal information to NDDOT, and no sanctions will be imposed on complainants or other individuals who deny NDDOT's request. However, if NDDOT fails to obtain information needed to investigate allegations of discrimination, it may be necessary to close the investigation.

- NDCC 44-04-18 permits certain types of systems of records to be exempt from some of its requirements, including the access provisions. It is the policy of NDDOT to exercise authority to exempt systems of records only in compelling cases. NDDOT may deny a complainant access to the files compiled during the agency investigation of his or her civil rights complaint against a respondent of Federal financial assistance. Complaint files are exempt in order to aid negotiations between respondents and NDDOT in resolving civil rights issues and to encourage respondents to furnish information essential to the investigation.

- NDDOT does not reveal the names or other identifying information about an individual unless it is necessary for the completion of an investigation or for enforcement activities against a respondent that violates the laws, or unless such information is required to be disclosed under NDCC 44-04-18. NDDOT will keep the identity of complainants confidential except to the extent necessary to carry out the purposes of the civil rights laws, or unless disclosure is required under NDCC 44-04-18 or otherwise required by law.

NDCC 44-04-18 gives the public access to certain files and records of the state of North Dakota. Individuals can obtain items from many categories of records of the state--not just materials that apply to them personally. NDDOT must honor requests under NDCC 44-04-18, with some exceptions. NDDOT generally is not required to release documents during an investigation or enforcement proceedings if the release could have an adverse effect on the ability of the agency to do its job.

Also, a state agency may refuse a request for records compiled for law enforcement purposes if their release could be an "unwarranted invasion of privacy" of an individual. Requests for other records, such as personnel and medical files, may be denied where the disclosure would be a "clearly unwarranted invasion of privacy."

**External Complaints of Discrimination Log**  
North Dakota Department of Transportation, Civil Rights  
SFN 59892 (5-2016)

To electronically access SFN 59892, click on or go to the following:

<http://www.dot.nd.gov/forms/sfn59892.pdf>

**EXTERNAL COMPLAINTS OF DISCRIMINATION LOG**

North Dakota Department of Transportation, Civil Rights  
SFN 59892 (5-2016)

Reporting Year
----------------

X

**PART I - COMPLAINANT INFORMATION** (Print all items legibly.)

Name		Telephone Number
Mailing Address		Email Address
City	State	ZIP Code

**PART II - STATUS OF COMPLAINANT**

Check appropriate box[es]		
<b>Title VI of the Civil Rights Act of 1964</b> <input type="checkbox"/> Race <input type="checkbox"/> National Origin <input type="checkbox"/> Color		<b>Other Nondiscrimination Statutes/Executive Orders</b> <input type="checkbox"/> Sex <input type="checkbox"/> Disability <input type="checkbox"/> Limited English Proficiency <input type="checkbox"/> Age <input type="checkbox"/> Income Status
Nature of Complaint		
Recipient (Processor of Complaint)		
Date Filed	Date Investigation Completed	Date of Disposition
Disposition		
<input type="button" value="Add Another Section"/>		

Figure 10 – NDDOT - External Complaints of Discrimination Log (SFN 59892), page 1

**Transit Title VI – List of Investigations, Lawsuits, and Complaints**  
North Dakota Department of Transportation, Local Government  
SFN 60805 (3-2015)

To electronically access SFN 60805, click on or go to the following link:

<http://www.dot.nd.gov/forms/sfn60805.pdf>

**TRANSIT TITLE VI - LIST OF INVESTIGATIONS, LAWSUITS, AND COMPLAINTS**

North Dakota Department of Transportation, Local Government Division  
 SFN60805 (03-2015)

Name of Transit Provider/Agency
---------------------------------

All recipients shall prepare and maintain a list of any of the following that allege discrimination on the basis of race, color, or national origin:

- Active investigations conducted by Federal Transit Administration (FTA) and entities other than FTA;
- Lawsuits; and
- Complaints naming the recipient.

Providers must submit form upon receipt of notification of complaint and annually upon request by the NDDOT Transit Section. Please attach additional documentation as needed. If you have not had any investigations, lawsuits, or complaints, please enter "None" in each category on the annual report.

	DATE (MM/DD/YYYY)	SUMMARY OF ALLEGATION(S) (include basis of complaint: race, color or national origin)	CURRENT STATUS	ACTION(S) TAKEN/FINAL FINDINGS
INVESTIGATIONS	1.			
	2.			
	3.			
	4.			

LAWSUITS	1.			
	2.			
	3.			
	4.			

COMPLAINTS	1.			
	2.			
	3.			
	4.			

