

“PUBLIC FUNDS EQUAL PUBLIC BENEFITS”

Title VI Impacts

Learning Objectives

- List Potential Title VI Issues in Major Program Areas
- Describe Ways to Address Potential Issues

In the provision of federal programs and activities, Title VI of the Civil Rights Act of 1964 has broad applicability. Therefore, the identification of Title VI-related impacts for consideration in the implementation of Federally funded projects is critical to the overall project’s success. The Federal Highway Administration (or FHWA), being aware that adverse issues may potentially have far-reaching effects on a community requires that all federal aid recipients and subrecipients not only understand and identify issues that may arise, but these same recipients should also set measures in place to mitigate or completely eliminate the issues that would, otherwise, unfavorably impact a community or protected group of persons.

To understand a Federally-funded project’s potential impacts for consideration in each phase could mean the difference between findings of discrimination that also result in costly developmental disruptions versus continuous, uninterrupted project development that more positively impacts a community upon completion.

While certain **protected groups**, particularly in urban areas, form a growing portion of the population, historically, these groups have experienced barriers to participation in the public decision-making process. Additionally, on occasion, these groups may not be fully aware of some potentially adverse impacts to their communities regarding specific Federally funded projects until the projects are implemented. It would then be during the implementation of a project where the onset of adverse impacts become apparent.

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Note:

Persons of protected minority and ethnic groups, persons of low-income households, women, children, elderly, and uneducated persons may find participation in planning and development phases of transportation projects difficult; therefore, these groups may possibly be underserved and underrepresented

In considering the impacts that projects may have on a community environmentally, culturally, linguistically, and economically, to name a few aspects, federal aid recipients and subrecipients can work diligently and proactively to empower protected and disadvantaged groups to participate in the kinds of transportation decisions that will impact their lives.

Title VI Program Impacts

The two primary types of impacts to consider are direct and indirect impacts. While direct impacts are caused by the immediate action that occurs at the same time and location, **indirect** impacts are caused by action that occurs later in time and further away in distance, but are still reasonably foreseeable.

In both direct and indirect impacts, context and intensity need to be considered in determining the significance of the outcome. The context and significance varies dependent on the setting, whether it's the society as a whole, an affected region, and community interests.

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Note:
<ul style="list-style-type: none"> Indirect effects may include growth-inducing effects that have the potential to cause changes in the pattern of land use, population density, or related effects on air, water and other natural systems.

Environmental Factors

Environmental factors play a very important role in the identification of potential impacts and elements for consideration during transportation project implementations. Although complex and fluid, both **human** and **natural** environmental factors serve as parameters to identify and evaluate environmentally-impacting issues and problems. Similarly to the discussion just reviewed regarding the importance of mitigation, maintaining a close watch on the environments affected by a project is essential to the successful completion of any project. Such environmental concerns must be carefully and continually considered throughout each phase of a project's developmental progression.

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Human Environmental Factors	Natural Environmental Factors
<p>The <i>Human Environment</i> includes:</p> <ul style="list-style-type: none"> Communities, Neighborhoods, People Environmental Justice Cultural, historic, archeological and scenic resources Integrated decision-making 	<p>The <i>Natural Environment</i> includes:</p> <ul style="list-style-type: none"> General environment, air quality, climate, noise Wetlands, water quality Habitat, ecosystem

During each phase of a project, every effort should be made to minimize adverse environmental impacts. Furthermore, it is a common “best practice” to implement to ongoing evaluation of all identifiable environmental benefits and consequences.

POTENTIAL TITLE VI ISSUES IN MAJOR PROGRAM AREAS & WAYS TO ADDRESS POTENTIAL ISSUES (MITIGATION)

In recent years, the FHWA published (and currently maintains) a document entitled the ***Title VI Considerations in the Federal-aid Highway Program***. In this document, detailed discussions are provided regarding each of the development phases of transportation-specific projects. These phases are:

- The Planning Process
- The Project Development Process
- Right-of-Way
- Construction
- **Research**

As mentioned moments ago, recipients and subrecipients are responsible for considering any issues that may arise during each phase of a federally funded project. Therefore, the remainder of this module will focus on each phase by defining the phase and identifying common issues for consideration during each project phase. Furthermore, the associated **mitigations** or measures to reduce or eliminate discriminatory practices associated with the issues that may adversely impact a community will be reviewed, as well.

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Note:
Link out to PDF document: <i>Title VI Considerations in the Federal-aid Highway Program</i>

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Note: (Research)
Although listed as a “phase” according to the FHWA’s <i>Title VI Considerations in the Federal-aid Highway Program</i> , research may be conducted at any time throughout a project. Research conducted during any of the phases between Planning to the Construction is encouraged and may be necessary to successfully complete or implement a proposed project, whereby nondiscriminatory practices are a regulated part of the entire process.

