
Title VI
Non-Discrimination Plan
for the
Kalamazoo Area Transportation Study

Adopted October 19, 2011

Kalamazoo Area Transportation Study

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Kalamazoo Area Transportation Study
Title VI Non-Discrimination Plan
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Kalamazoo Area Transportation Study

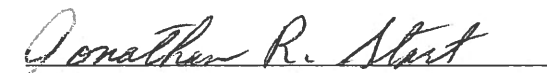
Non-discrimination Policy Statement

The Kalamazoo Area Transportation Study (KATS) assures that no person shall, on the grounds of race, color, national origin, or sex, as provided by Title VI of the Civil Rights Act of 1964 and the Civil Rights Restoration Act of 1987 (P.L. 100.259), be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity. KATS further assures every effort will be made to ensure nondiscrimination in all of its programs and activities, whether those programs and activities are federally funded or not. Furthermore, KATS will not exclude persons based on age, religion, or disability.

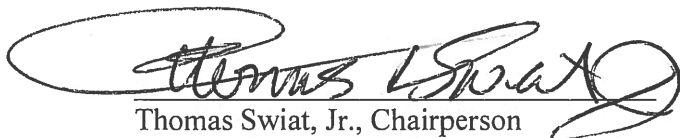
More specifically, the Kalamazoo Area Transportation Study assures that efforts will be made to prevent discrimination through the impacts of its programs, policies, and activities on minority and low income populations. Additionally, the Kalamazoo Area Transportation Study will take reasonable steps to provide meaningful access to services for persons with Limited English Proficiency.

In the event KATS distributes federal aid funds to another governmental entity, KATS will include Title VI language in all written agreements and will monitor for compliance.

KATS's Title VI Coordinator is responsible for initiating and monitoring Title VI activities, preparing required reports, and other KATS responsibilities as required by 23 Code of Federal Regulation (CFR) 200 and 49 Code of Federal Regulation 21.


Jonathan R. Start, Executive Director
Kalamazoo Area Transportation Study

Oct. 19, 2011
Date


Thomas Swiat, Jr., Chairperson
Kalamazoo Area Transportation Study Policy Committee

10-19-11
Date

Title VI Assurance

The Kalamazoo Area Transportation Study (hereinafter referred to as the “Recipient”), HEREBY AGREES THAT as a condition to receiving any federal financial assistance from the U.S. Department of Transportation, it will comply with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 USC 2000d - 42 USC 2000d-4 (hereinafter referred to as the “Act”), and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964 (hereinafter referred to as the “Regulations”), and other pertinent directives, to the end that in accordance with the Act, Regulations, and other pertinent directives, no person in the United States shall, on the grounds of race, color, sex, 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 the Department of Transportation, including the Federal Highway Administration, and

HEREBY GIVES ASSURANCE THAT it will promptly take any measures necessary to effectuate this agreement. This Assurance is required by Subsection 21.7(a)(1) of the Regulations.

More specifically and without limiting the above general assurance, the Recipient hereby gives the following specific assurances to its Federal Aid Highway Program:

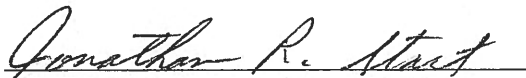
1. That the Recipient agrees that each “program” and each “facility”, as defined in Subsections 21.23(e) and 21.23(b) of the Regulations, will be (with regard to a “program”) conducted or will be (with regard to a “facility”) operated in compliance with all requirements imposed by, or pursuant to, the Regulations.
2. That the Recipient shall insert the following notification in all solicitations for bids for work or material subject to the Regulations made in connection with the Federal Aid Highway Program, and in adapted form in all proposals for negotiated agreements:

“The Kalamazoo Area Transportation Study, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and Title 49, Code of the Federal Regulations, Department of Transportation, SubTitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally assisted programs of the Department of Transportation, issued pursuant to such Act, hereby notifies all bidden that it will affirmatively insure that in any contract entered into pursuant to this advertisement, minority enterprises will be afforded full 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.”

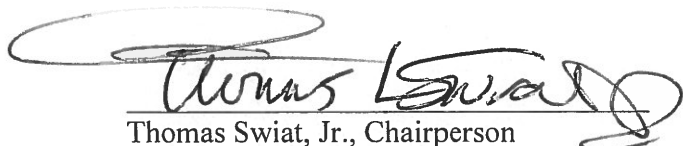
3. That the Recipient shall insert the clauses of Appendix A of this Assurance in every contract subject to the Act and the Regulations.

4. The Recipient shall provide for such methods of administration for the program, as are found by the State Secretary of Transportation or the official to whom s/he delegates specific authority, to give reasonable guarantee that it, other recipients, subgrantees, contractors, subcontractors, transferees, successors in interest, and other participants of federal financial assistance under such program will comply with all requirements imposed or pursuant to the Act, the Regulations, and this Assurance.
5. The Recipient agrees that the United States has a right to seek judicial endorsement with regard to any matter arising under the Act, the Regulations, and this Assurance.

THIS ASSURANCE is given in consideration of, and for the purpose of obtaining, any and all federal grants, loans, contracts, property, discounts, or other federal financial assistance extended after the date hereof to the Recipient by the Department of Transportation under the Federal Aid Highway Program and is binding on it, other recipients, subgrantees, contractors, subcontractors, transferees, successors in interest, and other participants in the Federal Aid Highway Program. The person or persons whose signatures appear below are authorized to sign this Assurance on behalf of the Recipient.


Jonathan R. Start, Executive Director

Oct. 19, 2011
Date


Thomas Swiat, Jr., Chairperson
Kalamazoo Area Transportation Study Policy Committee

10-19-11
Date

Regulatory Requirements

Title VI of the 1964 Civil Rights Act provides that no person in the United States shall, on the grounds of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving federal financial assistance (refer to 23 CFR 200.9 and 49 CFR 21).

The Civil Rights Restoration Act of 1987 broadened the scope of Title VI coverage by expanding the definition of the terms “programs or activities” to include all programs or activities of Federal Aid recipients, subrecipients, and contractors, whether such programs and activities are federally assisted or not (Public Law 100-259 [S. 557] March 22, 1988).

Additional Authorities and Citations Include:

Title VI of the Civil Rights Act of 1964, 42 United States Code 2000d to 2000-4; 42 United States Code 4601 to 4655; 23 United States Code 109(h); 23 United States Code 324; Department of Transportation Order 1050.2; Executive Order 12250; Executive Order 12898; 28 Code of Federal Regulations 50.3; Section 504 of the Rehabilitation Act of 1973; American’s With Disabilities Act of 1990; Section 324 of the Federal-Aid Highway Act

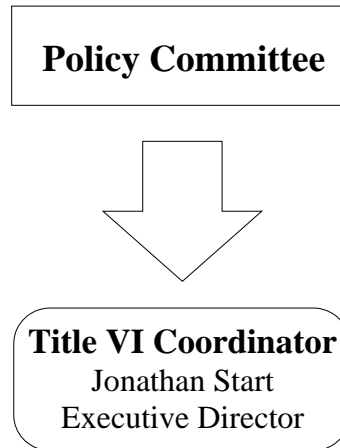
Structure for Organizational Oversight & Compliance

The Title VI Coordinator for the Kalamazoo Area Transportation Study is responsible for ensuring the implementation of the Title VI Plan. The Title VI Coordinator is responsible for the overall day-to-day management, administration and coordination of the Title VI Plan for Kalamazoo County. The current information for this individual is as follows:

*Jonathan R. Start, Executive Director
Kalamazoo Area Transportation Study
5220 Lovers Lane, Suite 110
Portage, MI 49002
(269) 343-0766
jrstart@KATSmpo.org*

Website: www.KATSmpo.org

Organization Chart



Programmatic Roles and Responsibilities

The Title VI Coordinator is responsible for implementing, monitoring, and ensuring the Kalamazoo Area Transportation Study's compliance with the Title VI regulations.

Title VI responsibilities are as follows:

1. Process Title VI complaints received by the Kalamazoo Area Transportation Study.
2. Compile and collect, as needed, statistical data (race, color, religion, sex and national origin) of participants in, and beneficiaries of the Kalamazoo Area Transportation Study Metropolitan Transportation Plan and the Transportation Improvement Program (TIP), with examples being citizens, impacted communities, and affected communities.
3. Conduct a review of Title VI program areas as necessary, and following the Transportation Plan and Transportation Improvement Program adoption, determine the effectiveness of the program at all levels.

4. Review internal policies and, where applicable, incorporate procedures to ensure compliance with Title VI.
5. Attend and/or send staff to training on Title VI.
6. Contribute to the required state annual Title VI report including a highlight of accomplishments as well as a list of established goals and performance measures.
7. Develop and utilize Title VI information from the Michigan Department of Transportation and other state and federal partners for dissemination to the general public and, where appropriate, in languages other than English.
8. Identify, investigate and eliminate discrimination when found to exist.

Title VI Plan Distribution

The Kalamazoo Area Transportation Study will disseminate Title VI Program information to its employees, sub-recipients, and contractors, as well as the general public. Public dissemination will include the posting of public statements, inclusion of Title VI language in contracts, annually publishing the Title VI Policy Statement in newspapers, and announcements of hearings and meetings on the agency's website and in minority newspapers when determined necessary and funding is available.

Accomplishment Report

At the end of each fiscal year, the Title VI Coordinator will provide a completed Title VI Sub-Recipient Annual Certification Form to the Michigan Department of Transportation Title VI EEO Office. The certification will be based on all of the information gathered relating to the adopted Title VI Plan for the Kalamazoo Area Transportation Study. This report will highlight any accomplishments and/or changes made to the Title VI program during the fiscal year.

