



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.


Michael P. Huerta
Administrator

Table of Contents

Chapter 1. General Information	5
1. Purpose of this Order.....	5
2. Audience	5
3. Where to Find This Order.....	5
4. What This Order Cancels.....	5
5. Explanation of Policy Changes.....	5
6. Distribution.....	5
7. Authority to Change This Order.....	5
8. List of Acronyms and Abbreviations.....	5
9. Definitions.....	5
10. Reserved.....	5
Chapter 2. Title VI/Nondiscrimination Policy, Legal Authorities,	6
and Discrimination Prohibited	6
1. Policy.....	6
2. Statutes.....	7
3. Implementing Regulations	7
4. Executive Orders.....	7
5. Directives and Guidance	7
6. Specific Title VI Based Actions.....	8
7. Discriminatory Actions Prohibited	9
8. Reserved.....	10
Chapter 3. Responsibilities.....	11
1. Introduction.....	10
2. FAA Office of Civil Rights	10
3. Assistant Administrator for Civil Rights.....	10
4. National Airport Civil Rights Policy and Compliance Office.....	10
5. Airport Nondiscrimination Compliance Staff.....	10
6. Office of the Chief Counsel	11
7. Office of Environment and Energy.....	11
8. Office of Airports.....	11
9. Airports Divisions.....	11
10. Other FAA Grants Program Organizations.....	11
11. Departmental Office of Civil Rights.....	12
12. Department of Justice Office of Civil Rights.....	12
13. General Applicability and Specific References	12
14. Reserved.....	12
Chapter 4. Recipient Obligations	13
1. Introduction.....	13
2. How Obligations are Incurred.....	13
3. Title VI Grant Assurances and Duration of Obligations.....	13
4. Scope of Coverage.....	14

5. Nondiscrimination in Services, Benefits, and Use of Facilities	15
6. Nondiscrimination in Employment	16
7. Nondiscrimination in Contracting Activities	16
8. Nondiscrimination in Project Site Selections.....	16
9. Age Discrimination Act of 1975.....	17
10. Reserved.....	17
Chapter 5. Title VI Monitoring of Airport Projects	18
1. Introduction.....	18
2. ARP Notification to ACR.....	18
3. AIP Grant Applications.....	18
4. Compliance Reviews by ACR.....	19
5. Documents and Information for Reviews	19
6. Title VI Pre-Award Checklist	20
7. Reserved.....	20
Chapter 6. Title VI/Nondiscrimination Monitoring of Airport Sponsors	21
1. Overview.....	21
2. Selecting the Airport.....	21
3. Compliance Standards.....	21
4. Conducting the Compliance Review	21
5. Compliance Determinations.....	22
6. Compliance Report.....	22
7. Voluntary Compliance	22
8. Enforcement.....	23
9. Close-Out of Compliance Review	23
10. Reserved.....	23
Chapter 7. Monitoring Compliance in Grant Programs Other than the AIP	24
1. General.....	24
2. Responsibilities of Grant and Program Offices.....	24
3. Responsibilities of the Airport Nondiscrimination Compliance Staff (AEA/ANE-9).....	25
4. Reserved.....	25
Chapter 8. Title VI/Nondiscrimination Complaints.....	26
1. General.....	26
2. Filing Formal Complaints.....	26
3. Complaint Processing Information.....	27
4. Complaints Against Air Carriers	28
5. Complaints Against Lessees or Contractors (Other than Air Carriers).....	28
6. Complaints of Employment Discrimination Against Recipients.....	28
7. Age Discrimination Act Complaints	29
8. Reserved.....	29
Chapter 9. Informal Resolution.....	30
1. General.....	30

2. Methods Used 30

3. Complaint Closure After Informal Resolution..... 31

4. Follow-Up Monitoring.....31

5. Reserved.....31

Chapter 10. Enforcement..... 32

1. Referrals for Action Under 49 CFR part 21. 32

2. Deferring Action on an Airport Grant Application..... 32

3. Reserved..... 32

Appendix 1. List of Acronyms and Abbreviations.....33

Appendix 2. Definitions 35

Appendix 3. MOU with Airports..... 39

Appendix 4. Use of Standard DOT Title VI/Nondiscrimination Assurances 47

Appendix 5. Notice of Unlawful Discrimination Poster..... 59

Appendix 6. Compliance Standards for Title VI /Nondiscrimination Pre-Award Reviews of Airport
Projects 60

