



Speaking With *One* Voice  
Civil Rights Virtual Symposium

# ***HONORING THE PAST, SHAPING THE FUTURE***

**MAY 17-18, 2017**

## **Best Practices for Addressing Title VI in Transportation Projects**



# Your Speakers

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- Moderator – Jon Ocana, Equal Opportunity Specialist, Policy, Education, and Training Division, Departmental Office of Civil Rights
- Presenter – Kevin L. Resler, National Title VI Program Coordinator, Federal Highway Administration Office of Civil Rights
- Presenter – Dawn Sweet, Director, Headquarters Operations Division, Federal Transit Administration Office of Civil Rights
- Presenter – John Lozada, Manager of Federal Programs, Office of Diversity and Civil Rights, Massachusetts Department of Transportation



# Purpose of the Session

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- The goal of this session is to highlight the development and implementation of Title VI best practices.
- Presentation of methods to incorporate Title VI principles early to avoid unnecessary delay and costs.
- Share best practices rooted in wide applicability and maximum benefit to recipients and the public.



# Title VI Program Review Essentials

## 2017 USDOT Virtual Civil Rights Symposium

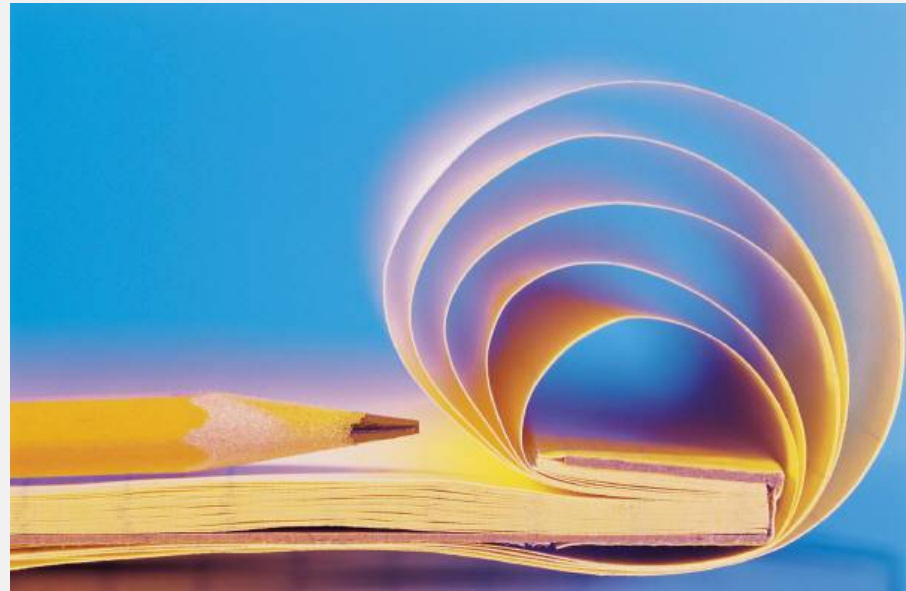
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# Learning Objectives

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1. Understand specific State and Local Requirements.
2. Understand legal theories of discrimination and complaint procedures.
3. Discuss nondiscrimination in practice.





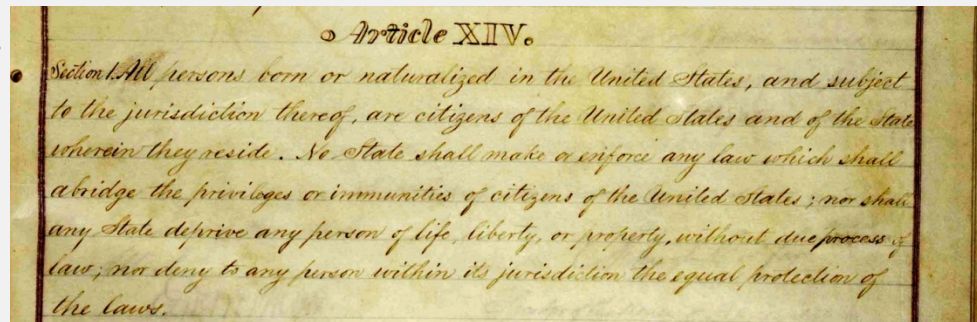
# Title VI Basics

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What is the law?