Annual Work Plan

Planning Coordination

KATS Responsibilities

- **Transportation Planning:**
The KATS has the responsibility to develop long- and short-range plans to provide efficient transportation services to Kalamazoo County.
- **Operational Guidelines:**
The Metropolitan Planning Organization Regulations 23 CFR 450
- **Planning Process:**
A comprehensive transportation planning process is used which incorporates input from the public. The process further entails the monitoring and collection of varied data pertaining to transportation issues. KATS coordinates with MDOT, cities, and counties, seeks public involvement, and provides technical support where needed.

Title VI Responsibilities

- Ensure that all aspects of the planning process operation comply with Title VI.
- Gather and organize the Planning portion of the Annual Title VI Update Report.
- Review the Planning work program and other directives to ensure compliance with Title VI program requirements.
- Ensure equal opportunities for participation on any Citizens Advisory Committee (CAC) by reviewing information pertaining to their selection criteria for CAC members and obtaining information on membership makeup (race, gender, and position within the organization) for evaluation.
- Monitor CAC meetings as well as public meetings when offered in predominantly ethnic minority communities to verify the level of participation of Title VI protected group members. Collect data on gender, race, and national origin of public forum attendees.

Education and Training Coordination

KATS Responsibilities

- **Staff Development:**
MDOT will provide training opportunities to KATS staff and sub-recipients.

Title VI Responsibilities

- Assist MDOT in the distribution of information on training programs regarding Title VI and related statutes.
- Ensure equal access to, and participation in, applicable NHI courses for qualified KATS employees.

Consultant Contracts Coordination

KATS Responsibilities

- Consultant Services:
KATS is responsible for consultant selection, negotiation, and the administration of consultant contracts.
- Consultant Selection Process:
The KATS operates under its internal contract procedures and all relevant federal and state laws.
- Operational Guidelines:
48 CFR 31
23 CFR 172

Title VI Responsibilities

- Monitor DBE program requirements.
- Ensure that all federally funded consultant contracts administered by the KATS have the appropriate Title VI provisions included.
- Review directives and procedures to ensure Title VI compliance.
- Maintain necessary data and documentation required for completion of the agency's Title VI Update Annual Report.

Public Involvement

KATS Responsibilities

- Serve as a forum where the Michigan Department of Transportation, transit providers, local agencies, and the public develop local transportation plans and programs.

Process with specific focus on areas within Environmental Justice populations (low income and minority)

- Notify local organizations/groups of KATS meetings relating to the planning process.
- Provide information to the Citizens Advisory Committee regarding plans and programs being developed by KATS.
- Operational Guidelines:
Kalamazoo Area Transportation Study Public Participation Plan
Executive Order 12898 Environmental Justice

Title VI Responsibilities

- Prepare materials for distribution to local organizations/groups announcing the opportunity to provide comment.
- Review KATS activities for compliance with adopted Public Involvement Process.
- Provide public notice materials in alternate format, as necessary, to non-English speaking individuals and those with an impairment

Complaint Procedures

These procedures cover all complaints filed under Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Civil Rights Restoration Act of 1987, and the Americans with Disabilities Act of 1990, relating to any plan or activity administered by the Kalamazoo Area Transportation Study as to sub-recipients, consultants, and contractors. State and Federal law prohibits intimidation or retaliation of any kind. Every effort will be made to obtain early resolution of complaints at the lowest level possible. The option of informal mediation meeting(s) between the affected parties and the Title VI Coordinator may be utilized for resolution. Further, these procedures do not deny the right of the complainant to file formal complaints with other state or federal agencies or to seek private counsel for complaints alleging discrimination.

1. Any individual, group of individuals or entity that believes they have been subjected to discrimination prohibited by Title VI nondiscrimination provisions may file a written complaint with the Kalamazoo Area Transportation Study. A formal complaint must be filed within 180 calendar days of the alleged occurrence. If the complainant could not reasonably be expected to know the act was discriminatory within the 180 calendar day period, the complainant will be allowed an additional 60 days to file from the time they become aware that the act was discriminatory.
2. Upon receipt of the complaint, the Kalamazoo Area Transportation Study will determine its jurisdiction, acceptability, need for additional information, and investigate the merit of the complaint. In cases where the complaint is against the Kalamazoo Area Transportation Study or one of the sub-recipients of federal funds, the Kalamazoo Area Transportation Study will forward the complaint to the Michigan Department of Transportation Civil Rights Program Unit EEO Officer. Additionally, a copy of the complaint will be forwarded to legal counsel contracted by the Kalamazoo Area Transportation Study for review.
3. When the complaint is forwarded to the Michigan Department of Transportation Civil Rights Program Unit, Equal Employment Opportunity (EEO) Officer, the Title VI Coordinator will notify the individual, group of individuals or entity that believes they have been subjected to discrimination within five calendar days.
4. Upon receipt of any complaint, the Title VI Coordinator will keep a record of all correspondence received regarding that complaint.
5. The Title VI Coordinator will review any comments or recommendations from legal counsel. The Title VI Coordinator will then discuss the recommendations with the Kalamazoo Area Transportation Study Chairperson at the time of the complaint.
6. Once the Kalamazoo Area Transportation Study is notified of Michigan Department of Transportation Civil Rights Program Unit EEO Officer's investigative report findings, the Kalamazoo Area Transportation Study will adopt a final resolution.

7. All parties will be properly notified of the outcome and their right to appeal the Michigan Department of Transportation Civil Rights Program Unit EEO Officer's report.
8. If the complainant is not satisfied with the results of the investigation of the alleged discriminatory practice(s), s/he shall be advised of their rights to appeal MDOT's Civil Rights Program Unit EEO Officer's decision. Appeals must be filed within ***180 days*** after the Kalamazoo Area Transportation Study's final resolution. Unless new facts not previously considered come to light, reconsideration of the Kalamazoo Area Transportation Study's determination will not be available.

Federal and state laws prohibit retaliation or intimidation against anyone because that individual has either taken action or participated in action to secure rights protected by Title VI. If you experience retaliation or intimidation separate from the discrimination alleged in this complaint or if you have questions regarding the completion of the Complaint of Title VI Discrimination form, please contact:

Jonathan R. Start, Executive Director

Kalamazoo Area Transportation Study

5220 Lovers Lane, Suite 110

Portage, MI 49002

Phone: (269) 343-0766

E-Mail: jrstart@KATSmpo.org

The Complaint of Title VI Discrimination form is also available at:
www.KATSmpo.org

COMPLAINT OF TITLE VI DISCRIMINATION

Formulario de queja de discriminación por el Título VI

The Kalamazoo Area Transportation Study, as a recipient of federal financial assistance, is required to ensure that its services and related benefits are distributed in a manner consistent with Title VI of the Civil Rights Acts of 1964, as amended.

Any person who believes that he or she, individually or as a member of any specific class of persons, has been subjected to discrimination under Title VI, on the basis of race, color, or national origin, may file a written complaint with the Kalamazoo Area Transportation Study.

We are asking for the following information to assist us in processing your complaint. If you need help in completing this form, please let us know.

Kalamazoo Area Transportation Study (MPO), como recipiente de ayuda financiera federal, es requerida a asegurar que el servicio de transporte público y sus servicios relacionados son distribuidos de una manera consistente con el Título VI del Acta de Derechos Civiles del 1964, con sus enmiendas.

Si usted cree que, individualmente o como parte de una clase específica de personas, ha sido discriminado bajo el Título VI, basado en su raza, color, o nacionalidad, puede presentar una queja por escrito al Kalamazoo Area Transportation Study.

Le pedimos la siguiente información para poder tramitar su queja. Si necesita ayuda para llenar este formulario, póngase en contacto con el Kalamazoo MPO.

1. Complainant

Reclamante

NAME *Nombre*

STREET ADDRESS *Dirección*

CITY *Ciudad*

STATE *Estado*

ZIP CODE *Código Postal*

HOME TELEPHONE *Nº de teléfono*

Email Address *Dirección de Correo Electrónico*

2. Person discriminated against (if someone other than the complainant):
Persona que fue discriminada, si no es la misma que el reclamante:

NAME *Nombre*

STREET ADDRESS *Dirección*

CITY <i>Ciudad</i>	STATE <i>Estado</i>	ZIP CODE <i>Código postal</i>
HOME TELEPHONE <i>Nº de teléfono</i>	Email Address <i>Dirección de Correo Electrónico</i>	

3. Are you represented by an attorney for this complaint?

¿Tiene usted representación de un(a) abogado(a) con relación al asunto de su queja?

Yes _____ No _____
 Sí _____ No _____

If yes, please complete the following:

Si tiene abogado(a), provea la siguiente información:

ATTORNEY'S NAME *Nombre del abogado(a)*

STREET ADDRESS *Dirección*

CITY <i>Ciudad</i>	STATE <i>Estado</i>	ZIP CODE <i>Código Postal</i>
TELEPHONE <i>Nº de teléfono</i>		

4. Date of the alleged discrimination: _____
Fecha de la supuesta discriminación:

Complaints should be filed within **180 days** of the alleged discrimination. If you could not reasonably be expected to know the act was discriminatory within the 180 days period, you have **60 days** after you became aware to file your complaint.

If your complaint is in regard to discrimination in the delivery of services or discrimination that involved the treatment of you or others by the agency or department indicated above, please indicate below the basis on which you believe these discriminatory actions were taken.

Las denuncias deben presentarse dentro de los 180 días de la presunta discriminación. Si usted no podía razonablemente esperarse conocer que la ley es discriminatoria en el plazo de 180 días, tiene 60 días después de que tuvo conocimiento a presentar su queja.

Si su queja está en relación con la discriminación en la prestación de servicios o la discriminación que el tratamiento de usted u otros usuarios por el organismo o departamento indicado, sírvase indicar a continuación de la base en que crees que se tomaron estas medidas discriminatorias.