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Note:
The commitment made by Federal aid recipients and subrecipients to mitigate potentially adverse impacts must be instituted throughout the <i>entire</i> project, from planning and construction to ongoing monitoring and maintenance. Consequently, every approach to plan and implement a project must be <i>designed</i> to avoid, minimize or eliminate any adverse

impacts, by finding an amenable solution for all potentially affected areas.

40 CFR 1508.20 - Mitigation

TITLE 40 - PROTECTION OF ENVIRONMENT

CHAPTER V - COUNCIL ON ENVIRONMENTAL QUALITY

SUBCHAPTER A - ACCIDENTAL RELEASE PREVENTION REQUIREMENTS; RISK MANAGEMENT PROGRAMS UNDER THE CLEAN AIR ACT SECTION 112(R)(7); DISTRIBUTION OF OFF - SITE CONSEQUENCE ANALYSIS INFORMATION

PART 1508 - TERMINOLOGY AND INDEX

1508.20 - Mitigation.

Mitigation includes:

- (a) Avoiding the impact altogether by not taking a certain action or parts of an action.
- (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
- (c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.
- (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
- (e) Compensating for the impact by replacing or providing substitute resources or environments.

Planning

The statewide and metropolitan planning process establishes a cooperative, continuous, and comprehensive framework for making transportation investment decisions through the State and Metropolitan Area. The process is designed to promote involvement by all levels of government, stakeholders, and the general public, through a proactive public participation process. During the planning process, long and short-range plans are made to provide efficient transportation services to the citizens of their respective areas. In addition to the **considerations** that must be taken into account, there are some potential Title VI issues of which project managers should be aware during the planning process of a project. These potential issues include:

- Effective public involvement/participation
- Serious consideration of input from minority groups/persons
- Coordination with Indian tribal governments in statewide metropolitan transportation planning
- Adequate data collection/analysis
- Proper identification and description of Social, Economic, and Environmental (SEE) effects and impacts

- Provision of contracting opportunities for planning studies, corridor studies, or other work to minorities and women.

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Planning Considerations

- Support the economic vitality of the United States, the States, non- metropolitan and metropolitan areas, especially by enabling global competitiveness, productivity, and efficiency;
- Increase the safety of the transportation system for motorized and non-motorized users;
- Increase the security of the transportation system for motorized and non-motorized users;
- Increase the accessibility and mobility of people and freight;
- Protect and enhance the environment, promote energy conservation, improve the quality of life, and promote consistency between transportation improvements and State and local
- planned growth and economic development patterns;
- Enhance the integration and connectivity of the transportation system, across and between modes, for people and freight;
- Promote efficient system management and operation; and
- Emphasize the preservation of the existing transportation system.

To mitigate the possibility these during the Planning process, Federal aid recipients and subrecipients should:

- Obtain participation from those most directly impacted
- Contact minority community leaders, organizations, and media to reach the public
- Consider the availability of information (time, place, language, educational level)
- Conduct an adequate number of meetings and hearings to allow the public fair involvement
- Utilize citizen advisory committees
- Hold meetings or hearings at an appropriate location, convenient time, a convenient day of the week, and in the appropriate atmosphere, to encourage and increase attendance
- Actively demonstrate consideration of community input via newsletters, letters, brochures, or other medium that will potentially reach the target group or audience
- Establish better and/or effective relationships with Indian tribal governments.
- Obtain training and/or knowledge of Indian tribal customs and laws that govern their various sovereign nations
- Design forms, surveys, and other data collection methods to contain the following information:
 - Description of community boundaries
 - Racial/ethnic makeup
 - Income levels, tax base and
 - Community services, schools, hospitals, shopping, public safety
- Institute a systematic interdisciplinary approach

- Incorporate public involvement techniques such as minority citizen advisory committees
- Solicit input from minority and women-owned businesses and minority institutions of higher education

Project Development Process

The term "project development" refers to the process of a highway or transit project in which the environmental study necessary for the National Environmental Policy Act (or **NEPA**) compliance is performed. The NEPA requires that all Federal agencies examine and disclose the possible and likely effects of their actions on the human environment. During this phase, several **classes of environmental documentation** may be prepared to determine how a project will impact its surrounding environment.

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23 CFR Part 771

Refer to <http://www.fhwa.dot.gov/HEP/23cfr771.htm> for details regarding *Environmental Impact and Related Procedures*.