Name (Type or Print)	
Signature	Date

Figure 11 – NDDOT Transit Title VI – List of Investigations, Lawsuits, and Complaints (SFN 60805), page 1

**NDDOT Limited English Proficiency Plan**

To electronically access, click on or go to the following:

<http://www.dot.nd.gov/divisions/civilrights/titlevi.htm>

# **NDDOT Limited English Proficiency Plan**

**October 2016**

## INTRODUCTION

This *Limited English Proficiency Plan* has been prepared to address the North Dakota Department of Transportation's (NDDOT) responsibilities as a recipient of federal financial assistance as they relate to the needs of individuals with Limited English Proficiency language skills. The plan has been prepared in accordance with Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, et seq, and its implementing regulations, which state that no person shall be subjected to discrimination on the basis of race, color or national origin.

Executive Order 13166, titled ***Improving Access to Services for Persons with Limited English Proficiency***, indicates that differing treatment based upon a person's inability to speak, read, write or understand English is a type of national origin discrimination. It directs each agency to publish guidance for its respective recipients clarifying their obligation to ensure that such discrimination does not take place. This order applies to all state and local agencies which receive federal funds, including all NDDOT.

### **Plan Summary**

The NDDOT has developed this **Limited English Proficiency Plan** to help identify reasonable steps for providing language assistance to individuals with Limited English Proficiency (LEP) who wish to access services provided. As defined Executive Order 13166, LEP individuals are those who do not speak English as their primary language and have limited ability to read, speak, write or understand English. This plan outlines how to identify a person who may need language assistance, the ways in which assistance may be provided, staff training that may be required, and how to notify LEP individuals that assistance is available.

In order to prepare this plan, the NDDOT used the four-factor LEP analysis which considers the following factors:

1. The number or proportion of LEP persons served or encountered in the eligible service population.
2. The frequency with which LEP individuals come in contact with the program, activity, or services.
3. The nature and importance of the program, activity, or service provided by the program.
4. The resources available to the recipient and costs.

## **MEANINGFUL ACCESS: FOUR-FACTOR ANALYSIS**

### **1. The Number or proportion of LEP served or encountered in the eligible service population.**

The North Dakota Department of Transportation is a state agency with a statewide service area. NDDOT has 20 divisions and eight districts. NDDOT has district offices in 8 defined service areas throughout North Dakota. Services may be provided statewide or by district.

All previous contacts with LEP persons were identified by language along with the type of service provided for the reporting period, October 1, 2014 through September 30, 2015. The following contacts occurred.

In-person contacts:

- Drivers License testing at 8 major offices, offered in 11 languages- Arabic, Spanish, Somali, Russian, Vietnamese, Turkish, Swahili, Nepali, Serbo-Croatian, French, and Chinese
- Administrative Hearings for drivers license related issues- Spanish
- Motor Vehicle walk-in customers licensing/titling, motor carrier services, mobility placards- Spanish

Telephonic Interpreter Services:

- Drivers License- call-in/walk-in communication with LEP persons; questions, scheduling, drivers license renewals- Spanish; Somali; Arabic; Nepali; Kirundi (Rundi); Albanian; Chinese; Farsi; Kinyarwanda; Swahili; Bosnian.

- Motor Vehicle Division- call-in/walk-in communication with LEP persons; questions, licensing/titling, motor carrier services, mobility placards- Spanish
- Legal Division- drivers license hearings interpreter is accessed by telephone- Spanish

NDDOT attempted to identify LEP minority populations that are eligible beneficiaries that may be underserved because of existing language barriers. The following data was identified.

- Drivers License Tests were offered and taken at all major offices.
- All 11 languages for the Written Knowledge Test were available and utilized across the state.
- All requested languages were interpreted, except one.
- One request for a German telephonic interpreter was not completed. Issue corrected with service provider access and staff training.

Additional data on LEP populations was obtained from sources such as: census, school systems, religious organization, community organizations, community agencies, and state and local governments.

NDDOT consulted additional data sources:

U.S. Census for North Dakota

- 2010-2014 American Community Survey 5 Year Estimates
  - The NDDOT staff reviewed the 2010-2014 American Community Survey 5-Year Estimates for North Dakota and determined that 35,684 individuals, in North Dakota [5.4% of the population] speak a language other than English. Of those 7,720 individuals have limited English proficiency; that is; they speak English less than “very well” or “not at all.” This is only 1.2% of the overall population in North Dakota.
  - Individuals with Limited English Proficiency that are greater in number than 5% of the language group are: Spanish, French, French Creole, Portuguese or Portuguese Creole, Serbo-Croatian, German, Greek, Russian, Polish, Chinese, Arabic, Hebrew, Japanese, Korean, Thai, Vietnamese, Tagalog, Persian, Gujarati, Hindi, Urdu, Navajo, Scandinavian, Other Native North American Languages, Other Slavic Languages, Other Indic Languages, Other Indo-European Languages, Other Asian Languages, Other Pacific Island Languages, and African languages, and Other and unspecified languages.