“No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” Title VI of the Civil Rights Act of 1964; 42

U.S.C. § 2000d, et seq.



# Title VI Basics: Civil Rights Restoration Act of 1987

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- Rejected 1984 Supreme Court decision in Grove City College v. Bell (465 US 555)
- “Program or activity” means all of the operations—any part of which is extended Federal financial assistance—of:
  - a department, agency, special purpose district, or other instrumentality of a State or of a local government; or
  - The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State 42 U.S.C. § 2000d-4a(1).



# Title VI Basics: Case Law

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## Alexander v. Sandoval, 532 U.S. 275 (2001)

- Held the Title VI statute does not provide a private right of action in civil court for disparate impact. The private right of action is only for disparate treatment.
- However, the Court recognized federal agencies may enact disparate impact regulations, which are enforceable by the federal agency. E.g. persons may file a Title VI disparate impact complaint pursuant to USDOT regulations (49 C.F.R. §21.5 (b)(2)), a Letter of Finding may be issued, and enforcement actions taken by the grantor federal agency.





# Title VI Basics: Other Notes

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- Title VI doesn't apply to employment, unless Federal assistance is specifically for employment.
- Cross-cutting laws and protected categories beyond race, color, national origin are part of the FHWA nondiscrimination program under 23 C.F.R. Part 200 but are enforced through their own authorities. E.g. recipients must ensure nondiscrimination for “low income” persons under EJ Executive Order, but individuals cannot file Title VI compliant for only that status.
- Title VI applies to benefits and burdens.



# Title VI Roles and Responsibilities

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- FHWA
  - Provides stewardship and oversight
  - Approves Implementation Plans and conducts process reviews
  - Provide policy and technical assistance training
- State DOTs
  - Perform required actions under 23 C.F.R. Part 200
  - Submit annual Plan, assurances, and Report to FHWA Division
  - Conducts internal and external reviews
  - Process and investigate complaints against subrecipients



# Title VI Roles and Responsibilities: Local Public Agency Recipients

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- Conform to State DOT Implementation Plan, including:
  - Collection and analysis of demographic data to ensure nondiscrimination
  - Complaint procedures
  - Training requirements
  - Limited English Proficiency policies
  - Submit annual assurances to State DOT and use contract inserts
  - Submit reports on demographic data requested from State DOT
- Assist in State DOT external reviews



# Title VI: Key State DOT Requirements

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- Implementation Plans
  - States “shall **annually** submit an **updated** Title VI implementing plan to the Regional Federal Highway Administrator for **approval** or **disapproval**.” 23 CFR §200.9(b)(11).
  - Due by October 1 each Federal Fiscal Year
  - Submitted even if changes are minor
  - Accompanied by signed assurances
- Title VI Coordinator
- Annual internal program area reviews / Data Collection and Analysis. 23 CFR 200.9(b)(4-5).
- Subrecipient Reviews. 23 CFR 200.9(b)(7).



# Title VI: Key State DOT Requirements (cont'd.)

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- Complaint processing and investigation. 23 CFR 200.9(b)(3).
  - See FHWA External Complaint Manual:  
(<http://www.fhwa.dot.gov/civilrights/programs/finalcomplaintmanual110410.cfm>)
- Internal training for State Program Managers. 23 CFR 200.9(b)(9).
- Limited English Proficiency Plan. Executive Order 13166.
- Environmental Justice. Executive Order 12898.

