Agenda

November 20, 2012
10:30 am – 12:30 pm

MTC
101 Eighth Street
Oakland, CA 94607

Contact: Sri Srinivasan
(510) 817-5793

Telephone Number: (712) 432-1438
Participant Access Code: 932832#

Meeting called by: Muhaned Aljabiry

Facilitator: Abhijit Bagde

Recorder: Bruce Abanathie

Agenda Topics

Item	Description	Time	Presenter
1	Agenda	10:30	Abhijit Bagde
2	Ground Rules	10:35	Abhijit Bagde
3	Approval of 10/16/2012 meeting minutes	10:40	Abhijit Bagde
4	**Announcements and updates:** • Highway Bridge Program Update – Abhijit Bagde • FHWA – Planning and Air quality Team Leader	10:45	All
5	**Follow-Up Items from last meeting:** 1. MPOs to forward their comments on ARB's information for the cost-effectiveness of funding CMAQ projects to Dennis Wade, Air Resources Board (ARB) 2. CT Programming Office to meet with DMT to discuss FTA apportionments under MAP-21- Item completed (See Item No. 6 below) 3. Gwyn Reese, CT Programming will e-mail pre-populated CMAQ annual report request - Item completed 4. Michael Lange, CT-DMT, will send out the revised 5307 lapse fund tables (through Abhijit Bagde) (See Item No. 10 below) 5. Sri Srinivasan, MTC, will send the link to the FTA webinar on Title VI to Abhijit Bagde to forward it to the CFPG list – Item completed 6. MPOs need to review their Title VI plans/actions, and share information at the next meeting (See Item No. 9 below)	10:50	Abhijit Bagde
6	Moving Ahead for Progress in the 21st Century (MAP-21): • Programming - Muhaned Aljabiry 1. Apportionments – CMAQ, RSTP, TEA, TA 2. PM 2.5 emission benefits for CMAQ • FTA apportionments – Brian Travis, CT-DMT	10:55	CT
7	2013 FSTIP - Update	11:15	Lilibeth Green
8	Buy America Requirement	11:20	Jean Mazur, FHWA

9	Compliance with the new Title VI and Environmental Justice (Handout No. 1)	11:35	MPOs
10	CT-Division of Mass Transportation (DMT) – Update	12:00	Michael Lange
11	• Follow-Up Items • Open Forum • Future Agenda Items	12:10	All
12	**Future meeting dates and locations:** • January 22, 2013, SACOG Sacramento (10:30 am – 12:30 pm) • March 12, 2013, Caltrans Sacramento (10:30 am – 12:30 pm) • April 23, 2013, MTC Oakland (10:30 am – 12:30 pm) • June 4, 2013, SACOG Sacramento (10:30 am – 12:30 pm)	12:15	All

California Federal Programming Group (CFPG)

Minutes for November 20, 2012:

1. Agenda:

Abhijit Bagde (CT Federal Programming Office) reviewed the agenda

2. Ground Rules:

- Since there are phone participants, everyone who speaks should state his/her name and agency.
- Keep comments as brief as possible.
- Stick to the current agenda item. Additional items not in the agenda will be added to the end and will be discussed if time permits.
- Turn off cell phones and limit interruptions.
- This is a forum to hear everyone's concerns, comments and suggestions. Please make sure your voice is heard.
- Facilitator to ask before moving on to the next item if anyone on the phone has any additional comments on the item, then pause for a few seconds.
- Respond to follow-up items and meeting notices by the deadlines.
- Except for follow-up items, the minutes will include discussions that take place during the meeting only. If you do not want what you say during the meeting included in the minutes, state "off the record."
- **When not speaking, phone participants to keep their phones on mute if possible.**
- **Do not place conference call on hold. Please hang up and redial if you must take another call.**
- Meeting minutes to be distributed to the group with 10 days after the meeting.

Bolded items were emphasized by Abhijit.

3. Minutes of the Last Meeting: Abhijit Bagde

The final minutes of the October 16, 2012 meeting were provided via email prior to the meeting. No comments on the minutes were received and the minutes were approved as written.

4. Announcements and Updates:

a. Highway Bridge Update

Abhijit noted that the HBP programming has been updated and the information was provided to the MPOs. The programming office requests that the MPOs include the new programming in their next FTIP amendment or administrative modification to their 2013 FTIPs.

b. FHWA – Planning and Air Quality Team Leader

Jermaine Hannon (FHWA) introduced Jack Lord, from Washington State Division, as the Planning and Air Quality Team Leader. Jack introduced himself to the group.

Jermaine also reintroduced Cecelia Crenshaw. Cecelia has been on a development assignment in Minnesota regarding performance measures and performance based planning.

Will Ridder (SJCOG) announced that Sam Kaur (currently SJCOG) has accepted the position of Principal Planner with the Santa Clara Valley Transportation Authority (SCVTA) and will be leaving SJCOG. Sam will no longer be part of the CFPG group. Will also introduced Anthony Zapeda as the SJCOG Transit Planner. Will also noted that SJCOG will be recruiting for a new programmer for SJCOG.

Sam stated that she has enjoyed working with the other MPOs, Caltrans, and FHWA/FTA, that she has appreciated the opportunities to participate at the state and federal levels, and the staff connections. Muhaned expressed his appreciation for Sam's participation in committees and in the development of programs and guidance documents that the Programming Office has put out in the last several years.

5. Follow-up Items from Last Meeting – Abhijit Bagde

a. MPOs to forward their comments on ARB's information for the cost-effectiveness of funding CMAQ projects to Dennis Wade, Air Resources Board (ARB) – complete.

b. CT Programming Office to meet with DMT to discuss FTA apportionments under MAP-21- Item completed (See Item No. 6 below)

c. Gwyn Reese, CT Programming will e-mail pre-populated CMAQ annual report request - Item completed

d. Michael Lange, CT-DMT, will send out the revised 5307 lapse fund tables (through Abhijit Bagde) (See Item No. 10 below)

e. Sri Srinivasan, MTC, will send the link to the FTA webinar on Title VI to Abhijit Bagde to forward it to the CFPG list – Item completed

f. MPOs need to review their Title VI plans/actions, and share information at the next meeting (See Item No. 9 below)

6. Moving Ahead for Progress in the 21st Century (MAP-21)

a. Programming - Muhaned Aljabiry

(i) Apportionments – CMAQ, RSTP, TE

Muhaned Aljabiry (CT Federal Programming Office) stated that the estimated apportionments with which we programmed our 2013 FTIPs are still good estimates and projects can be programmed and delivered based on these estimates. We will update the estimates each year as we get annual apportionment updates from FHWA.

There are questions about the TA funds (that start with the implementation of MAP-21). There are working groups that are developing recommendations for the distribution of CMAQ, RSTP, and TA. For 2012/13 CMAQ and RSTP programs, Caltrans Administration has submitted and CTC has adopted a plan to distribute the funds as in SAFETEA-LU. For the TA program, for FY 2012/13, we have some TE projects programmed that will use the TE apportionments while using the TA programming capacity for financial constraint. Unfortunately, this is as clear as this can be made

right now. If you need further explanation or wish to discuss a project, please call the programming office.

For FY 2013/14 and beyond, the working groups will submit a recommendation for how the funds will be apportioned to the regions.

Abhijit added that; for the TE projects programmed in FY 2012/13, there is no need to change the fund type in the FTIP. Since we will deliver these projects with existing TE funds (using the TA level of programming capacity) the fund type will remain the same.

Jermaine asked how we planned to handle projects that are not eligible for TA funds. Muhaned responded that for projects that were eligible for TE, but are not eligible for TA we will have to change the fund type. Sam clarified that if we are delivering projects with existing TE funds, project eligibility should not be an issue. Bruce recommended that the projects eligible for TE but not TA be prioritized for the carry-over TE funds and the other projects funded with TA. Jermaine recommended that if there are any questions about eligibility requirements that the regions contact the programming office.

Will noted that the CTC is recommending that regions advance as many TE projects from future years as possible, particularly those that may have eligibility questions.

(ii) PM 2.5 emission benefits for CMAQ

Muhaned stated that although MAP-21 consolidated programs, they have also provided additional fund codes. For CMAQ, we now have two fund codes, one for "CMAQ PM 2.5" and one for the remaining CMAQ.

This also changes the PM 2.5 reporting mechanism that was being considered. We thought that we would just report the PM 2.5 benefit in the Annual CMAQ Report. Now we will report PM 2.5 benefit projects as we go - using the new fund code. When you request authorization to proceed with a project, you will need to tell Local Assistance whether you are using the CMAQ PM 2.5 or if you are using the remaining CMAQ. This will be done using the fund codes for each project. It will also be necessary to include a notation that the project is a PM 2.5 benefit project in the programming document (CTIPS). This can be done in the project description or in the MPO notes. This will alert Local Assistance of the PM 2.5 projects and the project can be obligated with the appropriate fund code.

ARB is working on developing the calculations to show PM 2.5 benefits and a project-type list for PM 2.5 benefit projects. The current opinion of ARB is that most of the projects that we fund with CMAQ in CA are PM 2.5 benefit projects. Any project that reduces engine exhaust is most probably a PM 2.5 benefit project. The calculations are projected to be available in mid-December. *(post meeting note: the ARB is now stating that the new calculations may not be available until mid January 2013)*

Muhaned mentioned the letter sent out to the regions and local agencies about the different fund codes and notifying LA about PM 2.5 projects based on the information we receive back from ARB. Bruce noted that the letter confused the local agencies into believing they had to wait until the ARB information was available to obligate CMAQ projects. Muhaned stated that we should move forward with obligating CMAQ projects. Jose-Luis (SACOG) stated that this would be an issue if

his only PM 2.5 project was ready to obligate and he could not use the PM 2.5 CMAQ fund code to record such. Bruce asked if, particularly at this time when we are still trying to establish the criteria, there would be an opportunity to change the fund code after obligation to record a PM 2.5 benefit project. Knowing that there are very few things that can be changed after a project is obligated; could this be at least a temporary option? Stew Sonnenberg (FHWA) stated that this might be an option. Stew is working on a nationwide committee within FHWA to update the CMAQ guidance and to address this type of question for CMAQ. This question has been brought up at the committee, he would like to say yes, but there is not a definitive answer yet.

**Muhaned will provide the Local Assistance letter to Abhijit to be sent out to the CFPG mailing list.*

Stew also stated that it is important to begin taking credit for PM 2.5 benefit projects right away. Utilizing the new fund code (M003) is the only way to do that. It will be a lot easier to take credit early as opposed to trying to go back in time at the end of the year.

Muhaned noted that the remaining information in the letter indicated that once a region has reached its 25% requirement of PM 2.5 fund obligation the remaining projects (whether they have a PM 2.5 benefit or not) will be obligated under the general CMAQ fund code.

Peter DeHaan (Ventura) asked about areas that are eligible for CMAQ funds, but are attainment areas for PM 2.5. Stew stated that you would just obligate all of your CMAQ projects with the general CMAQ fund code. Stew and Jermaine did caution that this is the current information and we will be updated if there are any changes.

Ross McKeown (MTC) asked if the additional focus on PM 2.5 would result in increased apportionments to the areas affected by the requirement. Muhaned stated that this would not be the case – unless we receive additional guidance from FHWA that this is necessary. This question has been addressed by the MAP-21 CMAQ Working Group. Lima reported that the group had agreed that for the 2012/13 FY the distribution of CMAQ funds would remain as it was under SAFETEA-LU and that the committee would review this recommendation for future years based on the information we receive from ARB regarding the PM 2.5 project types. Lima also noted that we do not have the population weighted data necessary to modify the distribution based on PM 2.5 nonattainment.

Jermaine stated that there are still some questions that need to be answered at FHWA regarding CMAQ and the PM 2.5 issue. Stew is on the national committee to answer these questions and FHWA will update you as we receive the information. Lima added that there is no direction in MAP-21 for the distribution of funds, only for the obligation.

Jose-Luis noted that at the last CFPG we were told that a list of PM 2.5 benefit project types would be sent out and asked if we had received that list yet. Muhaned replied that he had received an email from ARB that stated "… that any project that reduced criteria pollutants from gasoline of diesel engine exhaust produces a PM 2.5 benefit" and that they had hoped to have something more definitive by the end of December. Jose-Luis also asked for clarification of the application of the 25%. Muhaned stated

that the application of the 25% was by PM 2.5 non-attainment area. Jermaine stated that there was still some discussion about this at the federal level based on interpretations of the law. Jermaine recommended that we wait on the guidance from FHWA before we make final decisions.

Sri Srinavasan (MTC) asked - if the interpretation is that it is a statewide 25% requirement - would there be a credit to regions that obligate more than 25% within their region and help the state meet its obligation threshold. Muhaned stated that this is a question being discussed in the Working Group and that prior apportionments have been based on the weighted populations for criteria pollutants and if FHWA gives us the weighted populations for PM 2.5, we may use them in the apportionment calculations.

Sam followed by stating that if the FHWA does not give us the weighted populations, another option would be to take 25% off the top of the statewide CMAQ apportionment and distribute that to the PM 2.5 non-attainment areas by population. Muhaned stated that this would be different than our usual apportionment, but if the interpretation is that the requirement is statewide as opposed to regionally based that it is an option. Jermaine again asked that we wait until we have the full information on this issue before we try to commit to any program.

Ross pointed out that as we are required to reach out to the public to hear their concerns, so should the federal and state governments hear the concerns of the MPOs. Muhaned replied that the state is doing so by establishing the working groups and having representatives from the regions on the groups – including a representative from MTC. Muhaned also noted that the amount that we are talking about is not that significant. Peter replied that for areas that are CMAQ eligible, but are also PM 2.5 attainment that would mean a 25% reduction in their apportionment, which for the smaller areas could be quite significant.

Ross also addressed the subject of EPSP for PM 2.5 benefit projects and posed the question about how that would affect the annual 25%. If a region over-delivers their PM 2.5 requirement one year through the EPSP of projects from the subsequent year, will that credit carry over to the subsequent year. Muhaned and Jermaine both expressed the interpretation that this is an annual requirement and that there would be no carry-over. Jermaine and Stew both reminded the group that the guidance is still being written and that nothing is decided until it is completed.

A longer discussion on the opportunities for input to the committees carried into both the state working group and the federal guidance committee. Muhaned reiterated that the working group was made up of representatives from the regions and Jermaine stated that we have the opportunity to have input to the guidance committee through Stew.

b. FTA apportionments – Brian Travis, CT-DMT

Brian Travis, Mark Cody, and Michael Lange (Caltrans DMT) Brian stated that they are working on FTA funding programs 5307, 5337, and 5339, first establishing the large area recipients for the state and then integrating the 5307 and 5337 in the process. The only major change in the FTA programs is the 5310.

FTA 5310 now requires that 60% of the funds must be spent in large urban areas, 20% in small urban areas, and 20% in rural areas. It also gives the state and MPOs the

option of having the designated recipient status moved from the state to the large urban areas for the 60%. DMT is working on a transition into this option. Caltrans would like to see an all-or-nothing program for MPO designated recipient status, rather than a few that opt for designated recipient and some that do not. Bruce asked if Caltrans will retain the designated recipient status for the small urban and rural areas. Brian stated that they would. Sri asked if the all-or-nothing is their proposal or the decision. Brian stated that this is their proposal to open the discussion with the large urban area MPOs. Brian stated that this is a discussion within the FTA working group.

Abhijit asked for an update on the 5311 apportionments. Brian stated that DMT has the figures. FTA has released 50% of the funding. DMT is planning a call for projects in December/January for this 50% and a second call for projects in April when FTA releases the remaining 50%. Jose Luis asked why the two calls and why not one call with the total projected annual total.

Lucinda Eagle (FTA) clarified that a single call would work using the projected annual apportionment and the "below the line" capability of TEAM. Lucinda noted that this would also be faster for the second apportionment projects due to the elimination of the DOL review of each application.

Jose-Luis asked Lucinda if it would be possible for a transit operator to begin reimbursable work on a "below the line" project prior to the second appropriation. Lucinda stated that it may be if the agency has pre-award authority and the project is in the TIP.

**The programming office will meet with DMT about the call for projects procedure.*

Sri asked about the changing fund types (5309, 5337, 5339) and how those fund types will be managed in the fiscal constraint of the FTIP. Brian stated that, for the large urban areas, they will run the 5337 and 5339 programs as they have the 5307 and 5309 programs and if the MPO is a designated recipient of those funds they will also be a designated recipient of the new fund types. This will be managed differently for the small urban areas.

In small urban areas, some responsibility for apportionment development and programming of 5307 funds will remain with DMT. Caltrans will be the designated recipient, Caltrans will sub-allocate the funds back to FTA, and FTA will work directly with the small urban MPOs as a sub-allocated direct recipient.

Lucinda clarified that this is essentially keeping the current process in place. Brian agreed and stated that they are just cleaning up the language in their program. Brian asked FTA to speak on the responsibility of the sub-allocated direct recipient for programming. Lucinda stated that they are still waiting on some clarification from D.C. on this as well.

7. 2013 FSTIP- Update – Muhaned Aljabiry

Lilibeth Green (CT Federal Programming Office) reported that the final FSTIP was submitted to FHWA/FTA on November 15, 2012 and that the FSTIP is on track for federal approval December 17, 2012.

8. Buy America Requirement

Abhijit noted that Jean Mazur (FHWA) had requested that this item be added to the agenda,

but that Jean was not able to attend this meeting, so the item will be carried forward to the January meeting.

9. Compliance with the new Title VI and Environmental Justice (Handout No. 1)

This is a follow up item from the October meeting. The MPOs were to review the EJ requirements explained in the FTA Circular 4703.1 and discuss how their regions were going to address the requirements. Four handouts were provided for this topic (FTA Circular 4703.1, FTA Final Circular 4703.1.ppt, FHWA Title VI and LEP Requirements.ppt, and 2.0 Defining the Issue).

Bruce noted that the issue is not so much new requirements as it is that there is a wide spectrum of interpretation of what the circular and Environmental Justice require of us as MPOs. Bruce sent a question about an out of date document to the FAQ page of FHWA's EJ website and instead of an email response got a phone call from FHWA in D.C. The FHWA representative stated that the circular in question was simply an effort by FHWA and FTA to establish a common approach and guidance to meeting the EJ requirements of the Executive Order. FHWA noted that this was also still a work in progress.

FHWA emphasized that this circular did not add any new requirements to the EJ program, but simply clarified some of the requirements and provided direction on how to meet some of the requirements. The circular also tries to make the language used by FHWA and FTA more consistent (e.g. where FTA may say "older Americans", FHWA says "age Discrimination Act") when referring to requirements and populations. The requirements for monitoring and compliance reviews are spelled out more clearly for recipients versus sub-recipients.

Bruce stated that he sent two examples of EJ Analyses to the caller from FHWA and was informed that both were acceptable analyses.

Other points discussed by FHWA:

EJ is more specific in its identification of population but is only part of Title VI "disproportionate impact" considerations

EJ, as an executive order, carries the weight of law, but is subject to "complaint" only - not "cause" for legal action.

The current circular (4703.1) addresses the identification of all EJ populations and discusses data driven analysis (such as 4-Factor analysis for LEP), and "reasonable accommodation".

FHWA considerations are based on trends and patterns related to implementation of EJ programs and requirements as opposed to individual actions or analyses.

FHWA focus is on public participation, stakeholder lists (creating, updating, using), data that supports outreach, and priority documents for dissemination (public notices, meeting notices, policy statements).

Bruce also talked with FTA Region IX and was referred to FTA D.C. FTA was also helpful, but wanted to hold any definitive comments until they felt that the program was more finalized.

Points discussed by FTA:

The goal is fair and equitable service analysis for any significant change in either routes or fares.

EJ management in FTA is changing hands and regional coordinators are waiting for further guidance from D.C.

Circular 4703.1 is not the definitive update for EJ.

Decision making will occur after webinars throughout November and regional coordinators comments and input will be included as of January.

Jermaine reminded us that this is similar to the information that he provided to us about a year ago.

Sri noted that the reason that she requested that this item be placed on the agenda was due to two subsequent sets of direction on this issue and that she wanted to see how other MPOs were handling the EJ issue.

Ted Mately (FTA) confirmed the FTA position on this issue is consistent with the information provided and that the circular was to help create clarity for the people doing the work and the people reviewing the work.

**FHWA will work through their EJ Planner to develop a list of best practice type EJ Analyses within CA.*

10. Division of Mass Transportation (DMT) Update – Michael Lange

Michael Lange (Div. of Mass Trans) stated that he is still working with FTA to finalize some information. Some regions have enough information that they are able to start working with their FTA Coordinators. Lucinda stated that FTA is also still sorting out the information and will coordinate the information with DMT as soon as possible.

NOTE: This item was taken out of sequence, but is presented in sequence in the minutes

11a. Follow up Items

6.a(.ii). Muhaned will provide the Local Assistance letter regarding the CMAQ PM 2.5 fund code to Abhijit to be sent out to the CFPG mailing list.

6.b. Muhaned suggested that the programming office meet with DMT about the call for projects procedure.

9. *FHWA will work through their EJ Planner to develop a list of best practice type EJ Analyses within CA.*

12b. Open Forum

Jermaine state that in addition to being the Planning and Air Quality Team Leader, he will also be the CFPG liaison.

13. Next Meeting:

January 22, 2013, SACOG Sacramento (10:30 am – 12:30 pm)
March 12, 2013, Caltrans Sacramento (10:30 am – 12:30 pm)
April 23, 2013, MTC Oakland (10:30 am – 12:30 pm)
June 4, 2013, SACOG Sacramento (10:30 am – 12:30 pm)

Handout No. 1 for Item No. 9: Compliance with the new Title VI and Environmental Justice

TITLE VI/NONDISCRIMINATION & LEP REQUIREMENTS

Southern Transportation Civil Rights Executive Council

Atlanta, GA

July 2011

Lester G. Finkle

National Title VI/Nondiscrimination Program Manager

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- Relationship To Title VI
- Federal Government Responsibilities
- Elements Of A Language Access Program
- State Transportation Agency (STA) Responsibilities
- STA Monitoring Of Sub-Recipients
- Contact Information

LEP Overview

- Executive Order #13166: "*Improving Access To Services For Persons With Limited English Proficiency*" -- President Clinton, August 11, 2000.
- Attorney General Memorandum to All Federal Agencies, February 17, 2011 -- Does not create any new obligations.
- Clarifies responsibilities associated with the "*application of Title VI's prohibition on national origin discrimination when information is provided only in English to persons with limited English proficiency*." *

Relationship To Title VI

- Title VI of the Civil Rights Act of 1964 states that "No person…" shall be excluded from participation, denied benefits, or subjected to discrimination based upon race, color, or national origin*
- Lau v. Nichols, 414 U.S. 563 (1974): The U.S. Supreme Court decided that the failure of the San Francisco school system to provide language accommodation to non-English speaking students violated TitleVI**

Federal Government Responsibilities

- USDOJ has directed that all Departments conduct Self-Assessments and develop an LEP Action Plan to address identified deficiencies.
- USDOT is developing an LEP Action Plan and has directed all Modal Agencies to perform Self-Assessments.
- FHWA Office of Civil Rights will be sending a Self-Assessment Survey to the Division Offices and Resource Center.
- FHWA Division Offices are responsible for ensuring that STAs are LEP compliant.

Elements Of A Language Access Program

- Language Assistance Services
- Policy Directives
- Plan
- Procedures

Elements Of A Language Access Program (cont'd)

- Language Assistance Services

1. Interpreter Services: Oral language services;

2. Translation Services: Written language services.

Elements Of A Language Access Program (cont'd)

<u>Interpreters</u>

- Competent

1. More than self-identification as bilingual is necessary;
2. Knowledge of necessary words and phrases in both languages, ethics, role of an interpreter, modes of interpreting, confidentiality, etc., are important;

Elements Of A Language Access Program (cont'd)

Interpreters (cont'd)

- Types

1. Trained in-house competent bilingual personnel;
2. In-house full-time personnel interpreter;
3. Contracted professional interpreters; and
4. Telephone or video interpreter services.*

Please Note: Effective combination of the four Types is optimal

Elements Of A Language Access Program (cont'd)

Vital Documents

- Consent and complaint forms, Intake forms;
- Written notices of rights or denials;
- Applications to participate in a program or service; and
- Information on agency websites.

Elements Of A Language Access Program (cont'd)

Notice of Language Services

- Notices written in non-English languages describing language assistance services at intake areas and other points of contact;
- Telephone menu in commonly spoken non-English languages;
- Information in outreach materials and on the agency website; and
- Outreach through non-English media and community groups.

Elements Of A Language Access Program (cont'd)

Policy Directives

- Policy Directives may include the following elements:

1. Purpose and Authority;
2. General Policy Statement;
3. Personnel Compliance; and
4. Language Assistance Measures.

Elements Of A Language Access Program (cont'd)

<u>Language Access Plan</u>

- US DOJ Guidance Elements Of An Effective Plan:

1. Notice of language assistance services;
2. Identification & Assessment (Tracking);
3. Detail of available language assistance services;
4. Personnel Training;
5. Monitor Implementation/Update Plan; and
6. Appoint a Language Access Coordinator.

Elements Of A Language Access Program (cont'd)

<u>Language Access Procedures</u>

- Track & Record language preference information;
- Inform LEP persons about available language assistance services;
- Assess language needs of LEP persons;
- Respond to telephone calls and correspondence;
- Process requests for document translation;
- Process complaints filed by LEP persons.

STA Responsibilities

- Perform Self-Assessment to determine which personnel interact with members of the Public;
- Identify LEP Populations State-wide using US Census data (American Community Survey data available annually), www.census.gov/acs/www/
- Perform Four-Factor Analysis to determine frequency of contact, importance of services provided by STA, need for translation of written documents and interpreters, etc.

STA Responsibilities (cont'd)

- Four-Factor Analysis:

1. Number of LEP persons eligible to be served or likely to be encountered;
2. Frequency with which LEP persons use/need the program or service;
3. Nature and importance of the program or service to the people; and
4. Resources available to the STA.*

STA Responsibilities (cont'd)

- Four-Factor Analysis:
  - Number of LEP persons eligible to be served or likely to be encountered: This factor is important when Recipients are developing reasonable steps to provide meaningful opportunities. A Recipient may ask "*What number or proportion of people will be excluded from benefits or services absent efforts to remove language barriers?*"*

STA Responsibilities (cont'd)

- Four-Factor Analysis:
  - Frequency with which LEP persons use/need the program or service: If LEP persons must access a Recipient's program/activity daily, the Recipient has a greater duty than if the contact was unpredictable or infrequent.*

STA Responsibilities (cont'd)

- Four-Factor Analysis:
  - Nature and importance of the program or service to the people: More affirmative steps must be taken in programs where the denial or delay of access may have life or death implications.*

STA Responsibilities (cont'd)

- Four-Factor Analysis:
  - Resources available to the STA: A small Recipient with limited resources may not have to take the same steps as a larger Recipient to provide LEP assistance in programs that have a limited number of LEP persons.*

STA Responsibilities (cont'd)

- STA CEO issues LEP Policy;
- Identify written Plans/Manuals that are impacted and update/revise Plans/Manuals to implement LEP-related processes;
- Documents: Title VI/Nondiscrimination Plan, Public Involvement/Participation Plan, Operations Manuals for Offices of Planning, Environment, Design, and Rights-of-Way;

STA Responsibilities (cont'd)

- Ensure personnel interacting with the public understand steps to follow if an LEP person contacts the STA in person, by telephone, or by e-mail;
- Communicate Language Access Services available to members of the Public via STA website, brochures, etc;
- Ensure that Sub-Recipients are LEP compliant.