These groups reside throughout the state and most groups are small in number. Table B16001.

- Detailed Languages Spoken At Home and Ability to Speak English - Table 35, 2009-2013 Release Date October 2015
  - Scandinavian: consists of 4 languages (2 undisclosed); Norwegian and Swedish
  - Other Native North American Languages: consists of 20 languages (14 undisclosed); Okanogan, Hidatsa, Mandan, Dakota, Arikara, American Indian
  - Other Slavic Languages: consists of 5 languages (3 undisclosed); Ukrainian and Czech
  - Other Indic Languages: consists of 6 languages (5 undisclosed); Nepali
  - Other Indo-European Languages: consists of 7 languages (6 undisclosed); Romanian
  - Other Asian Languages: consists of 6 languages (4 undisclosed); Telugu and Turkish
  - Other Pacific Island Languages: consists of 7 languages (5 undisclosed); Indonesian and Malay

- African languages: consists of 9 languages (2 undisclosed); Amharic, Cushite (Somali), Sudanic, Swahili, Bantu (group of 250 languages/dialects), Mande, (group of 3) Kru, Ibo, Yoruba
- Other and unspecified languages: consists of 4 languages (2 undisclosed); Finnish and Syriac
- Characteristics of People by Language Spoken at Home – Table S1603
  - Educational Attainment: 24.3% of 5,785 individuals who speak Spanish or Spanish Creole have less than a high school education. Other languages data were too few to report.

North Dakota Department of Public Instruction (NDDPI) - Reports the English Language Learner languages.

- In 2014, NDDPI reported 3,770 ELL students in 73 schools.
  - 26% Spanish or 980 students
  - 11% Somali or 415 students
  - 10% Nepali or 377 students
  - 35% Other
- The North Dakota State Assessment for Grades 3-8 and 11 for the School Year 2013-2014 showed:
  - Of 1,967 LEP students, 67.7% were not proficient in Reading
  - Of 2,091 LEP students, 59.5% were not proficient in Mathematics

Lutheran Social Services of North Dakota (LSSND)

- LSSND is a religious organization that is appointed as the U.S. agency for resettlement of refugees in North Dakota.
  - Resettled 377 in 2015
  - Resettled 590 in 2014

## 2. The frequency with which LEP individuals come in contact with the program, activity, or service.

NDDOT identified the frequency with which NDDOT division and district staff have or should have contact with LEP individuals from different language groups seeking assistance. Spanish speaking individuals are the most frequently encountered LEP language group.

Drivers License Division

- Written Knowledge Tests were administered in 11 foreign languages at 8 major offices as indicated in the chart below. There was a total of 2,922 tests administered. A breakdown of the 8 major offices is provided on the map below.

Noncommercial (Class D) Foreign Language Tests											
October 1, 2014 thru September 30, 2015											
Office	Arabic	Spanish	Somali	Russian	Vietnamese	Turkish	Swahili	Nepali	Serbo-Croatian	French	Chinese
Bismarck	33	267	28	38	4	1	11	1	6	54	22
Devils Lake	13	23		27					1	2	11
Dickinson		17		6		2	3		1	40	3
Fargo	130	138	510	46	19	16	67	51	5	32	37
Grand Forks	41	30	455	9	10			31	6	3	57
Jamestown	1	17	18	32			2		1	5	
Minot	1	167	8	13	2	6	4		5	14	1
Williston	19	215		2	1	9	2		5	61	4
<b>Note: These are the number of tests administered. Some individuals attempt the test more than one time.</b>											
Totals:	238	874	1019	173	36	34	89	83	30	211	135

- Telephonic interpreter service was used for 104 walk-in and/or call-in customers during the past 12 month reporting period of October 1, 2014 through September 30, 2015.
- Contacts ranged from 2 per month to 14 per month.
- Contacts by language were as follows: 73 Spanish; 14 Somali; 6 Arabic; 3 Nepali; 2 Kirundi (Rundi); 1 Albanian; 1 Chinese; 1 Farsi; 1 Kinyarwanda; 1 Swahili; 1 Bosnian.

#### Motor Vehicle Division

- Telephonic interpreter services were used for 16 call-in/walk-in customers during the past 12 month reporting period.
- Contacts ranged from 0-3 during each of 11 months, and 1 month had 7 contacts during 2014-2015 for Spanish speaking customers.

#### Legal

- Telephonic interpreter services were used for two Administrative Hearings for driver license related issues for Spanish speaking individuals, one in April of 2015 and the other in July of 2015.

### **3. The nature and importance of services provided by the NDDOT to the LEP population.**

NDDOT determined the importance of its services for the LEP population in North Dakota by reviewing and considering the following factors including the identification of vital documents.

