

Title VI Non-Discrimination Limited English Proficiency Environmental Justice

Presented To: 8th Annual FAA National
Civil Rights Training Conference

Panelists: Joseph Manges, AGC
Elizabeth Newman, AGC

Date: August 1, 2017



Civil Rights Act of 1964

Title VI

Title VI (42 U.S.C. § 2000d, et seq.):

“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.”

Airport sponsors may not, on the basis of race, color or nat'l origin:

- Deny any individual service, financial aid, or benefit under the program
- Provide any service, financial aid, or benefit that is different from that provided to others
- Subject an individual to segregation or separate treatment



Nondiscrimination

49 U.S.C. Chapter 471

§ 47123. Nondiscrimination:

The Secretary of Transportation shall take affirmative action to ensure that an individual is not excluded because of race, creed, color, national origin, or sex from participating in an activity carried out with money received under a grant under this subchapter. The Secretary shall prescribe regulations necessary to carry out this section. The regulations shall be similar to those in effect under title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.). This section is in addition to title VI of the Act.



Title VI and §47123 scope

Contracts:

- AIP contracts
- PFC contracts
- Local contracts



Services:

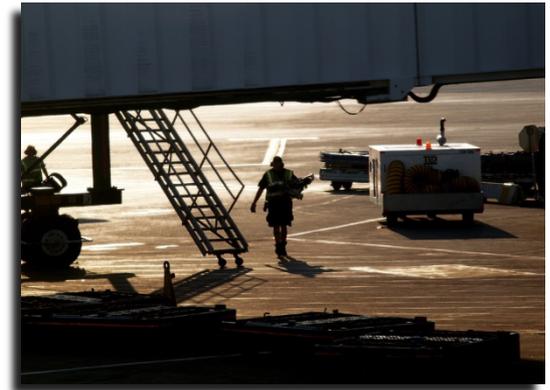
- Concessions
- Parking
- Surface transportation



Title VI and §47123 scope

Community access to:

- Airport Employment
- Job Advertisements
- FBO Operations

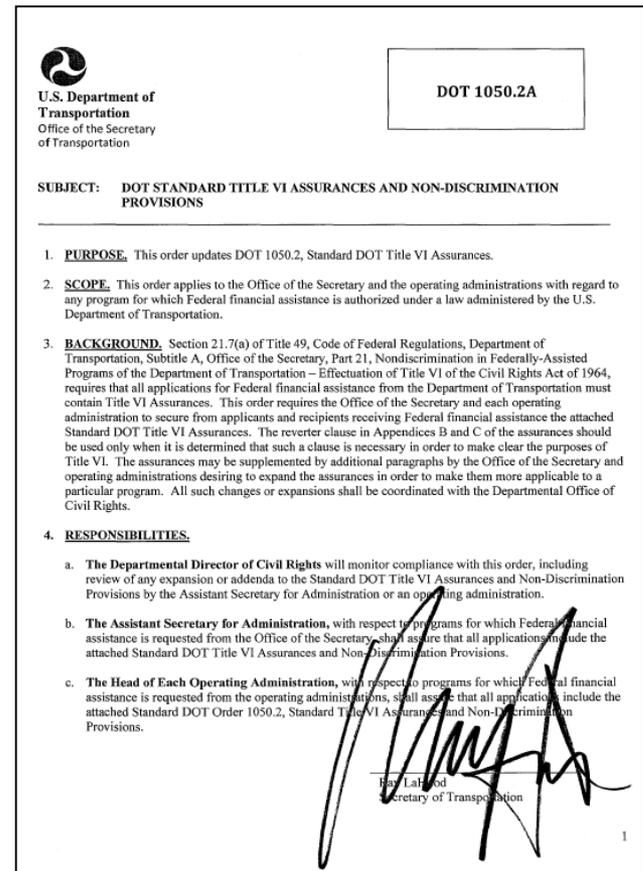


Nondiscrimination

DOT Order 1050.2A

Establishes standard DOT Title VI grant assurances for operating administrations, including FAA:

- Title VI of the Civil Rights Act of 1964
- 49 CFR part 21
- The Recipient must insert the clauses in Appendix A and E of the Order in every contract, lease or certain deeds involving AIP funded property