STA Monitoring of Sub-Recipients

- STAs are responsible to ensure that Sub-Recipients understand LEP requirements and are LEP compliant;
- STAs will communicate the need for each Sub-Recipient to conduct the Self-Assessment and develop a Language Access Program based upon the Self-Assessment and the Four-Factor Analysis.

Contact Information

Lester G. Finkle

FHWA National Title
VI/Nondiscrimination Program Manager

lester.finkle@dot.gov

202-366-5991

TITLE VI/NONDISCRIMINATION

ANNUAL WORK PLAN

& ACCOMPLISHMENT REPORT

NAME OF STATE TRANSPORTATION AGENCY

DATE SUBMITTED

REPORTING PERIOD

September 6, 2012

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CIVIL RIGHTS OFFICE ORGANIZATION:

TITLE VI/NONDISCRIMINATION COMPONENT

The Office of Civil Rights is composed of the following personnel: Manager, DBE Liaison Officer, DBE Certification/Business Development Specialist, Title VI/Nondiscrimination Coordinator, Title VI/Nondiscrimination Specialist, Contractor Compliance Coordinator, ADA/504 Coordinator and Affirmative Action Officer. The Civil Rights Manager reports directly to the Secretary of the State Transportation Agency (STA). The following Office of Civil Rights personnel report to the Civil Rights Manager: DBE Liaison Officer, Title VI/Nondiscrimination Coordinator, Contractor Compliance Coordinator, and Affirmative Action Officer.

The Title VI/Nondiscrimination Coordinator is responsible for ensuring that the STA is effectively implementing the Internal and External Monitoring Programs. The Title VI/Nondiscrimination Coordinator accomplishes this responsibility in the following manner:

- Internal Monitoring Program –
  - Title VI/Nondiscrimination Liaisons for each Federal Program Area submit the section of the Program Area to be reviewed to the Title VI/Nondiscrimination Coordinator by September 1st of each year;
  - The Title VI/Nondiscrimination Coordinator acts as the clearinghouse for all reviews conducted by Federal Program Areas:
    - Each Federal Program Area develops a review Report detailing the section of the Program Area reviewed during FFY 2012;
    - The Report describes the data collected and analyzed, the processes reviewed, and any trend/pattern identified during the review;
    - The Report identifies the corrective action proposed to address the trend/pattern;
    - The Report is submitted to the Federal Program Area Manager with a copy provided to the Title VI/Nondiscrimination Coordinator;
    - The Federal Program Area Manager endorses or modifies the proposed corrective action and submits the endorsement or modification to the Title VI/Nondiscrimination Coordinator;
    - The Title VI/Nondiscrimination Coordinator meets with the Federal Program Area Manager to develop actions to be taken, by whom, and due dates;
    - If the corrective action requires the participation of more than one Federal Program Area, the Title VI/Nondiscrimination Coordinator meets with the affected Division/Bureau Manager or Managers and the Federal Program Area Managers to ensure that there is agreement as to the necessary corrective actions, resources required to implement the corrective actions, due dates, etc.;
  - The Title VI/Nondiscrimination Coordinator meets with the STA Secretary at least annually to communicate trends/patterns that have been identified during the course of the FFY. The Secretary is briefed regarding corrective actions being taken by Federal Program Areas, any challenges experienced, and a request made

for the Secretary's support regarding the need for cooperation between Divisions/Bureaus to address an identified trend/pattern;

- The Title VI/Nondiscrimination Coordinator is the STA representative responsible for processing all Title VI/Nondiscrimination Complaints received by the STA. A Complaints Log is maintained and the Investigative Report is prepared and submitted to FHWA. The Title VI/Nondiscrimination Coordinator may conduct the investigation or may delegate the investigation to the Title VI/Nondiscrimination Specialist;
- The Title VI/Nondiscrimination Coordinator is responsible for developing and submitting the *Annual Title VI/Nondiscrimination Work Plan & Accomplishment Report* to the FHWA Division Office;

- External Monitoring Program –
  - Sub-Recipients submit a Title VI/Nondiscrimination Plan and an *Annual Title VI/Nondiscrimination Work Plan & Accomplishment Report* to the STA Title VI/Nondiscrimination Coordinator. Based upon the annual Reports, the STA Title VI/Nondiscrimination Coordinator summarizes the information submitted by each Sub-Recipient and provides an analysis to the FHWA Division Office Civil Rights Specialist in the *Annual Title VI/Nondiscrimination Work Plan & Accomplishment Report.* The analysis details any trends/patterns relating to how Sub-Recipients are implementing their Title VI/Nondiscrimination Programs and identifies how the STA intends to address the trends/patterns;
  - The Title VI/Nondiscrimination Coordinator is responsible for ensuring that all Sub-Recipients have signed the Standard Title VI/Nondiscrimination Assurance;
  - The Title VI/Nondiscrimination Coordinator is responsible for ensuring that all Sub-Recipients have appointed a Title VI/Nondiscrimination Coordinator with sufficient authority to implement an effective Title VI/Nondiscrimination Program;
  - The Title VI/Nondiscrimination Coordinator is responsible for ensuring that all Sub-Recipients have a prompt Complaint Disposition Process;
- Training Program –
  - The Title VI/Nondiscrimination Coordinator is responsible for developing a Title VI/Nondiscrimination Program Training schedule both for STA employees as well as training for Sub-Recipients;
    - The Title VI/Nondiscrimination Coordinator develops or coordinates the development of training sessions for varying levels of STA and Sub-Recipient employees;
    - The STA Secretary and Division/Bureau Managers receive more generalized training intended to provide them with a basic understanding of Title VI/Nondiscrimination requirements and how these requirements intersect with STA Federal Program Areas;
    - Federal Program Area Managers and Title VI/Nondiscrimination Liaisons are provided more in-depth training that highlights specifically segments of the Federal Program Area intersecting with the Title VI/Nondiscrimination requirements;
    - Additionally, the Title VI/Nondiscrimination Liaisons are instructed how to analyze data and how to conduct Process Reviews;

- The Title VI/Nondiscrimination Coordinator is responsible for ensuring that all Sub-Recipients are provided with training that focuses on the primary Sub-Recipient Title VI/Nondiscrimination responsibilities: STA-approved Title VI/Nondiscrimination Plan and Annual Work Plan & Accomplishment Report, Standard Title VI/Nondiscrimination Assurance, appoint a Title VI/ Nondiscrimination Coordinator.

The STA Title VI/Nondiscrimination Specialist is responsible for assisting the Title VI/Nondiscrimination Coordinator to effectively carryout all Title VI/Nondiscrimination-related Program responsibilities. The Title VI/Nondiscrimination Specialist accomplishes this responsibility in the following manner:

- Internal Monitoring Program –
  - The Title VI/Nondiscrimination Specialist coordinates the Reviews conducted by the Federal Program Areas annually. The Title VI/Nondiscrimination Specialist meets with the Federal Program Areas' Title VI/Nondiscrimination Liaisons prior to, during, and following the performance of a Review;
  - During a Review, the Title VI/Nondiscrimination Specialist observes how the Federal Program Area Title VI/Nondiscrimination Liaison (and other Review Team Members as applicable) conducts the Review by attending at least two Review-related meetings (i.e., personnel interviews, file reviews, field on-sites, etc.) in addition to the Review kick-off meeting (if applicable). The number of meetings attended will depend upon the duration and complexity of the Review and generally of the STA Reviews being conducted during the FFY;
  - The Title VI/Nondiscrimination Specialist is provided a copy of each draft Review Report. The Title VI/Nondiscrimination Specialist provides comments (focusing specifically on corrective actions developed to address an identified trend/pattern) and coordinates with the Title VI/Nondiscrimination Coordinator before officially transmitting the comments to the Title VI/Nondiscrimination Liaison;
  - If a trend/pattern is identified, the Title VI/Nondiscrimination Specialist monitors the progress made by the Federal Program Area as it implements corrective actions. The Title VI/Nondiscrimination Specialist periodically briefs the Title VI/Nondiscrimination Coordinator and requests assistance if a Federal Program Area is not making progress towards implementing corrective actions;
- External Monitoring Program –
  - The Title VI/Nondiscrimination Specialist coordinates with the Office of Local-Aid Projects to review a sampling of Local Public Agencies (LPAs). Additionally, the Title VI/Nondiscrimination Specialist coordinates with the Office of Planning to participate on Certification Reviews of Metropolitan Planning Organizations (MPOs):
    - Regarding LPAs, the Title VI/Nondiscrimination Specialist and the Office of Local-Aid Projects choose a number of LPAs to review during an FFY using the LPA Annual Reports to identify higher-risk agencies as well as using the level of FHWA funding received by LPAs as another determinant;

    - LPAs actively involved in any phase of Project Development are also given special consideration. Review Reports are developed and findings/deficiencies are communicated formally to the LPA/MPO;
    - The LPA/MPO develops corrective actions and the Title VI/Nondiscrimination Specialist coordinates with the Office of Local-Aid Projects and Office of Planning to monitor progress being made;
  - The Title VI/Nondiscrimination Specialist coordinates the review of LPA annual Reports with the Office of Local-Aid Projects and in the case of MPOs, with the Office of Planning;
- Training Program – The Title VI/Nondiscrimination Specialist is responsible for assisting the Title VI/Nondiscrimination Coordinator in all aspects of the development and implementation of personnel training for both STAs and Sub-Recipients.

INTERNAL MONITORING PROGRAM

In this context, the Internal Monitoring Program is the STA's approach to annually review processes of STA Federal Program Areas to identify any trends/patterns of discrimination. The Internal Monitoring Program is composed of two principal elements: Data Collection/ Analysis/Reporting and Process Reviews:

- Members of the Public participating in the Project Development process (i.e., Public Involvement/Participation), impacted by a proposed FHWA-funded project, or benefiting from an FHWA-funded Program are identified according to their race, color, national origin, sex, age, and disability (as well as low-income and whether a person speaks English as his/her primary language);
- The Office of Public Relations, in coordination with each Federal Program Area, gathers this data;
- At Public Hearings/Meetings, anonymous questionnaires are distributed and an STA representative explains to the participants the importance of providing the information;
- Representatives from the Office of Rights-of-Way collect this data through personal contacts with property owners and tenants (in-person or via telephone);
- The Office of Planning has mapped these populations statewide using the most recent Census data through GIS technology and these maps are available to all STA personnel via the Intranet.

Each Federal Program Area is responsible for annually reviewing a segment of process related to the Area's function. For example, the Office of Rights-of-Way has the following segments: Property Valuation (Appraisals), Property Negotiation (Acquisition), Property Relocation, Property Management, and Consultant Selection. As another example, the Office of Environment has the following segments: Public Involvement/Participation, Consultant Selection, Identification of Socio-Economic impacts, and Analysis of Socio-Economic impacts. Title VI/Nondiscrimination Liaisons are subject matter experts that perform Federal Program Area-related duties and that have been designated to represent the Program Area with respect to Title VI/Nondiscrimination-related functions. These functions may include data collection, data analysis, data reporting, and process reviews. Title VI/Nondiscrimination Liaisons develop Review Reports in coordination with the Title VI/Nondiscrimination Specialist. If a trend or pattern of discrimination is identified during the Review, the Federal Program Area develops corrective actions to address the identified trend/pattern. The Title VI/Nondiscrimination Specialist monitors how the Federal Program Area implements the corrective actions.

- Federal Program Area Reviews Conducted During FFY 2012 --
  - Office of Planning: Public Involvement/Participation;
  - Office of Environment: Analysis of Socio-Economic impacts;
  - Office of Design: Public Involvement/Participation;
  - Office of Rights-of-Way: Property Negotiation;
  - Office of Contract Administration: Insert Title VI/Nondiscrimination Assurance Appendix A into all consultant agreements and construction contracts regardless of tier;

- Office of Local-Aid Projects: Insert Title VI/Nondiscrimination Assurance Appendix A into all consultant agreements and construction contracts regardless of tier for all LPA projects;
- Office of Construction: Selection/Retention of Sub-Contractors by Prime Contractors;
- Office of Maintenance: Process to prioritize when to mow grass, pick up refuse, and trim trees along STA-controlled roadways;
- Office of Research: Advertising/Award of Research projects;
- Office of Safety: Prioritization of Safety projects;
- Office of Human Resources: How STA employees are identified to attend National Highway Institute training courses.

- Results of Reviews Conducted During FFY 2012 –
  - Office of Planning: The Review focused on how stakeholders are identified and noticed when Public Meetings are conducted. The Review found that while a List of Stakeholders is available for internal use, the List has not been updated since 2003. As there is no process presently in place to update the List, corrective actions being taken include the following – verify Stakeholders contact information presently on the List, contact MPOs to determine Stakeholders noticed by MPOs, conduct outreach efforts via e-mail and telephone to Community Based Organizations/Faith Based Organizations not presently on the List, and develop a procedure to periodically update the List;
  - Office of Environment: The Review focused on how Socio-Economic impacts are analyzed during the development of Environmental Impact Statements (EIS) and Environmental Assessments (EA):
    - Specifically, the focus considered how Socio-Economic impacts are analyzed within a Draft EIS/EA;
    - Two EISs and two EAs were reviewed and it was determined that the quality and quantity of the analysis in each document depended upon the Environmental Consultant drafting the document;
    - The Office of Environment is reviewing the existing EIS/EA Checklist and will seek to add narrative where appropriate to more fully detail the expected content for the Socio-Economic Impact Analysis section of each EIS/EA;
    - Once this has been accomplished, the Office of Environment will reach out to Environmental Consultants and will offer a short training module to explain the more detailed content required;
  - Office of Design: The Review focused on determining the percentage of participants at Design Public Meetings that fill out the Questionnaires distributed to identify the race, color, national origin, sex, age, and disability (including income level and Limited English Proficiency status). The Review analyzed Design Public Meetings returns from the last three calendar years (2011 to 2009). The analysis determined that approximately 30% of the Questionnaires distributed were actually filled out and returned. The Office of Design is coordinating with the Title VI/Nondiscrimination Coordinator to develop an introductory statement

for all Design Public Meetings to explain the importance of the Questionnaires, what the information is used for, and emphasize that the forms are anonymous;

- Office of Rights-of-Way: The Review focused on Acquisition Files from the previous three calendar years (2011 to 2009);
  - Files were sampled from a mixture of urban, semi-urban, and rural projects, partial and entire acquisitions, a mixture of files according to the property owner's socio-economic data, and at least six files were reviewed for each of ROW's seven ROW Agents;
  - ROW Logs were reviewed to determine whether each Agent followed the same process for Negotiations: introductory letter, including ROW map and ROW brochure sent to property owner; written offer of Just Compensation letter with a copy of the registered appraisal (or appraisal waiver) provided in person or via mail; property owner requested to show acceptable identification to prove he/she is lawfully present in the United States (for Relocation files); Negotiations documented to identify if a counteroffer was made, how the Agent processed the counteroffer including analysis of supporting documentation provided by property owner, final resolution of counteroffer (i.e., accepted, partially accepted, rejected); how much time was afforded to property owner to consider offer; etc.;
  - It was determined that all counteroffers from non-Caucasian property owners were rejected and lacked supporting documentation and explanation justifying the rejection of the counteroffers, whereas counteroffers from Caucasian property owners were accepted 90% of the time;
  - Due to the lack of supporting documentation and written justification, there is no way to determine through review of documentation the reason or reasons for this trend;
  - To address the trend, a checklist is being developed and training will be provided to ROW Agents to implement the new checklist and the new process regarding processing of counteroffers;
- Office of Contract Administration: This was a joint effort with the Office of Local-Aid Projects and the Office of Construction. The Review focused on consultant agreements and construction contracts advertised and awarded during the last three calendar years (2011 to 2009);
  - 100% of the pre-award documentation lacked the Title VI/Nondiscrimination language from specific assurance #2 of the Standard Title VI Assurance for all three years and approximately 50% of the consultant agreements and construction contracts advertised/awarded in 2009 were missing Appendix A;
  - However, only 20% of the 2010 agreements/contracts reviewed were missing Appendix A and only 5% of the 2011 agreements/contracts were missing Appendix A;
  - The new written process developed in 2008 and implemented in 2009 seems to be working;

- Regarding Sub-contracts/agreements, the Office of Contract Administration coordinated with the Office of Local-Aid Projects and the Office of Construction during its' Review and determined that approximately 60% of all Sub-contracts/agreements reviewed during the same calendar years were missing Appendix A;
- The Office of Contract Administration is working with the Office of Local-Aid Projects and the Office of Construction to develop a review process and to provide training to LPAs and contractors regarding including Appendix A in all Sub-contracts/agreements regardless of tier;
- The Title VI/ Nondiscrimination Coordinator and Specialist are coordinating this joint effort;
- All operations manuals will be updated with the new process once it has been approved and is final;
- Process for including the language from specific assurance #2 from the Standard Title VI Assurance will need to be developed and implemented as well;

➢ Office of Local-Aid Projects: This was a joint effort with the Office of Local-Aid Projects and the Office of Construction. The Review focused on consultant agreements and construction contracts advertised and awarded by LPAs during the last three calendar years (2011 to 2009):
- The results from the Review track exactly with the results arrived at by the Office of Contract Administration and this confirms also that the new process implemented in 2009 appears to be working well;
- Additionally, the results mirrored the findings of the Office of Construction regarding the percent of contractors not including Appendix A in Sub-contracts/agreements;
- The Office of Contract Administration is working with the Office of Local-Aid Projects and the Office of Construction to develop a review process and to provide training to LPAs and contractors regarding including Appendix A in all Sub-contracts/agreements regardless of tier;
- The Title VI/Nondiscrimination Coordinator and Specialist are coordinating this joint effort;
- All operations manuals will be updated with the new process once it has been approved and is final;

➢ Office of Construction: This was a joint effort with the Office of Local-Aid Projects and the Office of Construction. The Review focused on whether contractors are including Appendix A in all Sub-contracts/agreements:
- The Office of Construction determined that approximately 60% of all Sub-contracts/agreements reviewed during the last three calendar years (2011 to 2009) were missing Appendix A;
- The Office of Contract Administration is working with the Office of Local-Aid Projects and the Office of Construction to develop a review process and to provide training to LPAs and contractors regarding including Appendix A in all Sub-contracts/agreements regardless of tier;
- The Title VI/Nondiscrimination Coordinator and Specialist are coordinating this joint effort;

- All operations manuals will be updated with the new process once it has been approved and is final;

- Office of Maintenance: The Review focused on how the Office of Maintenance prioritizes when and where to perform maintenance activities (mow grass, pick up refuse, repave/fix potholes, restripe, trim trees, replace guiderail). The Office of Maintenance has a written process to determine when and where to perform maintenance activities, but does not have a process to review written/electronic/ telephonic contacts from members of the Public for any trends/patterns. The Review analyzed the records of contacts from members of the Public received during the previous three calendar years (2011 to 2009) using available socio-economic data (Office of Planning's GIS maps):
  - These records are located at the five District Offices as well as at Headquarters;
  - The analysis identified that 80% of the contacts were from travelers on urban roadways or urban-area residents living near roadways;
  - While the present prioritization process applies a greater factor for urban roadways, it does not delineate further portions of urban roadways that require special emphasis;
  - In coordination with the Title VI/Nondiscrimination Coordinator, the Office of Maintenance is developing a process to refine the prioritization process to allow for special emphasis areas and to centralize the receipt of contacts from members of the Public;
  - The revised prioritization process will factor in contacts from members of the Public when determining the frequency, location, and maintenance activities to be performed;
  - The operations manual will be updated with the new process once it has been approved and is final;
- Office of Research: The Review focused on how Research projects are advertised and awarded. During the Review, it was determined that there is an Historically Black College/University (HBCU) in the State. Previously, Research projects have always been awarded to the State University. In addition, two other Colleges have been identified. The Office of Research will interview the HBCU and the other Colleges to determine their Research capabilities and will add them to the Research projects solicitation list. The operations manual will be updated with the new process once it has been approved and is final;
- Office of Safety: The Review focused on the process used to prioritize the development, advertising, and award of Safety-funded projects:
  - Safety-funded projects are required to follow the same Project Development and advertising/award processes, except that the locations are identified through the STA's Highway Safety Improvement Program (HSIP) and in the Strategic Highway Safety Plan (SHSP);
  - In addition to the metrics included in 23 Code of Federal Regulations (CFR) Part 924, the Office of Safety referenced the Office of Planning GIS maps to overlay Safety-funded projects advertised and awarded during the previous three calendar years (2011 to 2009) and compared the

locations of these projects with all locations identified in the SHSP during the same calendar years;
    - Based upon this analysis, no trend/pattern was identified to indicate that Safety-funded projects are not being developed and constructed in predominantly Title VI/Nondiscrimination population areas compared to the number of projects eligible for development and construction;
    - However, the Office of Safety will include this analysis as a metric for future Safety-funded projects;
  - Office of Human Resources: The Review focused on the process for identifying and approving STA employees to participate in National Highway Institute training courses. The Office of Human Resources does not currently have a process to track the NHI course participants and compare the socio-economic information of the participants to the socio-economic information of the STA employees as a whole. For FFY 2013, the Office of Human Resources will develop a process to perform this function and actually conduct the Review. The Office of Human Resources will coordinate with the Title VI/Nondiscrimination Coordinator to accomplish this effort.
- Reviews Scheduled For FFY 2013 –
  - Office of Planning: Develop an STA Public Participation Plan;
  - Office of Environment: Develop an STA Public Participation Plan;
  - Office of Design: Develop an STA Public Participation Plan;
  - Office of Rights-of-Way: Property Relocation;
  - Office of Contract Administration: Review solicitations for bids/requests for proposals to ensure that the Title VI/Nondiscrimination paragraph is included in all pre-award documents;
  - Office of Local-Aid Projects: Develop and implement a process to monitor LPA agreements/contracts to ensure the Title VI/Nondiscrimination Assurance is included and develop/implement training for LPAs regarding the requirement to include the Title VI/Nondiscrimination Assurance in all agreements/contracts (as per Review in FFY 2012);
  - Office of Construction: Coordinate with Office of Local-Aid Projects to develop and implement a process to monitor LPA agreements/contracts to ensure the Title VI/Nondiscrimination Assurance is included and develop/implement training for LPAs regarding the requirement to include the Title VI/Nondiscrimination Assurance in all agreements/contracts (as per Review in FFY 2012);
  - Office of Maintenance: Develop and implement revised prioritization process as per the Review in FFY 2012;
  - Office of Research: Develop and implement use of revised solicitation List to include HBCUs that have capabilities to perform Research projects (as per Review in FFY 2012);
  - Office of Safety: Revise and implement present Metrics List to include socio-economic data as a metric (as per Review in FFY 2012);
  - Office of Human Resources: Develop and implement a process to include the socio-economic data of STA employees when monitoring to ensure that NHI training is being made available to all employees regardless of race, color, national origin, etc. (as per the Review in FFY 2012).

EXTERNAL MONITORING PROGRAM

In this context, the External Monitoring Program is the STA's Program to monitor the compliance of Sub-Recipients (LPAs, MPOs, and Research Colleges/Universities) with the Title VI/Nondiscrimination requirements. Regarding monitoring MPOs, the Office of Local-Aid Projects coordinates with the Office of Planning. Regarding Colleges/Universities, the Office of Local-Aid Projects coordinates with the Office of Research. The Office of Local-Aid Projects, in coordination with the Title VI/Nondiscrimination Specialist, has developed an annual Sub-Recipient monitoring program. Annually, a number of Sub-Recipients are chosen for a Review. Metrics to identify Sub-Recipients to review include the following: size of Sub-Recipient's workforce, amount of FHWA funds received by Sub-Recipient, whether the Sub-Recipient administers any phase of an FHWA-funded project or does the Sub-Recipient only receive an FHWA-funded project fully constructed to maintain into the future.

There are approximately six hundred LPAs, MPOs, and Colleges/Universities in this State. Of the six hundred, four hundred are FHWA Sub-Recipients. Three hundred eighty five are LPAs, ten are MPOs, and five are Colleges/Universities. Regarding LPAs, thirty five of the three hundred eighty five LPAs actually administer one or more phases of Project Development, Contract Administration, and Construction. Annually, seven Sub-Recipients are chosen for a Review (one College/University, at least one MPO, and approximately five LPAs). Each Review consists of a review of documents (i.e., operations manuals, annual reports, etc.) and interviews are conducted with subject matter experts from the LPA. The purpose of the personnel interviews is to determine how the Sub-Recipient is implementing the processes contained in the operations manuals and to verify data provided in the annual reports.

- Sub-Recipient Reviews conducted in FFY 2012:
  - State University at Site A – Consultant Selection process;
  - Upstate RPC – Certification Review;
  - Semi-Rural State MPO – Certification Review;
  - City of Midstate – Consultant Selection process, Public Participation process, Contract Administration process;
  - City of Rivercrossing – Consultant Selection process, Public Participation process, Contract Administration process;
  - Capital City – Consultant Selection process, Public Participation process, Contract Administration process;
  - City of Middling – Maintenance activities prioritization process, process to address contacts from members of the Public.
- Results of Sub-Recipients Reviews conducted in FFY 2012:
  - State University at Site A – This University has received two grants within the last three years. To implement the grants, the University has retained the services of ten consultant professors:
    - As the University does not collect socio-economic data regarding applicants, the University is not able to verify whether the Consultant Selection process is compliant with Title VI/Nondiscrimination requirements;
    - Additionally, it was determined that specific assurance #2 from the USDOT Standard Title VI Assurance is not being inserted into

solicitations for bids/requests for proposals and Appendix A is not being inserted into all consultant agreements;

Therefore, the University needs to develop a process to collect the socio-economic data related to applicants and needs to periodically review the data to identify if a discriminatory trend/pattern exists. Additionally, the University needs to develop a process to ensure that the required Title VI/ Nondiscrimination language/insert is being included in the applicable documents;

- Upstate RPC – A Certification Review was conducted by FHWA/FTA of this MPO. The STA Title VI/Nondiscrimination Specialist participated in the Review. Specifically, the Title VI/Nondiscrimination Specialist reviewed the MPO's Public Participation Plan. The Plan review identified that the MPO collects the following data: minority (race), disability, and low-income. The MPO does not collect data regarding color, national origin, sex, age, and LEP. Therefore, the MPO needs to develop a data collection process to collect the additional data. Additionally, the MPO needs to develop a data analysis process that reviews the collected data for trends/patterns related to determining the effectiveness of present public outreach efforts;
- Semi-Rural State MPO – A Certification Review was conducted by FHWA/FTA of this MPO. The STA Title VI/Nondiscrimination Specialist participated in the Review. It was determined that the MPO does not have a formal process to identify a list of stakeholders for invitations to participate at Public Meetings. Therefore, the MPO needs to develop a process to identify stakeholder, develop a list, and use the list when noticing the Public regarding holding Public Meetings;
- City of Midstate – The review identified the following:
  - City is not including language from specific assurance #2 of the Standard Title VI Assurance in pre-award documentation (i.e., solicitations for bids, requests for proposals) and is not inserting Appendix A into all consultant agreements and construction contracts;
  - Regarding Public Participation, while the City does notice and hold Public Meetings, it has not conducted the Four-Factor Analysis to determine if there are limited proficient populations requiring printed materials in a different language;
  - Additionally, the City does not collect data regarding the race, color, national origin, etc., of the applicants and consultants awarded agreements to identify if there is a trend/pattern respecting how consultant agreements are awarded;

  Therefore, the City needs to develop process to ensure that applicable Title VI-related language/inserts are being included in appropriate documentation, needs to conduct a Four-Factor Analysis under the LEP to determine if documents need to be printed in alternate languages, and needs to collect socio-economic data of owners of consultant applicants and consultants awarded agreements to monitor how the consultant selection process is being implemented;
- City of Rivercrossing -- The review identified the following:
  - It was determined that the City is not including language from specific assurance #2 of the Standard Title VI Assurance in pre-award documentation (i.e., solicitations for bids, requests for proposals) although

the City is inserting Appendix A into all consultant agreements and construction contracts;

- Regarding Public Participation, while the City does notice and hold Public Meetings, it has not conducted the Four-Factor Analysis to determine if there are limited proficient populations requiring printed materials in a different language;
- Additionally, the City does not collect data regarding the race, color, national origin, etc., of the applicants and consultants awarded agreements to identify if there is a trend/pattern respecting how consultant agreements are awarded.