5. Which of the following best describes the reason you believe the discrimination took place:

Según lo que cree usted, ¿en qué se basaron esas acciones discriminatorias?

<input type="checkbox"/> Race <i>Raza</i> / Color <i>Color</i>	<input type="checkbox"/> Religion <i>Religión</i>
<input type="checkbox"/> National Origin <i>Nacionalidad</i>	<input type="checkbox"/> Sex <i>Sexo</i>
<input type="checkbox"/> Disability <i>Incapacidad/medimento</i>	<input type="checkbox"/> Age <i>Edad</i>

Please sign below. You may attach any additional information you think is relevant to your complaint.

Por favor, firme el formulario. Adjunte cualquier información adicional usted cree que es pertinente con su queja.

Signature of Complainant
Firma del reclamante

Date
Fecha

Note: The laws enforced by the U.S. Department of Transportation prohibit retaliation or intimidation against anyone because that individual has either taken action or participated in action to secure rights protected by Title VI. If you experience retaliation or intimidation separate from the discrimination alleged in this complaint or if you have questions regarding the completion of this form, please contact:

Nota: Las leyes impuestas por el departamento de transporte de los Estados Unidos prohíben represalias o intimidación contra nadie porque ese individuo ha tomado medidas o participado en acción segura derechos protegidos por el título VI. Si tiene represalias o intimidación separada de la discriminación alegada en esta queja o si tiene preguntas acerca de la realización de esta forma, póngase en contacto con:

Jonathan R. Start, Executive Director
Kalamazoo Area Transportation Study
5220 Lovers Lane, Suite 110
Portage, MI 49002
Phone: (269) 343-0766
E-Mail: jrstart@KATSmpo.org

The Complaint of Title VI Discrimination form is also available at:
www.KATSmpo.org

Limited English Proficiency Review

In August, 2000, an executive order was signed by President William J. Clinton (Executive Order 13166: Improving Access to Service Persons with Limited English Proficiency (LEP), to clarify Title VI of the Civil Rights Act of 1964). The order was to ensure that those who are not proficient in the English language are provided access to programs and services. Assistance would be entitled under Title VI of the Civil Rights Act of 1964.

The Kalamazoo Area Transportation Study reviewed as a part of the development of the Title VI Plan the populations within the study area that may have language barriers when addressing and reviewing the activities and products of the Kalamazoo Area Transportation Study. After the review of the 2000 Census data for Kalamazoo County, it was deemed that the the Kalamazoo Area Transportation Study study area is not required to develop a formal Limited English Proficiency Plan. This section of the Title VI document is a brief analysis of the Limited English populations and the intent of the Kalamazoo Area Transportation Study to work with individuals needing services and having the inability to speak English.

The guidances outline **four factors** recipients should apply to the various kinds of contacts they have with the public to assess language needs and decide what reasonable steps they should take to ensure meaningful access for LEP persons;

1. The number of proportion of LEP persons eligible to be served or likely to be encountered by a program, activity, or service of the recipient or grantee.
2. The frequency with which LEP individuals come in contact with the program.
3. The nature and importance of the program, activity, or service provided by the recipient to the LEP community.
4. The resources available to the recipient and overall cost.

The greater the number or proportion of eligible LEP persons; the greater the frequency with which they have contact with the program, activity, or service; and the greater the importance of that program, activity, or service, the more likely enhanced language services will be needed.

Factor 1: The number or proportion of LEP persons in the service area who may be served or are likely to be encountered at a MDOT program, service, or activity.

The U.S. Census Bureau has a range of four classifications of how well people speak English. The classifications are (1) ‘very well,’ (2) ‘well,’ (3) ‘not well,’ and (4) ‘not at all.’

For planning purposes, the Kalamazoo Area Transportation Study considers individuals who speak English ‘not well’ or ‘not at all’ as Limited English Proficient, or LEP.

The following table shows a breakdown of Kalamazoo County’s population by race or ethnicity.

Identified as Speak English “not well” and “not at all” - Ages 18 and Over

	Population Kalamazoo County	% of Population
Speak Spanish Language	756	.33%
Speak Other Indo-European Language	463	.20%
Speak Asian and Pacific Island Language	358	.16%
Speak Other Languages	39	.02%
Total	1,616	.72%

Kalamazoo County Population: 223,228 (2000 Census)

The threshold for addressing Limited English Proficiency is 1,000 population or 5% per language group. Within Kalamazoo County, none of these thresholds are met with the 2000 Census figures.

Although the Kalamazoo Area Transportation Study’s study area does not show populations impacted, for each program, project, service, or activity, an assessment will be conducted to determine the number of Limited English Proficiency populations to ensure meaningful public involvement. The Kalamazoo Area Transportation Study Public Involvement Plan will be followed to ensure all groups have notification and access.

Factor 2: The frequency with which Limited English Proficiency persons come in contact with a program, activity, or service.

The program/project must be evaluated in relationship to the number of persons who are within the program/project area and the number of times they have frequented the program or activity. Notice for projects and programs will be provided to LEP persons within the project/program area so that they are aware of any programs/projects that may affect their quality of life.

Factor 3: The Nature and Importance of the Program, Activity, or Service by the Kalamazoo Area Transportation Study to the Limited English Proficiency population.

The Kalamazoo Area Transportation Study will make considerations during the development of the Metropolitan Transportation Plan, the Transportation Improvement Program, the Unified Planning Work Program, and other planning studies for those with Limited English Proficiency. KATS provides oversight and helps ensure that LEP and other protected classes of persons are not overlooked in the transportation planning process. The Unified Planning Work Program outlines tasks to be performed in the upcoming year. LEP persons, as well as low-income, minority populations, the elderly, and the disabled, must be considered in these processes.

Factor 4: The Resources Available to KATS and the Overall Cost to provide LEP assistance.

The Kalamazoo Area Transportation Study, as a sub-recipient of Federal funds, will review and address (as needed) the Limited English Proficiency section in the Public Involvement Plan with the acknowledgment that current Census data shows no populations that meet the thresholds for special consideration. The Kalamazoo Area Transportation Study, however, will provide as needed services to assist LEP persons, including translation services, with advance notice to the study.

Appendix A

To Be Inserted in Every State Contract

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 shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter referred to as DOT), Title 49, Code of Federal Regulations, part 21 (hereinafter referred to as the Regulations), as they may be amended from time to time, herein incorporated by reference and made a part of this contract.

2. Nondiscrimination

The contractor, with regard to the work performed during the contract, shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall not participate either directly or indirectly in discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

3. Solicitations for Subcontracts, including Procurement of Materials and Equipment

In all solicitations either by competitive bidding or negotiations made by the contractor for work to be performed under a subcontract, including procurement of material for leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the ground of race, color, sex, or national origin.

4. Information and Reports

The contractor shall provide all information and reports required by the Regulation or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the Kalamazoo Area Transportation Study, Michigan Department of Transportation, or appropriate Federal agency to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the Kalamazoo Area Transportation Study or the appropriate Federal Agency as needed, and shall set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance

In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the Kalamazoo Area Transportation Study shall impose such contract sanctions as the Kalamazoo Area Transportation Study may determine to be appropriate, including, but not limited to:

- Withholding of payments to the contractor under contract until the contractor complies, and/or
- Cancellation, termination, or suspension of the contract, in whole or in part.

6. Incorporations of Provisions

The contractor shall include the provisions of paragraphs (1) through (5) in every subcontract, including procurement of materials and leases of equipment, unless exempt by Regulations or directives issued pursuant thereto.

The contractor shall take such action with respect to any subcontractor or procurement as the Kalamazoo Area Transportation Study, the Michigan Department of Transportation, or appropriate Federal Agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the Kalamazoo Area Transportation Study to enter into such litigation to protect the interests of the Kalamazoo Area Transportation Study, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Appendix B

Prohibition of Discrimination in State Contracts

In connection with the performance of work under this contract; the contractor agrees as follows:

1. In accordance with Public Act 453 of 1976 (Elliott-Larsen Civil Rights Act), the contractor shall not discriminate against an employee or applicant for employment with respect to hire, tenure, treatment, terms, conditions, or privileges of employment or a matter directly or indirectly related to employment because of race, color, religion, national origin, age, sex, height, weight, or marital status. A breach of this covenant will be regarded as a material breach of this contract. Further, in accordance with Public Act 220 of 1976 (Persons with Disabilities Civil Rights Act), as amended by Public Act 478 of 1980, the contractor shall not discriminate against any employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment or a matter directly or indirectly related to employment because of a disability that is unrelated to the individual's ability to perform the duties of a particular job or position. A breach of the above covenants will be regarded as a material breach of this contract.
2. The contractor hereby agrees that any and all subcontracts to this contract, whereby a portion of the work set forth in this contract is to be performed, shall contain a covenant the same as hereinabove set forth in Section 1 of this Appendix.
3. The contractor will take affirmative action to ensure that applicants for employment and employees are treated without regard to their race, color, religion, national origin, age, sex, height, weight, marital status, or any disability that is unrelated to the individual's ability to perform the duties of a particular job or position. Such action shall include, but not be limited to, the following: employment; treatment; upgrading; demotion or transfer; recruitment; advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
4. The contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, age, sex, height, weight, marital status, or disability that is unrelated to the individual's ability to perform the duties of a particular job or position.
5. The contractor or its collective bargaining representative shall send to each labor union or representative of workers with which the contractor has a collective bargaining agreement or other contract or understanding a notice advising such labor union or workers' representative of the contractor's commitments under this Appendix.