Appendix 7. Compliance Standards for Title VI/Nondiscrimination Post-Award Reviews of Airport
Sponsors 62

Attachment 1. Contractor Contractual Requirements..... 69

Attachment 2. Clauses for Deeds, Licenses, Leases, Permits or Similar Instruments 71

Attachment 3. Clauses for Real Property 72

FAA Form 1320-19, Directive Feedback Information..... 73

Chapter 1: General Information

1. Purpose of this Order. This Order prescribes FAA’s operating procedures and responsibilities for implementing and enforcing Title VI of the Civil Rights Act of 1964, Public Law (P.L.) 88-352 as amended (codified at 42 U.S.C. § 2000e et seq); the non-discrimination provision (49 U.S.C. § 47123) in the Airport and Airway Improvement Act of 1982, as amended; and the Age Discrimination Act of 1975, P.L. 94-135, (codified at 42 U.S.C. § 6102) in its Federally-assisted programs. This Order also executes FAA’s responsibilities under the Department of Transportation (DOT) Order 1000.12.

2. Audience. This Order applies to all lines of business and staff offices that administer or have responsibility for FAA Federal financial assistance programs.

3. Where to Find This Order. You can find this order on the MyFAA Employee Web site: website https://employees.faa.gov/tools_resources/orders_notices/. This Order is available to the public at http://www.faa.gov/regulations_policies/orders_notices/.

4. What This Order Cancels. This Order cancels FAA Order 5100.30, “Nondiscrimination in Federally-Assisted Programs of FAA”, dated October 27, 1976.

5. Explanation of Policy Changes. This revision updates the previous Order that was issued in 1976, to reflect current organizational, regulatory, and programmatic changes. The changes include: an updated and strengthened policy statement of FAA’s commitment to non-discrimination in FAA-assisted programs; current organizational changes such as in the Office of Civil Rights; new pre-award procedures for airport projects; an updated post-award compliance program; identification of responsibilities for FAA offices responsible for non-AIP grant programs; and applicable new or revised program developments since 1976.

6. Distribution. This Order is intended for: (1) all Assistant and Associate Administrators, and heads of offices and services that have responsibility for any FAA grant or other FAA-assisted program; (2) the division levels in the Offices of the Chief Counsel, Civil Rights, Airports, and (3) the Acquisition, Materiel, and Grants Division under the Air Traffic Organization, and the Center of Excellence Program Office under the Office of NextGen.

7. Authority to Change This Order. Unless specifically reserved by the Administrator, the Assistant Administrator of Civil Rights, ACR-1, may approve changes to this Order except those affecting policy, delegation of authority, and assignment of responsibilities.

8. List of Acronyms and Abbreviations. See appendix 1 for a complete list of acronyms and abbreviations used in this Order.

9. Definitions. See appendix 2 for a complete list of definitions of terms used in this Order.

10. Reserved.

Chapter 2. Title VI/Nondiscrimination Policy, Legal Authorities, and Discrimination Prohibited

1. Policy. The Federal Aviation Administration is committed to compliance with all antidiscrimination laws, regulations and policies. There is zero tolerance for discrimination in the workplace on the basis of race, color, religion, sex (including pregnancy and gender identity), genetic information, national origin, age, disability (mental or physical), sexual orientation or reprisal for participating in protected Equal Employment Opportunity (EEO) activity.¹ It is also the FAA's policy is to actively ensure that recipients of Federal financial assistance in FAA programs do not discriminate on the basis of race, color, national origin, sex, creed, age, or disability, and that all FAA recipients comply with Title VI and other non-discrimination requirements as a condition of receiving Federal financial assistance. This Order covers all recipients (and subrecipients) of Federal financial assistance from the FAA. Major FAA recipients include airport sponsors receiving AIP grants, and research and educational institutions receiving FAA research grants.