Therefore, the City needs to develop process to ensure that applicable Title VI-related language/inserts are being included in appropriate documentation, needs to conduct a Four-Factor Analysis under the LEP to determine if documents need to be printed in alternate languages, and needs to collect socio-economic data of owners of consultant applicants and consultants awarded agreements to monitor how the consultant selection process is being implemented;

- Capital City – The review identified the following:
  - It was determined that the City is not including language from specific assurance #2 of the Standard Title VI Assurance in pre-award documentation (i.e., solicitations for bids, requests for proposals) although the City is inserting Appendix A into all consultant agreements and construction contracts;
  - Regarding Public Participation, the City has not updated the GIS maps for Title VI/Nondiscrimination/EJ/LEP to reflect the 2012 Census data. Additionally, the City needs to update the list of Stakeholders used to notify members of the Public of upcoming Public Hearings/Public Meetings;
  - Additionally, the City does not collect data regarding the race, color, national origin, etc., of the applicants and consultants awarded agreements to identify if there is a trend/pattern respecting how consultant agreements are awarded.

  In addition to updating the GIS maps to reflect 2012 Census data, the City needs to update the list of Stakeholders, and needs to collect socio-economic data of owners of consultant applicants and consultants awarded agreements to monitor how the consultant selection process is being implemented;
- City of Middling – The review identified the following:
  - The City does not conduct any Federal Program Areas prior to completion of Construction;
  - It does however receive the completed FHWA-funded improvement and maintains the improvement as a portion of its transportation infrastructure. As such, it is responsible for maintaining the transportation infrastructure in a Title VI/Nondiscrimination-compliant manner;
  - It was determined that while the City has a detailed analysis process that evaluates the physical characteristics of the pavement and the rotation for mowing grass/ picking up refuse/trimming trees/replacing guiderail, it does not collect socio-economic data and periodically review the data to

identify if there is a trend/ pattern respecting when, where, and how often maintenance activities are performed at a particular location;

- Additionally, while the City Public Works Department is responsive to contacts from members of the Public, it does not copy the City Title VI/Nondiscrimination Coordinator nor does it evaluate periodically to identify whether contacts from members of the Public are coming from a particular location or locations.

Therefore, the City needs to develop a data collection/data analysis process to identify any trends/patterns. Additionally, the City needs to communicate the contacts from members of the Public to the City Title VI/Nondiscrimination Coordinator.

- Sub-Recipient Reviews to be conducted in FFY 2013:
  - State University at Site B;
  - Northeastern RPC – Certification Review;
  - Southwestern RPC – Certification Review;
  - City of Three Bridges;
  - City of Lights;
  - Major City;
  - Town of Midpoint.

TITLE VI/NONDISCRIMINATION TRAINING SUMMARY

The Office of Civil Rights, in coordination with the Office of Human Resources, implements a Title VI/Nondiscrimination Training Program that consists of two parts: Internal (STA staff) and External (Sub-Recipients) –

- Internal Training component is composed of three levels of training of varied intensity and content:
  - Commissioner/Secretary/Director and Division/Bureau level -- This training occurs annually and functions as part training and part de-brief regarding highlights from the previous FFY. The training portion is high-level and is tailored to identify and address the major challenges and Special Emphasis Areas;
  - Federal Program Area Office Manager level -- This training occurs annually and more specifically focuses on the major challenges and Special Emphasis Areas in each of the Federal Program Areas. It highlights the challenges that require coordination between Federal Program Areas. For example, Public Participation processes cross between Planning, Environment, Design, and Rights-of-Way. To address a trend/pattern, it may be necessary for more than one Federal Program Area to work together to develop and implement corrective action;
  - Federal Program Areas Title VI/ Nondiscrimination Liaisons level -- This training is conducted annually and is intended to provide Liaisons with an opportunity to discuss issues, ask questions regarding reviews conducted or to be conducted, review specific scenarios, and share experiences. It is also an opportunity to provide individualized training relating to Title VI/Nondiscrimination requirements and how to apply the requirements to the specific Federal Program Area.
- External Training component is also composed of three levels of training of varied intensity and content:
  - Local Public Agencies that administer one or more Federal Program Areas – There are thirty five LPAs that administer one or more Federal Program Areas. Annually, four of these LPAs are chosen to receive training. The content of the training is developed specifically to address the issues/challenges facing each LPA as communicated through the LPA annual report submissions;
  - Local Public Agencies that only maintain FHWA-funded improvements and Colleges/Universities that receive Research, Development & Technology Transfer grants – Annually, thirty five of the three hundred fifty LPAs that only maintain FHWA-funded improvements are provided training focused on their Maintenance prioritization methods and evaluation of comments from members of the Public. To choose the thirty five LPAs to receive this training, a representative number are identified from each of the seven District Offices using the submitted annual reports to identify issues and ensuring that each LPA attends a training session every ten years. For Colleges/Universities, one institution receiving an FHWA grant is chosen annually and the training provided is focused on how it retains the services of consultants to perform the work and to ensure that the appropriate Title VI/Nondiscrimination language is included in the applicable contract-related documents;

- Metropolitan Planning Organizations – Training for MPOs is provided in coordination with the Office of Planning. The training is provided to each MPO in the year in which the Certification Review is conducted. Within sixty days following the Certification Review action (i.e., approval or denial), the Title VI/ Nondiscrimination Specialist coordinates with the Office of Planning Title VI/ Nondiscrimination Liaison to develop training tailored to the findings identified during the Certification Review. Training is conducted by the Title VI/ Nondiscrimination Specialist and the Office of Planning Title VI/ Nondiscrimination Liaison.

Training conducted during FFY 2012 is as follows --

- Internal Training:
  - Commissioner/Secretary/Director and Division/Bureau level – The training was held on August 8, 2011. Based upon reviews conducted in FFY 2011, the following topics were identified as review areas for FFY 2012: Public Participation, Data Collection/Data Analysis, ensuring appropriate Title VI/Nondiscrimination language is included in applicable contract-related documents. These review areas apply to both the STA and Sub-Recipient levels. The briefing consisted of informing the participants of the results of the FFY 2012 reviews. The Title VI/Nondiscrimination Coordinator also discussed the need for coordination of multiple Divisions/Bureaus to conduct follow-up reviews in FFY 2013. The participants reiterated their support and asked to be kept informed;
  - Federal Program Area Office Manager level – The training was held on August 15, 2011. This training session mirrored the upper management level training session, but included more specificity regarding the review areas. The Title VI/Nondiscrimination Coordinator spoke about the results of the FFY 2012 reviews, discussed the complexities of the reviews, and spoke about necessary coordination between the affected Federal Program Areas to develop and implement effective corrective actions. The participants voiced their support;
  - Federal Program Areas Title VI/ Nondiscrimination Liaisons level – The training was held on August 22, 2011. Both the Title VI/Nondiscrimination Coordinator and the Title VI/Nondiscrimination Specialist participated in this training session. The training focused upon the areas of Public Participation, Data Collection/Data Analysis, and inclusion of Title VI/Nondiscrimination language in appropriate documents. This training was provided in preparation for the Title VI/ Nondiscrimination Federal Program Areas reviews being scheduled for FFY 2013. The training included a Question & Answer segment. The training also contained a specific segment focused upon the Office of Local-Aid Projects.
- External Training:
  - Local Public Agencies that administer one or more Federal Program Areas – The training session was held on September 12, 2012. Training was provided to the following LPAs: City of Midstate, City of Rivercrossing, Capital City, and City of Middling. The training was focused to address the findings from the reviews conducted in FFY 2012;
  - Local Public Agencies that only maintain FHWA-funded improvements and Colleges/Universities that receive Research, Development & Technology Transfer

grants – The training session was held on September 19, 2012. State University for Site A attended the training. Additionally, Towns A through E for each of the seven STA Districts participated in the training;

- MPOs – The training session was held on September 26, 2012. The MPOs that received training were Northeastern RPC and Southwestern RPC. The Office of Planning jointly provided training with the Title VI/Nondiscrimination Specialist.

TITLE VI/NONDISCRIMINATION COMPLAINTS SUMMARY

During FFY 2012, three Title VI/Nondiscrimination complaints were received against three LPAs. Three investigations were conducted by the Title VI/Nondiscrimination Coordinator and Specialist. Additionally, one complaint was received against the STA and was investigated by the Title VI/Nondiscrimination Coordinator. The bases for the complaints were race, national origin, and low-income. The Title VI/Nondiscrimination Coordinator submitted the Investigative Reports to the FHWA Office of Civil Rights Investigations & Adjudications Unit. Letters of Findings are being developed by the Investigations & Adjudications Unit. The STA complaint alleged that the Office of Rights-of-Way (Property Relocation) discriminated against a displaced couple when it calculated the Relocation Housing Payment due to the couple's race. Property Relocation is scheduled to be reviewed by Office of Rights-of-Way during FFY 2013 and this will be a focus area for the review. The Complaints Log is available anytime for inspection.

SPECIAL EMPHASIS AREAS

Based upon the reviews conducted during FFY 2012, the following areas have been identified as requiring Special Emphasis: Public Participation and Data Collection/Data Analysis. These areas cross Federal Program Areas and will require coordination between the Areas to develop processes to address the findings. Therefore, during FFY 2013, the Title VI/Nondiscrimination Coordinator and Title VI/Nondiscrimination Specialist will facilitate meetings between the affected Federal Program Areas to develop and implement effective processes to address the findings. Additionally, due to the LAP being finalized during FFY 2012, implementation of the LAP will be a Special Emphasis Area for FFY 2013.

ENVIRONMENTAL JUSTICE

The STA developed an Environmental Justice (EJ) Plan during FFY 1997. Since FFY 2011, the STA has been ensuring that processes associated with EJ (i.e., Public Participation, Data Collection/Data Analysis, Benefits/Burdens Analysis, etc.) are linked with and harmonious with processes associated with the implementation of Title VI/Nondiscrimination requirements. This effort is on-going with respect to MPOs and how MPOs collect and analyze data and conduct Public Meetings (Public Participation). Overall, these efforts will continue to be implemented at the STA and Sub-Recipient levels during FFY 2013.

LIMITED ENGLISH PROFICIENCY

The STA developed a Limited English Proficiency (LEP) Plan during FFY 2005. In response to more specific guidance from the U.S. Department of Justice (USDOJ), the STA began to revise the LEP Plan as a Language Access Plan (LAP) during FFY 2011. These efforts culminated in an LAP finalized during FFY 2012. During FFY 2013, the Title VI/Nondiscrimination Specialist will schedule meetings with each Federal Program Area that is impacted by the LAP. These Federal Program Areas will include Planning, Environment, Design, Rights-of-Way, Contracts/Contract Administration, Construction, Maintenance, Safety, Human Resources, IT, and Building Facilities. During these meetings, the Title VI/Nondiscrimination Specialist will identify those segments within each Federal Program Area that will require further efforts and additional resources to effectively implement the LAP. Corrective actions will be developed by the particular Federal Program Area during FFY 2013 and will be implemented during FFY 2014.

FTA

FEDERAL TRANSIT ADMINISTRATION

Final Circular 4703.1

Environmental Justice Policy Guidance for FTA Recipients

November 8, 2012

FTA, Office of Planning and Environment

U.S. Department of Transportation

Federal Highway Administration

Federal Transit Administration

Planning Information Exchange

Webinar Series

Transportation Planning Capacity Building

Audio for Webinar

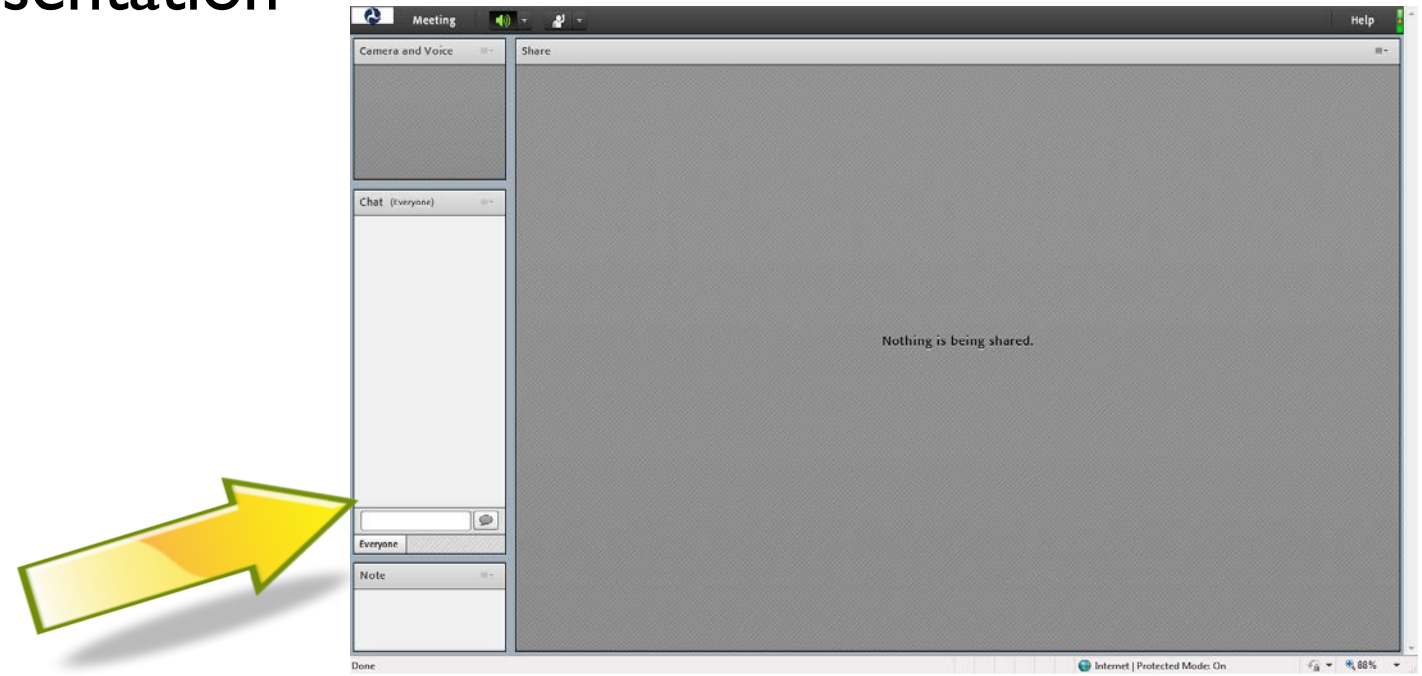
- For audio, please use the following phone numbers:
  - Dial-in number: 877-336-1828
    Participant access: 2282016

  OR

  - Dial-in number: 877-336-1828
    Participant access: 5963374
- If you have technical difficulty with the audio or video portion of this webcast, try:
  - Logging off, then logging in again
  - Request help through the chat box that appears on your screen.

How to submit Questions

- Questions related to content should be placed in the Q/A box that will appear on your screen during the presentation



Webinar Format

- Presentation will last approximately 90 minutes followed by 30 minutes of Q/A.
- Audience members are muted due to high number of participants.
- Review content of FTA's EJ Circular
- "Practitioner's Guide" to EJ Review
- Planning & NEPA EJ examples

Speakers

Lucy Garliauskas – Associate Administrator, Planning & Environment

Cecelia Comito – Regional Counsel, Region V

Faith Hall – Environmental Protection Specialist, Planning & Environment

Maya Sarna – Environmental Protection Specialist, Planning & Environment

What We Will Discuss

- Environmental Justice and how it applies to FTA's programs, policies and projects
- An Analytical Framework for Environmental Justice
- Environmental Justice as part of the transportation planning process
- Environmental Justice as part of the NEPA review process
- A copy of the Circular is available at: http://www.fta.dot.gov/12347_14823.html

FTA Circular 4703.1

- "Environmental Justice Policy Guidance for FTA Recipients" became effective August 15, 2012
- Circular does **NOT** present new requirements

Environmental Justice

- Executive Order 12898 – 1994
- Memorandum of Understanding on Environmental Justice and Executive Order 12898 – August 2011
- DOT Order 5610.2(a) – May 2012
- Master Grant Agreement
- FTA Circular 4703.1

Principles of Environmental Justice

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

Organization of FTA Circular

Chapter I: Environmental Justice, Title VI, and Public Transportation

Chapter II: Conducting an Environmental Justice Analysis

Chapter III: Achieving Meaningful Public Engagement with Environmental Justice Populations

Chapter IV: Integrating Principles of Environmental Justice in Transportation Planning and Service Delivery

Chapter V: Incorporating Environmental Justice Principles into the NEPA Process

CHAPTER I

Why Isn't My Title VI Analysis Good Enough to Satisfy Environmental Justice?

Environmental Justice Populations

- **Minority population** means any readily identifiable group or groups of minority persons who live in geographic proximity, and if circumstances warrant, geographically dispersed/ transient persons.
- **Low-income population** means any readily identifiable group of low-income persons who live in geographic proximity, and, if circumstances warrant, geographically dispersed/transient persons.

When is an EJ Analysis Required?

	MINORITY	Non-MINORITY
LOW INCOME	✓	✓
Non-LOW INCOME	✓	✗

CHAPTER I

Conducting an Analysis

Engage EJ Populations At All Stages of Project Development

Step 1

- **Know Your Community** by analyzing demographic data

Step 2

- Develop **Public Engagement Plan** that responds to community

Step 3

- Consider Proposed Project & Likely **Adverse Effects and Benefits**

Step 4

- Select alternative, **incorporate mitigation** as needed

Know Your Community

- What is your "study area"
- Use an appropriate unit of geographic analysis
  - Use the most up-to-date reliable data available (U.S. Census data – tract or block group level)
  - Other sources (local planning departments, MPOs/COGs, EDCs)
  - Travel the alignment (talk to residents or community organizations)

When is an EJ Population Present?

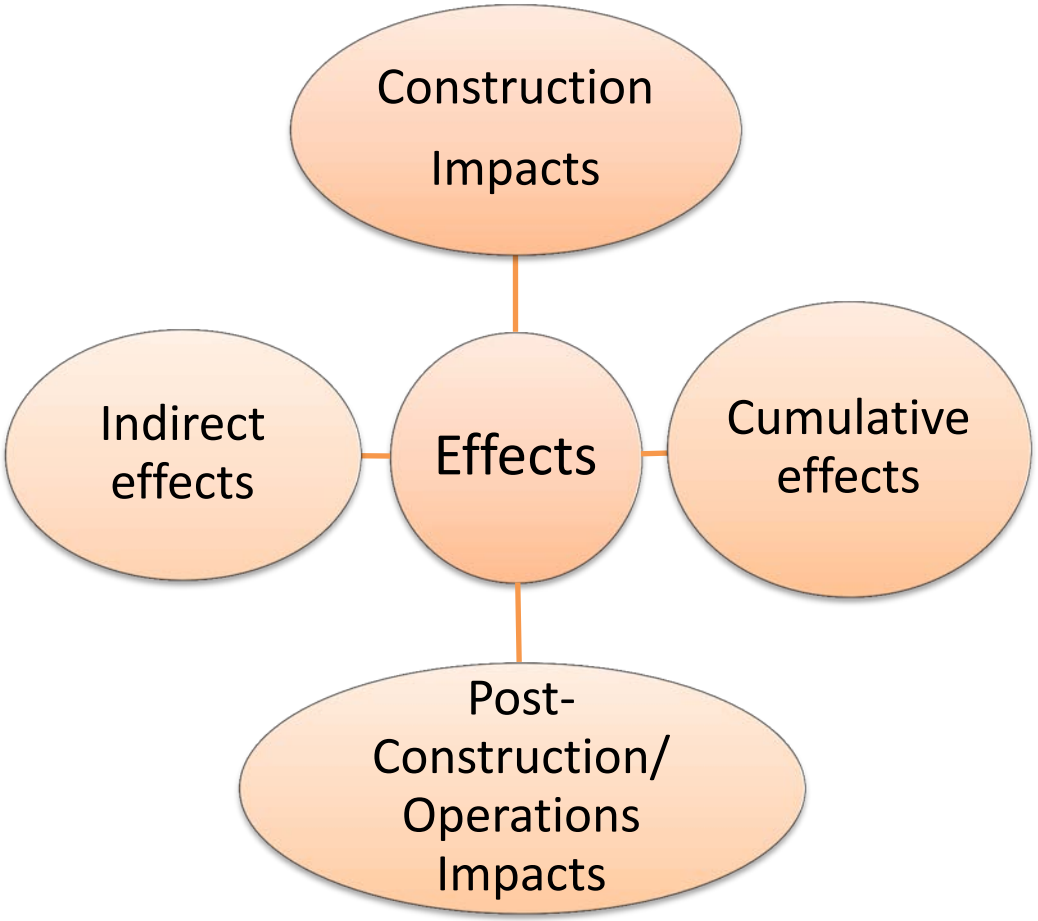
- *Disproportionately high and adverse effects*, not population size, are the bases for environmental justice
- A very small minority or low-income population in the project, study, or planning area *does not eliminate the possibility of a disproportionately high* and adverse effect on these populations

More Definitions

- Adverse Effect includes:
  - Totality of effects on human health or environment and denial of, reduction in, or significant delay in receipt of benefits
- Disproportionately high and adverse effect on human health or the environment of EJ populations
  - "an adverse effect that is predominantly borne by a minority population and/or a low-income population, or will be suffered by the minority population and/or low-income population and is appreciably more severe or greater in magnitude than the adverse effect that will be suffered by the non-minority population and/or non-low-income population."

Evaluating Effects

All reasonably foreseeable adverse social, economic, and environmental effects on minority populations and low-income populations must be identified and addressed.



Disproportionately High and Adverse Effects

- Effects
  - Predominantly borne by an EJ population, or
  - Appreciably more severe than suffered by the non-EJ population
- Take into consideration mitigation and enhancement measures
- Based on totality of the circumstances (burdens and benefits)
- Reflects community input

Effects Borne By EJ Population?

CHAPTER II

Questions to consider

- Whether the adverse effects on EJ populations exceed those borne by non-EJ populations?
- Whether cumulative or indirect effects would adversely affect an EJ population?
- Whether mitigation and enhancement measures will be taken for EJ and non-EJ populations?
- Whether there are off-setting benefits to EJ populations as compared to non-EJ populations?

What about benefits?

- Direct user benefits
- Improved traffic circulation
- Direct employment (new jobs)
- Redevelopment opportunities
- Improved access to jobs within the corridor
- Improved access to retail, entertainment, restaurant, and other non-work related establishments

Determine Mitigation

Avoid

- Alternative location
- Revise design/ Reconfigure facility or site

Minimize

- Limitations during construction (e.g. night work, construction hours)
- Considerations during operations (e.g. limit operational periods)

Mitigate

- Measures (e.g. sound walls, aesthetic treatments, etc.)

Meaningful Public Engagement

Formal Meeting

Engaged Dialogue

Traditional

Non-Traditional

Public Outreach and Participation

CHAPTER III

- Reach out to minority and low-income communities
- Contact social agencies and private organizations
- Provide opportunities for public input in addition to traditional open houses
- Advertise in target publications and community newsletters, other than in English
- Follow-up on suggestions gathered during public outreach activities.
- Make reasonable efforts to reach those affected by the proposed action

Meaningful Public Engagement

- Potentially affected community members have an appropriate opportunity to participate in decisions about a proposed activity that will affect their environment and/or health;
- The public's contribution can influence the regulatory agency's decision;
- The concerns of all participants involved will be considered in the decision-making process; and
- The decision-makers seek out and facilitate the involvement of those potentially affected.

Application of EJ Analysis

What is Transportation Planning?

Who?

- Regional planning organizations (MPOs, COGs), State departments of transportation (DOTs), transit operator and partners

What?

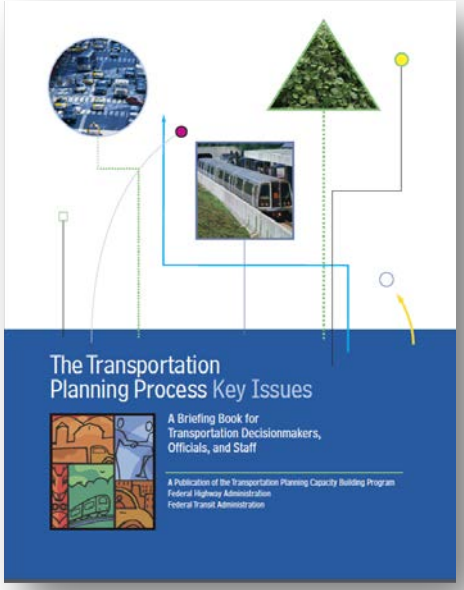
- Assess existing conditions and anticipate future needs;
- Develop a comprehensive range of investment strategies; and
- Provide for project selection that satisfies needs and supports the community's vision for its future.

How?

- Is a continual and cooperative process;
- Coordinates federal funds across jurisdictions; and
- Relies on public engagement with all system users, including proactive outreach to low-income and minority communities.