6. The contractor shall comply with all relevant published rules, regulations, directives, and orders of the Michigan Civil Rights Commission that may be in effect prior to the taking of bids for any individual state project.
7. The contractor shall furnish and file compliance reports within such time and upon such forms as provided by the Michigan Civil Rights Commission; said forms may also elicit information as to the practices, policies, program, and employment statistics of each subcontractor, as well as the contractor itself, and said contractor shall permit access to the contractor's books, records, and accounts by the Michigan Civil Rights Commission and/or its agent for the purposes of investigation to ascertain compliance under this contract and relevant rules, regulations, and orders of the Michigan Civil Rights Commission.
8. In the event that the Michigan Civil Rights Commission finds, after a hearing held pursuant to its rules, that a contractor has not complied with the contractual obligations under this contract, the Michigan Civil Rights Commission may, as a part of its order based upon such findings, certify said findings to the State Administrative Board of the State of Michigan, which State Administrative Board may order the cancellation of the contract found to have been violated and/or declare the contractor ineligible for future contracts with the state and its political and civil subdivisions, departments, and officers, including the governing boards of institutions of higher education, until the contractor complies with said order of the Michigan Civil Rights Commission. Notice of said declaration of future ineligibility may be given to any or all of the persons with whom the contractor is declared ineligible to contract as a contracting party in future contracts. In any case before the Michigan Civil Rights Commission in which cancellation of an existing contract is a possibility, the contracting agency shall be notified of such possible remedy and shall be given the option by the Michigan Civil Rights Commission to participate in such proceedings.
9. The contractor shall include or incorporate by reference, the provisions of the foregoing paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Michigan Civil Rights Commission; all subcontracts and purchase orders will also state that said provisions will be binding upon each subcontractor or supplier.

Revised June 2011

Appendix C

Transfer of Property

The following clauses shall be included in any and all deeds effecting or recording the transfer of real property, structures or improvements thereon, or interest therein from the United States.

(GRANTING CLAUSE)

NOW, THEREFORE, the Department of Transportation, as authorized by law, and upon the condition that the Michigan Department of Transportation, will accept title to the lands and maintain the project constructed thereon, in accordance with State of Michigan, the Regulations for the Administration of the State Transportation Program and the policies and procedures prescribed by the Federal Highway Administration of the Department of Transportation, also in accordance with and in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally assisted programs of the Department of Transportation (hereinafter referred to as the Regulations) 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 State of Michigan all the right, title and interest of the 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 Michigan Department of Transportation, 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 shall be binding on the Michigan Department of Transportation, its successors and assigns.

The Michigan Department of Transportation, in consideration or 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 shall on the grounds of race, color, sex, disability, 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 Michigan Department of Transportation shall 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, Department of Transportation, Subtitle A, Office of the Secretary, part 21, Nondiscrimination in Federally assisted programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended [,] and (3) that in the event of breach of any of the above-mentioned nondiscrimination

conditions, the Department shall have a right to re-enter said lands and facilities on said land, and the above described land and facilities shall thereon revert to and vest in and become the absolute property of the 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 effectuate the purposes of Title VI of the Civil Rights Act of 1964.

Appendix D

Permits, Leases, and Licenses

The following clauses shall be included in all deeds, licenses, leases, permits, or similar instruments entered into by the Michigan Department of Transportation, pursuant to the provisions of Assurance 6(a).

The (grantee, licensee, lessee, permittee, etc., as appropriate) for himself, his 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 in the event facilities are constructed, maintained, or otherwise operated on the said property described in this (deed, license, lease, permit, etc.) for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally assisted programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

*[Include in licenses, leases, permits, etc.]**

That in the event of breach of any of the above non-discrimination covenants, the Michigan Department of Transportation shall have the right to terminate the [license, lease, permit, etc.] and to re-enter and repossess said land and the facilities thereon, and hold the same as if said [license, lease, permit, etc.] had never been made or issued.

*[Include in deeds]**

That in the event of breach of any of the above non-discrimination covenants, the Michigan Department of Transportation shall have the right to re-enter said lands and facilities thereon, and the above described lands and facilities shall thereupon revert to and vest in and become the absolute property of the Michigan Department of Transportation and its assigns.

The following shall be included in all deeds, licenses, leases, permits, or similar agreements entered into by the Michigan Department of Transportation pursuant to the provisions of Assurance 6(b).

The (grantee, licensee, lessee, permittee, etc., as appropriate) for himself, his 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 grounds of race, color, sex, disability or national origin, shall be excluded from participation in, be 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 shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the grantee, licensee, lessee, permittee, etc.) shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964), and as said Regulations may be amended.

*[Include in licenses, leases, permits, etc.]**

That in the event of breach of any of the above nondiscrimination covenants, the Michigan Department of Transportation shall have the right to terminate the [license, lease, permit, etc.] and to re-enter and repossess said land and the facilities thereon, and hold the same as if said [license, lease, permit, etc.] had never been made or issued.

*[Include in deeds]**

That in the event of breach of any of the above nondiscrimination covenants, the Michigan Department of Transportation shall have the right to re-enter said land and facilities thereon, and the above described lands and facilities shall thereupon revert to and vest in and become the absolute property of the Michigan Department of Transportation and assigns.

*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purpose of Title VI of the Civil Rights Act of 1964.

Appendix E

Definitions

(As used in Title 32 of the Code of Federal Regulations, Highways, part 200.5)

1. **Adverse Effects:** The totality of significant 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 and 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 FHWA programs, policies, or activities.
2. **Affirmative Action:** A good faith effort to eliminate past and present discrimination and to ensure that future discriminatory practices do not occur. Actions aimed at addressing the under-representation of minorities and females.
3. **Beneficiary:** An individual and/or entity that directly or indirectly receive an advantage through the operation of a federal program; however, they do not enter into any formal contract or agreement with the federal government where compliance with Title VI is a condition of receiving such assistance.
4. **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.
5. **Compliance:** The 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.
6. **Deficiency Status:** The interim period during which the recipient State has been notified of deficiencies, has not voluntarily complied with Title VI Program guidelines, but has not been declared in noncompliance by the Secretary of Transportation.
7. **Disparate Impact:** Discrimination which occurs as a result of a neutral procedure or practice and such practice, lacks a "substantial legitimate justification." The focus is on the consequences or impact of a recipient's practices rather than the recipient's intent.

8. **Discrimination/Disparate Treatment:** Discrimination which occurs when similarly situated persons are treated differently intentionally, because of their race, color, national origin, sex, disability or age, and the decision maker was aware of the complainant's race, color, national origin, sex, disability, or age, and decisions were made (at least in part) because of one or more of those factors
9. **Disproportionately High and Adverse Effect on Minority and Low-Income Populations** means an adverse effect that:

is predominantly born by a minority population and/or a low-income population 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 and/or non-low income population.

10. **Facility:** Includes all, or any part of, structures, equipment or other real or personal property, or interests therein, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration or acquisition of facilities.
11. **Low Income:** A person whose household income (or in the case of a community or group, whose median household income) is at or below the U.S. Department of Health and Human Services guidelines.
12. **Low-Income Populations:** Any readily identifiable group of low-income persons who live in geographic proximity, and if circumstances warrant, geographically dispersed/transient persons who may be similarly affected by a proposed DOT program, policy, or activity. Low income is defined by the poverty threshold stipulated by the U.S. Department of Health and Human Services.
13. **MPO:** Metropolitan Planning Organization (considered a sub-recipient).
14. **Minority:**
- Black – a person having origins in any of the black racial groups of Africa.
 - Hispanic – a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.
 - Asian or Pacific Islander – a person having origins in any of the original peoples of the Far East, Southeast Asia, Indian Subcontinent, or the Pacific Islands.
 - American Indian or Alaskan Native – a person having origins in any of the original peoples of North America, and who maintain cultural identification through tribal affiliation or community recognition.

- White – a person having origins in any of the original peoples of Europe, North Africa, or the Middle East.
15. **Minority Populations:** Identifiable groups of minority persons who live in geographic proximity, and if circumstances warrant, geographically dispersed/transient persons, i.e., migrant workers, Native Americans, and others, who will be similarly affected by a proposed DOT program, policy, or activity.
 16. **Non-compliance:** A recipient has failed to meet prescribed requirements and has shown an apparent lack of good faith effort in implementing all of the Title VI requirements.
 17. **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”, “Asian or Pacific Islander”, “American Indian or Alaskan Native.” Additional sub-categories based on National origin or primary language spoken may be used, where appropriate, on either a national or a regional basis.
 18. **Program Area Officials:** The officials in the FHWA who are responsible for carrying out technical program responsibilities.
 19. **Programs, Policies, and/or Activities:** All projects, programs, policies, and activities that affect human health or the environment, and that are undertaken, funded, or approved by FHWA. These include, but are not limited to, permits, licenses, and financial assistance provided by FHWA. Interrelated projects within a system may be considered to be a single project, program, policy, or activity for purposes of this Order. In addition, it includes any highway project or activities 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 agreements with the recipient.
 20. **Recipient:** Any state, territory, possession, the District of Columbia, Puerto Rico, or any political subdivision, or instrumentality thereof, or any public or private agency, institution, or organization, or other entity, or any individual, in any state, territory, possession, the District of Columbia, or Puerto Rico, to whom federal assistance is extended, either directly or through another recipient, for any program. Recipient includes any successor, assignee, or transferee thereof. The term recipient does not include any ultimate beneficiary under any such program.
 21. **Regulations and Guidance:** Means regulations, programs, policies, guidance, and procedures promulgated, issued, or approved by FHWA.
 22. **State Transportation Agency:** That department, commission, board, or official of any state charged by its laws with the responsibility for highway construction. The term State would be considered equivalent to the State Transportation Agency if the context so implies.

23. **STIP:** A five-year, Statewide Transportation Improvement Program (STIP) that includes MDOT's program as well as the Transportation Improvement Programs prepared by the Metropolitan Planning Organizations in Michigan.