#### Identification of Vital Documents

- A document will be considered vital if it contains information that is critical for obtaining the federal services and/or benefits, or is required by law.
- Examples:
  - o Applications
  - o Consent and complaint forms,
  - o Notices of rights and disciplinary action
  - o Notices advising LEP persons of the availability of free language assistance
  - o Written tests that assess competency for a particular license, job, or skill for which English competency is not required
  - o Letters or notices that require a response from the beneficiary or client
  - o Larger documents, translation of vital information contained within the document will suffice and need not be translated in its entirety.
  - o Outreach docs: difficult to determine if vital- lack of awareness may effectively deny LEP persons access. It's important to continually survey/assess the needs of eligible service population to determine what outreach materials are critical to translate.

NDDOT provides a Request for Reasonable Accommodations form for individuals to request services for oral or written translations as determined by the Four-Factor Analysis or defined by Safe Harbor requirements. Safe Harbor applies to written translations only.

Vital documents will be translated when a significant number of percentage of the population eligible to be served, or likely to be directly affected by the program/activity, needs services or information in a language other than English to communicate effectively.

If the English language version is posted on NDDOT website, the translation will be posted on the website.

NDDOT considered the importance of immediate and long-term effects of a delay in written translations. Most services have several days to weeks allowed for comment or completion.

Failure to provide written translation under these cited circumstances does not mean that the recipient is in noncompliance; rather, it provides a starting point for recipients to consider in relation to the Four Factors.

Immediate oral telephonic interpreter services are provided free.

#### **4. The resources available to the recipient and costs.**

##### Telephonic Interpreter Services

NDDOT has joined the State of North Dakota WSCA contract for telephonic interpreter services that is available to all state and local governments.

- NDDOT set up a WSCA agreement with the two telephone based interpreter services to provide immediate interpreter services at no cost to LEP individuals statewide.
- The new WSCA contract started in June of 2015 and is \$0.57 to \$0.62 per minute dependent on which provider is accessed. 130 telephonic service calls made; 1,513.30 total minutes used in 2014-2015 for a total cost of approximately \$950.00.
- In person interpreters- Courts List- rate varies per interpreter, approximately \$40.00 per hour; none were used this past year.

##### Written Translation

NDDOT has identified and contacted several written translation service providers.

NDDOT procured the written translation of the Noncommercial Drivers License Manual from English into Spanish at a cost of \$3,017.60 which took about 30 days to complete.

Drivers License Division has translated nine tests into other languages. Two additional languages were translated this past year. The current cost to translate the drivers test into another language is approximately \$15,000 per language.

Prioritize the needs so that language services are targeted where most needed because of the nature and importance of the activity.

Resource and cost issues can be reduced: NDDOT's vital documents are uniform throughout the department due to being a statewide agency. NDDOT prepares templates of relevant documents for sub recipients to use in the development of their Title VI plans. The translation of sub recipient templates will be minimal cost if they are nearly identical to NDDOT's documents.

Using qualified translators and interpreters to ensure that docs need not be fixed later and that inaccurate interpretations do not cause delay other costs NDDOT has access to qualified translators through several companies. When revisions occur, it is most likely due to legislative changes which cannot be predetermined. NDDOT's telephonic interpreter service was thoroughly tested in the WSCA procurement process and has qualified interpreters.

NDDOT has many significantly large documents. Written translation of NDDOT large documents can range from translation of an entire document to translation of a short description of the document.

### **LANGUAGE ASSISTANCE**

A person who does not speak English as their primary language or who has a limited ability to read, write, speak or understand English may be a Limited English Proficient person and may be entitled to language assistance with respect to NDDOT services.

Language assistance can include interpretation, which means oral or spoken transfer of a message from one language into another language and/or translation, which means the written transfer of a message from one language into another language.

After applying the four-factor analysis, NDDOT has examined the following language assistance options and identified which methods will provide NDDOT with an effective LEP Plan. Spanish speaking individuals are most frequently encountered by NDDOT.

## Selecting Language Assistance Services

### Oral Language Services

Using telephone interpreter lines offer prompt interpreting assistance in many different languages

- WSCA contract procured for multiple state DOTs resulted in two competent service providers able to interpret transportation technical or legal terms.
  - 240+ languages
  - Includes all languages encountered by NDDOT for past 3 years
  - Both WSCA contract service providers have additional services available for video teleconferencing and written translation.
- Contracting for Interpreters
  - The North Dakota Courts has an interpreters list available for independent contractors.
- Use of family members, friends, other customers/passengers as interpreters
  - NDDOT allows at the request of LEP individual, if they are not willing to speak with an interpreter provided by NDDOT.
  - In rare emergency situations, NDDOT may allow.