2. Statutes. Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d). Section 601 of Title VI 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.

a. Title IX of the Education Amendments Act of 1972 (20 U.S.C. §§ 1681-1688). This statute is a comprehensive federal law that prohibits discrimination on the basis of sex in any Federally-funded educational program or activity, including FAA-funded assistance to colleges and universities.

b. The Civil Rights Restoration Act of 1987 (P.L. 100-259, 102 Stat. 28). This statute restored the intent of Title VI and the broad institution-wide scope and coverage of non-discrimination statutes to include all programs and activities of Federal-aid recipients, subrecipients, and contractors. This statute also applies to those programs and activities that are not Federally funded.

c. Title 49 U.S.C. § 47123. This statutory provision is the non-discrimination requirement for the FAA's AIP program. It provides that the Secretary of Transportation must take affirmative action to ensure that an individual is not excluded because of race, color, national origin, sex, or creed from participating in an activity carried out with money received under the FAA's AIP, and must prescribe regulations necessary to carry out this section. The regulations must be similar to those in effect under Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d-1). Title 49 U.S.C. § 47123 is an addition to Title VI of the Civil Rights Act, and includes sex and creed as bases of discrimination.

e. Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 et seq.). Subject to certain exemptions, the Age Discrimination Act of 1975 prohibits recipients of Federal financial assistance from discriminating against program beneficiaries based on age.

¹ The basis of disability is included in the FAA's non-discrimination policy, the FAA's civil rights grant assurances, and in the FAA-issued Notice of Unlawful Discrimination Poster. Therefore, non-discrimination based on disability will be mentioned in this Order within these contexts. FAA Order 1400.9A addresses the standards and procedures essential for ensuring access to airport facilities by persons with disabilities.

3. Implementing Regulations. 28 CFR part 42, Subpart F, “Coordination of Enforcement of Non-discrimination in Federally-assisted Programs”, are the Department of Justice’s (DOJ) regulations that govern the respective obligations of Federal agencies to enforce Title VI. Additional implementing regulations are:

a. 49 CFR part 21, “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 is DOT’s rule for implementing Title VI.

b. 49 CFR part 25, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance.” Part 25 implements Title IX of the Educational Amendments Act of 1972 for educational institutions receiving DOT financial assistance.

c. A DOT rule implementing the Age Discrimination Act has not been issued.

4. Executive Orders. Executive Order (E.O.) 12250, “Leadership and Coordination of Nondiscrimination Laws” (November 2, 1980) vests authority in the Attorney General to lead and coordinate the enforcement of Title VI by Federal agencies with Federal financial assistance programs. Other Executive Orders:

a. E.O. 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations” (February 11, 1994). This E.O. is intended to ensure that Federal departments and agencies identify and address disproportionately high and adverse human health and environmental effects of their policies, programs and activities on minority populations and low-income populations.

b. E.O. 13166, “Improving Access to Services for Persons with Limited English Proficiency” (August 11, 2000). This E.O. directs each Federal agency that is subject to the requirements of Title VI to publish LEP guidance for its Federally-conducted and Federally-assisted programs. This Order does not cover the implementation of FAA’s Federally-conducted program responsibility.

5. Directives and Guidance. DOT Order 1000.12, “Implementation of the Department of Transportation Title VI Program” (January 19, 1977) establishes the uniform minimum responsibilities of each operating element of DOT in implementing and enforcing DOT’s Title VI program. Other Directives and Guidance:

a. DOT Order 1050.2A, “Standard Title VI Assurances” (April 24, 2013). This Order provides the standard DOT Title VI grant assurances that must be used in every DOT grant agreement, Federally-assisted contract, or lease agreement.

b. DOT Order 5610.2(a),² “Department of Transportation Actions to Address Environmental Justice in Minority Populations and Low-Income Populations” (May 2, 2012) which:

² This Order does not address the Federally-conducted program or the low-income population requirements of DOT Order 5610.2(a).

(1) Updates DOT's original Environmental Justice Order that was published in 1997. DOT Order 5610.2(a) reaffirms DOT's commitment to Environmental Justice and clarifies certain aspects of the original Order. The revisions clarify the distinction between a Title VI analysis and an environmental justice analysis conducted as part of a National Environmental Policy Act (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 on low-income and minority populations, and

(2) Serves as a key component of DOT's strategy to comply with E. O. 12898. It describes the process each operating administration should use to incorporate Environmental Justice principles into existing programs, policies, and activities, and

(3) Covers matters beyond Title VI, including Federally-conducted programs and actions taken to address Environmental Justice for low-income populations.

c. DOT "Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficient (LEP) Persons" (December 14, 2005) (70 Fed Reg 74087). This guidance clarifies the responsibilities of DOT recipients of Federal financial assistance to persons with limited English proficiency, and provides guidance to recipients on meeting their obligation.