24. **Sub-recipient:** A non-federal entity that expends federal awards received from a pass-through entity to carry out a federal program, but does not include an individual that is a beneficiary of such a program. A sub-recipient may also be recipient of other federal awards directly from a federal awarding agency. [Cities, counties, universities, contractors, sub-contractors, and consultants]

25. **TIP:** A three-year, Transportation Improvement Program prepared by a Metropolitan Planning Organization.

Appendix F

Reporting Form

Michigan Department
of Transportation
0179 (07/11)

TITLE VI SUB-RECIPIENT ANNUAL CERTIFICATION FORM

Page 1 of 1

This form is to certify compliance with Title VI of the Civil Rights Act of 1964. If your Title VI Plan has been approved by the Michigan Department of Transportation (MDOT), all changes to the organization's Title VI Plan which occurred during the current fiscal year (October 1 thru September 30) must be reported on this form. Please attach additional pages, as necessary, to provide a complete response to each question.

NAME OF ORGANIZATION

NAME OF TITLE VI COORDINATOR

TITLE

ADDRESS

CITY

COUNTY

STATE

ZIP CODE

TELEPHONE NO.

FAX NO.

E-MAIL ADDRESS

1. Has your Title VI Coordinator/EEO Officer changed during the reporting period or since your last Title VI Plan was approved? If yes, please list the name and contact information for the new coordinator/EEO Officer. Yes No
2. Has your organization had any projects that have Title VI, LEP, or EJ impacts? How many? If yes, what did you do to ensure that those populations affected by the project had meaningful access to and involvement in the development process? No Yes
3. What is the number or percentage of LEP or EJ populations who were affected by the project?
4. How many public involvement meetings did you hold during the reporting period?
5. Did you provide language assistance at any of your public meetings during the reporting period? How many persons received this assistance? No Yes
6. Did you provide reasonable accommodation to persons with disabilities during the reporting period? How many? No Yes
7. Did you receive any formal or informal Title VI complaints, or law suits during this reporting period? If yes, how many, and please provide details regarding each complaint or law suit and the resolution. No Yes
8. How many contracts did you enter into with Disadvantaged Business Enterprises during the reporting period? If none, what did you do to encourage participation by DBEs?
9. During this reporting period, how many of your employees have been educated about Title VI and their responsibility to ensure non-discrimination in any of your programs, services, or activities.
10. Please provide any comments or additional information related to the organization's Title VI Plan.

The information reported on this form is accurate and reflects all changes to the organization's Title VI Plan for the current fiscal year.

NAME

TITLE

DATE

If you have questions regarding Title VI, contact: Cheryl Hudson, EEO Officer (517) 373-0980, or HudsonC1@michigan.gov **MAIL COMPLETED FORM TO:** Cheryl Hudson, EEO Officer, Michigan Department of Transportation, 425 W. Ottawa Street, Lansing, Michigan 48933

PLEASE SUBMIT THIS FORM BY OCTOBER 5TH OF THE REPORTING YEAR

Appendix G

49 CFR 21

TITLE 49--TRANSPORTATION

Authority: 42 U.S.C. 2000d-2000d-7.

Source: 35 FR 10080, June 18, 1970, unless otherwise noted.

§ 21.1 Purpose.

The purpose of this part is to effectuate the provisions of title VI of the Civil Rights Act of 1964 (hereafter referred to as the Act) to the end 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 receiving Federal financial assistance from the Department of Transportation.

§ 21.3 Application of this part.

(a) This part applies to any program for which Federal financial assistance is authorized under a law administered by the Department, including the types of Federal financial assistance listed in appendix A to this part. It also applies to money paid, property transferred, or other Federal financial assistance extended after the effective date of this part pursuant to an application approved before that effective date. This part does not apply to:

- (1) Any Federal financial assistance by way of insurance or guaranty contracts;
- (2) Money paid, property transferred, or other assistance extended before the effective date of this part, except where such assistance was subject to the title VI regulations of any agency whose responsibilities are now exercised by this Department;
- (3) Any assistance to any individual who is the ultimate beneficiary; or
- (4) Any employment practice, under any such program, of any employer, employment agency, or labor organization, except to the extent described in §21.5(c).

The fact that a type of Federal financial assistance is not listed in appendix A to this part shall not mean, if title VI of the Act is otherwise applicable, that a program is not covered. Other types of Federal financial assistance under statutes now in force or hereinafter enacted may be added to appendix A to this part.

(b) In any program receiving Federal financial assistance in the form, or for the acquisition, of real property or an interest in real property, to the extent that rights to space on, over, or under any such property are included as part of the program receiving that assistance, the nondiscrimination requirement of this part shall extend to any facility located wholly or in part in that space.

§ 21.5 Discrimination prohibited.

(a) General. 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 to which this part applies.

(b) Specific discriminatory actions prohibited:

(1) A recipient to which this part applies may not, directly or through contractual or other arrangements, on the grounds of race, color, or national origin.

(i) Deny a person any service, financial aid, or other benefit provided under the program;

(ii) Provide any service, financial aid, or other benefit to a person which is different, or is provided in a different manner, from that provided to others under the program;

(iii) Subject a person to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;

(iv) Restrict a person in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;

(v) Treat a person differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership, or other requirement or condition which persons must meet in order to be provided any service, financial aid, or other benefit provided under the program;

(vi) Deny a person an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program; or

(vii) Deny a person the opportunity to participate as a member of a planning, advisory, or similar body which is an integral part of the program.

(2) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of person to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of persons to be afforded an opportunity to participate in any such program; may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, or national origin.

(3) In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding persons from, denying them the benefits of, or subjecting them to discrimination under any program to which this regulation applies, on

the grounds of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this part.

(4) As used in this section the services, financial aid, or other benefits provided under a program receiving Federal financial assistance include any service, financial aid, or other benefit provided in or through a facility provided with the aid of Federal financial assistance.

(5) The enumeration of specific forms of prohibited discrimination in this paragraph does not limit the generality of the prohibition in paragraph (a) of this section.

(6) Examples demonstrating the application of the provisions of this section to certain types of Federal financial assistance administered by the Department of Transportation are contained in appendix C of this part.

(7) This part does not prohibit the consideration of race, color, or national origin if the purpose and effect are to remove or overcome the consequences of practices or impediments which have restricted the availability of, or participation in, the program or activity receiving Federal financial assistance, on the grounds of race, color, or national origin. Where prior discriminatory practice or usage tends, on the grounds of race, color, or national origin to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this part applies, the applicant or recipient must take affirmative action to remove or overcome the effects of the prior discriminatory practice or usage. Even in the absence of prior discriminatory practice or usage, a recipient in administering a program or activity to which this part applies, is expected to take affirmative action to assure that no person is excluded from participation in or denied the benefits of the program or activity on the grounds of race, color, or national origin.

(c) Employment practices:

(1) Where a primary objective of the Federal financial assistance to a program to which this part applies is to provide employment, a recipient or other party subject to this part shall not, directly or through contractual or other arrangements, subject a person to discrimination on the ground of race, color, or national origin in its employment practices under such program (including recruitment or recruitment advertising, hiring, firing, upgrading, promotion, demotion, transfer, layoff, termination, rates of pay or other forms of compensation or benefits, selection for training or apprenticeship, use of facilities, and treatment of employees). Such recipient shall take affirmative action to insure that applicants are employed, and employees are treated during employment, without regard to their race, color, or national origin. The requirements applicable to construction employment under any such program shall be those specified in or pursuant to Part III of Executive Order 11246 or any Executive order which supersedes it.

(2) Federal financial assistance to programs under laws funded or administered by the Department which have as a primary objective the providing of employment include those set forth in appendix B to this part.

(3) Where a primary objective of the Federal financial assistance is not to provide employment, but discrimination on the grounds of race, color, or national origin in the employment practices of the recipient or other persons subject to the regulation tends, on the grounds of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program to which this regulation applies, the provisions of paragraph (c)(1) of this section shall apply to the employment practices of the recipient or other persons subject to the regulation, to the extent necessary to assure equality of opportunity to, and nondiscriminatory treatment of, beneficiaries.

(d) A recipient may not make a selection of a site or location of a facility if the purpose of that selection, or its effect when made, is to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this rule applies, on the grounds of race, color, or national origin; or if the purpose is to, or its effect when made will, substantially impair the accomplishment of the objectives of this part.

§ 21.7 Assurances required.

(a) General.

(1) Every application for Federal financial assistance to which this part applies, except an application to which paragraph (b) of this section applies, and every application for Federal financial assistance to provide a facility shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to the application, contain or be accompanied by, an assurance that the program will be conducted or the facility operated in compliance with all requirements imposed by or pursuant to this part. Every award of Federal financial assistance shall require the submission of such an assurance. In the case where the Federal financial assistance is to provide or is in the form of personal property, or real property or interest therein or structures thereon, the assurance shall obligate the recipient, or, in the case of a subsequent transfer, the transferee, for 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 for as long as the recipient retains ownership or possession of the property, whichever is longer. In all other cases the assurance shall obligate the recipient for the period during which Federal financial assistance is extended to the program. The Secretary shall specify the form of the foregoing assurances, and the extent to which like assurances will be required of subgrantees, contractors and subcontractors, transferees, successors in interest, and other participants. Any such assurance shall include provisions which give the United States a right to seek its judicial enforcement.

(2) In the case where Federal financial assistance is provided in the form of a transfer of real property, structures, or improvements thereon, or interest therein, from the Federal Government, the instrument effecting or recording the transfer shall contain a covenant running with the land assuring nondiscrimination for the period during which the real 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. Where no transfer of property or interest therein from the Federal Government is involved, but property is acquired or improved with Federal financial assistance, the recipient shall agree to include such covenant in any subsequent transfer of such property. When the property is obtained

from the Federal Government, such covenant may also include a condition coupled with a right to be reserved by the Department to revert title to the property in the event of a breach of the covenant where, in the discretion of the Secretary, such a condition and right of reverter is appropriate to the statute under which the real property is obtained and to the nature of the grant and the grantee. In such event if a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on such property for the purposes for which the property was transferred, the Secretary may agree, upon request of the transferee and if necessary to accomplish such financing, and upon such conditions as he deems appropriate, to subordinate such right of reversion to the lien of such mortgage or other encumbrance.