CHAPTER IV

Transportation Planning Process



Transportation Planning Process

- Major plans must address EJ concerns by:

  "seeking out and considering the needs of those traditionally underserved by existing transportation systems, which includes ***low-income and minority households*** *who may face challenges accessing employment and other services"*

  - Regions have formal Public Participation Plans with explicit procedures, strategies, and desired outcomes – and periodic review of effectiveness
  - States need to have a Process that is part of the long range plan development

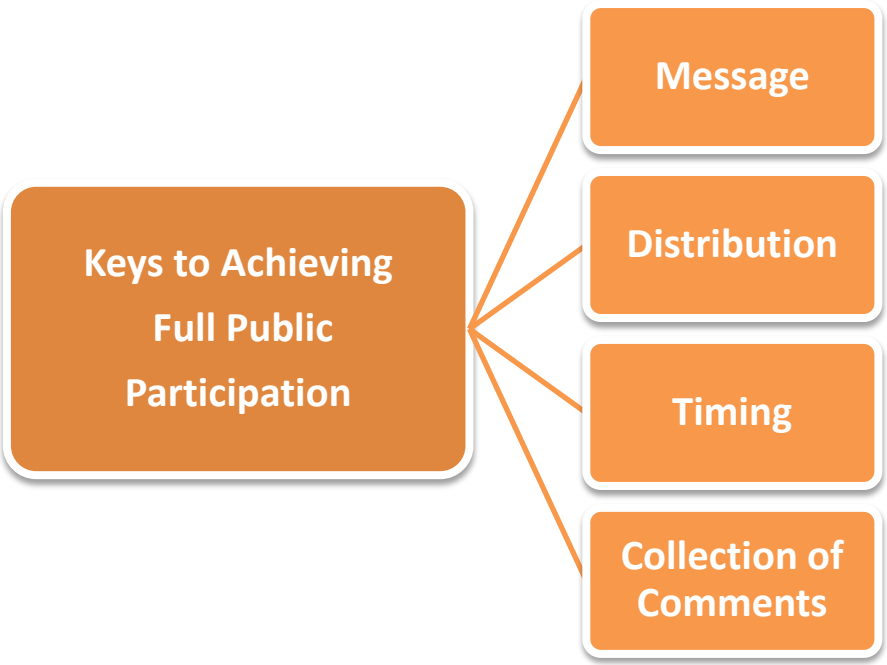
- Transit capital development plans & Service plans

Transit Considerations in Planning

- Transit providers connect their studies and research on transit ridership and demand to Regional and Statewide planning to best inform the transit element of multi-modal plans
- Transit Development Plans fit into Regional and statewide plans
- Engage EJ populations on issues of future transit service, especially if reductions are possible

Key Questions for EJ Outreach

- Public Engagement is key at all stages
- What message will spark public interest
- How will you distribute information
- What timing is best for outreach
- How will you show how decisions reflect public input
- How to anticipate barriers: location, timing, communication strategies



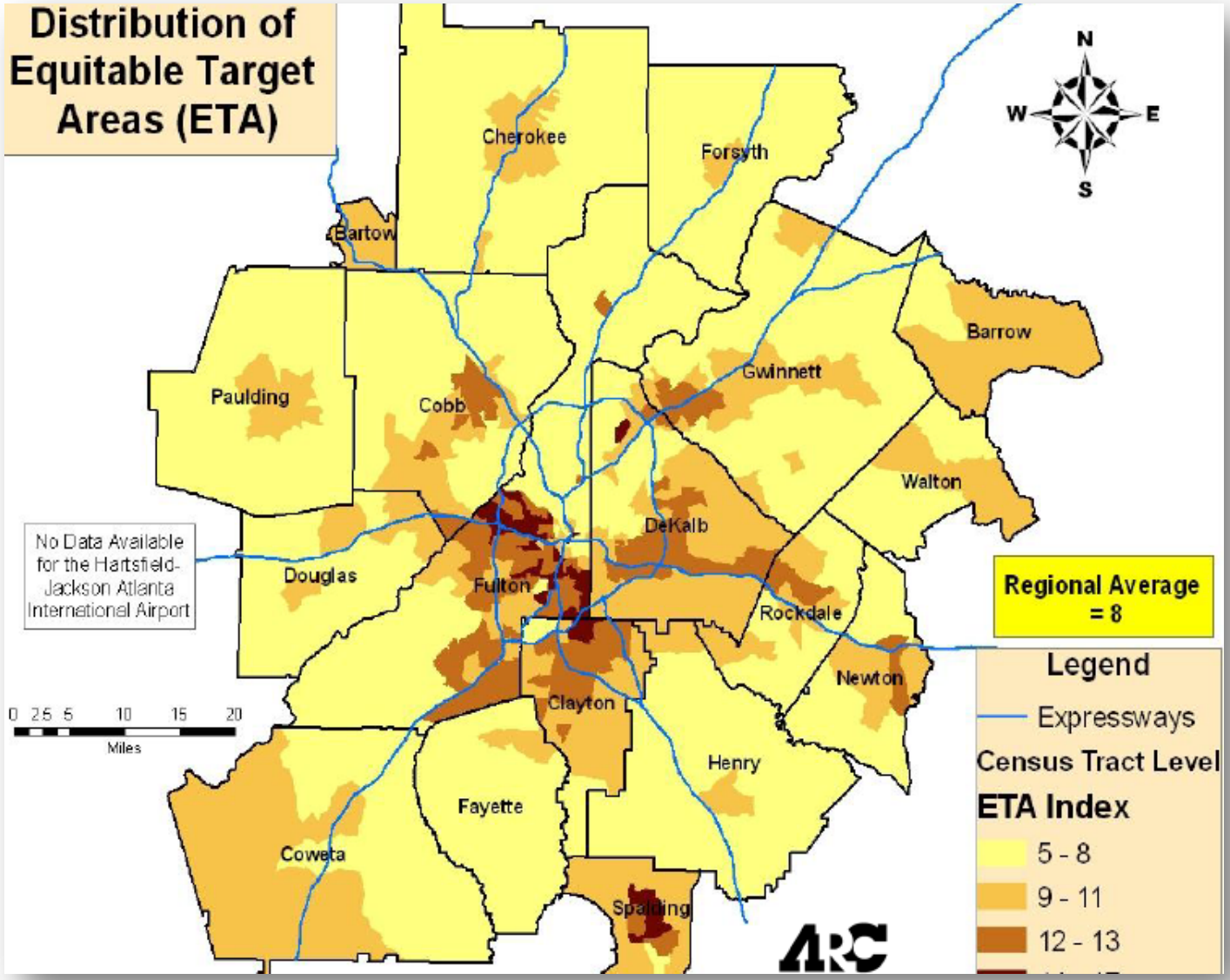
Environmental Justice Planning Case Studies

Atlanta Regional Commission

Social Equity Advisory Committee

Equitable Target Areas (ETA) Index:

- Poverty
- Race
- Median Housing Value
- Age
- Education



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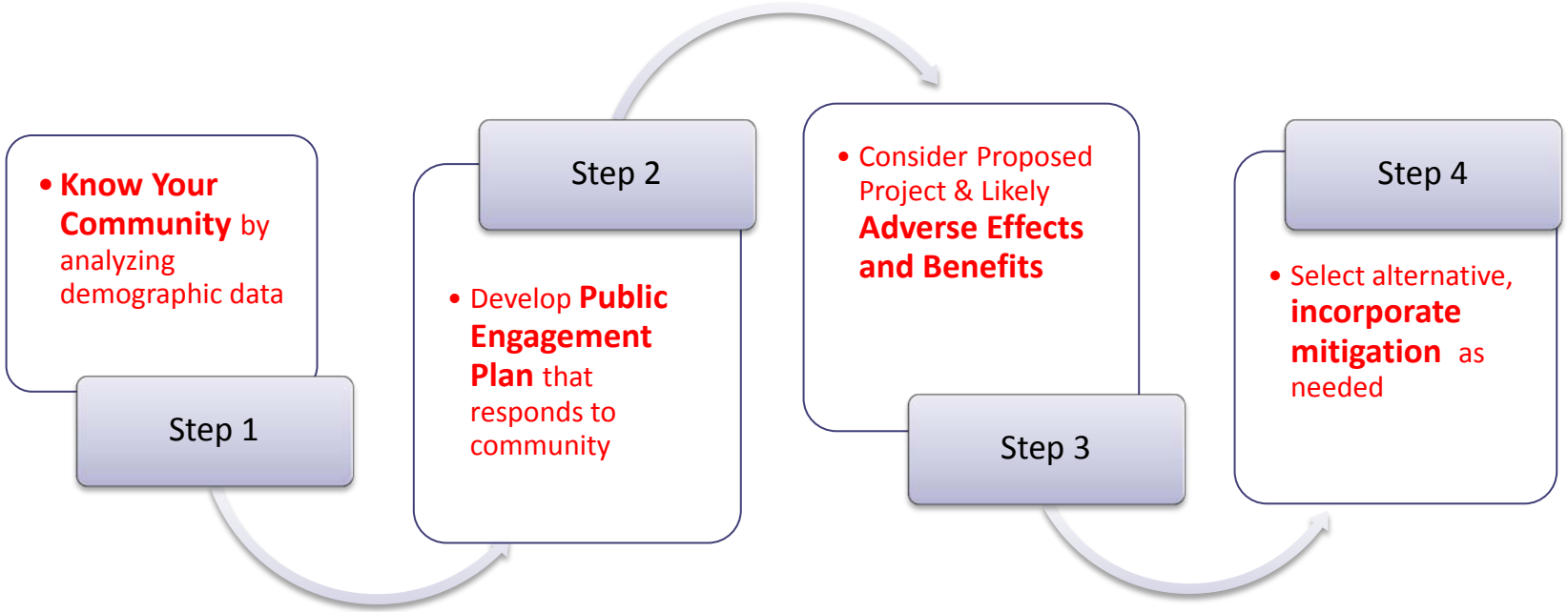
Indian Nations Council of Government

Fast Forward Transit Plan Mobile Outreach Bus

2012 USDOT Transportation Planning Excellence Award

2012 American Planning Association National Planning Award

EJ and NEPA


• Know Your Community by analyzing demographic data
Step 1
Step 2
• Develop Public Engagement Plan that responds to community
• Consider Proposed Project & Likely Adverse Effects and Benefits
Step 3
Step 4
• Select alternative, incorporate mitigation as needed

Adapting EJ Analysis to NEPA

Environmental review is required for all Federally-funded projects and includes:

- Reviewing important adverse effects of the project to determine whether those adverse effects are significant;
- Determining whether adverse effects can be avoided, minimized, or mitigated; and,
- Assessing the Project's benefits versus its burdens on the environment.

All Classes of Action Consider EJ

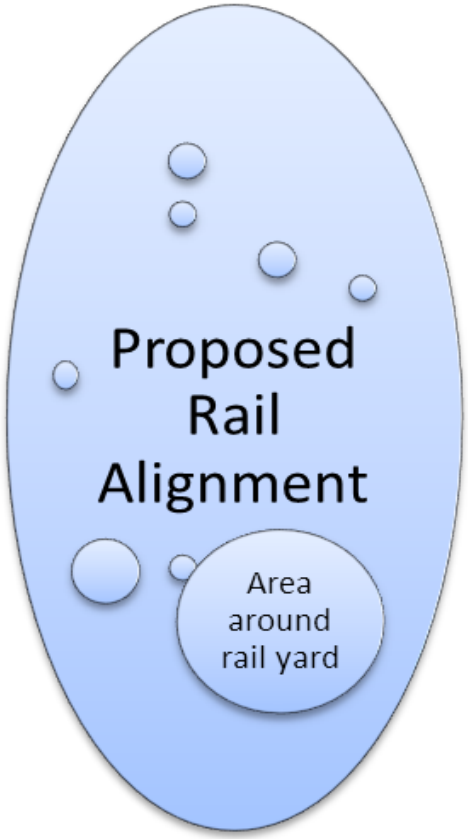
- Environmental justice should be considered in ***all*** decisions whether the project is processed with an Environmental Impact Statement, Environmental Assessment, or Categorical Exclusion.

Categorical Exclusions & EJ

- Categorical Exclusions (c-list): no further documentation required
- Categorical Exclusions (d-list): documentation and analysis required depending on the scope of the proposed project
- Unusual Circumstances may lead to EA or EIS

EJ Metrics

- Set appropriate boundaries
- Analyze demographic data
- Consider whether sub-areas are appropriate



EJ Analysis for NEPA

- ✓ Is the project area well-described?
- ✓ Are neighborhoods, cities, counties identified?
- ✓ How was the area of effects identified?
- ✓ Where did the data used for analysis originate?
- ✓ What level of data was used for analysis? Why?

PROJECT ANALYSIS	**Assess Impacts**
COMMUNITY ANALYSIS	**Assess Community**
COMMUNITY PARTNERSHIP	**Negotiate Mitigation**
PROJECT DEVELOPMENT	

EJ Analysis Simplified

- ✓ How were EJ populations identified?
- ✓ What methodology was used to determine EJ populations?
- ✓ Is it clear how disproportionately high and adverse effects were determined?
- ✓ Are avoidance, minimization, and mitigation measures identified?
- ✓ Are burdens and benefits adequately assessed?

STEP 1:
Determine whether there are any EJ populations potentially impacted by the activity or project

STEP 2:
If EJ population is present, analyze potential effects and benefits of the activity on the EJ population

STEP 3:
Determine whether the adverse effect may be avoided, minimized or mitigated

Public Outreach in EJ NEPA

- ✓ Is there a discussion of the public engagement process?
- ✓ What efforts were made to reach minority and low-income populations?
- ✓ Is there mention of how EJ communities were engaged during
  - ✓ Transportation Planning process
  - ✓ NEPA process

Questions to Consider

- Will the project result in "adverse effects?"
- Will the project result in disproportionately high and adverse effects on an EJ population?
- Does the project propose mitigation and/or enhancement measures?
- Are there project benefits that would accrue to the EJ population as compared to non-EJ populations?
- Does the project affect a resource that is especially important to an EJ population?
- What efforts were made to engage members of EJ populations?

Practice Pointers

- In EAs and EIS's, environmental justice should be discussed in its own chapter
- Your EJ analysis should be consistent with the rest of the NEPA analysis
- Benefits of project should be more than just "EJ populations will benefit from more transit options."
- What if my study area includes a majority EJ population?

Environmental Justice NEPA Case Studies

ILLUSTRATIVE EXAMPLE #1

Project Description

- Extension of 9 mile light rail transit (LRT), 11 new stations
- Most tracts within Study Area: R/C/I

Metrics

- Defined Study Area – ½ mile of alignment
- County used for comparative assessment
- 2000 Census data

Environmental Justice Population

- Set threshold values
- EJ Population present in16 out of 19 Census Tracts

Environmental Issues

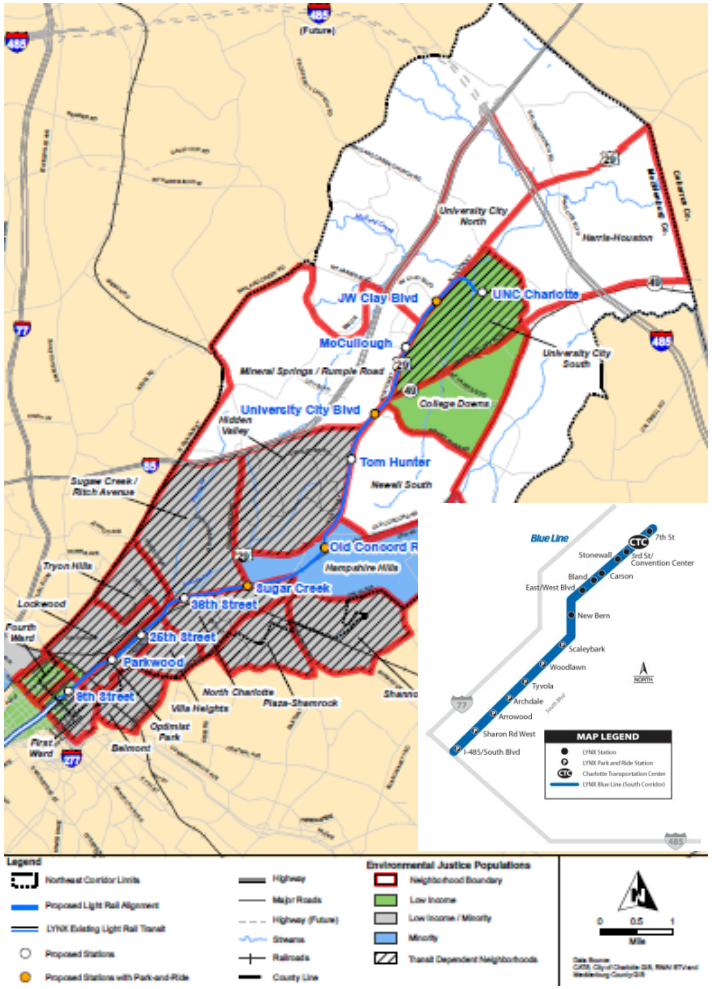
- Acquisition/displacements, visual change, noise and vibration

Environmental Justice Concerns

- Noise

Resolution/Mitigation [?]

- Benefits
- Mitigation



FTA FEDERAL TRANSIT ADMINISTRATION

ILLUSTRATIVE EXAMPLE #2

Project Description

- New transit hub in downtown core
- Most tracts within proximity: C/I

Metrics

- Study Area – immediately adjacent to site
- Land uses determined – no comparison needed

Environmental Justice Population

- Transitional housing and services provider

Environmental Issues

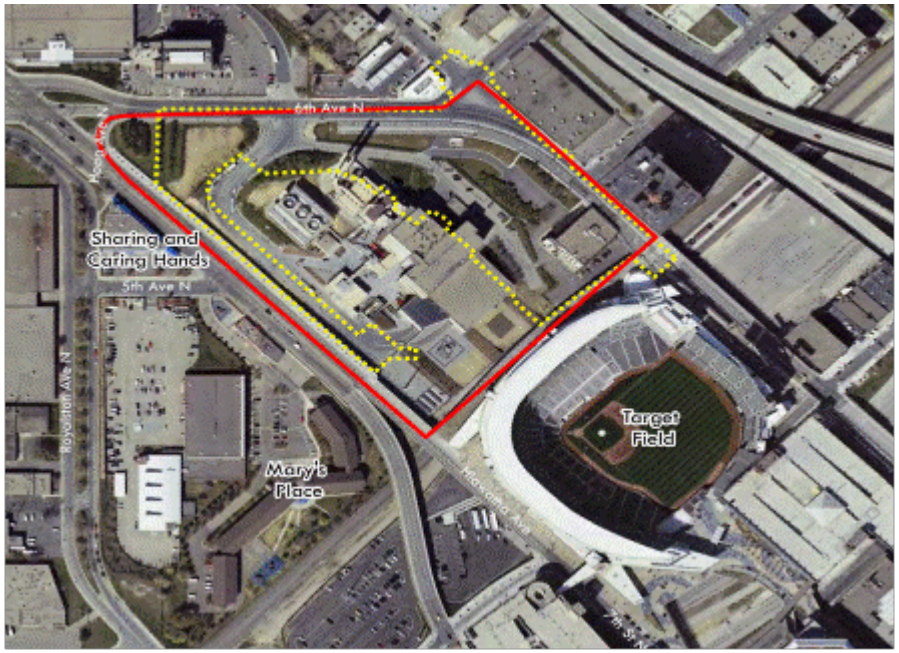
- Construction: visual change, noise and vibration

Environmental Justice Concerns

- N/A

Resolution/Mitigation

- Benefits

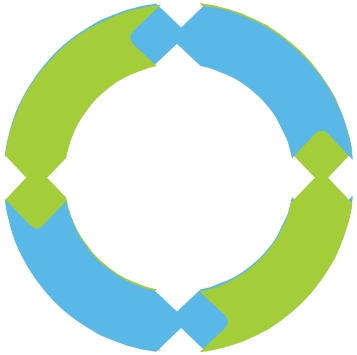


FTA FEDERAL TRANSIT ADMINISTRATION

EJ Support

Grant Recipients

Regional Support



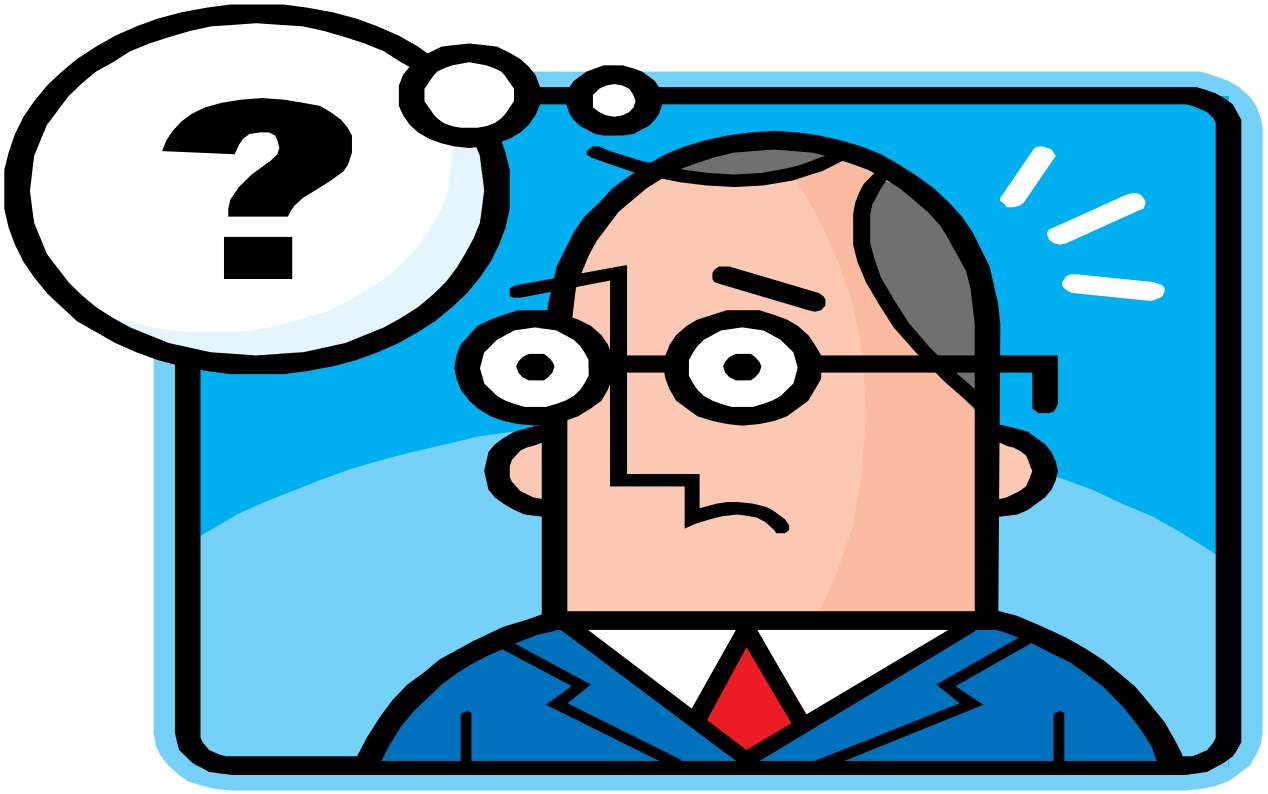
HQ EJ TEAM

What if you need help in determining whether a plan, program or project meets the requirements under EJ?

EPA EJ Small Grants

- EPA has announced that it is seeking applicants for a total of $1.5 million in Environmental Justice Small Grants.
- The 2013 grant solicitation period is now open and will close on January 7, 2013.
- There are three upcoming pre-application teleconference calls on Nov 14, Dec 1, and Dec 13.
- http://www.epa.gov/environmentaljustice/grants/ej-smgrants.html

Questions



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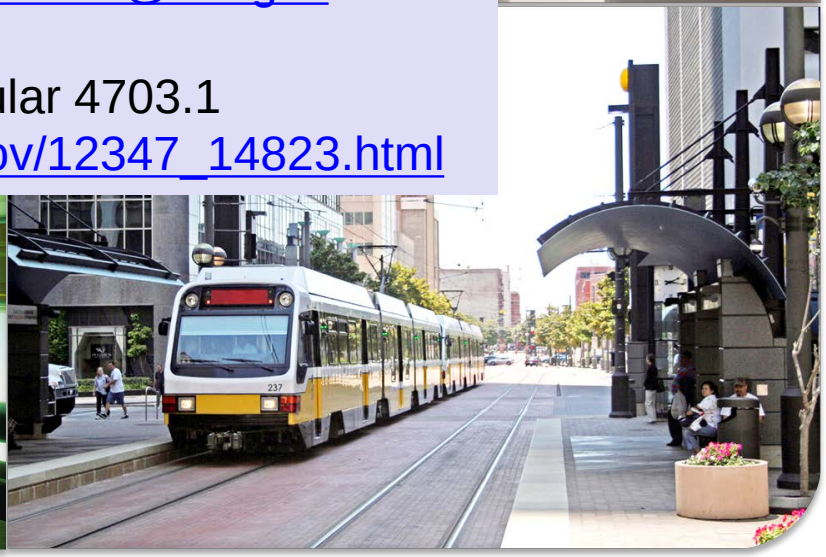
FTA Circular 4703.1
http://www.fta.dot.gov/12347_14823.html



FEDERAL TRANSIT ADMINISTRATION

U.S. Department
of Transportation

**Federal Transit
Administration**

CIRCULAR

FTA C 4703.1

August 15, 2012

Subject: **ENVIRONMENTAL JUSTICE POLICY GUIDANCE FOR FEDERAL TRANSIT ADMINISTRATION RECIPIENTS**

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1. PURPOSE. The purpose of this circular is to provide recipients of Federal Transit Administration (FTA) financial assistance with guidance in order to incorporate environmental justice principles into plans, projects, and activities that receive funding from FTA.

2. AUTHORITY.

   a. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, dated February 11, 1994.

   b. U.S. DOT Order 5610.2(a), Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 77 FR 27534, May 10, 2012.

   c. Federal Transit Laws, Title 49, United States Code, Chapter 53.

3. WAIVER. FTA reserves the right to waive any provisions of this circular to the extent permitted by Federal law or regulation.

4. FEDERAL REGISTER NOTICE. In conjunction with publication of this Circular, FTA published a notice in the *Federal Register*, addressing comments received during development of the Circular.

5. AMENDMENTS TO THE CIRCULAR. FTA reserves the right to update this circular to reflect changes in other revised or new guidance and regulations that undergo notice and comment, without further notice and comment on this circular. FTA will post updates on our website at **www.fta.dot.gov**. The website allows the public to register for notification when FTA issues *Federal Register* notices or new guidance. Please visit the website and click on "sign up for e-mail updates" for more information.

6. ACCESSIBLE FORMATS. This document is available in accessible formats upon request. To obtain paper copies of this circular as well as information regarding these accessible formats, call FTA's Administrative Services Help Desk, at: 202-366-4865. Individuals with hearing impairments may contact the Federal Relay Service at 1-800-877-8339 for assistance with the call.

/s/

Peter M. Rogoff
Administrator

Environmental Justice Policy Guidance for Federal Transit Administration Recipients FTA Circular 4703.1

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ACRONYMS

ACS	American Community Survey
CAC	Community Advisory Council
CEQ	Council on Environmental Quality
DOT	U.S. Department of Transportation
EJ	Environmental Justice
EO	Executive Order
EPA	U.S. Environmental Protection Agency
FHWA	Federal Highway Administration
FTA	Federal Transit Administration
GIS	Geographic Information System
HHS	Department of Health and Human Services
LEP	Limited English Proficiency
MPO	Metropolitan Planning Organization
NEPA	National Environmental Policy Act of 1969
OMB	Office of Management and Budget
STIP	Statewide Transportation Improvement Program
TIP	Transportation Improvement Program

This guidance is intended to improve the internal management of FTA with respect to environmental justice. It will not be deemed to create any right, benefit or trust obligation either substantive or procedural, enforceable by any person, or entity in any court against the agency, its officers, or any other person. Compliance with this guidance will not be justiciable in any proceeding for judicial review of agency action.

Chapter I
Environmental Justice, Title VI, and Public Transportation

Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, requires the U.S. Department of Transportation (DOT) and the Federal Transit Administration (FTA), to make environmental justice (EJ) part of our mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of our programs, policies, and activities on minority populations and/or low-income populations (collectively "EJ populations"). Environmental justice at FTA includes incorporating environmental justice and non-discrimination principles into transportation planning and decision-making processes as well as project-specific environmental reviews.