### Written Language Services - Translation of Documents

A “safe harbor” provision regarding the translations of documents is provided by the Department of Justice. The DOJ suggests providing written translations of vital documents for each eligible LEP language group that constitutes five percent or 1,000, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered. The safe harbor provision applies to the translation of written documents only.

Written translations would not be effective or useful for people with low literacy in their language. The literacy level should be determined.

For ‘vital’ Department documents, if there are fewer than 50 persons in a language group (that reaches five percent of the population of persons eligible to be served or likely to be affected or encountered), the Department does not translate ‘vital’ written materials but will provide written notice in the primary language of the LEP language group of the right to receive competent oral interpretation of those written materials, free of cost.

- Identification of Vital Documents
  - A document will be considered vital if it contains information that is critical for obtaining the federal services and/or benefits, or is required by law.
  - Examples:
    - Applications
    - Consent and complaint forms,
    - Notices of rights and disciplinary action
    - Notices advising LEP persons of the availability of free language assistance
    - Written tests that assess competency for a particular license, job, or skill for which English competency is not required
    - Letters or notices that require a response from the beneficiary or client
    - Larger documents, translation of vital information contained within the document will suffice and need not be translated in its entirety.
    - Outreach docs: difficult to determine if vital- lack of awareness may effectively deny LEP persons access. It’s important to continually survey/assess the needs of eligible service population to determine what outreach materials are critical to translate.

Failure to provide written translation under these cited circumstances does not mean that the recipient is in noncompliance; rather, it provides a starting point for recipients to consider in relation to the Four Factors.

## LANGUAGE ASSISTANCE MEASURES

NDDOT employees will inform all LEP individual attempting to access services that the Department provides free interpreter services upon request for their interactions with the department.

When NDDOT receives a request or identifies a need for services, NDDOT will make every effort to provide the services in a timely manner. NDDOT will pay for interpreter services and translation of vital documents as necessary.

- Request For Reasonable Accommodations form is available to request oral interpretation and written translation services.
- The public is notified of LEP services via Press Releases, newspaper ads, and advocacy groups, notices in division/district manual, posters, drivers license study guides, Environmental Justice Brochure.
- Drivers License tests are available in 11 languages.
- Auditory drivers license study guides for those who understand English but are unable to read English.
- Spanish translation of the Noncommercial Drivers License study guide.
- NDDOT's website has a "Contact" webpage for "Language Interpreter Services" with a contact person and telephone number.
- To ensure competency of interpreter services, NDDOT joined a WSCA contract where competency was thoroughly checked, verified, and tested for competency.
- NDDOT checked references to verify translation services providers to ensure competent services.

## STAFF TRAINING

Training includes how to obtain language assistance service and communication with interpreters and translators.

- Annual training is provided to all NDDOT employees
  - o Information to know their obligations to provide meaningful access to information and services for LEP persons.
  - o Information on NDDOT LEP policies and procedures
  - o Description of language assistance services offered to the public.
  - o Primary division/district contacts to assist LEP individuals.
  - o Division/district process for External Complaints of Discrimination
- Additional training is provided to employees in public contact positions who may receive telephone calls from or provide in-person services to LEP individuals as follows:
  - o Instructions to work effectively with telephone interpreters.
  - o Instructions for working with an in-person interpreter
  - o Instructions for transferring calls with LEP individuals on the telephone line
  - o Use of two telephonic interpreter language lists
  - o Use of "I Speak" cards for in-person LEP individuals. It is located at:  
<http://www.justice.gov/sites/default/files/crt/legacy/2010/12/14/ISpeakCards.pdf>
  - o Access for two telephonic interpreter service providers
  - o Documentation of language assistance requests.
  - o Reporting of poor quality services by interpreter
- Training is provided for assigned employees for specific services
  - o Request for Reasonable Accommodations
    - Instructions for processing requests
    - Accessing assistive technology
    - Follow-up on quality of services

## **MONITORING**

**Monitoring and Updating the LEP Plan** - The NDDOT will update the LEP Plan as required. At a minimum, the plan will be reviewed and updated when data from the 2020 U.S. Census is available, or when it is clear that higher concentrations of LEP individuals are present in North Dakota. Updates will include the following:

- The number of encountered LEP persons, by language who received language assistance services annually.
- The frequency of encounters with LEP persons
- The current/primary language of LEP populations in the service area.
- Whether the need for translation services has changed.
- Whether local language assistance programs have been effective.
- Whether the NDDOT's financial resources are sufficient to fund language assistance resources needed.
- Determine whether the NDDOT fully complies with the goals of this LEP Plan.
- Determine the number and type of complaints received concerning the needs of LEP individuals.
- Whether staff are knowledgeable about department LEP procedures.