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NEPA Documentation Classes

Class I	
• EIS	Environmental Impact Statement - "Significant" impact on the environment Most detailed (considers all reasonable alternatives) / least used
• NOI	Notice of Intent - Notice published in CFR that summarize purpose, impacts, solutions
• DEIS	Draft Environmental Impact Statement (FEIS) - identifies the project's location, the population demographics and other community characteristics
• FEIS	Final Environmental Impact Statement (FEIS) - identifies and compares the various alternatives and mitigation measures
• ROD	Record of Decision - explains the basis for the decision and describes any applicable commitments
Class II	
• CE	Categorical Exclusion - Shows significant or cumulative SEE impacts /Used most /EA or EIS not used
Class III	
• EA	Environmental Assessment - Unknown or unclear impacts /Profile local population /Consider one to two alternatives
• FONSI	Finding of No Significant Impacts - No impact indicated

As with Planning, there some potential Title VI issues project managers should be mindful of during the Project Development Process. These potential issues include:

- The adequate solicitation and consideration of public involvement
- The adequate identification of Social, Economic, and Environmental (or SEE) impacts
- The adequate attention given to the potential for disproportionate or discriminatory impacts.

To **mitigate** the possibility of adverse effects rendered by these issues, Federal aid recipients and subrecipients should:

- Develop a public involvement program, during the planning stage and continue during the project development process, to meet the needs of a particular community (e.g., minority, disabled, and elderly)
- Use newsletters, speakers bureaus and media to provide a consistent flow of information regarding project development status
- Provide opportunity for public hearing after release of the Draft Environmental Impact Statement or Environmental Assessment.
- Focus outreach on the appropriate communities to ensure involvement
- Use informal contact versus a formal atmosphere for public hearings to increase participation and effectiveness
- Experiment with informal open forum public hearing formats; for example, allow one-on-one comments to a recorder
- Identify *beneficial* impacts such as increased access to facilities and/or services and cut-through traffic reduction, reduced congestion within communities, and reduced adverse air quality impacts
- Identify adverse impacts such as:
 - Diminished access to facilities/services
 - Disruption of community cohesion
 - Disruption of people, businesses and farms
 - Changes in tax base and property values
 - Traffic
 - Noise
 - Relocation of residences and businesses, and
 - Diminished quality of the water, air, or natural environment used by residents.
- Develop mitigation and enhancement strategies based on public involvement and agency coordination
- Include a compilation and analysis of demographic data, including breakdowns by characteristics protected under Title VI and related statutes for each community impact assessment
- Become aware of other actions that have occurred in the impacted area and understand how these actions were perceived by members of the community
- Effectively utilize public involvement techniques to identify issues of discriminatory potential as early as possible in the project development process
- Study avoidance, minimization, mitigation and enhancement strategies, working with the affected community on the specifics as a definite proposal begins to take shape

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Specific Project Development Process Mitigation Measures Include:

- The restoration of circulation and pedestrian patterns for disrupted communities
- The provision of relocation assistance and advisory services, replacement housing and payments for moving displaced families and businesses
- Provision for maximum retention of existing trees and shrubs included in grading plans for ramp areas and along right-of- way
- Provisions for last resort housing
- Traffic control provisions
- Improved traffic signalization and street lighting
- The establishment of priorities for employment, training and contracting opportunities for residents of the affected community
- The provision of noise barriers and buffer zones
- Landscaping provision
- The functional replacement of publicly-owned facilities displaced by the project
- Coordination with community development agencies to implement jointly funded initiatives

Right-of-Way

This phase of a project is initiated while the Project Development Process is in progress, however the design work must be completed when this phase begins. Right-of-way functional activities include appraisal of all properties to be purchased, negotiation with property owners, acquisition of the property, management of the property acquired, relocation of people and businesses and the adjustment of utilities. Each of these activities can be accompanied by their own potential Title VI issues.

The issues associated with the appraisal review include:

- The diversification in the use of appraisers
- The nondiscriminatory and non-stereotypical selection or adjustment of comparable sales and rental properties
- Fair adjustments to the comparable sales and rental properties, as not to reflect discrimination.
- Consistency in the determination of severance/consequential damages

The mitigation measures associated with the issues that may arise during the appraisal review include:

- The expansion of the pool of qualified fee appraisers via aggressive outreach
- The maximization of the quality for appraisal reviews
- Ensuring all appraisal activity complies with the following:
 - Title VI
 - Nondiscrimination in Federally-Assisted Programs and Title VII

- Equal Employment Opportunity
- Ensuring information-gathering, analysis, and **reporting** are objective, without regard to race, color, national origin, sex, age, or disability.