The image shows the cover page of DOT Order 1050.2A. At the top left is the U.S. Department of Transportation logo and name. At the top right is a box containing the text "DOT 1050.2A". Below this is the subject line: "SUBJECT: DOT STANDARD TITLE VI ASSURANCES AND NON-DISCRIMINATION PROVISIONS". The main body of the page contains four numbered sections: 1. PURPOSE, 2. SCOPE, 3. BACKGROUND, and 4. RESPONSIBILITIES. Each section contains detailed text regarding the order's purpose, scope of application, background context, and the responsibilities of the Department Director, the Assistant Secretary for Administration, and the Head of Each Operating Administration. At the bottom right, there is a signature of Fay Lalande, Secretary of Transportation, and the page number "1".

U.S. Department of Transportation
Office of the Secretary of Transportation

DOT 1050.2A

SUBJECT: DOT STANDARD TITLE VI ASSURANCES AND NON-DISCRIMINATION PROVISIONS

1. **PURPOSE.** This order updates DOT 1050.2, Standard DOT Title VI Assurances.
2. **SCOPE.** This order applies to the Office of the Secretary and the operating administrations with regard to any program for which Federal financial assistance is authorized under a law administered by the U.S. Department of Transportation.
3. **BACKGROUND.** Section 21.7(a) of Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964, requires that all applications for Federal financial assistance from the Department of Transportation must contain Title VI Assurances. This order requires the Office of the Secretary and each operating administration to secure from applicants and recipients receiving Federal financial assistance the attached Standard DOT Title VI Assurances. The reverter clause in Appendices B and C of the assurances should be used only when it is determined that such a clause is necessary in order to make clear the purposes of Title VI. The assurances may be supplemented by additional paragraphs by the Office of the Secretary and operating administrations desiring to expand the assurances in order to make them more applicable to a particular program. All such changes or expansions shall be coordinated with the Departmental Office of Civil Rights.
4. **RESPONSIBILITIES.**
 - a. **The Departmental Director of Civil Rights** will monitor compliance with this order, including review of any expansion or addenda to the Standard DOT Title VI Assurances and Non-Discrimination Provisions by the Assistant Secretary for Administration or an operating administration.
 - b. **The Assistant Secretary for Administration**, with respect to programs for which Federal financial assistance is requested from the Office of the Secretary, shall assure that all applications include the attached Standard DOT Title VI Assurances and Non-Discrimination Provisions.
 - c. **The Head of Each Operating Administration**, with respect to programs for which Federal financial assistance is requested from the operating administrations, shall assure that all applications include the attached Standard DOT Order 1050.2, Standard Title VI Assurances and Non-Discrimination Provisions.

Fay Lalande
Secretary of Transportation

1



Nondiscrimination

FAA Order 1400.11

Prescribes FAA operating procedures and responsibilities for:

- Title VI of Civil Rights Act
- 49 U.S.C. § 47123
- Age Discrimination Act of 1975
- Grant assurances required
 - See FAA website:

www.faa.gov/regulations_policies/orders_notices/index.cfm/go/document/information/documentid/1021906



U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

National Policy

ORDER
1400.11

Effective Date
08/27/13

SUBJ: Nondiscrimination in Federally-Assisted Programs at the Federal Aviation Administration (FAA)

Title VI of the Civil Rights Act of 1964, as amended, (Title VI) prohibits discrimination on the grounds of race, color, or national origin under any program or activity receiving Federal financial assistance. Title 49 United States Code (U.S.C.) § 47123 provides similar protections to individuals that participate in an activity carried out with money received from an Airport Improvement Program (AIP) grant. It also extends protection on the basis of sex and creed. The Age Discrimination Act of 1975 prohibits discrimination on the basis of age in Federally-assisted programs.

FAA's policy is to comply fully with these non-discrimination requirements in all FAA-assisted programs. This Order sets forth the operating procedures for the implementation and enforcement of Title VI and other non-discrimination laws.

All FAA lines of business and offices with responsibilities for FAA-assisted programs will be expected to actively enforce FAA's policy on non-discrimination.