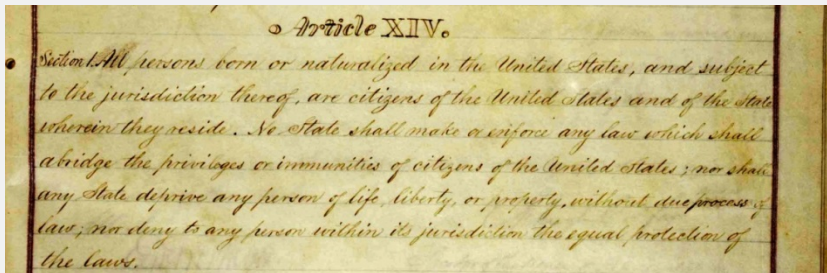




# Legal Theories of Discrimination

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- What is discrimination under Title VI?
  - Disparate Treatment
  - Disparate Impact



“No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, § 1.



# Legal Theories of Discrimination: Disparate Impact

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- Facially neutral procedure or practice;
- Disproportionate impact on protected individuals; and
- A causal connection exists between policy and the impact. Often shown through statistical data.
- In addition, the practice lacks a substantial legitimate justification and a reasonable nondiscriminatory alternative could not be identified.



# Title VI – Ensuring Compliance in Practice: Risk

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## What is the Risk?

If Recipients lack good data, analysis, and review procedures, they can:

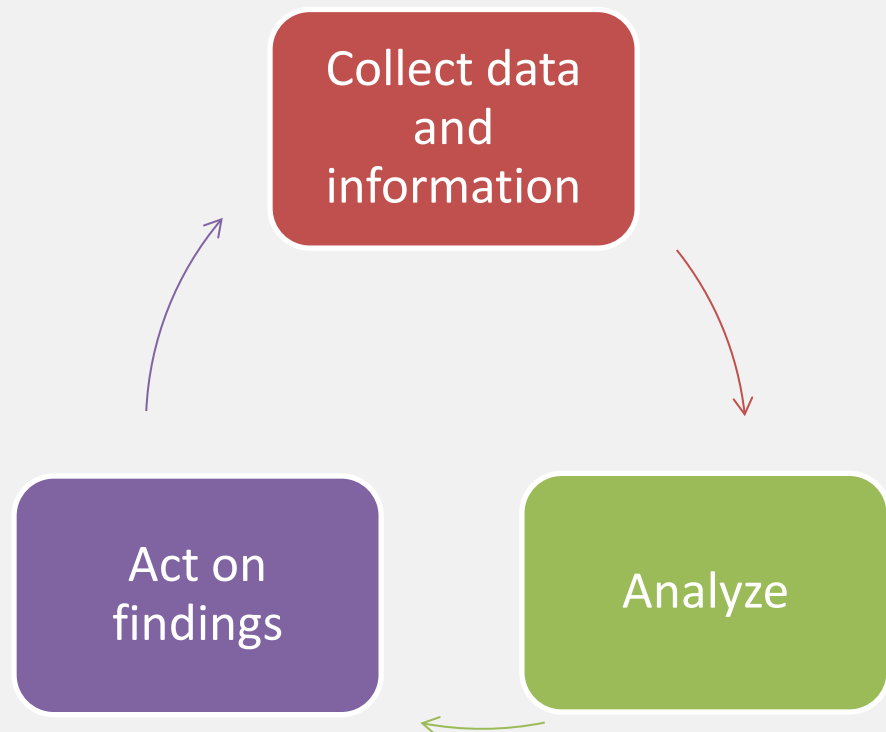
- Adversely impact the public, and
- Will not be prepared to respond to USDOT oversight.



# Title VI – Ensuring Compliance in Practice

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- Civil Rights practitioners must be conversant in project development (planning, NEPA, etc.) and data analysis.
- Checklists and forms are useful to roll up information but must work in conjunction with in-depth reviews.
- “Interdisciplinary” means meeting face-to-face with other disciplines and reviewing material together.