## **DISSEMINATION OF THE NDDOT LEP PLAN**

- Post NDDOT's LEP Plan to their website.
- Send electronic notification of the LEP Plan to advocacy groups, local governments, sub recipients, consultants, and other stakeholders via email lists.
- Display free language assistance posters in all NDDOT building's public areas.
- State on agendas, public notices, brochures, fliers, ads that a Request For Accommodation is available to request oral and written translation of documents from NDDOT.
- Post signs in public areas of Transit facilities and in transit vehicles notifying LEP individuals of the LEP Plan and how to access free language services.
- Post on the transit provider's websites, the LEP Plan and how to access free language services.

## Title VI and Related Nondiscrimination Authorities

### A. Nondiscrimination Statutes

- **Title VI of the Civil Rights Act of 1964**, 42 U.S.C. 2000d, provides: No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.
- **Section 504 of the Rehabilitation Act of 1973**, 42 U.S.C. 794, et seq., provides: No qualified handicapped person shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, be subjected to discrimination under any program or activity that receives or benefits from Federal financial assistance.
- **Age Discrimination Act of 1975**, 42 U.S.C. 6101, provides: No person in the United States 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.
- **Federal Aid Highway Act of 1973**, 23 U.S.C. 324, provides: No person shall, on the ground 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 Civil Rights Restoration Act of 1987**, P.L. 100-209, provides: Clarification of the original intent of Congress in Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973. The Act restores the broad, institution-wide scope and coverage of the nondiscrimination statutes to include all programs and activities of Federal-aid recipients, sub-recipients, and contractors, whether such programs and activities are federally assisted or not.
- **Title II of the Americans with Disabilities Act of 1990**, 42 U.S.C. 12131, et seq., provides: No qualified individual with a disability shall, by reason of such disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination by a department, agency, special purpose district, or other instrumentality of a State or local government.

### B. Regulations

- 23 Code of Federal Regulations (CFR) 1.36, Compliance with Federal Laws and Regulations
- 23 CFR 200, Title VI Program and Related Statutes-Implementation and Review Procedures
- 28 CFR 35, Nondiscrimination on the Basis of Disability in State and Local Government Services
- 28 CFR 36, Nondiscrimination on the Basis of Disability in Public Accommodations and in Commercial Facilities
- 28 CFR 42, Subpart C, Implementing Title VI of the Civil Rights Act of 1964
- 28 CFR 50.3, USDOJ's Guidelines Enforcement of Title VI of the Civil Rights Act of 1964
- 49 CFR 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964
- 49 CFR 27, Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance
- 49 CFR 28, Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Transportation (DOT)
- 49 CFR 53, Federal Transit Laws

### C. Executive Orders (E.O.)

- E.O. 12250, Leadership and Coordination of Nondiscrimination Laws
- E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
- E.O. 13166, Improving Access to Services for Persons with Limited English Proficiency

#### **D. Directives**

- DOT Order 1000.18, Implementation of the DOT Title VI Program
- DOT Order 1050.2, Standard Title VI Assurances
- FHWA Notice 4720.6, Impacts of the Civil Rights Restoration Act (CRRRA) on FHWA Programs
- DOT Order 5610.2(a), Actions to Address Environmental Justice and Minority Populations and Low-income Populations

#### **E. Other References**

- USDOJ's Title VI Legal Manual
- USDOJ's Investigation Procedures Manual for the Investigation and Resolution of Complaints Alleging Violations of Title VI and Other Nondiscrimination Statutes
- Americans with Disabilities Act Accessibility Guidelines (ADA Handbook Appendix B)
- Revised Draft Public Rights-of-Way Accessibility Guidelines (PROWAG) (2005)
- FHWA's Memorandum Clarification of FHWA's Oversight Role in Accessibility, Dated September 12, 2006

**Request For Reasonable Accommodations**  
North Dakota Department of Transportation, Civil Rights  
SFN 60135 (2-2016)

To electronically access SFN 60135, click on or go to the following:

<http://www.dot.nd.gov/forms/sfn60135.pdf>

**REQUEST FOR REASONABLE ACCOMMODATIONS**

North Dakota Department of Transportation, Civil Rights  
 SFN 60135 (2-2016)

	Date
--	------

**PART I**

Name		Telephone Number	
Street/Mailing Address		City	State ZIP Code
Preferred Method of Contact <input type="checkbox"/> Day Phone <input type="checkbox"/> Email <input type="checkbox"/> USPS		Email Address	
<b>Type of Event:</b> <input type="checkbox"/> Public Meeting/Public Hearing <input type="checkbox"/> Training <input type="checkbox"/> Other (specify) _____			
Date of Event	and/or	Date Needed	Location of Event