A handwritten signature in black ink, appearing to read "Michael P. Huerta", with a circular stamp or mark to the right.
Michael P. Huerta
Administrator



Federal Aviation
Administration

AIP Grant Assurances

AIP Grant Assurances are agreed to by the sponsor when accepting an AIP grant. They define what is required:

- For FAA to approve a grant application (such as the sponsor must own an airport, having the local share)
- For the sponsor to build the project (Davis Bacon Wages, water and air quality)
- For the sponsor to operate and maintain the airport (such as keeping the runway safe)
- All assurances are online:

http://www.faa.gov/airports/aip/grant_assurances/



AIP Grant Assurances

No. 30 - Civil Rights

Sponsor's grant assurance from DOT 1050.2a:

- It will promptly **take any measures** necessary to ensure that no person in the United States shall, on the grounds **of race, creed, color, national origin, sex, age, or disability** be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in any activity conducted with, or benefiting from, funds received from this grant.



Title VI nondiscrimination clauses

Obligated Sponsors

- An obligated sponsor must include Title VI nondiscrimination clauses in their solicitations and contracts, including grant assurance 30.
- Title VI clause must also be included in the obligated sponsor's **non-federally** funded contracts.
- Nondiscrimination provisions must be included in subcontracts.



Federal Contract Clauses

FAA Guidelines for AIP Contract Provisions

- Identifies source of requirement
- Includes applicability matrix per project type and size
- Identifies mandatory language, including civil rights
- Provides model language whenever mandatory language is not prescribed
- http://www.faa.gov/airports/aip/procurement/federal_contract_provisions/media/combined-federal-contract-provisions.pdf

Table 1 – Applicability of Provisions

Provision	Dollar Threshold	Professional Services	Construction	Equipment	Property (Land)	Non-AIP Contracts
a. Access to Records and Reports	\$ 0	REQD	REQD	REQD	REQD	n/a
b. Buy American Preferences	\$ 0	Limited	REQD	REQD	Limited	n/a
(1) Buy American Statement	\$ 0	Limited	REQD	REQD	Limited	n/a
(2) Buy American – Total Facility	\$ 0	Limited	REQD	REQD	Limited	n/a
(3) Buy American – Manufactured Product	\$ 0	Limited	REQD	REQD	Limited	n/a
c. Civil Rights – General	\$ 0	REQD	REQD	REQD	REQD	REQD
d. Civil Rights - Title VI Assurances	\$ 0	REQD	REQD	REQD	REQD	REQD
(1) Notice - Solicitation	\$ 0	REQD	REQD	REQD	REQD	REQD
(2) Clause - Contracts	\$ 0	REQD	REQD	REQD	REQD	REQD
(3) Clause – Transfer of U.S. Property	\$ 0	n/a	n/a	n/a	REQD	REQD
(4) Clause – Transfer of Real Property	\$ 0	n/a	n/a	n/a	REQD	REQD
(5) Clause - Construct/Use/Access to Real Property	\$ 0	n/a	n/a	n/a	REQD	REQD
(6) List – Pertinent Authorities	\$0	REQD	REQD	REQD	REQD	REQD
e. Disadvantaged Business Enterprise	\$ 0	REQD	REQD	REQD	REQD	n/a
f. Energy Conservation Requirements	\$ 0	REQD	REQD	REQD	REQD	n/a
g. Federal Fair Labor Standards Act	\$ 0	REQD	REQD	REQD	REQD	REQD
h. Occupational Safety and Health Act	\$ 0	REQD	REQD	REQD	REQD	REQD
i. Rights to Inventions	\$ 0	Limited	Limited	Limited	n/a	n/a
j. Trade Restriction Certification	\$ 0	REQD	REQD	REQD	REQD	n/a
k. Veteran's Preference	\$ 0	REQD	REQD	REQD	REQD	n/a
l. Seismic Safety	\$ 0	Limited	Limited	n/a	n/a	n/a
m. Copeland Anti-Kickback	\$ 2,000	Limited	REQD	Limited	Limited	n/a
n. Davis Bacon Requirements	\$ 2,000	Limited	REQD	Limited	Limited	n/a
o. Distracted Driving	\$3,000	REQD	REQD	REQD	REQD	n/a
p. Affirmative Action Requirement	\$10,000	Limited	REQD	Limited	Limited	n/a
q. Equal Employment Opportunity	\$10,000	Limited	REQD	Limited	Limited	n/a
(1) EEO Contract Clause	\$10,000	Limited	REQD	Limited	Limited	n/a



