



Appendix 2-C

MBTA Community Engagement PowerPoint



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MBTA/MassDOT Office of Diversity and Civil Rights

Title VI Overview



Presentation Objectives

- To encourage more strategic understanding and discussion of civil rights that impact the public in relation to the MBTA, this presentation will focus on:
 - Transit related Title VI/Nondiscrimination fundamentals, including complaints, public participation, language and disability access.
 - Progress that MassDOT/MBTA are making to build anti-discrimination strategies and tools
 - Opportunities for community involvement



Transportation and Civil Rights



Jim Crow South

- Laws mandated legal segregation of all public facilities
 - Public schools
 - Restaurants
 - Public transportation
 - Restrooms
 - US military / bureaucracy



Title VI Basic Principles

- Civil Rights Act of 1964 established prohibition against public facing discrimination nationwide.
- Section 601 defines non-discrimination
- Section 602 directs agencies (such as USDOT) to implement the law, and to take action against recipients who are non-compliant.



Title VI and Executive Order Requirements

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

Objective: Ensure that public funds are not spent in ways that encourage, subsidize, or result in discrimination.

Nondiscrimination Law Expansion: Age, Sex (1987), Disability (1990)

Executive Orders expanded nondiscrimination obligations to:

- Environmental Justice (Low-Income and Minority)
- Improve Access to Services for Persons with Limited English Proficiency



Transit Related Federal Civil Rights Regulatory Framework

1964

- Title VI of the Civil Rights Act of 1964

1987

- Civil Rights Restoration Act of 1987

1994

- Executive Order 12898-Environmental Justice

2000

- Executive Order 13166-Limited English Proficiency

2007

- FTA Circular 4702.1A

2012

- FTA Circular 4702.1B



Theories for Alleging Title VI Claims

- Disparate treatment alleges an individual of a protected group has been singled out and treated less favorably than others similarly situated on the basis of a Title VI protected class.
- Disparate impact alleges that practice or policy has a disproportionately adverse effect on members of the protected class as compared with non-members of the protected class. Requires a valid statistical framework.
- Defense to prima facie claim is based showing a legitimate nondiscriminatory justification that is not pretext. FTA requires transit providers to consider alternatives or mitigation, even where there is a justification.



Environmental Justice

- Executive Order 12898 was established by Presidential action in 1994.
- Key difference from Title VI is lack of private standing to allege EJ violations
- Title VI jurisdiction can be used to allege that the activities funded that adversely affect human health and/or the environment, do so on the basis of race, color, or national origin.



Theories of Review Under EJ

- Can use different treatment theory under Title VI to allege intentional discrimination?
- Can use impact theory, called “Disproportionate Burden” under EJ – a statistical based claim that the impact of a policy or practice that adversely affects low income and/or minority populations.
- MBTA must consider EJ along with Title VI in analysis of major service and fare changes.



Federal Agency Title VI Oversight

- FTA Circular 4702.1B, established by Federal Transit Administration (FTA) in 2012
 - Provides compliance guidance to transit providers and other recipients on Title VI; incorporates EJ principles
 - Metropolitan Planning Organizations (MPOs) are a critical recipient of federal funding because of financial, planning and that must include the public in planning discussions on use of federal dollars for transportation, including transit.
 - Specific requirements are stated for providers of 50 or more fixed route vehicles in peak service located in urbanized areas of 200,000 or more in population.
 - Nature of compliance – build data to shape all policies that are relevant for CR



Required Title VI Program Elements

- Establishing Civil Rights Unit
- Signed Assurance of Title VI Compliance
- Notice of Title VI Obligations to Subrecipients and Rights of Beneficiaries
- Complaint Processing
- Inclusive Public Participation
- Ensuring Meaningful Access to Individuals with Limited English Proficiency
- Conducting Internal Compliance Reviews and Reporting
- Subrecipient Monitoring and Reporting
- Technical Assistance and Training
- Demographic Data Collection and Analysis



Title VI Complaints and Procedures

- MBTA has established procedures for complaints
 - Investigative unit established to handle complaints
 - Title VI complaint form (translated)
 - Complaint procedures are posted on website
- MBTA includes a report on allegations of discrimination in the Title VI Program:
 - Title VI Specialist audits and analyzes complaints for trends and possible training needs.