**PART II: LIMITED ENGLISH PROFICIENCY (LEP)**

<input type="checkbox"/> Yes <input type="checkbox"/> No    Do you need language assistance for LEP?	
Language Assistance	
<input type="checkbox"/> Oral Interpretation (specify language)	_____
<input type="checkbox"/> Written Translation (specify language)	_____
Name of Documents	

**PART III: AMERICANS WITH DISABILITIES ACT (ADA)**

<input type="checkbox"/> Yes <input type="checkbox"/> No    Do you need an accommodation for a disability?	
Types of Accommodation	
<input type="checkbox"/> Interpreter for deaf (specify ASL, tactile, etc.)	_____
<input type="checkbox"/> Assistive Listening device (specify)	_____
<input type="checkbox"/> Physical location accessible for persons with a physical mobility impairment.	
<input type="checkbox"/> Other (specify)	_____
Nature of Disability (Medical documentation may be requested)	
<input type="checkbox"/> Physical Mobility Impairment (specify)	_____
<input type="checkbox"/> Speech Impairment (specify)	_____
<input type="checkbox"/> Visual impairment (specify)	_____
<input type="checkbox"/> Hearing Impairment (specify)	_____
<input type="checkbox"/> Other (specify)	_____
Alternative Format (Indicate first, second, third choice if possible.)	Date Needed
<input type="checkbox"/> Braille	
<input type="checkbox"/> Large Print (font point size) _____	<input type="checkbox"/> Audio Recording -MP3 _____
<input type="checkbox"/> Other (specify) _____	<input type="checkbox"/> CD/Flash Drive _____
Name of Documents	
<b>For Office Use Only</b>	
The accommodation request is:	
<input type="checkbox"/> Granted as requested	<input type="checkbox"/> Granted with change - see additional information <input type="checkbox"/> Denied - see additional information

Figure 12 – NDDOT - Request for Reasonable Accommodations (SFN 60135), page 1

## **NDDOT INSTRUCTIONS**

General:

1. Requests for Reasonable Accommodations can be made by completing this form. If you prefer to complete this form electronically, go to the North Dakota Department of Transportation website at <http://www.dot.nd.gov/forms/sfn60135.pdf>
2. You may submit the completed form as follows:  
Save the completed form to your computer, click on the email link and attach your completed form. Email to: [civilrights@nd.gov](mailto:civilrights@nd.gov)

Mail to: NORTH DAKOTA DEPARTMENT OF TRANSPORTATION  
CIVIL RIGHTS DIVISION  
608 EAST BOULEVARD AVENUE  
BISMARCK ND 58505-0700

3. If you need assistance to complete the Request for Reasonable Accommodations form, please contact Paula Messmer, Civil Rights Division, NDDOT at (701-328-2978) or [civilrights@nd.gov](mailto:civilrights@nd.gov). TTY users may use Relay North Dakota at 711 or 1-800-366-6888.
4. Appropriate provisions will be considered when the Department is notified at least 10 days prior to the meeting date or 15 days prior to the date the written comments or grant applications are due.
  - Requests should be made as soon as possible
  - Converting printed material may take several weeks.
5. The Civil Rights Division will contact you to discuss your request.

### **PART I**

Complete all information in this section.

### **PART II: Limited English Proficiency (LEP)**

Check all boxes that apply to the type of language assistance that you are requesting.

### **PART III: Americans with Disabilities Act (ADA)**

Check all boxes that apply to the accommodation(s) that you are requesting.

## Definition of Terms

**AASHTO** -- American Association of State Highway Transportation Officials

**Administrative Program Area** - Identifies program areas that are required to have Title VI reviews according to an FHWA approved review schedule. 23 C.F.R.200.9(b)5

**Adverse Effects** - The totality of significant individual or cumulative human health or environmental effects, including interrelated social and economic effects, which may include, but are not limited to:

- Bodily impairment, infirmity, illness or death;
- Air, noise, and water pollution and soil contamination;
- Destruction or disruption of man-made or natural resources;
- Destruction or diminution of aesthetic values;
- Destruction or disruption of community cohesion or a community's economic vitality;
- Destruction or disruption of the availability of public and private facilities and services;
- Vibration;
- Adverse employment effects;
- Displacement of persons, businesses, farms, or nonprofit organizations;
- Increased traffic congestion, isolation, exclusion or separation of minority or low-income individuals within a given community or from the broader community; and
- The denial of, reduction in, or significant delay in the receipt of benefits of DOT programs, policies, or activities.

**Advocacy Distribution List** - A mailing list of agencies, organizations, and individuals that provide services to underserved populations including individuals or groups of persons with limited English proficiency, disabilities, low-income, or minorities.

**Affirmative Action** - A good faith effort to eliminate past and present discrimination in all federally assisted programs, and to ensure future nondiscriminatory practices.