d. DOT Order 1000.18, "External Civil Rights Complaints Processing Manual" (September 2007). This Order provides guidance to all DOT operating administrations in reference to processing discrimination complaints against DOT Federal financial assistance recipients.

e. Memorandum of Understanding (MOU) Between the FAA Office of Civil Rights and the FAA Office of Airports to Establish a "Pilot Program" to Share Environmental Justice Information in Environmental Impact Statements (EISs) for major airport development for which the FAA may provide AIP funding. (February 6, 2012) (Title VI MOU). This MOU provides procedures for the sharing of Environmental Justice information for the purpose of ensuring non-discrimination under 49 U.S.C. § 47123 and Title VI by the FAA and airport sponsors. (The Title VI MOU is provided at appendix 3).

6. Specific Title VI Based Actions. Environmental Justice (see definition in appendix 2) applies to all aspects of transportation decision making, from policy decisions to planning, development, operations, and maintenance of airports and other FAA-assisted projects. Environmental Justice is based in Title VI, which prohibits recipients of Federal financial assistance from using neutral criteria or methods of administration that would disproportionately allocate negative environmental impacts on a group because of their race, color, or national origin. These impacts or effects may constitute unlawful discrimination under Title VI. Executive Order 12898 and DOT Order 5610.2(a) require FAA to ensure that its recipients achieve Environmental Justice by avoiding, minimizing, or mitigating discriminatory impacts on minority and low-income populations in FAA-assisted airport projects, and by complying with Title VI in their environmental reviews.

a. Program Access for Limited English Proficient (LEP) persons. Title VI prohibits discrimination on the basis of national origin. Language is an attribute that is associated with one's national origin. Language for LEP persons can be a barrier to accessing important benefits or services, understanding and exercising important rights, complying with responsibilities, or understanding other information provided by Federally-assisted programs and activities. Recipients, therefore, are obligated to provide LEP persons with language assistance to enable them to have meaningful access to the recipient's programs and activities. Failure to do so may constitute national origin discrimination under Title VI. At airports, LEP persons may include the flying public, other users of the airport, and local communities that may be impacted by airport development. Recipients are required to analyze their services, identify potential LEP populations and their language needs, and take reasonable steps to provide language assistance, where needed. For example, recipients are obligated to assess LEP needs in their information programs and emergency preparedness plans.

b. Executive Order 13166, 3 CFR. 289 (2001) on Limited English Proficiency, according to the U.S. Department of Justice in its Policy Guidance Document dated August 16, 2000 (65 Fed. Reg. at 50123), clarifies the 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." When receiving Federal funds, recipients are expected to conduct a Four-Factor Analysis to prevent discrimination based on National Origin. (See also U.S. DOT's "Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficient (LEP) Persons," dated December 14, 2005, (70 Fed. Reg. at 74087 to 74100); the Guidance is a useful resource when performing a Four-Factor Analysis).

c. The FAA will carry out its Environmental Justice and LEP responsibilities as part of its non-discrimination program.

7. Discriminatory Actions Prohibited. Guidance on what actions are prohibited under Title VI is found in the DOT Title VI regulation under 49 CFR § 21.5(b), and in other parts of the 49 CFR part 21 regulations. Also, under 49 CFR § 21.5(b), recipients may not use criteria or methods of administration (either directly or through contractual or other arrangements) which have the effect of subjecting persons to discrimination because of their race, color, or national origin when deciding the types of services, facilities, benefits, or opportunities that will be provided under the program. A recipient under any program to which 49 CFR part 21 applies may not, directly or through contractual or other arrangements, on the grounds of race, color, or national origin:

- a.** Deny a person any service, financial aid, or other benefit provided under the program;
- b.** Provide a different service or benefit than to others;
- c.** Subject a person to segregation or separate treatment in any matter related to the person's receipt of a service; or
- d.** Restrict a person in any way in the enjoyment of any advantage or privilege enjoyed by others receiving service or financial aid under the program.

8. Reserved.

Chapter 3. Responsibilities

1. Introduction. This Chapter identifies the lines of business, offices and agencies with Title VI and other non-discrimination responsibilities under this Order. Should their functions or names change, this Order applies to the successor entities.