# Title VI – Ensuring Compliance in Practice: Example Review Methods

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- **Threshold or Representation analysis** compares demographics to actual distribution of benefit/burden (e.g. project alternative route selection).
- **Barrier analysis** to test whether practices have a disproportionate, adverse impact, acting as a barrier to participation (e.g. venue for public meetings).
- **Selection analysis** to determine whether the selection rate for one demographic group of beneficiaries is lower than other groups (e.g. selection of consultants).





# **Title VI – Ensuring Compliance in Practice: Data to collect and analyze**

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- Think from **perspective of the public and beneficiaries.**
- Where and how do you **contact public?**
- Where are your **contracts**; who with?
- Where does the Recipient **spend** its funds?
- Have formal or informal **complaints or public comments** been submitted?



# Title VI – Ensuring Compliance in Practice: Risk-Based Approach

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- Internally: process reviews to include “desk audit” and data analysis.
- Externally: use selection method best suited for your program. Sampling and weighting criteria are acceptable. But, remember risk can come from the smallest subrecipients.



# Title VI – Review Analysis Example

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Hypothetical:

Minority residents in the City of Madeup are concerned that FHWA grants to improve roads and sidewalks near schools are disproportionately awarded to school districts with non-minority students. The residents do not wish to file a formal complaint, but they would like FHWA to investigate.



# Title VI – Ensuring Compliance in Practice: Data and Analysis

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- What data and information you need to proceed?
  - Data on applicant schools and demographics over reasonable timeframe.
  - Information on policies and procedures.
  - Interviews with schools and public officials
- What analytical framework can you use?
  - Statistical disparate impacts:
    - Selection Analysis: applicants and selectees.
    - Threshold/Barrier Analysis: actual applicants and available applicants





# Title VI – Ensuring Compliance in Practice: Good Review Practices

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- Anticipate
- Are interdisciplinary
- Use both data and information
- Are continuous and iterative

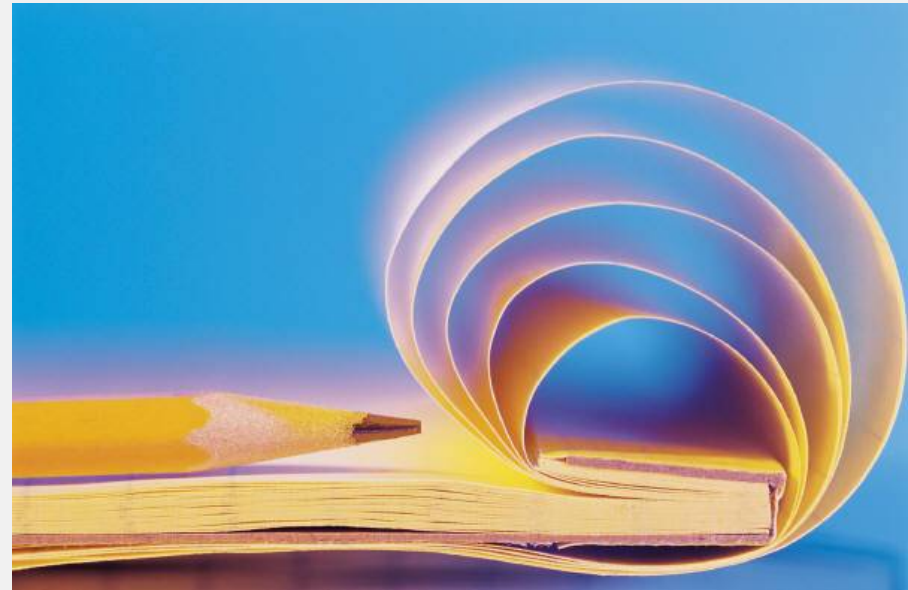




# Learning Objectives Recap

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# Thank You





FEDERAL TRANSIT ADMINISTRATION

# Title VI and Public Transit: Implementation Themes

## 2017 Civil Rights Virtual Symposium

**Dawn Sweet**  
**Director**

**Headquarters Operations Division**  
**FTA Office of Civil Rights**



U.S. Department of Transportation  
Federal Transit Administration

# About FTA

- Provides funding and technical assistance to local public transit systems:
  - Buses, subways, light rail, commuter rail, and ferries
  - Also State DOTs, MPOs, etc.
- \$12 billion annually to local communities – large/small, urban/rural



