

“PUBLIC FUNDS EQUAL PUBLIC BENEFITS”

Compliance and Enforcement (Text Only)

Learning Objectives

- Describe the mechanisms and enforcement tools used to determine compliance
- Summarize enforcement actions that can be taken

Each year, the US DOT distributes a considerable amount of funds to the FHWA for further distribution to State and local public agencies through grants, loans, and other approved avenues. These funds, being issued for the purpose of supporting programs, services, and activities administered by specific agencies, indirectly impact virtually every aspect of American life. As a result, Congress enacted laws, not only obligating the DOT (and other Federal agencies) to fair distribution of funds, these laws entitle Federal aid recipients to fair and equitable use of the same funds.

These funds, which were collected in a nondiscriminatory manner, are not to be used in ways that subsidize, promote, or perpetuate discrimination based on race, color, national origin, sex, age, etc. Additionally, recipients and subrecipients of Federal financial assistance are required to establish and maintain a comprehensive and proactive Title VI compliance and enforcement program to eliminate and prevent discrimination in each of the federally assisted programs they administer.

MECHANISMS AND ENFORCEMENT TOOLS USED TO DETERMINE COMPLIANCE

Each federally funded recipient is responsible for cultivating an equitable, nondiscriminatory environment that provides equal treatment, equal access, equal rights, and equal opportunities to each person within the United State territories and possessions. Specifically, the FHWA is charged with more than just the **oversight** of compliance with laws and regulations. FHWA is also charged with **stewardship** towards improving the efficiency and effectiveness of the transportation systems across the US. Furthermore, assistance provided by the FHWA is not just financial; it is managerial and technical as well.

Having strong oversight and stewardship responsibilities in the compliance and enforcement of Title VI, there are several mechanisms and tools that have been identified for use in determining recipient and subrecipient compliance with nondiscrimination laws. The primary tools to be discussed in this module include:

- Agency/Organizational Self-Monitoring and Self-Assessments
- On-Site Reviews
- Assurance Agreements
- Demographic Collection and Awareness

Agency/Organizational Self-Monitoring and Self-Assessments. Federal aid recipients and subrecipients may establish processes whereby they **monitor and assess** themselves for Title VI compliance. By having procedures specifically in place to address nondiscrimination issues, these recipients and subrecipients are more likely to be in compliance with federal laws and regulations that uphold nondiscriminatory measures. Additionally, reports and assessments produced via self-monitoring can be used by the DOT, FHWA, HCR or any other adjudicating entity to determine compliance.

On-Site Reviews. To monitor and evaluate the activities, programs, and services provided by Federal aid recipients, the FHWA will periodically conduct on-site reviews. These reviews assist the FHWA in determining nondiscriminatory compliance via the close review of processes and procedures. Additionally the FHWA may conduct a thorough assessment of the recipient's use of funds in the areas where a State has assumed specific responsibilities to benefit its communities.

Assurances require that recipients of Federal funds from the FHWA who distribute funds downstream ensure subrecipients, contractors, subcontractors, grantees, transferees, successors in interest, and other federally assisted participants comply with all Title VI nondiscrimination provisions. These agreements hold both primary recipients and subrecipients accountable for full compliance with Title VI provisions (*42 U.S.C. § 2000d-1 (1988)*).

Demographic Data Collection and Awareness. The collection and analysis of demographic data is an element successfully used to determine Title VI compliance, as it allows an agency to monitor whether program funds are reaching intended communities without adversely affecting protected groups. By identifying and creating demographic profile maps of low-income and minority populations for designated areas to be affected by a federally funded project, past and future compliance with Title VI can be verified and can help to identify communities that are prone to infractions of environmental justice.

Furthermore, mapping a project against a demographic profile map will quickly inform recipients and subrecipients of Federal funds whether or not the distribution of services, facilities, and resources within the identified planning area is fair and equitable.

In the next portion of this module, actions can be taken to enforce Title VI should a recipient or subrecipient fail to effectively comply applicable laws and statutes will be reviewed. Although there has been a discussion regarding some common mechanisms and tools used to determine compliance, additional details regarding *prevention* of discrimination and proactive measures can be found in the *Strategies for Prevention of Discrimination* module. Again, should any agency be found in noncompliance, there are specific ramifications for the agency or agencies found in violation.

TITLE VI ENFORCEMENT ACTIONS THAT CAN BE TAKEN

Although the Federal Highway Administration (FHWA) is the Federal Agency responsible for ensuring compliance with Federal requirements in the delivery of the Federal highway

program, ultimately the Office of the Secretary of Transportation is responsible for effecting Title VI compliance regarding federally-assisted programs of the DOT.

Per CFR 49 21.13, if it appears that an agency or organization is found to be in noncompliance with Title VI of the Civil Rights Act of 1964, or if such noncompliance cannot be corrected by informal means, the agency may face **suspension or termination** of Federal financial assistance.

Furthermore, agencies found in noncompliance may be subject to referral to the Department of Justice (DOJ) with a recommendation that appropriate proceeding be brought forth to enforce any rights of the United States under **United States Federal law**, State or local law, applicable assurances, or by contractual obligation.

Assurances are authorized and required by law, and are legally binding agreements required before any, and all, Federal grants, loans, contracts, property, discounts or other Federal financial assistance are rendered to recipients and subrecipients. If an applicant fails or refuses to furnish an assurance required by **49 CFR 21.7** or comply with a requirement imposed by or pursuant to that section, that agency may be refused Federal financial assistance.

Termination or refusal to grant or continue Federal financial assistance is subject to four, specific conditions outlined by law:

1. The Secretary of Transportation must have advised the applicant or recipient of his failure to comply; it must also be determined that compliance by such applicant or recipient cannot be secured by voluntary means
2. There must be an express finding on record, after a hearing opportunity, of said applicant's or recipient's failure to comply with a requirement imposed by law
3. Termination or refusal of funds must be approved by the Secretary of Transportation
4. A full written report must be submitted to the appropriate Senate and House committees citing the circumstances and grounds for termination or refusal of funds; 30 days after report submission will termination or refusal of funds become effective

It should be noted that the ultimate determination by the Department for suspension, termination, or refusal of funds is subject to authorization by law, based on the following three conditions:

- (1) The Secretary of Transportation must determine that compliance cannot be secured by voluntary means;
- (2) The recipient or other person must be notified of its failure to comply and of the action to be taken to effect compliance; and
- (3) At **least 10 days** from the mailing of such notice to the recipient or other person must expire.

In summary, the FHWA can, and sometimes does, *delay* funds for State projects when it has found noncompliance in a postaward review. In the event the recipient fails or refuses to comply with the terms of this agreement, the FHWA may take any or all of the following sanctions:

- a. Suspend, terminate, or cancel this agreement in whole or in part;
- b. Refrain from extending any further assistance to the recipient under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from the recipient.
- c. Take such other authorized action that may be deemed appropriate under the circumstances, until compliance or remedial action has been accomplished by the recipient.
- d. Refer the case to the Department of Justice for appropriate legal proceedings.
- e. Utilize applicable proceedings under state or local law.