In May 2012, DOT issued an updated internal Order, Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (DOT Order). The DOT Order updates the Department's original Environmental Justice Order, which was published April 15, 1997. The DOT Order continues to be a key component of the Department's strategy to promote the principles of environmental justice in all Departmental programs, policies, and activities.

DOT Order 5610.2(a) sets forth the DOT policy to consider environmental justice principles in all DOT programs, policies, and activities. It describes how the objectives of environmental justice will be integrated into planning and programming, rulemaking, and policy formulation. The DOT Order sets forth steps to prevent disproportionately high and adverse effects to minority or low-income populations through Title VI analyses and environmental justice analyses conducted as part of Federal transportation planning and NEPA provisions. It also describes the specific measures to be taken to address instances of disproportionately high and adverse effects and sets forth relevant definitions.

The updated DOT Order reaffirms DOT's commitment to environmental justice and clarifies certain aspects of the original order, including the definitions of "minority" populations in compliance with the Office of Management and Budget's (OMB) Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity of October 30, 1997. The revisions clarify the distinction between a Title VI analysis and an environmental justice analysis conducted as part of a NEPA review, and affirm the importance of considering environmental justice principles as part of early planning activities in order to avoid disproportionately high and adverse effects. The updated DOT Order maintains the

original order's general framework and procedures and DOT's commitment to promoting the principles of environmental justice in all DOT programs, policies, and activities.

The Executive Order directs Federal agencies to identify and address, as appropriate, disproportionately high and adverse human health or environmental effects of agency programs, policies, and activities on EJ populations.

A. Guiding Environmental Justice Principles

The guiding EJ principles followed by DOT and FTA are briefly summarized as follows:

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

You should consider these goals of environmental justice throughout transportation planning and project development, and through all public outreach and participation efforts conducted by FTA, its grantees and subgrantees.

In our grant agreements, we require you, as a recipient of FTA funds, to facilitate our compliance with Executive Order 12898 and the DOT Order 5610.2(a). You facilitate our compliance by incorporating EJ principles into your transportation decision-making process and environmental review documents.

B. Title VI Nondiscrimination Law

Title VI of the Civil Rights Act of 1964 prohibits discrimination by recipients of Federal financial assistance on the basis of race, color, and national origin, including matters related to language access for limited English proficient (LEP) persons. Under DOT's Title VI regulations, as a recipient of DOT financial assistance, you are prohibited from, among other things, using "criteria or methods of administering your program which have the effect of subjecting individuals to discrimination based on their race, color, or national origin." For example, neutral policies or practices that result in discriminatory effects or disparate impacts violate DOT's Title VI regulations, unless you can show the policies or practices are justified and there is no less discriminatory alternative. In addition, Title VI and DOT regulations prohibit you from intentionally discriminating against people on the basis of race, color, and national origin.

The overlap between the statutory obligation placed on Federal agencies under Title VI to ensure nondiscrimination in Federally-assisted programs administered by State and local entities, and the administrative directive to Federal agencies under the Executive Order to address disproportionately high and adverse impacts of Federal activities on EJ populations explain why Title VI and environmental justice are often paired. The clear objective of the Executive Order and Presidential Memorandum accompanying the Executive Order is to ensure that Federal agencies promote and enforce nondiscrimination as one way of achieving the overarching objective of environmental justice – a fair distribution of the benefits or burdens associated with Federal programs, policies, and activities.

C. How Do Title VI and EJ Work Together?

Environmental justice and Title VI are not new concerns. The Presidential Memorandum accompanying EO 12898 identified Title VI of the Civil Rights Act of 1964 as one of several Federal laws that must be applied "as an important part of . . . efforts to prevent minority communities and low-income communities from being subject to disproportionately high and adverse environmental effects." According to the U.S. Department of Justice, "... the core tenet of environmental justice – that development and urban renewal benefitting a community as a whole not be unjustifiably purchased through the disproportionate allocation of its adverse environmental and health burdens on the community's minorities – flows directly from the underlying principle of Title VI itself."[1]

Today, environmental justice and Title VI are receiving greater emphasis. Effective transportation decision-making depends upon understanding and properly addressing the unique needs of different socioeconomic groups. This is more than an academic exercise; it requires providing opportunities for meaningful engagement to all sectors of the public potentially affected by FTA projects. This Circular is provided to assist you with promoting environmental justice and ensuring nondiscrimination on projects that use FTA funds in your community.

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[1] *See* Title VI Legal Manual, U.S. Department of Justice Civil Rights Division (2001), page 59.

D. What Are the Similarities and Differences Between Title VI and Environmental Justice?

Environmental justice principles have been confused with the requirements of Title VI. Here is a summary of the key differences between environmental justice and Title VI.

Key aspects of the authorities	Title VI	Environmental Justice
What is the basis for the authority?	Title VI is a Federal statute and provides that no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.	The basis for addressing environmental justice is an Executive Order: EO 12898 directs each Federal agency to "make achieving environmental justice part of its mission." The EO was intended to improve the internal management of the executive branch and not to create legal rights enforceable by a party against the U.S.
What is the purpose of the authority?	Title VI prohibits recipients of Federal financial assistance (e.g., states, local governments, transit providers) from discriminating on the basis of race, color, or national origin in their programs or activities, and it obligates Federal funding agencies to enforce compliance.	EO 12898 calls on each Federal agency to achieve "environmental justice ... by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations...."
To whom does the authority apply?	Title VI is a Federal law that applies to recipients and subrecipients of Federal financial assistance (*e.g.,* states, local governments, transit providers), and not to DOT itself.	EO 12898 applies to Federal agency actions, including DOT's and FTA's actions. Title VI is one of the tools used by Federal agencies to implement this directive.
What does the authority require, and of whom?	Under Title VI, DOT has the responsibility to provide oversight of recipients and to enforce their compliance with Title VI, to ensure that recipients do not use DOT funds to subsidize discrimination based on race, color, or national origin.	EO 12898 is a directive from the President of the United States to Federal agencies intended to improve the internal management of the Federal government. DOT issued its own Order implementing EO 12898, and updated the Order in May 2012 (Order 5610.2(a)).

Key aspects of the authorities	Title VI	Environmental Justice
What does the authority say with regard to negative effects or impacts?	In accordance with 49 CFR part 21, and Title VI case law, if an otherwise facially neutral program, policy or activity will have a discriminatory impact on minority populations, that program, policy or activity may only be carried out if (1) the recipient can demonstrate a substantial legitimate justification for the program, policy or activity; (2) there are no comparably effective alternative practices that would result in less disparate impacts; and (3) the justification for the program, policy or activity is not a pretext for discrimination.	DOT implemented EO 12898 in its order on EJ, which provides that if a DOT program, policy or activity will have a disproportionately high and adverse effect on minority or low-income populations, that program, policy or activity may only be carried out if further mitigation measures or alternatives that would reduce the disproportionately high and adverse effects are not practicable. In determining whether a mitigation measure or an alternative is "practicable," the social, economic (including costs) and environmental effects of avoiding or mitigating the adverse effects will be taken into account.
Does the authority create any rights or remedies?	Title VI allows persons alleging discrimination based on race, color, or national origin by recipients of Federal funds to file administrative complaints with the Federal departments and agencies that provide financial assistance. Persons alleging intentional discrimination (i.e., disparate treatment) may bring a court action seeking to enforce Title VI but cannot do so with regard to allegations of discrimination based on agency disparate impact regulations. Disparate impact complaints may be filed with the Federal agency.	EO 12898 establishes the Executive Branch policy on environmental justice; it is not enforceable in court and does not create any rights or remedies.

Thus, while Title VI is one tool for agencies to use to achieve the principles of environmental justice, it is important to recognize that Title VI imposes statutory and regulatory requirements that are broader in scope than environmental justice. You are cautioned that while there may be overlap, engaging in an EJ analysis under Federal transportation planning and the National Environmental Policy Act of 1969 (NEPA) provisions will not satisfy Title VI requirements, as outlined in FTA's Title VI Circular. Similarly, a Title VI analysis will not necessarily satisfy environmental justice, given that Title VI does not include low-income populations. Moreover, Title VI applies to all activities

of Federal recipients, not solely those which may have disproportionately high and adverse human health or environmental effects on EJ populations.

For example, while a bus rehabilitation project may not impose disproportionately high or adverse health or environmental effects on EJ populations, the ***use*** of those buses subsequent to the rehabilitation may be subject to a Title VI analysis to ensure that vehicles assigned to a particular area does not result in a disparate impact on the basis of race, color, or national origin. In addition, if there are substantive changes to the service levels for which the rehabilitated or other buses will be used, *i.e.,* the vehicles are deployed in such a way that the nature and quantity of service in a particular area is changed, then a service equity analysis must be conducted under Title VI to determine whether this change results in a disparate impact on the basis of race, color, or national origin. The requirements for that particular analysis are part of the compliance determinations made for Federal transit recipients under FTA's Title VI Circular, and you are encouraged to review that document.

E. Conducting an Environmental Justice Analysis

The Executive Order directs Federal agencies to make environmental justice part of their mission through identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of our programs, policies, and activities on EJ populations. For FTA, this means following the three guiding principles of environmental justice:

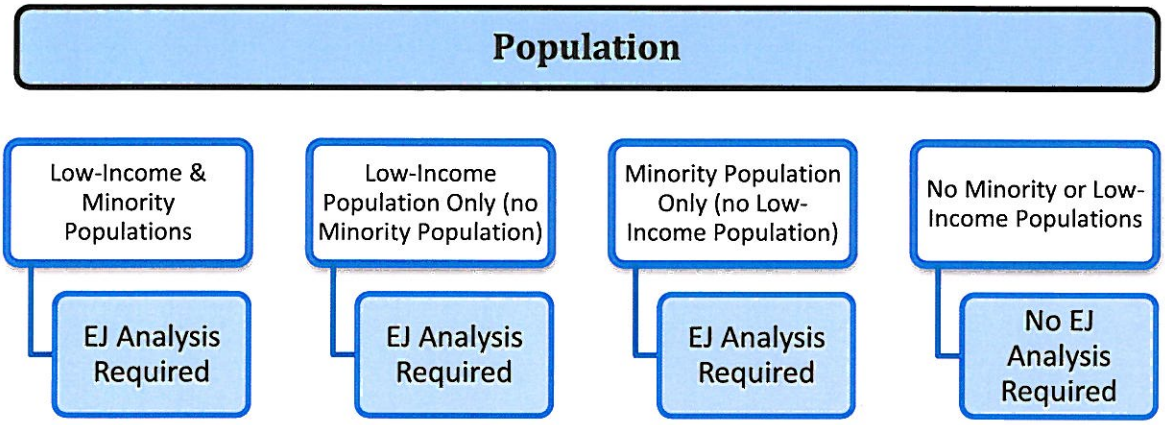
- To avoid, minimize, and mitigate disproportionately high and adverse effects.
- To ensure the full and fair participation by all potentially affected communities
- To prevent the denial of, reduction in, or significant delay in the receipt of benefits by minority and low-income populations.

An EJ analysis starts with determining whether minority populations and/or low-income populations will experience potential environmental or health impacts from a proposed program, project, or activity.

A **minority population** means any readily identifiable group or groups of minority persons who live in geographic proximity, and if circumstances warrant, geographically dispersed or transient persons such as migrant workers or Native Americans who will be similarly affected by a proposed DOT program, policy or activity. Minority includes persons who are American Indian and Alaska Native, Asian, Black or African American, Hispanic or Latino, and Native Hawaiian and other Pacific Islander.

Low-income means a person whose median household income is at or below the Department of Health and Human Services (HHS) poverty guidelines. However, you are encouraged to use a locally developed threshold, such as that used for FTA's grant program,[2] or a percentage of median income for the area, provided that the threshold is at least as inclusive as the HHS poverty guidelines.[3] A **low-income population** means any readily identifiable group of low-income persons who live in geographic proximity, and, if circumstances warrant, geographically dispersed/transient persons (such as migrant workers or Native Americans) who will be similarly affected by a proposed FTA program, policy or activity.

The two terms "minority" and "low-income" should not be presumptively combined. There are minority populations of all income levels, whereas low-income populations may be minority, non-minority, or a mix in a given area. As the definition of minority indicates, even minority populations can include several racial or ethnic categories. As the chart below demonstrates, although the two groups may overlap, that is not always the case.



Whether a plan or project impact area has one or more minority populations and/or low-income populations is determined by analyzing the demographic data for the area, and is discussed in more detail in Chapter II of this Circular.

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[2] Public Law 112-141 defines "low-income individual" to mean "an individual whose family income is at or below 150 percent of the poverty line, as that term is defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2), including any revision required by that section, for a family of the size involved."

[3] When FTA funds are combined with other DOT funds or when one NEPA review is used to evaluate activities for multiple DOT agencies, then low-income means a person whose median household income is at or below the Department of Health and Human Services (HHS) poverty guidelines.

Under the DOT Order, **adverse effect** means:

> "the totality of significant individual or cumulative human health or environmental effects, including interrelated social and economic effects, which may include, but are not limited to: bodily impairment, infirmity, illness, or death; air, noise, and water pollution and soil contamination; destruction or disruption of man-made or natural resources; destruction or diminution of aesthetic values; destruction or disruption of community cohesion or a community's economic vitality; destruction or disruption of the availability of public and private facilities and services; vibration; adverse employment effects; displacement of persons, businesses, farms, or non-profit organizations; increased traffic congestion, isolation, exclusion or separation of individuals within a given community or from the broader community; and the denial of, reduction in, or significant delay in the receipt of benefits of DOT programs, policies, or activities."

An EJ analysis also includes a determination of whether the activity will result in a "**disproportionately high and adverse effect on human health or the environment**," which is defined in the DOT Order as:

> *"an adverse effect that:*
> *(1) is predominantly borne by a minority population and/or a low-income population, or*
> *(2) 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."*

Once you have identified your EJ populations, you will want to compare the burdens of the activity experienced by EJ populations with those experienced by non-EJ populations. Similarly, you will want to compare the activity's benefits experienced by EJ populations as compared to non-EJ populations. Chapter II discusses this analysis in more detail.

F. What Is the Purpose of a Separate Circular on Environmental Justice?

This Circular is designed to provide a framework to assist you as you integrate principles of environmental justice into your transit decision-making process. The Circular contains recommendations for State DOTs, MPOs and transit providers on (1) how to fully engage EJ populations in the transportation decision-making process; (2) how to determine whether EJ populations would be subjected to disproportionately high and adverse human health or environmental effects of a public transportation project, policy, or activity; and (3) how to avoid, minimize, or mitigate these effects.

A key component of environmental justice is engaging EJ populations as a part of your transportation planning process. We recommend that your public engagement plan incorporate outreach techniques that are designed to encourage meaningful participation from members of the EJ populations in your community. If your long-range plan, Transportation Improvement Program/Statewide Transportation Improvement Program, or transit project is estimated to have disproportionately high and adverse human health or environmental effects on EJ populations, engaging these populations early in the process may help you avoid, minimize, or mitigate these impacts. In the event the effects cannot be avoided, minimized, or mitigated, such engagement may help you develop off-setting benefits.

Finally, a note about what is not in this Circular. This Circular does not contain any new requirements, policies or directives. Under existing Federal law, you are required to include interested parties and the public in your transit decision-making and planning processes. This Circular recognizes that how you approach environmental justice in any specific situation will need to be tailored to the unique circumstances of each decision, whether it is a project review under NEPA or the development of long-range and short-range transportation plans.

Public transit providers know firsthand how critical public transportation is for many members of low-income populations and minority populations, many of whom have no other reliable transportation to get them to jobs, health care, school, or childcare services.

G. Summary

The DOT Order on EJ sets forth guidance for determining whether a DOT or a DOT-funded program, policy, or activity is likely to have disproportionately high and adverse human health or environmental effects on low-income or minority populations. The DOT Order directs FTA to consider EJ objectives when administering the requirements of NEPA; Title VI and related statutes; the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA); Congressionally-authorized planning requirements; and other laws, regulations, and executive orders that address or affect infrastructure planning and decision-making; social, economic, or environmental matters; public health; or public engagement.

The DOT Order provides the definitions and framework for your EJ analyses. These important definitions are set forth above, and in more detail, in the Appendix. Chapter II of the Circular provides an analytical framework for effectively addressing environmental justice in public transportation plans, programs, projects, and activities. It also addresses disproportionately high and adverse effects, including mitigation measures and consideration of alternatives that would avoid or reduce the disproportionately high and adverse effects. In order to create infrastructure that meets the needs of the community,

you must be committed to public outreach and creating meaningful opportunities for public engagement, including participation by minority and low-income communities. Chapter III provides detailed guidance on the range of public engagement approaches that you can deploy in these various activities. Together, Chapters II and III provide the foundation for effectively integrating EJ principles into the public transportation decision-making processes. Chapters IV and V describe the particular considerations of environmental justice in planning and NEPA activities, respectively.

Chapter II
Conducting an Environmental Justice Analysis

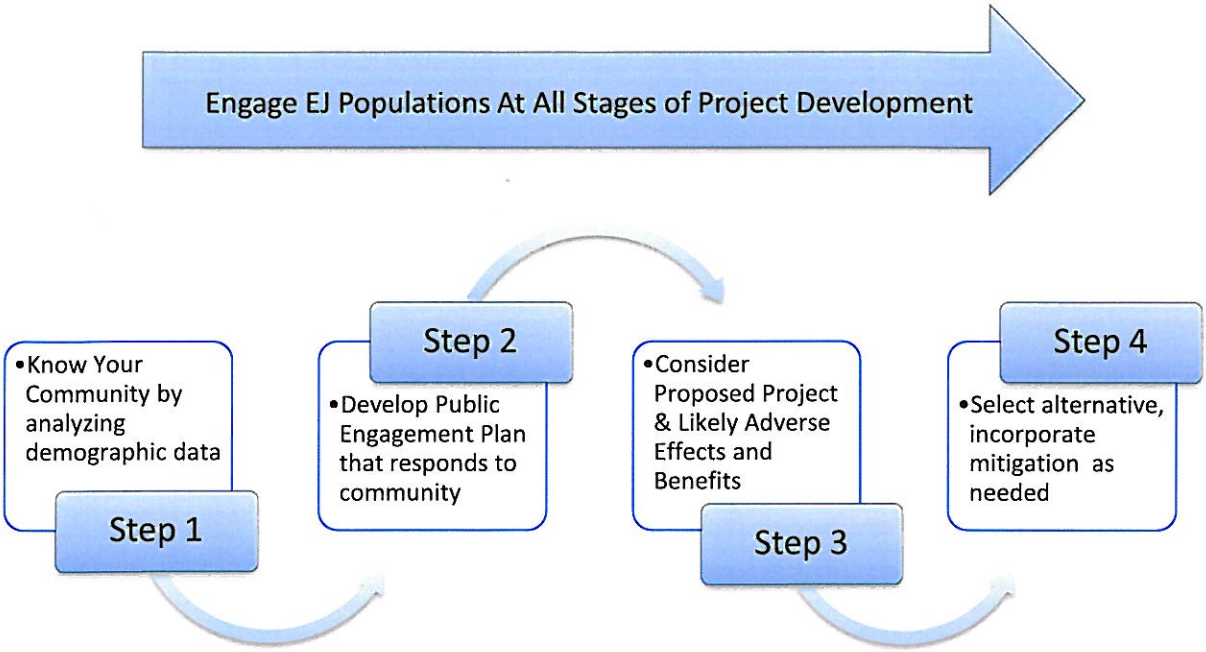
This chapter provides an analytical framework for conducting an EJ analysis of your plan, program, or project (activity) under the principles of environmental justice. The analytical framework is designed to assist you as you work your way through an analysis of the environmental justice implications of your plans, programs, projects, and activities. You may need to adapt or adjust this framework to fit the particular activity you are analyzing.

Throughout the continuum of transit decision-making, there are many occasions for you to consider the public transportation needs of EJ populations. We recommend that you consider EJ principles as part of Statewide, metropolitan, and local long- and short-range planning process, with early and ongoing engagement of the public in all stages of decision-making. In addition, we recommend that transit providers consider EJ principles during local planning activities and service delivery through project development and design, including consideration as part of the environmental review required by NEPA.

A. Environmental Justice Analysis

An EJ analysis starts with knowing basic socioeconomic information about the people who live and/or work in your community. Without this information, you cannot determine whether your proposed activity will affect minority and/or low-income populations. Once you know who is in your community, you can develop a targeted public engagement plan that will encourage the full and fair participation by all members of the affected communities. Your public engagement plan will then help guide you through the rest of the analysis as you consider whether the proposed programs, policies, and activities will result in disproportionately high and adverse human health or environmental effects on EJ populations.

As the chart below illustrates, the engagement of EJ populations in all aspects of your transportation decision-making process is fundamental to truly making the principles of environmental justice a part of your mission.



Each step is discussed in more detail in this Circular. In this Chapter, we will explore recommendations for gathering and analyzing demographic data sources to better inform you about the members of your community who may be impacted by your transit decision. We will also discuss the analytical framework we recommend you use when considering an EJ issue. In Chapter III, we will discuss developing a robust public engagement plan that provides for the full and fair participation of all members of the community including members of EJ populations. In Chapters IV and V, we discuss more specifically how to undertake an EJ analysis during development of your transportation plans and during the NEPA process.

B. Know Your Community

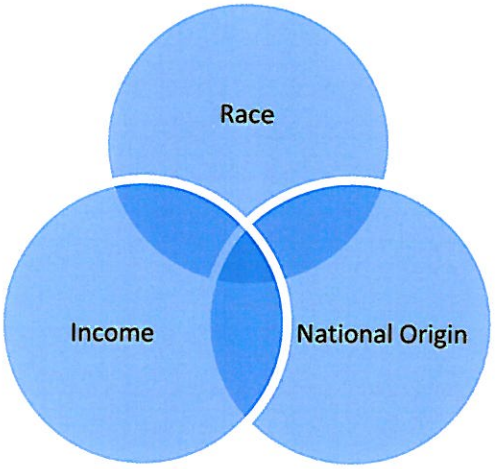
Effective transportation planning starts with knowing who lives and works in your community and what their mobility needs are. This is true for an effective EJ analysis as well. You will need to obtain and analyze relevant data within the planning or project area. You will use this data to create a residential demographic profile to help you determine where EJ populations are located.

1. Sources of Demographic Data

Demographic data is available from a number of publicly available sources. The two primary sources for demographic data – the Decennial Census of Population (Census) and

the annual American Community Survey (ACS) – are available from the U.S. Census Bureau[4] and aid in identifying the locations and demographic characteristics of EJ and non-EJ populations. Census data is available at the Census tract, Census block, and block group level.[5]

The U.S. Census data also includes economic Census data and TIGER (Topologically Integrated Geographic Encoding and Referencing) files, which contain a digital database that can be used with Geographic Information System (GIS) or other mapping software to show geographic distribution of populations and other Census data.



Census data on age, race and ethnicity is available at the Census block level, which is the most geographically detailed level of Census data available. Other types of socioeconomic data, such as income, poverty and education, are available from ACS at the Census tract, block group or block level. Statewide and metropolitan planning activities may affect large areas, while transit provider planning and project-level effects are usually localized. Small area Census data such as blocks and block-groups is generally more appropriate for projects and local planning activities. Large scale Census data, such as tracts and counties, may be more appropriate for Statewide and metropolitan planning activities. You may also find it helpful to use data developed through the Statewide or metropolitan planning process for local projects to get a sense of the larger area. You should determine the most appropriate level of Census data to use based on the project and the area.

Other data can supplement U.S. Census data, if it has a sound basis and gives an accurate assessment of income levels and other population characteristics. In some instances, population characteristics can be derived from information available from MPOs, councils of government, and city or county agencies. Other local sources of information include State and local tax and financing agencies, economic and job development agencies, social service agencies, local health organizations, school districts, local public agencies, and community

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[4] The types of data sets and resources available from the U.S. Census Bureau are summarized on their website at http://www.Census.gov.

[5] Explanation of how these classifications are defined can be found in U.S. Census publications on social, economic, and housing characteristics, under "Area Classifications," and at http://www.Census.gov/geo/www/tiger/glossary.html.

action agencies. The source and basis of the information on income and what it represents should be identified. We recommend that each situation be evaluated in context.

Local transit providers or planning agencies may wish to augment this national data with local information regarding residential property assessed valuations and rent or by surveying local residents directly to obtain current demographic and development information in greater geographic detail.[6] Some of this information, however, may vary widely in quality, level of specificity, and format. Therefore, it is important when collecting information that you recognize when data was collected, the data sources used, and data reliability.

Regardless of the source, you will want to use the most up-to-date reliable data available, understand the basic assumptions used in each compilation, and recognize the purposes for which data were originally collected. As well, consistency in data sources may be an important consideration, particularly if the analysis seeks to track changes in socioeconomic data over time.

The composite residential demographic profile may be portrayed and analyzed most effectively when a GIS software platform is used. The data overlay and mapping capabilities of GIS are useful tools in evaluating the patterns of completed or planned transportation activities relative to the locations of EJ populations, and can help you evaluate how various populations may be differentially affected by a plan or proposed project. By conducting a GIS analysis, you can spatially depict the percent of minority populations and low-income populations relative to a planning area or to a project by overlaying the percent of minority populations with the low-income populations relative to the planning or project impact area. Additional maps can depict disaggregated minority populations so outreach strategies can be tailored to the specific needs of the community.

The Census Bureau website provides demographic data for download and use by the public. The Census Bureau periodically releases digital files called TIGER/Line files. The Census Bureau's TIGER/Line files are created from the Census Bureau's TIGER database of selected geographic and cartographic information and provide a digital database of geographic features such as roads, railroads, rivers, lakes, political boundaries, and Census statistical boundaries covering the entire United States.

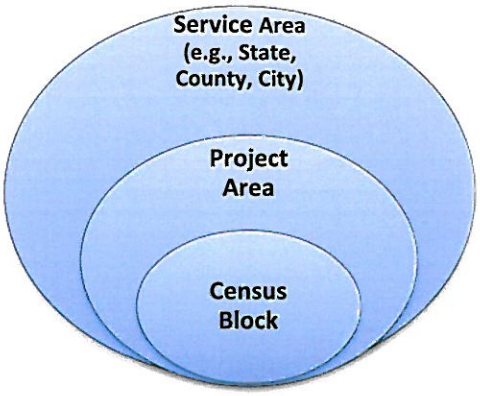
The TIGER/Line data files do not include demographic data but they contain geographic entity codes that can be linked to the Census Bureau's demographic data. For information

[6] Transit providers that meet certain requirements set forth in the Title VI Circular also are required as part of their Title VI program to collect and report demographic data. Data collected as part of your Title VI program may also be used for your EJ analysis.

on how to use the TIGER/Line data with a specific software package, contact the company that produced the software. Environmental Systems Research Institute (ESRI) provides free block group geographic files.[7] Census 2010 TIGER/Line files are available for download from the Census Bureau website[8] and are also available on CD-ROM and DVD.

2. Unit of Geographic Analysis

The unit of geographic analysis is the area impacted by the proposed action. Depending on the nature of the proposed action, the unit of geographic analysis may be a governing body's jurisdiction, a transit provider's service area, a neighborhood, Census tract, or other similar unit. However, when establishing the boundaries of the geographic unit, you will want to be careful not to choose boundaries that artificially dilute or inflate the affected minority population and/or low-income population.