(b) Continuing Federal financial assistance. Every application by a State or a State agency for continuing Federal financial assistance to which this part applies (including the types of Federal financial assistance listed in appendix A to this part) shall as a condition to its approval and the extension of any Federal financial assistance pursuant to the application: (1) Contain or be accompanied by a statement that the program is (or, in the case of a new program, will be) conducted in compliance with all requirements imposed by or pursuant to this part, and (2) provide or be accompanied by provision for such methods of administration for the program as are found by the Secretary to give reasonable guarantee that the applicant and all recipients of Federal financial assistance under such program will comply with all requirements imposed by or pursuant to this part.

§ 21.9 Compliance information.

(a) Cooperation and assistance. The Secretary shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with this part and shall provide assistance and guidance to recipients to help them comply voluntarily with this part.

(b) Compliance reports. Each recipient shall keep such records and submit to the Secretary timely, complete, and accurate compliance reports at such times, and in such form and containing such information, as the Secretary may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this part. In the case in which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this part. In general recipients should have available for the Secretary racial and ethnic data showing the extent to which members of minority groups are beneficiaries of programs receiving Federal financial assistance.

(c) Access to sources of information. Each recipient shall permit access by the Secretary during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. Where any information required of a recipient is in the exclusive possession of any other agency, institution, or person and this agency, institution, or person fails or refuses to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

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

§ 21.11 Conduct of investigations.

(a) Periodic compliance reviews. The Secretary shall from time to time review the practices of recipients to determine whether they are complying with this part.

(b) Complaints. Any person who believes himself or any specific class of persons to be subjected to discrimination prohibited by this part may by himself or by a representative file with the Secretary a written complaint. A complaint must be filed not later than 180 days after the date of the alleged discrimination, unless the time for filing is extended by the Secretary.

(c) Investigations. The Secretary will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation will include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this part.

(d) Resolution of matters.

(1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this part, the Secretary will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in §21.13.

(2) If an investigation does not warrant action pursuant to paragraph (d)(1) of this section the Secretary will so inform the recipient and the complainant, if any, in writing.

(e) Intimidatory or retaliatory acts prohibited. No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of the Act or this part, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

§ 21.13 Procedure for effecting compliance.

(a) General. If there appears to be a failure or threatened failure to comply with this part, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law. Such other means may include, but are not limited to:

(1) A reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking, and

(2) any applicable proceeding under State or local law.

(b) Noncompliance with §21.7. If an applicant fails or refuses to furnish an assurance required under §21.7 or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that section, Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. The Department shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under such paragraph. However, subject to §21.21, the Department shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an application approved prior to the effective date of this part.

(c) Termination of or refusal to grant or to continue Federal financial assistance. No order suspending, terminating, or refusing to grant or continue Federal financial assistance shall become effective until:

(1) The Secretary has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means;

(2) There has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this part;

(3) The action has been approved by the Secretary pursuant to §21.17(e); and

(4) The expiration of 30 days after the Secretary has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action.

Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) Other means authorized by law. No action to effect compliance with title VI of the Act by any other means authorized by law shall be taken by this Department until:

(1) The Secretary has determined that compliance cannot be secured by voluntary means;

(2) The recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance; and

(3) The expiration of at least 10 days from the mailing of such notice to the recipient or other person. During this period of at least 10 days, additional efforts shall be made to persuade the recipient or other person to comply with the regulation and to take such corrective action as may be appropriate.

§ 21.15 Hearings.

(a) Opportunity for hearing. Whenever an opportunity for a hearing is required by §21.13(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either: (1) Fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request of the Secretary that the matter be scheduled for hearing or (2) advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing under this paragraph or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under section 602 of the Act and §21.13(c) and consent to the making of a decision on the basis of such information as is available.

(b) Time and place of hearing. Hearings shall be held at the offices of the Department in Washington, D.C., at a time fixed by the Secretary unless he determines that the convenience of the applicant or recipient or of the Department requires that another place be selected. Hearings shall be held before the Secretary, or at his discretion, before a hearing examiner appointed in accordance with section 3105 of title 5, United States Code, or detailed under section 3344 of title 5, United States Code.

(c) Right to counsel. In all proceedings under this section, the applicant or recipient and the Department shall have the right to be represented by counsel.

(d) Procedures, evidence, and record.

(1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with sections 554 through 557 of title 5, United States Code, and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the Department and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

(2) Technical rules of evidence do not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably

necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) Consolidated or joint hearings. In cases in which the same or related facts are asserted to constitute noncompliance with this part with respect to two or more Federal statutes, authorities, or other means by which Federal financial assistance is extended and to which this part applies, or noncompliance with this part and the regulations of one or more other Federal departments or agencies issued under title VI of the Act, the Secretary may, by agreement with such other departments or agencies, where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules or procedures not inconsistent with this part. Final decisions in such cases, insofar as this regulation is concerned, shall be made in accordance with §21.17.

§ 21.17 Decisions and notices.

(a) Procedure on decisions by hearing examiner. If the hearing is held by a hearing examiner, the hearing examiner shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the Secretary for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient. Where the initial decision is made by the hearing examiner the applicant or recipient may, within 30 days after the mailing of such notice of initial decision, file with the Secretary his exceptions to the initial decision, with his reasons therefor. In the absence of exceptions, the Secretary may, on his own motion, within 45 days after the initial decision, serve on the applicant or recipient a notice that he will review the decision. Upon the filing of such exceptions or of notice of review, the Secretary shall review the initial decision and issue his own decision thereon including the reasons therefor. In the absence of either exceptions or a notice of review the initial decision shall, subject to paragraph (e) of this section, constitute the final decision of the Secretary.

(b) Decisions on record or review by the Secretary. Whenever a record is certified to the Secretary for decision or he reviews the decision of a hearing examiner pursuant to paragraph (a) of this section, or whenever the Secretary conducts the hearing, the applicant or recipient shall be given reasonable opportunity to file with him briefs or other written statements of its contentions, and a written copy of the final decision of the Secretary shall be sent to the applicant or recipient and to the complainant, if any.

(c) Decisions on record where a hearing is waived. Whenever a hearing is waived pursuant to §21.15, a decision shall be made by the Secretary on the record and a written copy of such decision shall be sent to the applicant or recipient, and to the complainant, if any.

(d) Rulings required. Each decision of a hearing examiner or the Secretary shall set forth his ruling on each finding, conclusion, or exception presented, and shall identify the requirement or

requirements imposed by or pursuant to this part with which it is found that the applicant or recipient has failed to comply.

(e) Approval by Secretary. Any final decision by an official of the Department, other than the Secretary personally, which provides for the suspension or termination of, or the refusal to grant or continue Federal financial assistance, or the imposition of any other sanction available under this part or the Act, shall promptly be transmitted to the Secretary personally, who may approve such decision, may vacate it, or remit or mitigate any sanction imposed.

(f) Content of orders. The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, to which this regulation applies, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this part, including provisions designed to assure that no Federal financial assistance to which this regulation applies will thereafter be extended to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to this part, or to have otherwise failed to comply with this part, unless and until it corrects its noncompliance and satisfies the Secretary that it will fully comply with this part.

(g) Post termination proceedings.

(1) An applicant or recipient adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this part and provides reasonable assurance that it will fully comply with this part.

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (f) of this section may at any time request the Secretary to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of paragraph (g)(1) of this section. If the Secretary determines that those requirements have been satisfied, he shall restore such eligibility.

(3) If the Secretary denies any such request, the applicant or recipient may submit a request for a hearing in writing, specifying who it believes such official to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record in accordance with rules or procedures issued by the Secretary. The applicant or recipient will be restored to such eligibility if it proves at such a hearing that it satisfied the requirements of paragraph (g)(1) of this section.

While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (f) of this section shall remain in effect.

§ 21.19 Judicial review.

Action taken pursuant to section 602 of the Act is subject to judicial review as provided in section 603 of the Act.

§ 21.21 Effect on other regulations, forms, and instructions.

(a) Effect on other regulations. All regulations, orders, or like directions issued before the effective date of this part by any officer of the Department which impose requirements designed to prohibit any discrimination against individuals on the grounds of race, color, or national origin under any program to which this part applies, and which authorize the suspension or termination of or refusal to grant or to continue Federal financial assistance to any applicant for a recipient of such assistance for failure to comply with such requirements, are hereby superseded to the extent that such discrimination is prohibited by this part, except that nothing in this part may be considered to relieve any person of any obligation assumed or imposed under any such superseded regulation, order, instruction, or like direction before the effective date of this part. Nothing in this part, however, supersedes any of the following (including future amendments thereof):

(1) Executive Order 11246 (3 CFR, 1965 Supp., p. 167) and regulations issued thereunder or

(2) any other orders, regulations, or instructions, insofar as such orders, regulations, or instructions prohibit discrimination on the ground of race, color, or national origin in any program or situation to which this part is inapplicable, or prohibit discrimination on any other ground.

(b) Forms and instructions. The Secretary shall issue and promptly make available to all interested persons forms and detailed instructions and procedures for effectuating this part as applied to programs to which this part applies and for which he is responsible.

(c) Supervision and coordination. The Secretary may from time to time assign to officials of the Department, or to officials of other departments or agencies of the Government with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of title VI of the Act and this part (other than responsibility for final decision as provided in §21.17), including the achievement of effective coordination and maximum uniformity within the Department and within the Executive Branch of the Government in the application of title VI and this part to similar programs and in similar situations. Any action taken, determination made or requirement imposed by an official of another department or agency acting pursuant to an assignment of responsibility under this paragraph shall have the same effect as though such action had been taken by the Secretary of this Department.