Grant Assurances

Duration

Duration- Sponsor is obligated to assurance for:

- Period during which Federal financial assistance is extended to the program
- Personal and Real Property - the longer of the following
 - So long as the property is used for the purpose federal assistance was extended- eg the airport is used as an airport, or
 - So long as the sponsor retains ownership/possession of the property.



Compliance

- Training, education, online materials.
- FAA Compliance reviews, desk audits, report analysis
- Complaints: 49 CFR part 21 governs complaints and investigations for civil rights issues
- Pre-Complaint Process
- Investigations
- Dismissals – With and Without Prejudice
- Do I Get a Hearing?
- Decisions, reconsiderations and appeals



Limited English Proficiency (LEP)

- *Lau v Nichols*, 414 U.S. 563 (1974)
(held language barriers violated Title VI prohibition against discrimination based upon national origin- involving students of Chinese origin)
- Spanish, French, Japanese, German, Navajo (Dine), Tagalog, Hmong, Korean, Yup'ik, Inupiat, Russian and many others
- International travelers- business and tourists



Executive Order 13166

- “Improving Access to Services for Persons with Limited English Proficiency”- August 11, 2000
- Requires Federal agencies to examine the services they provide, identify any need for services to those with limited English proficiency, and develop and implement a system to provide those services to such persons.



DOT guidance

- U.S. Department of Transportation issued LEP guidance *“Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficient (LEP) Persons”* -December 2005 (Federal Register, Volume 70, No. 239)
 1. Number of LEP persons affected (area specific- LAX, Spanish)
 2. Frequency of service or likely contact (one-time v. daily)
 3. Nature and importance of the activity, program or service (drivers license?)
 4. Resources available/costs imposed (cost/benefit analysis, large v small)
- LEP services should be “reasonable and necessary” given 4 factors



LEP Strategies

- Community and stakeholder outreach
- Translation “I Speak” cards with flying public
- Provide notice to LEP populations
- Posting language assistance services
- Advertising/Marketing



Environmental Justice

Environmental justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. [EPA]



Federal Requirements and Resources

- Executive Order 12898 (“Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations”)
- DOT Order 5610.2A
- FAA Order 1050.1F (“Environmental Impacts: Policies and Procedures”) and FAA Order 5050.4B (“National Environmental Policy Act (NEPA) Implementing Instructions for Airport Actions”)
- Order 1050.1F Desk Reference
- Title VI-Pre-Award Checklist – optional information on Environmental Justice
 - https://www.faa.gov/about/office_org/headquarters_offices/acr/com_civ_support/envir_justice/media/FAA_Order_1400.11_Pre-Award_Checklist.pdf



Federal Role

Federal agencies achieve Environmental Justice by:

- identifying and addressing disproportionately high and adverse human health and environmental effects, including interrelated social and economic effects on minority populations and low-income populations



Environmental Justice Considerations

Consider impacts to minority and low income populations from:

- airport noise
- airport construction
- other adverse human health and environmental effects



Environmental Justice Considerations

- Review potential alternatives to the proposed action
 - different runway alignments, or other means of meeting the aeronautical need
- Review airport noise contour data and other data and compare with minority and low-income maps



Environmental Justice Considerations

Consider options to reduce impacts

- Airports and FAA seek to avoid impacting populated areas - particularly if disproportionately low-income areas
- Mitigation may include property acquisition, sound insulation, or compensation
 - FAA may fund mitigation through AIP grants to airport sponsor or the community
- FAA may fund development of noise compatibility plans per 14 CFR part 150,
 - can include noise abatement measures



Environmental Justice Public Participation

- Meaningful involvement
- Early involvement is critical—**before** key decisions are made or alternatives eliminated.
- Crucial to early identification and consideration of key issues and community concerns



Questions