For example, when considering the impacts of a new light rail line, it is appropriate to establish the area affected by the project to include the entire alignment, which would then be compared with the transit provider's service area. However, when considering the location for a maintenance yard that will support the new rail line, both the affected area and the comparison geographic unit may be different and therefore may require its own analysis. In other words, those persons located adjacent to the maintenance yard may experience different and more intense impacts from the maintenance yard than those persons along the alignment but farther away from the yard.

When considering the impacts of a multi-modal transfer center in a small town or rural area, the town or county may be an appropriate area by which to compare the general population and the EJ populations affected by the project. The area around the transfer center should be an appropriate size such that you can conduct a meaningful analysis of the effects on the EJ populations.

Through the Statewide or metropolitan planning processes, we recommend that you conduct an evaluation of the system-level EJ impacts of a collection of projects in the long-range plan. When projects move from a long-range plan into the short-range Transportation Improvement Program (TIP) or State Transportation Improvement

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[7] Available at http://www.esri.com/data/free-data/index.html.

[8] Available at http://www.Census.gov/geo/www/tiger/.

Program (STIP), they are assumed to be reasonably assured of funding and ready for implementation. Chapter IV addresses integration of environmental justice into the transportation planning process in more detail. At that point, for projects that include Federal funds or involve a Federal approval, you will need to evaluate the projects under NEPA, which is described in Chapter V of this Circular. When considering EJ principles for individual projects, the geographic unit for comparison may need to be smaller than the entire geographic area covered by the long-range plan depending on the project and its likely impacts. You are encouraged to work closely with your FTA Regional Office in establishing an appropriate unit of geographic analysis.

3. How Do You Know If An EJ Population Is Present?

Disproportionately high and adverse effects, not population size, are the bases for environmental justice. A very small minority or low-income population in the project, study, or planning area does not eliminate the possibility of a disproportionately high and adverse effect on these populations. Some people wrongly suggest that if minority or low-income populations are small ("statistically insignificant"), this means there is no environmental justice consideration. While the minority or low-income population in an area may be small, this does not eliminate the possibility of a disproportionately high and adverse effect of a proposed action. EJ determinations are made based on effects, not population size. It is important to consider the comparative impact of an action among different population groups.

The selection of the appropriate unit of geographic analysis may be a governing body's jurisdiction, a neighborhood Census tract, or other similar unit. However, for analytical purposes it must be appropriate to the scope of the plan, program, or project to determine disproportionate burdens on EJ versus non-EJ populations affected by that plan, program, or project. We recommend that you make reasonable efforts to identify the presence of distinct minority and/or low-income communities residing both within, and in close proximity to, the proposed project or activity and to identify those minority and/or low-income groups who use or are dependent upon natural resources that could be potentially affected by the proposed action. Non-traditional data gathering techniques, including outreach to community-based organizations and tribal governments early in the screening process, may be the best approach for identifying distinct minority and/or low-income communities, and/or tribal interests within the study area.

You should work closely with your FTA Regional Office for additional guidance as you conduct your analysis.

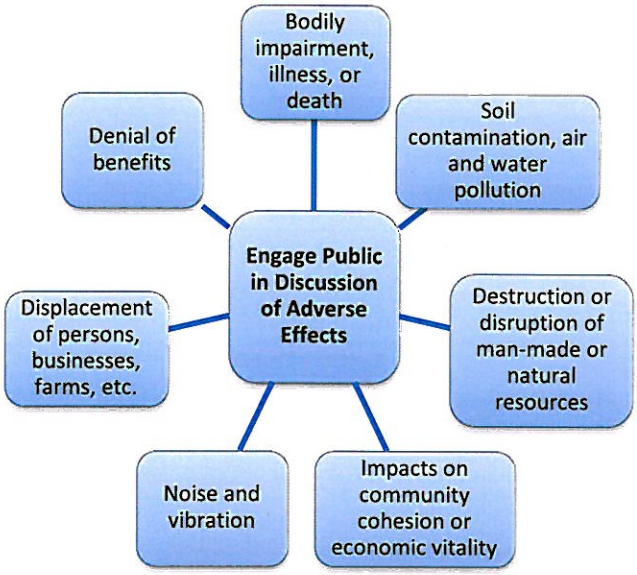
C. Determining Disproportionately High and Adverse Effects

The first of the three guiding EJ principles is to avoid, minimize, or mitigate disproportionately high and adverse human health and environmental effects, including social and economic effects, on minority populations and low-income populations. As discussed in Chapter I, the DOT Order defines the following important concepts: (1) what constitutes an "adverse effect," (2) how to determine whether an adverse effect is "disproportionately high," and (3) how to determine whether an EJ population will bear a "disproportionately high and adverse effect" of the project. Each of these concepts is explored in more detail below.

1. Identifying Adverse Effects

As discussed in Chapter I, the DOT Order defines: (1) what constitutes an "adverse effect," and, (2) when a "disproportionately high and adverse effect" on an EJ population is present.

The definition of adverse effects includes the totality of significant individual or cumulative human health or environmental effects to human health, the natural and social environment, community function, etc. It also includes the denial, reduction, or delay in receiving benefits, which should be addressed like any other impact.



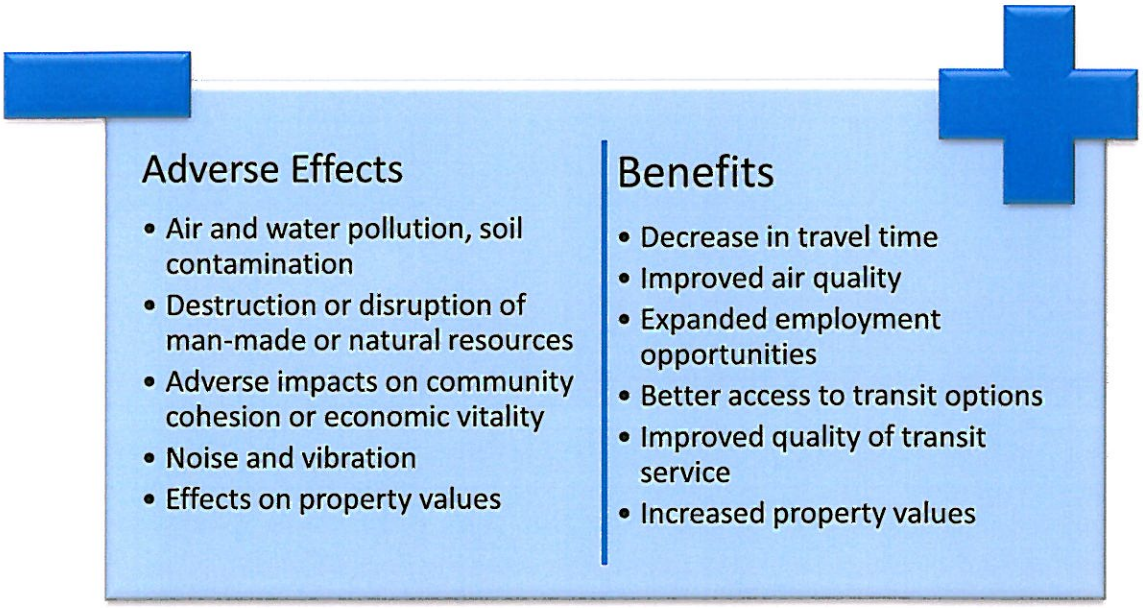
When considering whether a potential effect is "adverse," it is important to include the community that might be impacted by that effect in the discussion. What one population may perceive as an adverse effect, another may perceive as a benefit. It is also possible that, within the same population, the same action may be perceived by various segments as both an adverse effect and a benefit. This is why having a robust public engagement plan is so important.

2. Determining Whether Adverse Effects Are Disproportionately High

Determinations of disproportionately high and adverse effects include taking into consideration "mitigation and enhancements measures that will be taken and all offsetting benefits to the affected minority and low-income populations... as well as the design,

comparative impacts, and the relevant number of similar existing system elements in nonminority and non-low-income areas."[9]

Many public transportation projects involve both adverse effects such as short-term construction impacts, increases in bus traffic, etc., and positive benefits such as increased transportation options, improved connectivity, or overall improvement in air quality. Whether adverse effects will be disproportionately high is dependent on the net results after consideration of the totality of the circumstances. Consideration of these factors cannot be done in a vacuum. Rather, we recommend that you undertake reasonable efforts to engage members of EJ populations who may be impacted by a proposed project, program, or activity, regardless of whether you may consider the proposed activity to have an overall benefit to the community. (*See* Chapter III, Public Engagement.)



For example, when considering a fixed guideway project, we recommend that you compare the type, level, and quality of mitigation proposed for EJ and non-EJ populations in the project's study area. If a mitigation measure is proposed for a non-EJ population, but not for the EJ population, you will need to explain why such mitigation cannot be implemented in both communities.

If, after considering the adverse effects and potential benefits of the proposed project, you determine that the proposed project will have a disproportionately high and adverse effect on minority populations or low-income populations, then you must determine whether further mitigation measures or alternatives are practicable, and implement practicable

[9] DOT Order, section 8.b.

mitigation measures or alternatives, before moving forward with the activity. "In determining whether a mitigation measure or an alternative is 'practicable,' the social, economic (including costs) and environmental effects of avoiding or mitigating the adverse effects will be taken into account."[10]

In addition, Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, and national origin. Accordingly, a program, policy, or activity that will result in a disparate impact as to one of these protected classes may be carried out only if: (1) the recipient can demonstrate a substantial legitimate justification for the program, policy or activity; and (2) there are no comparably effective, reasonable alternative practices that would result in less disparate impacts. This analysis is discussed in more detail in FTA's Title VI Circular.

3. Determining Whether Adverse Effect Will Be Borne By EJ Population

Whether an adverse effect is "disproportionately high" on minority and low-income populations depends on whether that effect is (1) predominantly borne by an EJ population, or (2) will be suffered by the EJ population and is appreciably more severe or greater in magnitude than the adverse effect that will be suffered by the non-EJ population. We recommend that you engage the affected EJ populations in this discussion as well.

Questions to consider when determining if disproportionately high and adverse human health or environmental impacts exist include:

- Whether the adverse effects on EJ populations exceed those borne by non-EJ populations?
- Whether cumulative or indirect effects would adversely affect an EJ population?
- Whether mitigation and enhancement measures will be taken for EJ and non-EJ populations?
- Whether there are off-setting benefits to EJ populations as compared to non-EJ populations?

[10] DOT Order, section 8.c.

Chapter III
Achieving Meaningful Public Engagement With Environmental Justice Populations

One of the guiding principles of environmental justice is to ensure the full and fair participation by all potentially affected communities in the transportation decision-making process. It is important that you develop and use public engagement efforts to encourage environmental justice populations to participate during the planning and implementation of transit projects.

Public Engagement Helps You:

- Identify transit needs of EJ populations and set priorities
- Identify proposed project's benefits and burdens
- Identify mitigation measures

By ensuring that environmental justice populations are engaged in the decision-making process, you can develop transportation plans, programs, and projects that will address the transportation needs of environmental justice populations and will include their priorities. Having done so, you will be in a better position to develop transportation plans that are fair across all levels of society, particularly when establishing the priorities under limited available funding for transit projects. Understanding the needs and priorities of environmental justice populations will also help you to balance the benefits of the proposed project against its adverse effects. This partnership with environmental justice populations will assist you as you consider options to avoid, minimize, or mitigate disproportionately high and adverse human health or environmental effects. Moreover, with a robust and inclusive public engagement program, you will be in a better position to know whether your plans or projects as implemented will prevent the denial of, reduction in, or significant delay in the receipt of benefits by environmental justice populations.

In this chapter, we identify strategies and techniques for effective public engagement of environmental justice populations that may be used during the planning process and NEPA review. This Circular contains practical suggestions designed to help you develop a strategy for outreach and public participation that is designed for the unique environmental justice populations in your community. We have tried to go beyond the traditional methods of public outreach to incorporate innovative approaches that leverage the ever-changing communications environment in which we live. As you consider whether these non-traditional methods will be effective for engaging underrepresented

populations in your community, neither underestimate the prevalence of electronic media with all segments of society, nor forget the effectiveness of "low tech" communication methods such as hanging posters or handing out flyers. Finally, we recognize that public outreach strategies used in any particular instance must be tailored to address the scope of the proposed plan, project or activity, the population of the planning or project impact area, and your resources available for public outreach.

The strategies and techniques discussed in this chapter are suggestions, and the discussion is not meant to be exclusive or exhaustive. You are in the best position to know which strategies will be effective for your specific situation. Also, you are likely to develop other techniques that will more effectively reach the members of your community. We encourage you to use those techniques, as you know your community better than anyone else.

A. Public Engagement as Part of Transportation Planning

Public engagement is integral to good transportation planning. Without meaningful public participation, you risk making poor decisions, or decisions that have unintended negative consequences. With it, it is possible to make a lasting contribution to an area's quality of life. Public engagement is more than an agency requirement and more than a means of fulfilling a statutory obligation. Meaningful public participation is central to good decision-making on transportation planning.

As you develop your public engagement strategy, we recommend that you keep in mind the requirements of the joint FTA/FHWA planning regulations, which provide greater detail and definition for public engagement. The statutory and regulatory framework creates a proactive program of engagement, interaction, and accountability involving decision makers, interested parties, and the public, including environmental justice populations. FTA/FHWA joint planning regulations require you to seek out and consider the needs of those traditionally underserved by existing transportation systems, such as low-income and minority households, who may face challenges accessing employment and other services.

The fundamental objective of public engagement programs is to ensure that the concerns and issues of everyone with a stake in transportation decisions are identified and addressed in the development of the policies, programs, and projects being proposed in their communities. For many of you, engaging EJ populations in the transportation decision-making process is a standard part of your overall public engagement plan that is integrated throughout the process, from the earliest stages (long-range planning, visioning, and scenario planning) through project implementation (construction, operation, and on-going evaluation).

Effective public engagement strategies typically are designed to eliminate barriers to active participation by all members of the community, including EJ populations. Strategies should also create constructive, productive dialogue that will lead to practical decisions that benefit all members of the community, including low-income populations and minority populations. Responsive transportation plans and projects that are designed to serve the needs of all members of the community involve not only the expertise of transportation planners, traffic engineers, urban designers, architects, and other professionals, but also include the views and ideas of the public as collaborators and experts with their own experiences and visions for the future.

Additionally, it is important that you follow the requirement in the FTA/FHWA planning regulations that call for periodic review of the effectiveness of your public engagement process, and the procedures and strategies contained in the participation plan, to ensure a full and open participation process. This review would include revisions to the process, as appropriate.

B. Getting to Know Your Community

The effectiveness of your public engagement plan will depend on how well you know the members of your community. This means going beyond the numbers in the demographic profile, and learning about the individuals in your service area, including members of EJ populations, and finding out what is important to them.

Know Your Community

- Where do they work?
- Where do they relax?
- What languages do they speak at home?
- How do they get their information?

Although we use the term "EJ populations" throughout this Circular, you should in no way infer from that term that there is only one way to communicate with all minority populations and low-income populations. For example, communication techniques that may be effective for engaging African-Americans who live in a densely populated urban area in the Northeastern United States may not be effective for engaging African-Americans who live in a rural area in the Midwest. Similarly, how long members of a minority group have lived in the United States may affect the way you communicate with that community. We recommend that you include strategies that address the needs of limited English proficient (LEP) persons as appropriate to ensure compliance with Title VI. FTA's Title VI Circular and DOT's policy guidance on LEP are good resources for you to review.

Analyze the public engagement you have used in the past to see how effective it was. The more you know about the values, traditions, and histories of the communities that make up

your service area, the more you can tailor your public engagement for these groups. A good place to start getting to know your community is by reviewing the customer comments you receive through surveys, comment cards, and other techniques. You also may want to search the Internet for blogs or websites about public transportation in your community.

C. Traditional Public Outreach

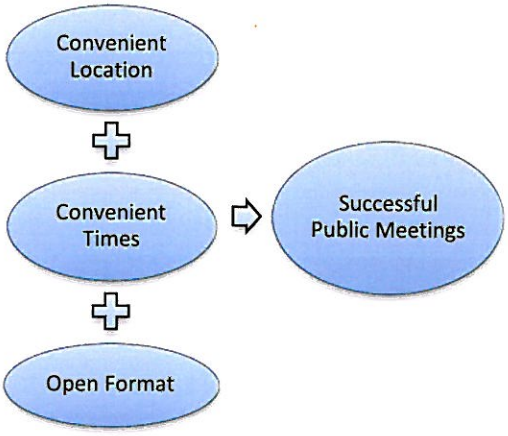
You are probably familiar with the formal public outreach required by Federal, State, or local law for certain transportation decisions (*e.g.,* public meetings on annual budgets, long-range plans, service reductions or fare increases, etc.). Required notice and comment periods are intended to generate comments for an official docket, which is a reliable and organized method for collecting and documenting public input. Public meetings, listening sessions and community forums can provide a good baseline for public engagement campaigns when they are well-facilitated and supplemented with more interactive approaches.

You can make these processes more inviting and user-friendly by writing clear, concise, and understandable documents, and by clarifying the ways for members of the public to provide comments on proposed transportation plans and projects. You will want to provide opportunities for EJ populations to analyze proposals, submit additional data, and provide comments. This can be achieved by scheduling a series of interactive outreach sessions during the notice and comment process, and by making the comments received during those sessions part of the public record. It is also possible to utilize interactive and collaborative online technologies, such as social networking, blogs, videosharing and wikis, to generate increased awareness of, and interest in, the notice and comment process.

For long-range plans, significant capital projects, and other major decisions, it is worthwhile to explore more resource-intensive and in-depth engagement opportunities, including visioning and scenario planning workshops and other collaborative processes. These events can be scaled up or down according to the resources available to support them. Workshops draw members of the public together and expose them to the complexity of plans and projects and the tough choices to be made. It is important to recruit members of EJ populations to participate in community-wide events. Additional events specifically designed to target EJ populations also may be appropriate in some situations.

D. Hosting Successful Public Meetings

Many agencies rely on formal public meetings as the foundation of their public engagement plan because such meetings are often required under Federal, State, or local laws. These types of meetings can be effective, particularly if you are well-prepared for the meeting, adequately publicize the meeting, and hold it at a convenient time and location. These required public meetings, hearings or comment periods are the minimum requirement to meet specified legal requirements and should not constrain your public engagement strategy. The most successful public meetings will follow a series of more informal meetings with community groups and smaller gatherings of community members.



FTA/FHWA joint planning regulations include requirements for where to hold public meetings and the methods of engagement to use. For example, under Federal regulations, you are required to:

- Hold public meetings at convenient and accessible locations and times;
- Employ visualization techniques to describe plans; and
- Make public information available in electronically accessible formats and means, such as the World Wide Web.

Consider the ***location*** of the meetings, including whether to hold the meeting in a location that serves the interests of EJ communities, such as community centers, social service organizations, or local schools.

- Is the meeting in a convenient location that is easily accessible by public transit?
- Is the room large enough and comfortable?
- Is the location accessible to persons with disabilities?

The ***timing*** for the meeting should be designed to allow maximum participation by EJ communities.

- Consider work schedules, school schedules, rush hours, meal hours, and religious worship hours when setting the date and time for the meeting. You may want to schedule more than one meeting and to vary the times of meetings.

- Consider whether your community might prefer meetings scheduled for early mornings or weekends.

You should consider the ***format*** of the meeting to allow maximum input.

- Develop a meeting format that allows everyone to participate if they want to. This may mean setting reasonable time limits for speakers so that a few individuals do not monopolize the meeting.
- Limit your own comments. The purpose of this meeting is to hear from the public.
- Be willing to adapt the room set-up to accommodate the attendees. For example, if you expect 100 people to attend a public meeting, that may require a traditional public meeting set-up (a head table, a podium and rows of chairs, and regulated by an agenda and a three-minute speaking limit). A meeting with a smaller group may be more informally arranged.

Make the public participation process ***accessible to all***.

- Designate a specific employee to accommodate the needs of persons who are linguistically and culturally isolated, as well as persons who have disabilities. You may have obligations under Title VI to provide assistance to persons who do not speak English well or at all.
- When planning accessible public engagement campaigns, it is vital for agencies to consider that people have different learning styles, educational attainment levels, and literacy skills. Therefore, it is a good idea to go beyond the auditory nature of public meetings to include visual and tactile tools and techniques in the overall public engagement strategy.

Communicate clearly during the meeting.

- Assess a group's preferred types of communications prior to the meeting.
- Clearly explain the purpose of the meeting and the steps in the process, including the proposed schedule.
- Provide information in plain language. Make sure technical information and complex policies and procedures are described in layperson's terms rather than jargon.
- Spell out acronyms and define technical concepts and terms; Federal, State, and local transportation planning processes are complex.
- Break the plan or project into pieces; plan public sessions that focus on one part or section at a time.

Finally, you will need to provide notice to the community, including EJ populations, about the meeting to encourage people to participate. Check Federal, State, and local requirements to be sure that you comply with any formal publication or notice requirements. For example, your State's open meetings law may require that you provide notice in certain specified media 48 hours before the meeting. These requirements establish the minimum that must be done for providing notice. We recommend that you use other methods to provide notice to the public.

People generally expect that government entities will post on their websites electronic versions of major action documents, such as proposed transportation plans, NEPA review documents, public engagement plans, and actions by its governing board. If you do not already do this, we recommend that you consider implementing such a practice as soon as practicable.

In addition, Federal, State, or local law may require that documents that require an official comment period and administrative record (such as a draft environmental impact statement) be made available for public review at your office and other public offices that are open to the general public, such as libraries, community centers, etc. We recommend that you make these documents available in locations that are easily accessible by members of EJ populations. That location may not necessarily be your main offices. At a minimum, you may want to consider making documents available at local public library branches which may be open evenings and weekends and are in locations serving EJ populations.

EffectiveNotice

- Required Notice
- Signs on Transit Vehicles, Stations, Stops
- Email Blasts
- Social Networking
- Notice in Ethnic or Community Media

Where appropriate, we recommend that you develop signs or other materials to post or distribute. Although signs may be placed in a static location, they can be an effective means for reaching targeted audiences who use that location regularly. For example, if you want to reach your customers to let them know about a meeting, project, or service proposal, consider placing signs on the inside of transit vehicles, at bus shelters, or in transit stations. These ads and signs can be designed for visual impact and often draw wider interest than formal legal notices. Other techniques include purchasing billboards in EJ communities, providing information kiosks at community events, and providing storefront displays. The key is to let the community know about the issue under consideration and your desire to have them participate before a final decision is made.

In addition to meeting with the public face-to-face, we recommend that you include the use of traditional and non-traditional media as part of your public engagement strategy. Traditional media include your website; local newspapers, radio, and television stations. It also includes leveraging and your transit assets, such as signs on buses, trains, stations, and bus shelters.

We recommend that you do not rely solely on "official" notice methods, but that you consider other cost-effective ways to reach members of your committee. Particular EJ populations may read or listen to ethnic media that are delivered in native languages and provide information about public and cultural events occurring in the community. These media may also provide opportunities for inclusion of news articles or editorial comments from their point of view. Use of ethnic media can help you tailor your communication, message, and voice.

We also recommend that you consider radio or television advertisements that serve LEP populations. You may want to undertake marketing research to ensure the media buy targets the appropriate environmental justice market with the correct media message. Outreach to LEP populations could include audio programming available on podcasts.

E. Non-Traditional Outreach

As discussed above, Federal, State, and local law may establish the minimum required for you to comply with legal requirements for public engagement and notice. You should not, however, let these minimum requirements limit you from using other methods to engage the public. Rather, we recommend that you identify other ways to engage the public that may be less formal than a public meeting or formal listening session. For example, consider attending meetings held within the community or organized by local advocacy groups or faith-based coalitions. Consider non-traditional media outlets, such as local, neighborhood publications, or internet outlets, such as YouTube, Twitter, or Facebook. New ways to reach large numbers of the public are emerging almost daily, and we suggest that you consider whether any of these methods will work for your community.

1. Informal Group Meetings

Seek out opportunities to attend existing community group meetings, such as neighborhood associations, faith-based coalitions, and advocacy groups. Just as the downtown business coalition will meet with the decision makers to provide input into the process, we recommend that you provide similar opportunities to EJ communities early in the process. Waiting to bring EJ communities and decision makers together in the same room until the first public meeting, or until the final decision, is not as effective as engaging with them early on. Decision makers benefit from public comments and ideas while there is still time to suggest and discuss alternatives, and it gives the public the opportunity to influence the decision-making process.

One strategy for meaningful engagement is to approach differing viewpoints between you and the community in a non-traditional fashion. Conflict often presents an opportunity to become aware of community priorities. Identify and learn from past practices that have resulted in disagreements or misunderstandings between EJ populations and your organization. Challenges will often arise when transit agencies and planning "experts" tell a minority or low-income community what is best for it. Instead, try carefully listening to the community's concerns. Often times, they support the specific project proposed, but are concerned about other issues such as service reliability or safety. Do not take a defensive posture. Acknowledge the short-comings of your transit operations or the plan. Most importantly, be honest about the community concerns you can address and those you cannot. Too often, conflicts surrounding a transit project or changes in service stem from longstanding trust issues between the community and the transit operator. *Remember: Building trust and confidence in your transit system will not occur overnight.*

You develop trust from these meetings by promptly following through on commitments made during meetings. It's helpful to acknowledge the contribution of the public in the decision-making process and explain the reasons for the decision.

2. Digital media

As a result of technological advances, there are many new and very cost-effective methods for communicating with the public that go well beyond posting legal notices and documents to your website. You can use digital media to engage people not just during public meetings or business hours, but at any time of the night or day. These tools can be used to reach out to people whose schedules do not allow them to attend meetings, to those who are intimidated or put off by large government-sponsored meetings or hearings, and to those who prefer to deliver their comments in writing rather than in person. Also, consider leveraging digital communications that can be used on personal mobile devices such as mobile phones or smartphones. While not all members of EJ populations have

convenient access to a computer, researchers have identified high rates of mobile phone and smartphone use amongst EJ populations. Thus, the use of "blast" public engagement information via text messages can be an effective way to reach your target audience.

Social media (*e.g.,* YouTube, Twitter, Facebook) can also be an effective tool for creating a forum for public dialogue. Social media can be accessed on mobile devices, as well as on laptops, desktops, and some video game consoles and televisions. This level of accessibility makes social media ideal for broadcasting information and questions, and generating comments, virtual conversations, increased visibility, and excitement (especially when a posting "goes viral"). Consider recording in audio and visual formats presentations about your transportation plan or project and posting the digital file not only on your website but on YouTube, iTunes, and other outlets.

Another way to incorporate new voices and ideas into the transportation planning process is through crowdsourcing, a form of distributed problem solving. This technology allows community members to contribute to the design of something like a bus stop or a transit center. Transportation plans and projects can be discussed over longer periods of time via Web-based discussion forums including webinars, webcasts, wikis, and online dialogues. These platforms create structured, moderated opportunities to engage in two-way communication, from any location at any time of day. Interactive and collaborative online technologies are becoming increasingly accessible and affordable to the public at large, including EJ populations.

3. Direct Mail Campaigns

You may want to consider developing shorter information pieces, such as fliers or handbills that can be distributed by direct mail, or at bus stops, rail stations, community events, or other places where large numbers of people gather. By forming partnerships with local businesses or community-based organizations, you may be able to distribute written materials through direct mail campaigns, utility bills, and school bulletins, and at other key locations. These organizations can also help you develop a list of members or organizations from the EJ community.