§ 21.23 Definitions.

Unless the context requires otherwise, as used in this part:

(a) Applicant means a person who submits an application, request, or plan required to be approved by the Secretary, or by a primary recipient, as a condition to eligibility for Federal financial assistance, and “application” means such an application, request, or plan.

(b) Facility includes all or any part of structures, equipment, or other real or personal property or interests therein, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration or acquisition of facilities.

(c) Federal financial assistance includes:

- (1) Grants and loans of Federal funds;
- (2) The grant or donation of Federal property and interests in property;
- (3) The detail of Federal personnel;
- (4) 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
- (5) Any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(d) Primary recipient means any recipient that is authorized or required to extend Federal financial assistance to another recipient.

(e) Program or activity and program mean all of the operations of any entity described in paragraphs (e)(1) through (4) of this section, any part of which is extended Federal financial assistance:

- (1) (i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;
- (2) (i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;
- (3) (i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (e)(1), (2), or (3) of this section.

(f) Recipient may mean any State, territory, possession, the District of Columbia, or Puerto Rico, or any political subdivision thereof, or instrumentality thereof, any public or private agency, institution, or organization, or other entity, or any individual, in any State, territory, possession, the District of Columbia, or Puerto Rico, to whom Federal financial assistance is extended, directly or through another recipient, including any successor, assignee, or transferee thereof, but such term does not include any ultimate beneficiary.

(g) Secretary means the Secretary of Transportation or, except in §21.17 (e), any person to whom he has delegated his authority in the matter concerned.

Appendix A to Part 21—Activities to Which This Part Applies

1. Use of grants made in connection with Federal-aid highway systems (23 U.S.C. 101 et seq.).
2. Use of grants made in connection with the Highway Safety Act of 1966 (23 U.S.C. 401 et seq.).
3. Use of grants in connection with the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1391–1409, 1421–1425).
4. Lease of real property and the grant of permits, licenses, easements and rights-of-way covering real property under control of the Coast Guard (14 U.S.C. 93 (n) and (o)).
5. Utilization of Coast Guard personnel and facilities by any State, territory, possession, or political subdivision thereof (14 U.S.C. 141(a)).
6. Use of Coast Guard personnel for duty in connection with maritime instruction and training by the States, territories, and Puerto Rico (14 U.S.C. 148).
7. Use of obsolete and other Coast Guard material by sea scout service of Boy Scouts of America, any incorporated unit of the Coast Guard auxiliary, and public body or private organization not organized for profit (14 U.S.C. 641(a)).
8. U.S. Coast Guard Auxiliary Program (14 U.S.C. 821–832).
9. Use of grants for the support of basic scientific research by nonprofit institutions of higher education and nonprofit organizations whose primary purpose is conduct of scientific research (42 U.S.C. 1891).

10. Use of grants made in connection with the Federal-aid Airport Program (secs. 1–15 and 17–20 of the Federal Airport Act, 49 U.S.C. 1101–1114, 1116–1120).
11. Use of U.S. land acquired for public airports under:
 - a. Section 16 of the Federal Airport Act, 49 U.S.C. 1115; and
 - b. Surplus Property Act (sec. 13(g) of the Surplus Property Act of 1944, 50 U.S.C. App. 1622(g), and sec. 3 of the Act of Oct. 1, 1949, 50 U.S.C. App. 1622b).
12. Activities carried out in connection with the Aviation Education Program of the Federal Aviation Administration under sections 305, 311, and 313(a) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1346, 1352, and 1354(a)).
13. Use of grants and loans made in connection with Urban Mass Transportation Capital Facilities Grant and Loan Program—Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1602).
14. Use of grants made in connection with Urban Mass Transportation Research and Demonstration Grant Program—Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1605).
15. Use of grants made in connection with Urban Mass Transportation Technical Studies Grant Program—Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1607a).
16. Use of grants made in connection with Urban Mass Transportation Managerial Training Grant Program—Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1607b).
17. Use of grants made in connection with Urban Mass Transportation Grants for Research and Training Programs in Institutions of Higher Learning—Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1607c).
18. Use of grants made in connection with the High Speed Ground Transportation Act, as amended (49 U.S.C. 631–642).

Appendix B to Part 21—Activities to Which This Part Applies When a Primary Objective of the Federal Financial Assistance Is To Provide Employment

1. Appalachia Regional Development Act of 1965 (40 U.S.C. App. 1 et seq.).

Appendix C to Part 21—Application of Part 21 to Certain Federal Financial Assistance of the Department of Transportation

Nondiscrimination on Federally Assisted Projects

(a) Examples. The following examples, without being exhaustive, illustrate the application of the nondiscrimination provisions of this part on projects receiving Federal financial assistance under the programs of certain Department of Transportation operating administrations:

(1) Federal Aviation Administration.

(i) The airport sponsor or any of his lessees, concessionaires, or contractors may not differentiate between members of the public because of race, color, or national origin in furnishing, or admitting to, waiting rooms, passenger holding areas, aircraft tiedown areas, restaurant facilities, restrooms, or facilities operated under the compatible land use concept.

(ii) The airport sponsor and any of his lessees, concessionaires, or contractors must offer to all members of the public the same degree and type of service without regard to race, color, or national origin. This rule applies to fixed base operators, restaurants, snack bars, gift shops, ticket counters, baggage handlers, car rental agencies, limousines and taxis franchised by the airport sponsor, insurance underwriters, and other businesses catering to the public at the airport.

(iii) An aircraft operator may not be required to park his aircraft at a location that is less protected, or less accessible from the terminal facilities, than locations offered to others, because of his race, color, or national origin.

(iv) The pilot of an aircraft may not be required to help more extensively in fueling operations, and may not be offered less incidental service (such as windshield wiping), than other pilots, because of his race, color, or national origin.

(v) No pilot or crewmember eligible for access to a pilot's lounge or to unofficial communication facilities such as a UNICOM frequency may be restricted in that access because of his race, color, or national origin.

(vi) Access to facilities maintained at the airport by air carriers or commercial operators for holders of first-class transportation tickets or frequent users of the carrier's or operator's services may not be restricted on the basis of race, color, or national origin.

(vii) Passengers and crewmembers seeking ground transportation from the airport may not be assigned to different vehicles, or delayed or embarrassed in assignment to vehicles, by the airport sponsor or his lessees, concessionaires, or contractors, because of race, color, or national origin.

(viii) Where there are two or more sites having equal potential to serve the aeronautical needs of the area, the airport sponsor shall select the site least likely to adversely affect existing communities. Such site selection shall not be made on the basis of race, color, or national origin.

(ix) Employment at obligated airports, including employment by tenants and concessionaires shall be available to all regardless of race, creed, color, sex, or national origin. The sponsor shall coordinate his airport plan with his local transit authority and the Urban Mass Transportation Administration to assure public transportation, convenient to the disadvantaged areas of nearby communities to enhance employment opportunities for the disadvantaged and minority population.

(x) The sponsor shall assure that the minority business community in his area is advised of the opportunities offered by airport concessions, and that bids are solicited from such qualified minority firms, and awards made without regard to race, color, or national origin.

(2) Federal Highway Administration.

(i) The State, acting through its highway department, may not discriminate in its selection and retention of contractors, including without limitation, those whose services are retained for, or incidental to, construction, planning, research, highway safety, engineering, property management, and fee contracts and other commitments with person for services and expenses incidental to the acquisition of right-of-way.

(ii) The State may not discriminate against eligible persons in making relocation payments and in providing relocation advisory assistance where relocation is necessitated by highway right-of-way acquisitions.

(iii) Federal-aid contractors may not discriminate in their selection and retention of first-tier subcontractors, and first-tier subcontractors may not discriminate in their selection and retention of second-tier subcontractors, who participate in Federal-aid highway construction, acquisition of right-of-way and related projects, including those who supply materials and lease equipment.

(iv) The State may not discriminate against the traveling public and business users of the federally assisted highway in their access to and use of the facilities and services provided for public accommodations (such as eating, sleeping, rest, recreation, and vehicle servicing) constructed on, over or under the right-of-way of such highways.

(v) Neither the State, any other persons subject to this part, nor its contractors and subcontractors may discriminate in their employment practices in connection with highway construction projects or other projects assisted by the Federal Highway Administration.

(vi) The State shall not locate or design a highway in such a manner as to require, on the basis of race, color, or national origin, the relocation of any persons.

(vii) The State shall not locate, design, or construct a highway in such a manner as to deny reasonable access to, and use thereof, to any persons on the basis of race, color, or national origin.

(3) Urban Mass Transportation Administration.

(i) Any person who is, or seeks to be, a patron of any public vehicle which is operated as a part of, or in conjunction with, a project shall be given the same access, seating, and other treatment with regard to the use of such vehicle as other persons without regard to their race, color, or national origin.

(ii) No person who is, or seeks to be, an employee of the project sponsor or lessees, concessionaires, contractors, licensees, or any organization furnishing public transportation service as a part of, or in conjunction with, the project shall be treated less favorably than any other employee or applicant with regard to hiring, dismissal, advancement, wages, or any other conditions and benefits of employment, on the basis of race, color, or national origin.

(iii) No person or group of persons shall be discriminated against with regard to the routing, scheduling, or quality of service of transportation service furnished as a part of the project on the basis of race, color, or national origin. Frequency of service, age and quality of vehicles assigned to routes, quality of stations serving different routes, and location of routes may not be determined on the basis of race, color, or national origin.

(iv) The location of projects requiring land acquisition and the displacement of persons from their residences and businesses may not be determined on the basis of race, color, or national origin.