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Note:

- Appraisal reports should not reflect bias and should not include unfounded statements, inappropriate data, prejudicial analysis or misleading conclusions. Such practices are unethical and illegal.

The issues associated with negotiation and/or acquisition activities include:

- The exertion of every effort to negotiate for required property before filing condemnation
- Whether property owners were fully informed of their rights to receive just compensation for their property before any donation of such property.
- Whether the offer was made for the full amount of the review appraiser's determination of compensation
- Whether there is consistency in the application of minimum payment policy

The mitigation measures associated with the issues that may arise pertaining to negotiation and/or acquisition activities include:

- Ensuring compliance with regulatory requirements prior to instituting of condemnation proceedings
- Ensuring the parcel record documents the basis for donations and notification of entitlement to just compensation
- Ensuring consistency in the implementation of negotiation procedures
- Ensuring policy is applied uniformly from project to project

The issues associated with relocation advisory assistance and payment activities include:

- Whether relocation advisory assistance was provided equitably and without discrimination to displaced individuals.
- Whether the selection of comparable replacement housing is fair, consistent, and without discrimination.
- Whether decent, safe and sanitary inspection standards are consistently applied.
- Adequacy of personal contacts.

The mitigation measures associated with the issues that may arise for relocation advisory assistance and payment activities include:

- Ensuring diversification of relocation staff

- Obtaining feedback from displaced individuals
- Conducting appropriate needs assessment
- Conducting self evaluations, etc.
- Conducting training (i.e. sensitivity)

Finally, the issues associated with property management activities include:

- Whether the determination of rent amounts is equitable.
- Whether the procurement of bids provides equal opportunity.
- Whether the maintenance of rental properties on projects is adequate and consistently performed for all renters.

These issues associated with property management activities can be mitigated via implementation of the measures such as:

- Staff diversification of staff
- Training
- Self evaluations
- Aggressive outreach
- Barrier removal
- Tenant feedback consideration

Construction

The construction process focuses on the delivery, construction, and maintenance of capacity enhancing, operational improvements. This phase includes pre-construction (design and contracting), construction, and post-construction (maintenance) activities. During this phase, the FHWA may conduct periodic on-site inspections to monitor recipients' and subrecipients' control of the work. The FHWA may also be included as part of a broader process review. Some specific issues that may arise during the various execution of activities throughout this phase of a transportation project include:

- Whether appropriate contract provisions are incorporated in Federal-aid contracts
- Whether the monitoring/inspection of work by the State results in disparate treatment of protected groups
- Whether required mitigation measures have been effectively implemented, i.e, safety through construction zones; noise and air impacts; employment and contracting goals, etc
- Whether barriers exist in pre-qualification, approval of subcontractors, bonding and licensing requirements
- Whether uniformity exists in the approval of plans changes and supplemental agreements
- Whether uniformity exists in the assessment of sanctions, liquidated damages, withholding payments, suspension/termination of contracts, and decertification

Measures that can be implemented to mitigate potential adverse impacts during the construction phase include:

- Process reviews
- Self evaluations
- Training implementation
- Staff diversification
- Public involvement feedback
- Coordination with public interest groups
- Subcontractor surveys
- Utilization of supportive services

Research

Although not technically a *phase* of project development, Research plays a vital role in the success of a federally-funded transportation project. It is during research that recipients and subrecipients are encouraged to conduct transportation-related research projects with respect to **problem statements** that have been made available to an STA. Title VI issues that may arise during research include the following considerations:

- Whether there is diversification in the selection of consultants/universities
- Proposal/problem statement solicitation

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Problem Statement
<ul style="list-style-type: none">• The problem statement provides a brief description of the proposed research, need for the research, and estimated cost.

By implementing the following measures of mitigation, the issues associated with transportation-specific project research may be highly reduced, or eliminated altogether. These measures include:

- Aggressive outreach
- Use of supportive services
- Solicitation and consideration of public feedback
- Barrier removal
- Solicitation of minority universities and research firms based on capability and expertise

In summary, it matters not what phase of a project has already passed, or is to come. Rather, the emphasis upon public involvement and environmental awareness are key when addressing the issues for consideration during a project. Furthermore by becoming intimately

familiar with the issues that may adversely affect impacted communities, Federal aid recipients position themselves in such a manner to lessen the possibility acting unfairly toward specific groups or persons. By implementing measures of mitigation that consider the impacts reviewed in this module, federal aid recipients proactively save themselves a world of headache and unnecessary, added monetary costs and legal consequences, as they would be more likely to be in compliance with the FHWA's Title VI program including the law and other authoritative statutes.