4. Community Led Events

You can also cast a wider net by creating public engagement opportunities for groups. Effective techniques in this realm include hosting a table or booth at a community event or piggybacking an engagement effort onto a regularly-scheduled community meeting. It can also be productive to conduct discussions including focus groups and roundtables; many agencies offer modest incentives (*e.g.,* stipends, refreshments, child care, transit passes) to

those who attend. Many transit operators and planning agencies have found that these adjunct approaches can increase the ability of EJ populations to participate in activities.

5. Partnerships with Community-Based Organizations and Leaders

We recommend that your outreach strategy include building relationships with community-based organizations who serve underrepresented populations. You can partner with community-based organizations to hold meetings, facilitate discussions, and work with the leaders of these groups to obtain feedback on your public engagement plan. Consider how you can combine forces and resources with agencies that share a mission to interact with specific populations. Community leaders are ideally positioned to champion the public engagement process and disseminate information to their constituents and members during the course of their day-to-day activities.

Encourage your staff to become familiar with local environmental justice networks and environmental justice organizations at the local, regional, state, and national levels. It can also be effective for you to partner with educational institutions including elementary and secondary schools, community colleges, and universities that traditionally have served minority or low-income populations. Staff at these institutions can often provide access to communities, neighborhoods, and groups.

You may choose to create a Community Advisory Council (CAC) or a task force that focuses on a specific project or on the needs of specific populations (low-income, minority, and/or transit dependent persons). Transit providers often appoint one or more members of EJ-focused organizations to their transportation planning board. Significant public outreach is encouraged to ensure the communities are well represented on the committee. However, we do not recommend that you rely on a CAC or transportation planning board as the sole method for engaging EJ populations because members may not represent the diverse viewpoints of the EJ community.

Community outreach coordinators who have extensive knowledge of the EJ populations you are targeting, relationships with community leaders within that community, and the

cultural and linguistic competency may be helpful when engaging EJ communities in your planning or project management team. These outreach practitioners have a rich understanding of ways to effectively communicate with and build relationships with EJ populations, which often enhances trust and rapport.

By engaging community leaders, community advocates, and community advisory councils, you will be better able to develop strategies that not only make your traditional public engagement activities more effective, but also help you develop other non-traditional methods for engaging the community in your transportation planning and project implementation activities. These traditional public outreach methods are important, but should not be used exclusively. Rather, we recommend that you strive to develop a robust public outreach strategy that engages all members of the community, including members of EJ populations.

F. Summary

No single tool or technique can create effective interaction between the public and decision makers; each transit operator, State DOT, or MPO will achieve this goal differently, depending on the preferences of its decision makers and on its organizational structure, community history, public engagement culture, and demographic characteristics.

A robust public engagement program that meets the particular needs of the community relative to the plan, project, or decision under consideration is important. We recognize that you may not be able to resolve every issue or concern raised by the EJ community or that every need or request can be met. However, we recommend that you work diligently to engage in a meaningful public dialogue with the EJ populations impacted by your plan, project, or decision by listening to what they have to say, respond to their comments and concerns, and incorporate their comments into the transportation process where practicable.

Engaging EJ populations in the decision-making process should not be regarded as "extra" or "special" effort; rather, public engagement of underrepresented groups such as EJ populations is the cornerstone to an inclusive and effective public engagement process.

Chapter IV
Integrating Principles of Environmental Justice in Transportation Planning and Service Delivery

This chapter will provide you with guidance on incorporating EJ principles into Statewide, metropolitan and local planning processes.[11] As recognized in EO 12898, the DOT Order, and the statutory and regulatory framework governing transportation planning, the mobility needs of EJ populations are an important consideration in the planning process.

Transportation planning plays a fundamental role in the state, region or community's vision for its future. It includes a comprehensive consideration of possible strategies; an evaluation process that encompasses diverse viewpoints; the collaborative participation of relevant transportation-related agencies and organizations; and open, timely, and meaningful public engagement.

A. What Is the Transportation Planning Process?

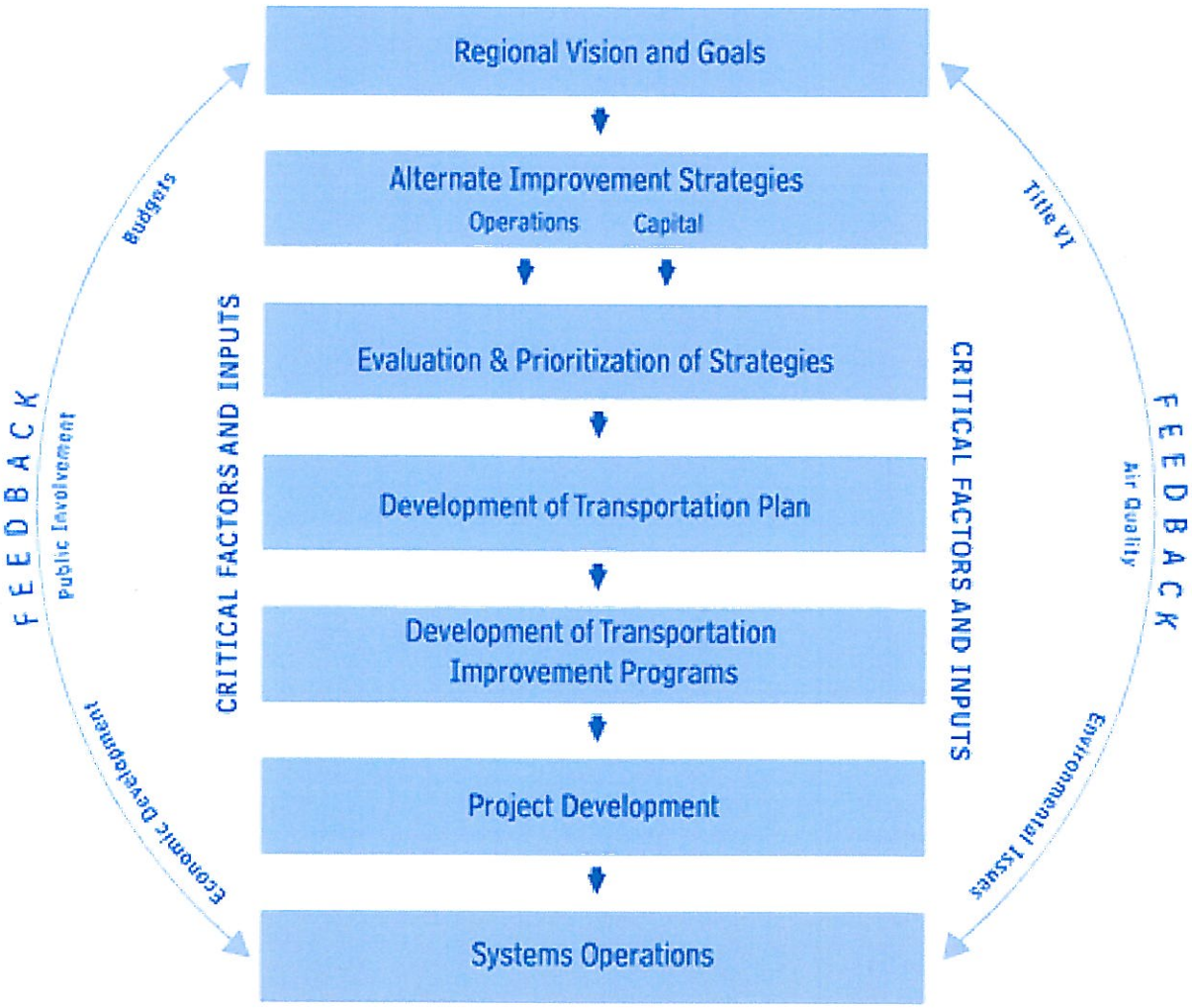
Transportation planning is a cooperative process designed to foster engagement with all users of the system, such as the business community, community groups, environmental organizations, the traveling public, freight operators, and the general public, through a proactive public participation process conducted by the Metropolitan Planning Organization (MPO), state Department of Transportation (state DOT), and transit operators. The figure below illustrates the transportation planning process.

Transportation planning includes a number of steps:

- Monitoring existing conditions;
- Forecasting future population and employment growth, including assessing projected land uses in the region and identifying major growth corridors;
- Identifying current and projected future transportation problems and needs and analyzing, through detailed planning studies, various transportation improvement strategies to address those needs;
- Developing long-range plans and short-range programs of alternative capital improvement and operational strategies for moving people and goods;

[11] This chapter assumes the reader has a basic understanding of Federal law related to transportation planning requirements. For more information on joint FTA/FHWA planning processes, please see FTA's website: www.fta.dot.gov.

- Estimating the impact of recommended future improvements to the transportation system on the environment, including air quality; and
- Developing a financial plan for securing sufficient revenues to cover the costs of implementing strategies.



Federal law requires transportation planning processes at the Statewide level, managed by State DOTs; and in Census-defined urbanized areas, planning processes are managed by Metropolitan Planning Organizations (MPOs). They are a primary means by which State and local officials work with all communities, stakeholders, interested parties, and transit providers to draft long range transportation plans—covering a 20 or more year time frame – and establish investment priorities for projects and programs in those plans through development of short range, four-year transportation improvement programs (TIPs and STIPs). Compliance with this planning process is a necessary first step in establishing eligibility for future Federal funds.

FTA and FHWA have adopted joint regulations (*see* 23 CFR part 450) to implement the statewide and metropolitan planning provisions in the Federal transportation statutes. These regulations detail a process of collaborative transportation decision-making led by State DOTs and MPOs, which incorporates the participation of the public and other stakeholders. Agencies leading these planning activities specifically address transit needs and issues as part of the larger multimodal scope of these plans. Likewise, transit agencies need to ensure that they are early and active participants in these state and metropolitan led efforts, including provision of data and other information that define current and future transit needs. Essential to all is the meaningful engagement of the community, including members of EJ populations as a part of the planning process. Through effective public engagement you are able to identify and understand the needs of the community as a whole, and incorporate those needs into your transportation plans.

In addition to the required Statewide and metropolitan planning process, transit providers and other local entities frequently engage in planning activities, and may want to consider the strategies outlined in this chapter in order to address EJ principles.

B. Planning Tools for Residential Demographic Profiles

Central to effective transportation planning is accurate information regarding the populations that will either use, or be affected by, the transportation projects and programs included in the statewide and metropolitan transportation plans. Chapter II of this Circular describes how to complete a residential demographic profile, including the types of data you collect and analyze to ensure minority and low-income populations are appropriately identified. A demographic profile of the community or communities within the "planning impact area" is essential to create an effective public engagement strategy, as discussed in Chapter III of this Circular. Note that the "planning impact area" can range dramatically from the entire boundary of the subject state or metropolitan region, to the more constrained sphere of a particular project. Once you have gathered data through the demographic profile, different techniques and tools can be brought to bear to manage and analyze the demographic data required for various plans, and elements of plans.

Tools such as GIS and Census data are described in Chapter II of this Circular. Two additional informational resources will soon be available from the Census Bureau that can support more detailed evaluation of the travel needs of EJ populations and the available options: Census Transportation Planning Package (CTPP) and Longitudinal Employer and Household Dynamics (LEHD).[12] The CTPP presents results from the ACS in a series of tables describing worker characteristics, work place characteristics, and commuter travel

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[12] LEHD home page is located at http://lehd.did.Census.gov/led. Also available is the companion tool, OnTheMap, at http://lehdmap.did.Census.gov.

data; all at small area units of geography specified by MPOs and States. These data will permit a comparative assessment of accessibility, travel times, travel mode usage, and other travel attributes across EJ and non-EJ populations. The LEHD uses modern statistical and computing techniques to combine Federal and State administrative data on employers and employees with core Census Bureau data. Together, these data may provide a useful picture of travel behavior, flows, and mode choice.

Again, states, MPOs and transit grantees are urged to review the FTA/FHWA joint planning regulations and related technical assistance provided on the agencies' respective websites.

C. Strategies for Public Engagement for Planning Activities

Once you have determined who lives in the relevant areas related to projects and activities addressed in the state or metropolitan plan, and the residential locations of EJ populations, you are in a position to develop and implement a strategy for engaging EJ populations at the earliest stages of planning. Those leading the planning effort, whether they be states, MPOs, or transit grantees, should provide meaningful and frequent opportunities for community members and decision makers to voice future visions of their communities. Public engagement strategies, including non-traditional methods for engaging EJ populations, are discussed in more detail in Chapter III of this Circular.

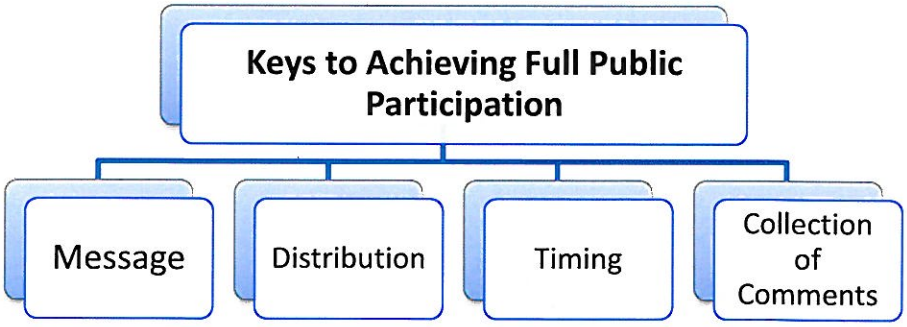
As you develop your public engagement strategy, you should be mindful of requirements of the joint FTA/FHWA planning regulations, which provide greater detail and definition for public engagement. The statutory and regulatory framework creates a proactive program of engagement, interaction, and accountability involving decision makers, interested parties, and the public, including EJ populations. FTA/FHWA joint planning regulations require you to seek out and consider the needs of those traditionally underserved by existing transportation systems, such as low-income and minority households, who may face challenges accessing employment and other services.

For planning purposes, it is important to engage EJ populations in a dialogue focused on their accessibility and mobility needs, with a focus on both immediate and long term issues. These needs may be matched with both a policy framework to address them alongside other issues in the plan, and a priority list of investments for consideration in metropolitan and statewide transportation plan recommendations. To the extent that EJ populations identify transit investments among their needs and priorities, transit agencies providing those services must be actively engaged throughout the overall planning process to help articulate those needs to states and MPOs.

D. Strategies to Achieve Full Public Participation for Planning Activities

In developing your plan, we recommend that statewide, metropolitan and local transportation planning practitioners consider the following types of questions before embarking on an outreach program targeted to EJ populations:

- What messages and information will you provide to spark public interest and engagement at the planning stage before project details and spending plans are established?
- Through what means and in what manner will you distribute this information?
- At what stages in the planning process will you engage in outreach and information dissemination?
- How will transportation decision makers learn of issues that are of particular concern to EJ populations?
- How will you use input from the public, including EJ populations, in the planning process, so that their input influences transportation investment decisions?
- How will you evaluate the effectiveness of the public engagement process, including its success in reaching EJ populations?
- Are there barriers to the public engagement process to limited English proficient populations, people with disabilities, etc.? How will you avoid or mitigate those barriers?



Your public engagement strategies should be flexible and robust enough to solicit meaningful input from EJ populations on transportation needs and approaches to address those key elements in the planning process. This can be accomplished through the following:

- Identification of goals and visions of the future across EJ and non-EJ populations, including the role of transportation in achieving those visions as the basis of State DOT, MPO, and transit provider development of regional transportation goals and policies;
- Discussion of the extent and quality of current transportation options for serving current and future mobility needs of EJ populations, including articulation of specific issues, problems, and concerns with current facilities and services;
- Identification of recommended future projects and strategies for addressing these needs, along with the implementation priorities in the long-range plan;
- Provisions for ongoing engagement of communities in monitoring the implementation of recommended projects and strategies, re-evaluating their needs, and tracking emerging demographic and development shifts in order to ensure future populations are engaged.

E. Future Goals and Visions

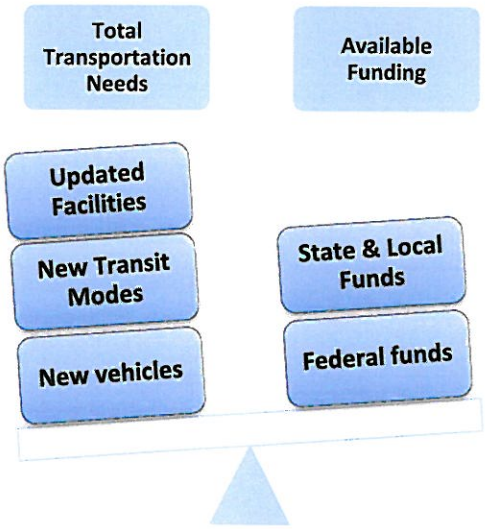
Fundamental to the planning process at all levels is the development of a vision for future transportation. In developing that vision, we recommend that you engage EJ populations on mobility, accessibility, community environment, and any other goals that help to identify unmet needs and prepare options for addressing those needs. We recommend that you consider capturing the EJ population's goals and visions, keeping in mind that these are fluid concepts and can change over time.

The visioning process typically will include broad community goals, and how transportation programs and projects help or hinder achievement of those goals. For example, preserving affordable housing may be a key focus for EJ communities, and this preservation may be challenged when major capital investments are made in transportation access and facilities. Similarly, State or regional development policies supporting improved jobs and housing can inform the transportation dialogue at the goals stage and prompt decision makers to increase their support for shorter distance, community-based travel choices, including viable options for those who do not own a car. In all, understanding the future visions of communities, from the perspective of both EJ

populations and non-EJ populations, will provide an important insight into the transportation issues that you may want to address in the planning process.

F. Transportation Needs and Recommended Projects

Goals and visions do not serve as stand-alone exercises – they serve as a guide to the identification of future transportation needs in the planning process, and how those needs might be addressed with current and future resources. State and metropolitan plans are "financially constrained," which means important choices must be made among the many demands to maintain and enhance the transportation system. Transportation planning processes seek to identify and respond to the unmet accessibility and mobility needs of all communities, with general parity across EJ and non-EJ populations. Special studies, such as those performed in support of the local coordinated public transit-human service transportation plan, may provide further insight into the transportation needs of EJ populations and the most appropriate strategies for addressing those needs.



Given the inherent competition for limited resources within a financially constrained plan, transit providers may want to provide any travel and demographic surveys or other studies that they have conducted to State and metropolitan planners to incorporate into the planning process to better inform the transit elements of the multi-modal plans. It is not unusual for transit providers to survey their customers regarding the usage of their systems, the demographic characteristics of users, and patterns of customer comments on unmet needs and overall satisfaction with services. With that in mind, transit providers may want to gather information useful for these larger state and metropolitan planning processes when they collect data, thereby enabling the survey and study efforts to leverage each other's value.

While you strive to reflect the needs of all communities proportionately by projects and strategies within the 20-year horizon of the long-range plan, you should also consider the needs of EJ populations when setting priorities of projects contained in the plan, as reflected by the projects programmed in the TIP or STIP. As with the long-range planning process, selection of projects for the TIP or STIP also requires public engagement and comment.

G. Current Operations, Management, and Maintenance

Environmental justice requires that you engage EJ populations to obtain their feedback on the need for new or expanded transit services, as well as improvements to how existing facilities and service are being operated and maintained – and importantly, this is not limited to Statewide or MPO long-range planning. Transit providers routinely engage in local service and budget planning efforts – led by themselves or others – where current and future transit services are under review. We recommend that transit providers planning for future service operations engage EJ populations, especially when considering possible reductions or restructuring of transit service.

You may want to consider the following questions to guide the discussion with the public to inform Statewide, metropolitan and local planning officials on how well current operation, management, and maintenance of facilities and services serve the needs of communities, with particular attention to the parity between EJ and non-EJ populations.

- Are transportation facilities and systems maintained to an adequate and equivalent state of good repair in EJ and non-EJ areas?
- Are facilities and services operated to an equivalent degree of safety and reliability in EJ areas as compared with non-EJ areas?
- Is accessibility to key employment, medical, educational, and other opportunities at equivalent levels for EJ and non-EJ populations?
- Are newer vehicles placed on routes based on ridership, age of vehicles being replaced, and other neutral criteria?
- Have you considered EJ concerns when siting maintenance or bus storage facilities?

Of particular note at the local level, transit providers must consider whether proposed service or fare changes will be disproportionately borne by EJ populations. This analysis is described in more detail in FTA's Title VI Circular, which outlines requirements for a "service equity analysis" and a "fare equity analysis" to ensure these service changes do not result in a disparate impact on the basis of race, color, or national origin.

H. Dynamic Nature of Planning and Public Engagement

Your responsibilities to engage EJ populations do not end with the completion of a long-range plan, a short-range TIP or STIP, or a local plan. Rather, we recommend that you maintain a regular and open dialogue with EJ populations as you monitor the effectiveness of the plan and identify future trends in transportation for future long-range plans, TIPs, STIPs, and local plans. We recommend that your planning process provide for the

continued monitoring and surveying of the use of transportation facilities, the demographic characteristics of transit customers, the performance of the systems, and how patterns of exceptional and inferior performance are experienced by customers.

Chapter V
Incorporating Environmental Justice Principles into the NEPA Process

Environmental justice should be considered and addressed in all NEPA decision-making and appropriately documented in Environmental Impact Statements, Environmental Assessments, or Categorical Exclusions. NEPA requires Federal agencies to consider the environmental effects of projects proposed for Federal funding if there is a potential for significant environmental effects. Agencies must consider whether a Federally funded project will have an EJ impact regardless of the NEPA class of action. While most CE's may not require extensive EJ analysis if any, the project sponsor will have to do an early assessment to verify whether or not further EJ analysis is needed. Thus, incorporation of environmental justice principles in your NEPA review is not a new responsibility, but something you already do through basic compliance with NEPA.[13]

Executive Order 12898 and the accompanying Presidential Memorandum call for specific actions to be directed in NEPA-related activities. They include:

- Analyzing environmental effects, including human health, economic, and social effects on minority populations and low-income populations when such analysis is required by NEPA;
- Ensuring that mitigation measures outlined or analyzed in EA's, EIS's, and ROD's, whenever feasible, address disproportionately high and adverse environmental effects or proposed actions on minority populations and low-income populations; and
- Providing opportunities for community input in the NEPA process, including identifying potential effects and mitigation measures in consultation with affected communities and improving accessibility to public meetings, official documents, and notices to affected communities.

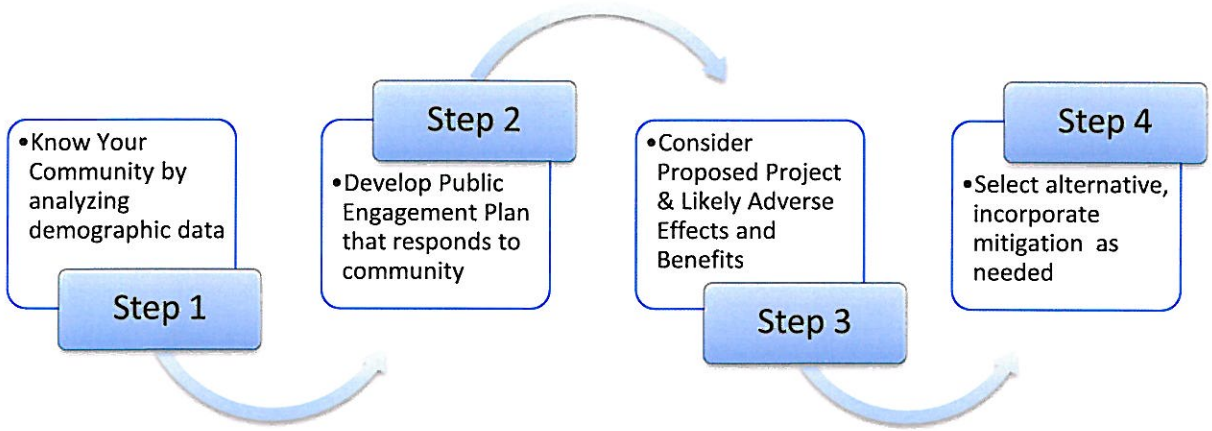
FTA's guidance for incorporating principles of environmental justice into the NEPA process is intended to be consistent with the definitions and guidance issued by the Council on Environmental Quality (CEQ) and the U.S. Environmental Protection Agency (EPA). (*See,* DOT Order 5610.2(a) at ¶4.) The general framework for implementing NEPA is presented in regulations (40 CFR part 1500 et seq.) promulgated by CEQ. In addition, FTA and FHWA

[13] This chapter assumes that the reader has a basic understanding of NEPA and the FTA/FHWA regulations implementing NEPA, 23 CFR part 771.

have issued joint regulations (*see* 23 CFR part 771) and related procedures that describe the process for developing documents for an environmental review under NEPA.

A. Adapting Your EJ Analysis for NEPA.

In Chapter II, we set forth the process for undertaking an EJ analysis as follows:



This analysis is easily adapted to the analysis required under NEPA and its implementing regulations for assessing the environmental impacts that may result from a government action. Environmental review is required for all Federally-funded projects and includes:

- Reviewing important adverse effects of the project to determine whether those adverse effects are significant;
- Determining whether adverse effects can be avoided, minimized, or mitigated; and,
- Assessing the Project's benefits versus its burdens on the environment.

For FTA-funded projects, NEPA begins when you notify your Regional Office of a proposed project and provide information on the proposed project including a project description, a summary of prior planning work on the project, the project's general purpose and need or a general statement of need, a graphic showing the location of the proposed project, its potential effects on the environment and human health, and, to the extent available and applicable to the project, its proposed termini, station locations and sizes, the maintenance facility (existing or proposed), and other project features. With this information, FTA makes a determination as to the class of NEPA action, *i.e.*, whether it is an Environmental Impact Statement (EIS), Environmental Assessment (EA) or Categorical Exclusion (CE). Further guidance on each classification is contained in 23 CFR part 771.

In this Chapter, we provide recommended strategies for incorporating environmental justice into your project reviews under NEPA. CEQ regulations, and FTA/FHWA joint regulations have certain specific requirements for public engagement, including comment periods and public hearings, dissemination of information, and responding to public comments. As discussed in Chapter III, you should not view these requirements as the only means for public engagement; rather, you should develop a robust public engagement strategy that is designed to engage all segments of the community including members of EJ populations.

Additionally, the CEQ regulation and the FTA/FHWA joint NEPA regulation emphasize the importance of making the NEPA process more useful to decision makers and the public by reducing paperwork and the accumulation of extraneous background data and emphasizing real environmental issues and alternatives. The Plain Writing Act of 2010 states that Federal agencies shall write "clear government communications that the public can understand and use." Documents should be concise, clear and to the point and shall focus on the issues meaningful to a decision. It is important to use plain language and avoid excessive technical language.

EJ populations, as well as the larger general public, will be far more meaningfully engaged in the NEPA process if concise and readable documents are provided. Abbreviated executive summaries and handouts are helpful for distributing relevant project evaluation information to the public. Involving the public, including EJ populations, in the NEPA process at the earliest stages allows them to understand and comment on the proposed project in a meaningful way.