# FTA and Civil Rights

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## Mission

- Ensure FTA grantees comply with all Title VI requirements (49 CFR Part 21)

## Oversight Approach

- Onsite compliance reviews
- Complaint investigations
- Title VI program submission by grantees (every 3 years)





# The Customer: The Public

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- Transit is critical to the public
  - Connector to jobs, education, social opportunities
- Title VI communities often more transit-dependent and choice riders



# The Framework: Title VI Circular

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- **Circular 4702.1B:** “Title VI Requirements and Guidelines for Federal Transit Administration Recipients”
- Audience is transit providers but the general principles and format can potentially be replicated in other areas



# Circular Highlights

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## Ch. 3: General Requirements

- Public notice
- Complaint procedures
- Public participation
- Language access
- Monitoring of subrecipients

## Ch. 4: Service and Fare Equity (SAFE) Analysis

- Transit-specific requirement
- Applies to larger fixed route transit systems (50+ vehicles / 200,000 population)
- Must evaluate the impacts of **proposed** fare and major service changes on minority populations



# Effective Programs

## Proactive:

- More difficult to make changes after the fact
- Public participation is key

## Integrated:

- General nondiscrimination applies to all activities

## Title VI

## Tailored:

- Locally developed programs
- Reflective of size and activities

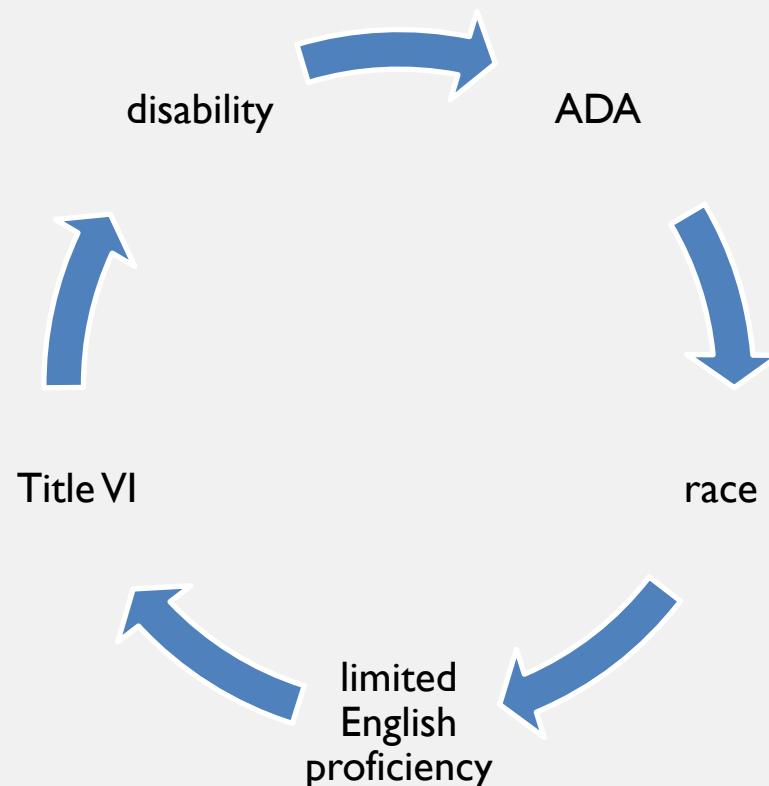
## Documentation-heavy:

- Policies and procedures
- Application and consistency



# Trend: Intersectionality

- Overlap among civil rights programs
- Don't silo or view the requirements in a vacuum
- Two-way street examples
  - Language assistance for LEP persons needed in ADA paratransit
  - Public participation process / locations must be accessible to people with disabilities



# Questions

Contact Us Tool

([www.transit.dot.gov](http://www.transit.dot.gov))





# Massachusetts Department of Transportation

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A Peer Perspective on

## ***Best Practices for Addressing Title VI in Transportation Projects***

John Lozada, Manager of Federal Programs, Office  
of Diversity and Civil Rights, Massachusetts  
Department of Transportation



# Title VI Challenges

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- Building proactive Title VI awareness across state DOT and transit leadership, managers and staff on civil rights requirements
- Understanding USDOT modal policies on Title VI demands knowledge of federal regulations and policy, but creativity to support transit and highway initiatives
- Engaging FTA and FHWA on complex questions requires refinement of issues and solid analysis before engaging
- Establishing internal transportation enterprise networks is critical to ensure comprehensive Title VI thinking
- Proactive communication and nurturing relationships with project partners and key stakeholders is required to build trust and support on projects



# MassDOT/MBTA Title VI Background

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- In 2009, Massachusetts Department of Transportation (MassDOT) was created, establishing a full multimodal enterprise that includes the Massachusetts Bay Transportation Authority (MBTA)
- MassDOT's Office of Diversity and Civil Rights deepened strategic Title VI compliance activities in 2011, hiring a Title VI Specialist support Highway, Registry and State Managed Transit Title VI Programs
- In 2014, MassDOT submitted Title VI Programs for Highway, State managed Transit and MBTA that share a base Public Participation and Language Access Plan
- In 2016, MBTA hired a Title VI Specialist, in response to the 2012 FTA Title VI Circular and new compliance requirements



# Areas of Innovation in Title VI

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- Coordinated MPO compliance – shared MassDOT Title VI practices with 13 Metropolitan Planning Organizations statewide, translated key documents into 10 languages, and built SharePoint site for resource sharing and posting Title VI Programs.
- Developed “Engage” software for Public Participation, with features to identify languages spoken, accessible meeting locations and email links for 5,000 community based organizations.
- Collaborated with FTA and FHWA leading to Civil Rights Specialist playing lead role on Title VI within federal MPO Certification Reviews
- Expanding MassDOT assessments of functional areas for compliance with FHWA Title VI requirements to MBTA public facing departments
- Built a software tool for civil rights compliance on ADA self-assessment



# Examples of Effective Engagement with FTA and FHWA Civil Rights

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- Responding to Major Complaints – termination of late night service, commuter rail cancellations
- Developing Complex Policy – Disproportionate Burden/Disparate Impact Policy; Youth Pass Pilot extension
- Building technology based platforms for compliance
- Identifying “best practices” across providers nationwide
- MPO Certification Reviews



# Key Strategic Considerations

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- FTA Title VI Circular – offers ample guidance, but does not cover every situation; ask FTA questions when a gap is identified
- Support leadership and departmental managers to know civil rights requirements, express operational challenges to compliance and build confidence to engage USDOT modal representatives
- Establish multidisciplinary Title VI team, to thoroughly analyze situations and focus questions for advice.
- Research and study “best practices” across providers to compare with situation presented
- Refine policy questions, identify alternative solutions and impact of legal or regulatory requirements before seeking USDOT modal agency advice





# Wish List for USDOT Innovation

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- E-library of Civil Rights Investigations, Reviews and Policy Guidance to build consistent practices
- Blog for interactive sharing with other Transit and DOT partner agencies on substantive issues
- Directory of Civil Rights Leadership for State DOT and Transit agencies for ease of communication
- Regularly sharing “Best Practice” and updates on civil rights activity
- Develop policy to unify Title VI Program documents to limit redundancy and risk of public confusion



# Questions

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