(b) Obligations of the airport operator —

(1) Tenants, contractors, and concessionaires. Each airport operator shall require each tenant, contractor, and concessionaire who provides any activity, service, or facility at the airport under lease, contract with, or franchise from the airport, to covenant in a form specified by the Administrator, Federal Aviation Administration, that he will comply with the nondiscrimination requirements of this part.

(2) Notification of beneficiaries. The airport operator shall:

(i) Make a copy of this part available at his office for inspection during normal working hours by any person asking for it, and

(ii) conspicuously display a sign, or signs, furnished by the FAA, in the main public area or areas of the airport, stating that discrimination based on race, color, or national origin is prohibited on the airport.

(3) Reports. Each airport owner subject to this part shall, within 15 days after he receives it, forward to the Area Manager of the FAA Area in which the airport is located a copy of each written complaint charging discrimination because of race, color, or national origin by any person subject to this part, together with a statement describing all actions taken to resolve the matter, and the results thereof. Each airport operator shall submit to the area manager of

the FAA area in which the airport is located a report for the preceding year on the date and in a form prescribed by the Federal Aviation Administrator.

Appendix H

23 CFR PART 200 - Title VI Program and Related Statutes - Implementation and Review Procedures

Authority: Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d to 2000d-4; Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601-3619; 42 U.S.C. 4601 to 4655; 23 U.S.C. 109(h); 23 U.S.C. 324.

Source: 41 FR 53982, Dec. 10, 1976, unless otherwise noted.

§ 200.1 Purpose.

To provide guidelines for: (a) Implementing the Federal Highway Administration (FHWA) Title VI compliance program under Title VI of the Civil Rights Act of 1964 and related civil rights laws and regulations, and (b) Conducting Title VI program compliance reviews relative to the Federal-aid highway program.

§ 200.3 Application of this part.

The provisions of this part are applicable to all elements of FHWA and provide requirements and guidelines for State highway agencies to implement the Title VI Program requirements. The related civil rights laws and regulations are listed under §200.5(p) of this part. Title VI requirements for 23 U.S.C. 402 will be covered under a joint FHWA/NHTSA agreement.

§ 200.5 Definitions.

The following definitions shall apply for the purpose of this part:

- (a) Affirmative action. A good faith effort to eliminate past and present discrimination in all federally assisted programs, and to ensure future nondiscriminatory practices.
- (b) Beneficiary. Any person or group of persons (other than States) entitled to receive benefits, directly or indirectly, from any federally assisted program, i.e. , relocatees, impacted citizens, communities, etc.
- (c) 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.
- (d) 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.
- (e) Deficiency status. The interim period during which the recipient State has been notified of deficiencies, has not voluntarily complied with Title VI Program guidelines, but has not been declared in noncompliance by the Secretary of Transportation.

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

(g) **Facility.** Includes all, or any part of, structures, equipment or other real or personal property, or interests therein, and the provision of facilities includes the construction, expansion, renovation, remodeling, alternation or acquisition of facilities.

(h) **Federal assistance.** Includes:

(1) Grants and loans of Federal funds,

(2) The grant or donation of Federal property and interests in property,

(3) The detail of Federal personnel,

(4) 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

(5) Any Federal agreement, arrangement, or other contract which has, as one of its purposes, the provision of assistance.

(i) **Noncompliance.** A recipient has failed to meet prescribed requirements and has shown an apparent lack of good faith effort in implementing all of the Title VI requirements.

(j) **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”, “Asian or 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.

(k) **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.

(l) **State highway agency.** That department, commission, board, or official of any State charged by its laws with the responsibility for highway construction. The term State would be considered equivalent to State highway agency if the context so implies.

(m) Program area officials. The officials in FHWA who are responsible for carrying out technical program responsibilities.

(n) Recipient. Any State, territory, possession, the District of Columbia, Puerto Rico, or any political subdivision, or instrumentality thereof, or any public or private agency, institution, or organization, or other entity, or any individual, in any State, territory, possession, the District of Columbia, or Puerto Rico, to whom Federal assistance is extended, either directly or through another recipient, for any program. Recipient includes any successor, assignee, or transferee thereof. The term recipient does not include any ultimate beneficiary under any such program.

(o) Secretary. The Secretary of Transportation as set forth in 49 CFR 21.17(g)(3) or the Federal Highway Administrator to whom the Secretary has delegated his authority in specific cases.

(p) 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, sex, or national origin 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–d4 (49 CFR part 21; the standard DOT Title VI assurances signed by each State pursuant to DOT Order 1050.2; Executive Order 11764; 28 CFR 50.3);

(2) Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601–4655) (49 CFR part 25; Pub. L. 91–646);

(3) Title VIII of the Civil Rights Act of 1968, amended 1974 (42 U.S.C. 3601– 3619);

(4) 23 U.S.C. 109(h);

(5) 23 U.S.C. 324;

(6) Subsequent Federal-Aid Highway Acts and related statutes.

§ 200.7 FHWA Title VI policy.

It is the policy of the FHWA to ensure compliance with Title VI of the Civil Rights Act of 1964; 49 CFR part 21; and related statutes and regulations.

§ 200.9 State highway agency responsibilities.

(a) State assurances in accordance with Title VI of the Civil Rights Act of 1964.

(1) Title 49, CFR part 21 (Department of Transportation Regulations for the implementation of Title VI of the Civil Rights Act of 1964) requires assurances from States 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 assistance from the Department of Transportation, including the Federal Highway Administration.

(2) Section 162a of the Federal-Aid Highway Act of 1973 (section 324, title 23 U.S.C.) requires that there be no discrimination on the ground of sex. The FHWA considers all assurances heretofore received to have been amended to include a prohibition against discrimination on the ground of sex. These assurances were signed by the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, and American Samoa. The State highway agency shall submit a certification to the FHWA indicating that the requirements of section 162a of the Federal-Aid Highway Act of 1973 have been added to its assurances.

(3) The State highway agency shall take affirmative action to correct any deficiencies found by the FHWA within a reasonable time period, not to exceed 90 days, in order to implement Title VI compliance in accordance with State-signed assurances and required guidelines. The head of the State highway agency shall be held responsible for implementing Title VI requirements.

(4) The State program area officials and Title VI Specialist shall conduct annual reviews of all pertinent program areas to determine the effectiveness of program area activities at all levels.

(b) State actions.

(1) Establish a civil rights unit and designate a coordinator who has a responsible position in the organization and easy access to the head of the State highway agency. This unit shall contain a Title VI Equal Employment Opportunity Coordinator or a Title VI Specialist, who shall be responsible for initiating and monitoring Title VI activities and preparing required reports.

(2) Adequately staff the civil rights unit to effectively implement the State civil rights requirements.

(3) Develop procedures for prompt processing and disposition of Title VI and Title VIII complaints received directly by the State and not by FHWA. Complaints shall be investigated by State civil rights personnel trained in compliance investigations. Identify each complainant by race, color, sex, or national origin; the recipient; the nature of the complaint; the dates the complaint was filed and the investigation completed; the disposition; the date of the disposition; and other pertinent information. Each recipient (State) processing Title VI complaints shall be required to maintain a similar log. A copy of the complaint, together with a copy of the State's report of investigation, shall be forwarded to the FHWA division office within 60 days of the date the complaint was received by the State.

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

- (5) Develop a program to conduct Title VI reviews of program areas.
- (6) Conduct annual reviews of special emphasis program areas to determine the effectiveness or program area activities at all levels.
- (7) Conduct Title VI reviews of cities, counties, consultant contractors, suppliers, universities, colleges, planning agencies, and other recipients of Federal-aid highway funds.
- (8) Review State program directives in coordination with State program officials and, where applicable, include Title VI and related requirements.
- (9) The State highway agency Title VI designee shall be responsible for conducting training programs on Title VI and related statutes for State program and civil rights officials.
- (10) Prepare a yearly report of Title VI accomplishments for the past year and goals for the next year.
- (11) Beginning October 1, 1976, each State highway agency shall annually submit an updated Title VI implementing plan to the Regional Federal Highway Administrator for approval or disapproval.
- (12) Develop Title VI information for dissemination to the general public and, where appropriate, in languages other than English.
- (13) Establishing procedures for pregrant and postgrant approval reviews of State programs and applicants for compliance with Title VI requirements; i.e. , highway location, design and relocation, and persons seeking contracts with the State.
- (14) Establish procedures to identify and eliminate discrimination when found to exist.
- (15) Establishing procedures for promptly resolving deficiency status and reducing to writing the remedial action agreed to be necessary, all within a period not to exceed 90 days.

§ 200.11 Procedures for processing Title VI reviews.

- (a) If the regional Title VI review report contains deficiencies and recommended actions, the report shall be forwarded by the Regional Federal Highway Administrator to the Division Administrator, who will forward it with a cover letter to the State highway agency for corrective action.
- (b) The division office, in coordination with the Regional Civil Rights Officer, shall schedule a meeting with the recipient, to be held not later than 30 days from receipt of the deficiency report.
- (c) Recipients placed in a deficiency status shall be given a reasonable time, not to exceed 90 days after receipt of the deficiency letter, to voluntarily correct deficiencies.

(d) The Division Administrator shall seek the cooperation of the recipient in correcting deficiencies found during the review. The FHWA officials shall also provide the technical assistance and guidance needed to aid the recipient to comply voluntarily.

(e) When a recipient fails or refuses to voluntarily comply with requirements within the time frame allotted, the Division Administrator shall submit to the Regional Administrator two copies of the case file and a recommendation that the State be found in noncompliance.

(f) The Office of Civil Rights shall review the case file for a determination of concurrence or nonconcurrence with a recommendation to the Federal Highway Administrator. Should the Federal Highway Administrator concur with the recommendation, the file is referred to the Department of Transportation, Office of the Secretary, for appropriate action in accordance with 49 CFR.