Your environmental review under NEPA should document the extent to which potential EJ issues have been identified and addressed. As with any issue evaluated as part of NEPA, the parameters of the EJ analysis will depend on the nature of the project and its potential environmental impacts. As a part of your NEPA analysis, you will assess whether there will be potential human or natural environmental effects. If preliminary analysis indicates that there is a potential for environmental effects, then you will need to conduct a more detailed assessment to estimate the level of those effects. In undertaking this assessment, you also will need to consider whether the potential environmental effects will have a disproportionately high and adverse effect on EJ populations.

B. Define the Project Area and Identify EJ Populations.

Once you have identified a project that will require review under NEPA, then you need to define the unit of geographic analysis impacted by the proposed project. The boundaries of your unit of geographic analysis should be large enough to include the area likely to experience adverse effects, but not so large as to artificially dilute the minority population

and/or low-income population. Similarly, you should not constrict the boundaries to artificially inflate EJ populations. Establishing the appropriate geographic area surrounding the project should be done early in the process, *i.e.*, around the time planning for scoping begins for environmental impact statements and planning begins for environmental assessments.

For example, when considering the impacts of a new light rail line, it may be appropriate to establish the area affected by the project to include the entire alignment, which would then be compared with the transit provider's service area. However, when considering specific elements of a project, such as power stations, maintenance yards, stations, or park and rides, may have sub-units of geographic analysis to address the unique environmental impacts from these project elements. Moreover, you need to be particularly sensitive to diluting EJ populations. For example, although it may be reasonable when analyzing the impacts of the entire rail line to use a geographic unit of a half-mile on either side of the alignment, a half-mile radius around a maintenance yard for the unit of geographic analysis may be too large, given that those persons located adjacent to the maintenance yard may experience a more direct impact from the maintenance yard than those persons farther away from the yard.

Once you have identified the impact area, you will need to undertake an analysis of the demographic characteristics of the persons located within the impact area (*e.g.*, residential or business, race, age, income levels, etc.). It is at this point in the process when you will analyze whether the project impact area contains EJ populations.

In Chapter II, we discussed the need to know your community through gathering relevant demographic data from reliable sources, including U.S. Census data and locally gathered data. This data is then used to identify EJ populations within your proposed project area and the larger comparison geographic area. The 2010 Census provides information on minority populations to the Census Block level – the smallest geographic area. American Community Survey (ACS) data is available for 1-year, 3-year, and 5-year estimates. Although this data is not as reliable as Census data, it can be useful when analyzing the demographics in the proposed project area.

C. Identify Adverse Environmental Effects on EJ Populations

The primary purpose of a NEPA review document is to identify the important environmental effects of the project both during and after construction and to determine whether those environmental effects are significant. DOT Order 5610.2(a) defines a number of key terms used in your EJ analysis, including "adverse effect" and "disproportionately high and adverse effect."

All reasonably foreseeable social, economic, and environmental effects on minority populations and low-income populations must be identified and addressed as part of your NEPA review: As defined in the Appendix of the DOT Order, adverse effects include, but are not limited to:

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

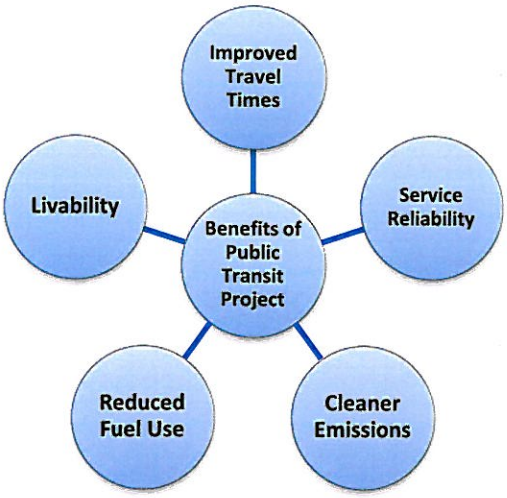
The DOT Order also defines "disproportionately high and adverse effect on human health or the environment," to include:

> *"an adverse effect that:*
> *(a) is predominantly borne by a minority population and/or a low-income population, or*
> *(b) 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."

These definitions must be a part of your EJ analysis in your NEPA documentation. Your environmental review documents should contain a discussion of the impacts on the community as a whole, as well as whether there will be disproportionately high and adverse effects on EJ populations. Your EJ analysis looks at identified subsets of your community to determine if any of the impacts identified result in a disproportionately high and adverse human health or environmental effect on an EJ population.

Determinations of disproportionately high and adverse effects include taking into consideration mitigation and enhancement measures that will be incorporated into the project. Additionally, your analysis also should include consideration of offsetting benefits to the affected minority and low-income populations. This is particularly important for public transit projects because they often involve both adverse effects (such as short-term construction impacts, increases in bus traffic, etc.) and positive benefits (such as increased transportation options, improved connectivity, or overall improvement in air quality). Your NEPA EJ analysis will include a review of the totality of the circumstances before you determine whether there will be disproportionately high and adverse effects on EJ populations.



Most transit projects are undertaken because they will provide a number of benefits to the community. Public transportation project benefits may include, but are not limited to: increased access to jobs, community facilities and services; access to additional travel modes; improved travel times or service reliability; enhanced economic development potential; improvements in air quality; an increase in the livability and sustainability of neighborhoods; and a reduction in transportation costs. Therefore, as a part of the environmental review process, you should discuss all positive effects that would affect the community as a whole.

As with the discussion of adverse effects, your discussion of benefits should also consider project benefits accruing specifically to EJ populations. Identifying benefits is important to any NEPA review because it provides the framework in which the Federal agency will

consider adverse impacts and proposed mitigation measures before issuing its final agency action.

The questions below may be helpful as you determine whether your proposed project results in any disproportionately high and adverse effects:

- Will the project result in "adverse effects?"
- Will the project result in adverse effects predominately borne by an EJ population?
- Will the project result in adverse effects that would be suffered by the EJ population that would be appreciably more severe or greater in magnitude than the adverse effects that would be suffered by the non-EJ population?
- Does the project propose mitigation and/or enhancement measures?
- Are there project benefits that would accrue to the EJ population as compared to non-EJ populations?
- Does the project affect a resource that is especially important to an EJ population? For example, does the project affect a resource that serves an especially important social, religious, or cultural function for an EJ population?

Through consideration of these questions you will be more prepared to identify those adverse effects that are likely to be disproportionately high and adverse. Your environmental review documents should contain a discussion of the impacts on the community as a whole, as well as whether there will be disproportionately high and adverse effects on EJ populations. Your EJ analysis looks at identified subsets of your community to determine if any of the impacts identified result in a disproportionately high and adverse human health or environmental effect on an EJ population.

In addition, Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, and national origin. Accordingly, a program, policy, or activity that will result in a disparate impact as to one of these protected classes may be carried out only if: (1) the recipient can demonstrate a substantial legitimate justification for the program, policy or activity; and (2) there are no comparably effective alternative practices that would result in less disparate impacts. This analysis is discussed in more detail in FTA's Title VI Circular.

If, after considering the adverse effects and potential benefits of the proposed project, the proposed project will have a disproportionately high and adverse effect on minority populations or low-income populations, then you should consider whether further

mitigation measures or alternatives are practicable before moving forward with the activity. "In determining whether a mitigation measure or an alternative is 'practicable,' the social, economic (including costs) and environmental effects of avoiding or mitigating the adverse effects will be taken into account."[14]

If you cannot avoid, minimize, or mitigate the adverse effect, your NEPA analysis should contain a discussion of why the impacts of any alternatives could not be avoided or minimized. You should specifically describe potential mitigation for those effects and how the impacted populations were involved in the decision process. Finally, you should include a discussion of the remaining disproportionately high and adverse human health or environmental effects on EJ populations, if any, and why further mitigation is not proposed. While considering adverse effects and possible mitigation, you may also want to consider whether there are any enhancements or betterments that you can provide the community in lieu of mitigation. For example, a community may be more accepting of an unavoidable adverse effect of a new rail line if the project includes features such as better lighting, more trees, and community gathering areas.

D. Public Engagement and NEPA

Both the CEQ NEPA regulation at 40 CFR 1501.7 and the FTA/FHWA regulation at 23 CFR 771.105(c) and 771.111, emphasize the need for public participation during the NEPA process. Special considerations may be necessary to effectively include EJ populations in the NEPA public participation process.

The CEQ regulation and the FTA/FHWA joint NEPA regulation support ongoing public outreach activities throughout the NEPA process that are helpful for keeping stakeholders, agencies and the general public involved. The regulations require that a 45-day public comment period on a DEIS and a 30-day public comment period for an EA be provided. Also, conducting a minimum of one public hearing is required for an EIS. Though not required for an EA, a public meeting is an effective means for encouraging public input in the process. Additional public outreach activities beyond the minimum requirements are important for encouraging the public, including EJ populations, to be engaged throughout the NEPA process.

Chapter III of this Circular provides a discussion of effective strategies for engaging members of the public who may be interested in or affected by the proposed project. It is important to adapt your strategies for public engagement to fit the needs of community groups within your project area. The goal with any public engagement strategy is to

[14] DOT Order, section 8.c.

encourage and facilitate the inclusion of all members of the public in the decision-making process.

The FTA/FHWA regulation provides that recipients can achieve public participation on proposed projects by providing public meetings and seeking input from the public through the scoping process for the environmental review process of projects evaluated with an environmental impact statement and for projects evaluated with an environmental assessment for which FTA chooses to do scoping. Depending on the classification of the NEPA review, Federal transit law and FTA regulations provide other specific public participation activities for the environmental review process. In addition, the regulations provide for formal notification processes, such as publishing a notice in the *Federal Register* or local newspapers of record. As you develop your public participation strategy, you should keep in mind that the regulations provide the minimum requirements for public engagement under NEPA. You are encouraged to use additional public engagement if needed to reach specific segments of the public that would like to participate or will be affected by the project, such as EJ populations.

We recommend that your public engagement strategy involve EJ populations throughout the process. Consider inviting members of EJ communities to become involved during the planning phase and continue their involvement into the NEPA scoping through mitigation to ensure that their concerns are incorporated into the project and to build ongoing trust.

E. Environmental Impact Statements and Environmental Assessments

An EIS is required for major Federal actions significantly affecting the quality of the human environment. Proposed actions in which the significance of the environmental impact is not clearly established are analyzed in EAs. Where the significance of the impacts is uncertain, proposed actions are analyzed in EAs. EAs are important analytical tools, intended to aid in the determination of significance of the effects of a proposed action. Compared to EISs, there are fewer detailed regulatory requirements for EAs as to content, format, or public participation. The scale of EAs usually depends on the relative significance of the projected impacts.

Public participation and involvement is required throughout the NEPA process, beginning with scoping. However, if you have identified significant EJ populations during the definition and screening stages (pre-scoping activities), you may want to consider engaging EJ populations at this early stage.

Your EIS or EA should include the following components:

- Provide a description of the EJ populations within the study area affected by the project, if any, and a discussion of the method used to identify this population (e.g., analysis of Census data, minority business directories, direct observation, or a public involvement process).
- A discussion of all adverse effects of the project both during and after construction that would affect the identified minority and low-income populations.
- A discussion of all positive effects that would affect the identified minority and low-income populations, such as an improvement in transit service, mobility, or accessibility.
- A description of all mitigation and environmental enhancement actions incorporated into the project to address effects, including, but not limited to, any special features of the relocation program that go beyond the Uniform Relocation Act and address adverse community effects such as separation or cohesion issues; and the replacement of the community resources destroyed by the project.
- A discussion of the remaining effects, if any, and why further mitigation is not proposed.
- For projects that travel through predominantly minority and low-income and predominantly non-minority and non-low-income areas, a comparison of mitigation and environmental enhancement actions that affect predominantly low-income and minority areas with mitigation implemented in predominantly non-minority or non-low-income areas.

We recommend that your EJ analysis includes a discussion of your consideration of the affected community's views on the project and the potential benefits and burdens of the project, and alternatives that have less impact on EJ populations. In selecting the preferred alternative, your NEPA document should include a discussion of the magnitude and distribution of disproportionately high and adverse human health or environmental effects on EJ populations for all reasonable alternatives.

F. Categorical Exclusions

Many transit projects meet the CEQ's definition of categorical exclusions contained in 40 CFR 1508.4. Categorical exclusions are actions that do not individually or cumulatively have a significant environmental effect. Activities classified as a categorical exclusion are projects that:

- Do not induce significant impacts to planned growth or land use for the area;
- Do not require the relocation of significant numbers of people;
- Do not have a significant impact on any natural, cultural, recreational, historic or other resource;
- Do not involve significant air, noise or water quality impacts;
- Do not have significant impacts on travel patterns; or
- Do not otherwise either individually or cumulatively have any significant environmental impacts.

The FTA/FHWA NEPA regulation has identified two types of categorical exclusions: Activities that fall within the listed categorical exclusions set forth in 23 CFR § 771.117(c) and documented categorical exclusions, which are activities set forth in 23 CFR § 771.117(d), and require additional documentation in order to establish that the proposed activity meets the criteria for a categorical exclusion.

Examples of activities listed under 23 CFR § 771.117(c) include, but are not limited to, activities which do not involve or lead directly to construction, such as planning and research activities; ridesharing activities; purchase of vehicles; purchase and installation of maintenance or operating equipment to be located within an existing transit facility and with no significant impacts off the site. Because these activities meet the criteria for a categorical exclusion under CEQ regulations (40 CFR § 1508.4) and therefore will not result in significant environmental effects, we do not usually require any further environmental documentation or review under NEPA.[15] However, if circumstances exist that indicate that further evaluation or analysis based on potential environmental effects on EJ populations, you may be asked by your Regional Office to conduct further evaluation. Often times those circumstances would have already caused FTA to elevate the project to an EA or EIS.

Examples of transit activities listed under documented categorical exclusions (23 CFR § 771.117(d)) include construction of new bus storage and maintenance facilities in areas used predominately for industrial or transportation purposes where such construction is not inconsistent with existing zoning, or certain rehabilitation or reconstruction of existing rail and bus buildings. As a part of your documentation, you will need to consider the potential impacts on members of EJ populations and you will need to provide information to support your EJ analysis. The scope of the documents and analysis required will vary depending on the scope of the proposed project. Your Regional Office will assist you in

[15] This is consistent with the EPA's Final Guidance for Incorporating Environmental Justice Concerns in EPA's NEPA Compliance Analyses (April 1998).

determining what additional documentation or studies may be required before we can determine the classification of the action.

If a proposed activity involves unusual circumstances, such as substantial controversy on environmental grounds or inconsistencies with Federal, State or local laws, the project may need to be evaluated with additional documentation, including possibly an environmental impact statement or an environmental assessment.

APPENDIX

This appendix contains definitions of terms used, explanations of authorities, and complete citations for regulations and other material cited in this Circular.

A. Definitions

Adverse Effect means the totality of significant individual or cumulative human health or environmental effects, including interrelated social and economic effects, which may include, but are not limited to: bodily impairment, infirmity, illness, or death; air, noise, and water pollution and soil contamination; destruction or disruption of man-made or natural resources; destruction or diminution of aesthetic values; destruction or disruption of community cohesion or a community's economic vitality; destruction or disruption of the availability of public and private facilities and services; vibration; adverse employment effects; displacement of persons, businesses, farms, or non-profit organizations; increased traffic congestion, isolation, exclusion or separation of individuals within a given community or from the broader community; and the denial of, reduction in, or significant delay in the receipt of benefits of DOT programs, policies, or activities.

Benefits and Burdens Analysis means an evaluation comparing the impacts likely to be experienced by EJ populations against those likely to be experienced by non-EJ populations and the community as a whole in order to address any disproportionate benefits or burdens between EJ populations and the population at large.

Disproportionately High and Adverse Effect on Minority and Low-income Populations means an adverse effect that:

(2) is predominantly borne by a minority population and/or a low-income population, or

(3) 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.

EJ population means low-income populations and/or minority populations.

Grantee means **Recipient**. See definition for Recipient.

Long-Range Plan means the official Statewide or metropolitan multimodal transportation plan covering a period of no less than 20 years developed through the Statewide or metropolitan transportation planning process.

Low-income means a person whose median household income is at or below the Department of Health and Human Services (HHS) poverty guidelines.[16]

A low-income population means any readily identifiable group of low-income persons who live in geographic proximity, and, if circumstances warrant, geographically dispersed or transient persons who will be similarly affected by a proposed DOT program, policy or activity.

Metropolitan Planning Organization (MPO) means the policy board of an organization created and designated to carry out the metropolitan transportation planning process.

Minority Persons include the following:

(1) American Indian and Alaska Native, which refers to people having origins in any of the original peoples of North and South America (including Central America), and who maintain tribal affiliation or community attachment.

(2) Asian, which refers to people having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent, including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.

(3) Black or African American, which refers to people having origins in any of the Black racial groups of Africa.

(4) Hispanic or Latino, which includes persons of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race.

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[16] You are encouraged to use a locally developed threshold, such as that used for FTA's grant program, or a percentage of median income for the area, provided that the threshold is at least as inclusive as the HHS poverty guidelines. Public Law 112-141 (MAP-21), revises 49 U.S.C. § 5302 to include a definition of "low-income individual" to mean "an individual whose family income is at or below 150 percent of the poverty line, as that term is defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2), including any revision required by that section, for a family of the size involved."

(5) Native Hawaiian or Other Pacific Islander, which refers to people having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

Minority population means any readily identifiable group of minority persons who live in geographic proximity, and, if circumstances warrant, geographically dispersed/transient populations (such as migrant workers or Native Americans) who will be similarly affected by a proposed DOT program, policy or activity.

Programs, Policies, and/or Activities means all projects, programs, policies, and activities that affect human health or the environment, and that are undertaken, funded, or approved by FTA. These include, but are not limited to, permits, licenses, and financial assistance provided by FTA. Interrelated projects within a system may be considered to be a single project, program, policy, or activity for purposes of addressing EJ concerns.

Recipient (aka **Grantee**) means any entity that receives Federal financial assistance from FTA, whether directly or indirectly.

Statewide Transportation Improvement Program (STIP) means a statewide prioritized listing/program of transportation projects covering a period of four years that is consistent with the long-range statewide transportation plan, metropolitan transportation plans, and TIPs, and required for projects to be eligible for funding under title 23, U.S. Code, and chapter 53 of title 49, U.S. Code.

Transit Provider means any entity that operates public transportation services, and includes States, local and regional entities, public and private entities.

Transportation Improvement Program (TIP) means a prioritized listing/program of transportation projects covering a period of four years that is developed and formally adopted by an MPO as part of the metropolitan transportation planning process, consistent with the metropolitan transportation plan, and required for projects to be eligible for funding under title 23, U.S. Code and title 49, U.S. Code Chapter 53.

We means Federal Transit Administration.

You means Recipient (Grantee).

B. Authorities

This Circular builds on existing Orders and Authorities developed since issuance of Executive Order 12898. While this list is not exhaustive, we have included the authorities most relevant to consideration of EJ principles in the transportation context.

Executive Order 12898

Issued on February 11, 1994, EO 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," directs each Federal agency to "make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations." The EO was intended to improve the internal management of the executive branch and not to create legal rights enforceable by a party against the United States, its agencies, its officers, or any person; however, Federal agencies are required to implement the provisions of the EO consistent with, and to the extent permitted by, existing law.

Presidential Memorandum Accompanying EO 12898

The Presidential Memorandum accompanying EO 12898 emphasizes the importance of existing laws, such as Title VI of the Civil Rights Act of 1964 and the National Environmental Policy Act of 1969 (NEPA), that can assist with implementation of the principles of the Executive Order. The Memorandum provides that in accordance with Title VI, "each Federal agency shall ensure that all programs or activities receiving Federal assistance that affect human health or the environment do not directly, or through contractual or other arrangements, use criteria, methods, or practices that discriminate on the basis of race, color, or national origin." With regard to NEPA, the Memorandum provides that, when NEPA requires a Federal agency to analyze "the environmental effects, including human health, economic and social effects, of Federal actions," that the agency analyze "the effects on minority communities and low-income communities." Further, mitigation measures should "address significant and adverse environmental effects of proposed Federal actions on minority communities and low-income communities."

U.S. DOT Order 5610.2(a)

On May 10, 2012, DOT issued Order 5610.2(a), Actions to Address Environmental Justice in Minority Populations and Low-Income Populations 77 FR 27534 (May 2, 2012). This Order updates the Department's original Environmental Justice Order, which was published April 15, 1997. The updated Order reaffirms DOT's commitment to environmental justice and clarifies certain aspects of the original Order, including the definitions of "minority" populations in compliance with the Office of Management and Budget's (OMB) Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity of October 30, 1997. The revisions affirm the importance of considering environmental justice principles

as part of early planning activities in order to avoid disproportionately high and adverse effects. The updated Order maintains the original Order's general framework and procedures and DOT's commitment to promoting the principles of environmental justice in all DOT programs, policies, and activities.

National Environmental Policy Act (NEPA)

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) is the national charter for protection of the environment. NEPA ensures that environmental information on certain major Federal actions is available to public officials and citizens before decisions are made and before actions are taken (40 CFR 1500.1). NEPA directs agencies to:

- identify and assess the reasonable alternatives to proposed actions that will avoid, minimize, or mitigate adverse effects of these actions upon the quality of the human environment (40 CFR 1500.2);
- use all practicable means to restore and enhance the quality of the human environment and avoid, minimize, or mitigate any possible adverse effects of their actions upon the quality of the human environment (40 CFR 1500.2);
- evaluate alternative courses of action and make decisions in the best overall public interest based upon a balanced consideration of the need for safe and efficient transportation; of the social, economic, and environmental impacts of the proposed transportation improvement; and of national, State, and local environmental protection goals (23 CFR 771); and,
- encourage and facilitate public involvement in decisions which affect the quality of the human environment (40 CFR 1500.2).

Executive Order 12898 states that, to the extent practical and appropriate, Federal agencies shall determine whether their programs, policies, and activities have disproportionately high and adverse human health or environmental effects on minority populations and low-income populations. These determinations are generally made at the project level during the NEPA process pursuant to the policy that, "to the fullest extent possible, all environmental investigations, reviews, and consultations be coordinated as a single process, and compliance with all applicable environmental requirements be reflected in the environmental review document required by FTA's NEPA regulation." 23 CFR 771.105(a).

Title VI

Title VI of the Civil Rights Act of 1964 provides 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 subjected to discrimination under any program or activity receiving Federal financial assistance.

As the Presidential Memorandum accompanying EO 12898 stated, in accordance with Title VI, "each Federal agency shall ensure that all programs or activities receiving Federal assistance that affect human health or the environment do not directly, or through contractual or other arrangements, use criteria, methods, or practices that discriminate on the basis of race, color, or national origin."

Joint FHWA/FTA Regulation for Statewide and Metropolitan Planning

FHWA and FTA updated their joint planning regulation in 2007; the regulation can be found at 23 CFR part 450 (adopted at 49 CFR part 613). The regulation requires a continuing, cooperative, and comprehensive planning process, and contains the requirements for public participation during the planning process. In addition, the regulation requires identification and consideration of potential issues for which environmental mitigation may be warranted in both Statewide and metropolitan transportation planning. While not focused on impacts affecting the built environment and EJ populations in particular, these provisions provide for identification and consideration of such potential impacts at the very earliest stage of decision-making – the planning process.

Joint FHWA/FTA NEPA Regulation

The FHWA/FTA joint NEPA regulation is at 23 CFR Part 771 (adopted at 49 CFR part 622). In section 771.105, FTA and FHWA make the following policy statements: Alternative courses of action will be evaluated and decisions will be made in the best overall public interest based upon a balanced consideration of the need for safe and efficient transportation; *of the social, economic, and environmental impacts of the transportation improvement*; and of Federal, State, and local environmental protection goals. Public engagement and a systematic interdisciplinary approach are essential parts of the development process for proposed actions, and measures necessary to mitigate adverse impacts will be incorporated into the action. In considering whether a mitigation measure will be Federally-funded, FHWA and FTA will consider, among other factors, the extent to which the proposed measures would assist in complying with a Federal statute, Executive Order, or Administration regulation or policy. Section 771.111 requires, for FTA projects, public meetings and input from the public through the scoping process for environmental review documents. For documents requiring an EIS, an early opportunity for public engagement in defining the purpose and need for action and the range of alternatives must be provided.

Council on Environmental Quality (CEQ) EJ Guidance

The Council on Environmental Quality developed *Environmental Justice Guidance under the National Environmental Policy Act* in December, 1997. The guidance, as with EO 12898, is intended to assist Federal agencies in improving the internal management of the executive branch with respect to environmental justice under NEPA.

The CEQ guidance includes principles agencies should consider in making the determination of whether an agency action raises environmental justice issues. If an agency action may potentially have an effect on minority populations, low-income populations or Indian tribes, the document recommends the agency develop a strategy for public engagement in the agency's determination of the scope of the NEPA analysis. There is extensive guidance on developing a sound public participation process.

FTA Master Agreement

FTA annually publishes a Master Agreement, which is incorporated by reference and made a part of every grant agreement and cooperative agreement. Section 12.j. of FTA's Master Agreement provides that recipients agree to promote environmental justice by: (1) following and facilitating FTA's compliance with Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 42 U.S.C. § 4321 note, and (2) following the DOT Order addressing environmental justice. The DOT Order is 5610.2(a), 77 FR 27534 (May 10, 2012).

C. References

For more information on the authorities cited above and referenced in other Chapters, we have included the citations, below.

a. Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000d.

b. National Environmental Policy Act of 1969, as amended, 42 U.S.C. Section 4321 *et seq.*

c. Moving Ahead for Progress in the 21st Century (MAP-21), Pub. L. 112-141 (July 6, 2012).

d. U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964," 49 CFR part 21. http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title49/49cfr21_main_02.tpl

e. Joint FHWA/FTA regulations, "Planning Assistance and Standards," 23 CFR part 450 (adopted at 49 CFR part 613). http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title23/23cfr450_main_02.tpl

f. Joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 CFR part 771 (adopted at 49 CFR part 622). http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title23/23cfr771_main_02.tpl

g. Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," Feb. 11, 1994, 59 FR 7629 (Feb. 16, 1994). http://www.archives.gov/Federal-register/executive-orders/pdf/12898.pdf

h. Executive Order 13166, "Improving Access To Services For Persons With Limited English Proficiency," Aug. 11, 2000, 65 FR 50121 (Aug. 16, 2000). http://www.justice.gov/crt/about/cor/Pubs/eolep.php

i. U.S. DOT 2011 implementation report on environmental justice, available at http://www.fhwa.dot.gov/environment/environmental_justice/ej_at_dot/.

j. U.S. DOT Order 5610.2(a) Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 77 FR 27534 (May 10, 2012). http://www.fhwa.dot.gov/environment/environmental_justice/ej_at_dot/order_56102a/.

k. U.S. DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficient (LEP) Persons, 70 FR 74087 (Dec. 14, 2005). https://www.docr.dot.gov/page/dots-lep-guidance

l. CEQ, *Environmental Justice Guidance under the National Environmental Policy Act* (Dec. 1997), available at http://www.fta.dot.gov/documents/Environmental Juscite_guidance_nepa_ceq1297.pdf.

m. FTA Circular 4702.1B, Title VI Requirements and Guidelines for Federal Transit Administration Recipients. http://www.fta.dot.gov/legislation_law/13718.html

n. FTA Master Agreement FTA MA(18), Oct. 1, 2011, available at http://www.fta.dot.gov/documents/18-Master.pdf.