**Beneficiary** - Any person or group of persons (other than States) entitled to receive benefits, directly or indirectly, from any federally assisted program, i.e., relocates, impacted citizens, communities, etc.

**Citizen Participation** -- An open process in which the rights of the community to be informed, to provide comments to the Government and to receive a response from the Government are met through a full opportunity to be involved and to express needs and goals.

**Compliance** - That satisfactory condition existing when a recipient has effectively implemented all of the Title VI requirements or can demonstrate that every good faith effort toward achieving this end has been made.

**Discrimination** - That act (or action), whether intentional or unintentional, through which a person in the United States, solely because of race, color, religion, national origin, or sex has been otherwise subjected to unequal treatment under any program or activity receiving federal assistance from the Federal Highway Administration under title 23 U.S.C.

**Disproportionately High and Adverse Effect** - An adverse effect that is

- Predominately borne by a minority population and/or a low-income population, or;

- Will be suffered by the minority population and/or low-income population and is appreciably more severe or greater in magnitude than the adverse effect that will be suffered by the non-minority population.

**Environmental Justice** --Environmental justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.

FHWA further affirms three fundamental environmental justice principles:

1. *To avoid, minimize, or mitigate disproportionately high and adverse human health and environmental effects, including social and economic effects, on minority populations and low-income populations.*
2. *To ensure the full and fair participation by all potentially affected communities in the transportation decision-making process.*
3. *To prevent the denial of, reduction in, or significant delay in the receipt of benefits by minority and low-income populations.*

**Federal Assistance** - Includes:

1. Grants and loans of Federal funds;
2. The grant or donation of Federal property and interests in property, the detail of Federal personnel, the sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient, and;
3. Any Federal agreement, arrangement, or other contract, which has, as one of its purposes, the provision of assistance.

**Low Income** - A person whose median household income is at or below the U.S. Department of Health and Human Services poverty guidelines.

**Low Income Population** - Any readily identifiable group of low-income persons (a person whose median household income is at or below the Department of Health and Human Services poverty guidelines) who live in geographic proximity, and, if circumstances warrant, geographically dispersed/transient persons (such as migrant workers or Native Americans) who will be similarly affected by a proposed DOT program, policy or activity.

**Minority** - Means a person who is:

**Black** or **African American** - A person having origins in any of the black racial groups of Africa.

**Hispanic or Latino** - A person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.

**Asian** - A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent.

**American Indian and Alaskan Native** - A person having origins in any of the original people of North America and who maintains cultural identification through tribal affiliation or community recognition.

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

**Minority Population** - Any readily identifiable groups of minority persons who live in geographic proximity, and if circumstances warrant, geographically dispersed/transient persons (such as migrant

workers or Native Americans) who will be similarly affected by a proposed DOT program, policy or activity.

**Persons** - Where designation of persons by race, color, or national origin is required, the following designations ordinarily may be used: "White not of Hispanic origin", "Black not of Hispanic origin", "Hispanic or Latino", "Asian", "Native Hawaiian or Other Pacific Islander", "American Indian or Alaskan Native." Additional subcategories based on national origin or primary language spoken may be used, where appropriate, on either a national or a regional basis.

**Program** - Includes any highway, project, or activity for the provision of services, financial aid, or other benefits to individuals. This includes education or training, work opportunities, health, welfare, rehabilitation, housing, or other services, whether provided directly by the recipient of Federal financial assistance or provided by others through contracts or other arrangements with the recipient.

**Recipient** - Any State, City, County, political subdivision or instrumentality thereof, or any public or private agency, institution, or organization, or other entity, or any individual to whom Federal assistance is extended, either directly or through another recipient (sub-recipient), for any program. Recipient includes any successor, assignee, or transferee thereof.

**Special Emphasis Program Areas** - Identifies major program areas that are required to have annual Title VI reviews to determine the effectiveness of program area activities at all levels.  
23 C.F.R.200.9(a)4(b)6

**Title VI Program** - The system of requirements developed to implement Title VI of the Civil Rights Act of 1964. References in this part to Title VI requirements and regulations shall not be limited to only Title VI of the Civil Rights Act of 1964. Where appropriate, this term also refers to the civil rights provisions of other Federal statutes to the extent that they prohibit discrimination on the grounds of race, color, national origin, or sex in programs receiving Federal financial assistance of the type subject to Title VI itself. These Federal statutes are:

1. Title VI of the Civil Rights Act of 1964 (42 U.S.C §§ 2000d - 2000d-7)
2. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C 4601-4655)
3. Title VIII of the Civil Rights Act of 1968, amended 1974 (42 U.S.C 3601-3619)
4. 23 U.S.C § 109h
5. 23 U.S.C § 324
6. Subsequent Federal-Aid Highway Acts and related statutes.