MassDOT Public Participation Plan (PPP)

- Transit providers must create public participation for Title VI compliance, including opportunity for public comment, mandated board approval and federal review and concurrence.
- FHWA and FTA concurred with MassDOT's Public Participation Plan in 2014, for both Highway and Rail & Transit Divisions
- MBTA has adapted the MassDOT PPP to meet its requirement, which is part of the 2014 MBTA Title VI Program.
- Key public participation opportunities in transit include disparate impact/disproportionate burden, service delivery, major service change, and mitigation in cases of adverse disparate impact (on fare and major service changes).



Key Title VI Public Engagement Elements

- Diverse and effective outreach
- Accessible location and reasonable accommodations
- Language support
- Timely response to public questions and consideration of public comments
- Effective information dissemination across demographics



Board Role and Responsibility:

- The FTA requires board approval in a range of areas, such as:
 - The Title VI program, including the disparate impact/disproportionate burden policy
 - Service delivery policy
 - Major service change policy
 - Results of any service and fare equity analyses
 - Results of service monitoring



Collection and Use of Data

- MBTA collects data on service area and customer demographics, profile maps and operational data, as well as travel patterns.
- FTA requires data collection on crowding, wait times, delays, on time performance, access to service
- Data is used to set system-wide standards and policies.
- Key MBTA Data Challenge: Ridership survey data can be weak due to poor public response rate; Census data becomes aged over 10 year cycle
- Reliability of data becomes problematic when matched to unique circumstances and changes.



Service and Fare Equity

- Required for any proposed “major service change” and fare changes
- Definition and analysis of major service changes are based on ridership data, and are defined by providers, with public input.
- Analytical framework requires comparing impacts on minority and low-income to non-minority, non-low-income populations.
- FTA required data is considered in defining changes through analysis of equity impacts on customer experience



Adverse Service or Fare Equity Analysis Finding

- Identify disparity and alternatives; share with Board to determine next steps
- If alternatives are not available, consider whether mitigation can be achieved
- Seek public input on mitigation
- Modify proposal, as needed
- Conduct an equity analysis of the proposed option(s)



Language Access

- Based on US Supreme Court decision (Lau v. Nichols) declaring that language based discrimination is effectively national origin discrimination.
- Definition of “Limited English Proficient” – changes slightly between USDOT agencies. FTA definition:

“Limited English Proficient (LEP) persons refers to persons for whom English is not their primary language and who have a limited ability to read, write, speak, or understand English. It includes people who reported to the U.S. Census that they speak English less than very well, not well, or not at all.”



Language Access Plan (LAP)

- Compliance is based on creation and implementation of a Language Assistance Plan, an analysis identifying critical documents, interactions and other supports needed for equal access. Components include:
 1. Number or proportion of LEP individuals eligible to be served or likely to be encountered
 2. Frequency of contact with LEP persons
 3. Importance of programs, services, and activities. Vital documents include: notice of right to access language assistance free of charge; consent and complaint forms; intake and application forms; written notice of rights; notices of denials, losses or decreases in benefits or services.
 4. Resources
- LAP protocols, resources, and schedules of language access provisions reaches all MassDOT units; updated triennially.



MassDOT's Accessible Public Meeting Policy

- MassDOT is committed to ensuring that all public meeting are fully accessible to persons with disabilities.
- MassDOT Accessible Meeting Policy, signed by Secretary Davey in 2013, frames the obligations and protocols for accessible interactions with the public and provides resources, like checklists, to ensure accessibility
- Guidelines and checklists exist for the following strategies:
 - Accessibility of location, room, and set-up
 - Alternate formats
 - Sign language and real-time transcription



Questions?