2. FAA Office of Civil Rights. The FAA Office of Civil Rights (ACR) is responsible for ensuring that airports and other FAA recipients of Federal financial assistance comply with all civil rights laws and requirements, including Title VI.

3. Assistant Administrator for Civil Rights. The Assistant Administrator for Civil Rights (ACR-1), serves as the FAA's principal advisor on matters concerning the agency's responsibilities under Title VI, 49 U.S.C. § 47123, and the Age Discrimination Act. In this capacity, ACR-1 assists the Administrator in administering regulatory requirements described in this Order. ACR-1 is delegated the authority to act for, represent, and speak for the Administrator. ACR-1 is also responsible for recommending such regulations and other implementing policy as may be needed or required under 49 U.S.C. § 47123.

4. National Airport Civil Rights Policy and Compliance Office. The National Airport Civil Rights Policy and Compliance office in ACR (ACR-4), is located in the ACR headquarters office in Washington, DC under the Director, National Airport Civil Rights Policy and Compliance. This office's responsibilities include:

a. Developing FAA's Title VI and other non-discrimination policies, guidelines, standards and operating procedures for FAA offices, and compliance guidance for grant recipients, in coordination with the Airport Nondiscrimination Compliance Staff and with the Office of Airports;

b. Providing program oversight and technical assistance to the Airport Nondiscrimination Compliance Staff; and

c. Training FAA staff on carrying out FAA's non-discrimination program.

5. Airport Nondiscrimination Compliance Staff. The Airport Nondiscrimination Compliance Staff in ACR (AEA/ANE-9) is located in the FAA Eastern Regional Office under the Director, Civil Rights, Eastern and New England Regions and Airport Nondiscrimination Compliance. Staff responsibilities include:

a. Determining pre-award compliance with Title VI, and 49 U.S.C. § 47123 in AIP applications for major projects such as a new airport, a new runway, or a major runway extension, prior to agency approval of the application or project;

b. Conducting post-award compliance reviews of airport sponsors' Title VI/Nondiscrimination programs;

c. Assisting FAA offices responsible for Federal financial assistance programs in complying with this Order;

d. Providing training and technical assistance to FAA grant recipients on how to comply with Title VI and other non-discrimination requirements;

e. Assisting members of the public by providing information on Title VI/Nondiscrimination requirements, recipient compliance responsibilities, and information on filing a complaint; and

f. Investigating and resolving complaints of discrimination based on Title VI and other non-discrimination statutes described in this Order.

6. Office of the Chief Counsel. The Office of the Chief Counsel (AGC) is responsible for developing and recommending policies and procedures to assist the Agency in complying with the requirements of the law. Specifically, the Airport Law Branch (AGC-610) and the regional counsel offices represent the agency with regard to determinations of regulatory non-compliance by an airport sponsor or other covered entity. Legal counsel responsibilities include the provision of advisory services, and legal sufficiency reviews for complaint decisions and compliance reviews.

7. Office of Environment and Energy. The Office of Environment and Energy (AEE) in the Office of Policy, International Affairs, and Environment (APL) develops, recommends, and coordinates national and international aviation policy relating to environmental and energy matters. Within AEE, the Environmental Policy and Operations Division's (AEE-400) responsibilities include ensuring that FAA's environmental policies comply with E.O. 12898 and DOT Order 5610.2(a). AEE-400 and ACR-4 will serve as co-coordinators in administering the Environmental Justice program in accordance with this Order and other pertinent DOT and agency directives, and lead FAA's implementation of DOT's Environmental Justice strategy.

8. Office of Airports. Within the Office of Airports (ARP), the Office of Airport Planning and Programming (APP), the Office of Airport Safety and Standards (AAS), and the Office of Airport Compliance and Management Analysis (ACO), as appropriate, are responsible for providing technical assistance to airport sponsors that will facilitate the administration of the airport grant program, and for preparing Environmental Impact Statements (EISs) and other National Environmental Policy Act (NEPA) actions that may involve Environmental Justice issues for AIP and Passenger Facility Charge (PFC) projects. The Office of Airports will provide assistance to ACR to the extent possible to help ACR in the implementation of this Order and will notify ACR if it becomes aware of any Title VI issues.

9. Airports Divisions. Regional Airports Divisions and Airports District Offices are responsible for implementing the AIP and PFC programs, and are responsible for all airport program matters pertaining to airport safety and certification, airport design, planning, and environmental analysis. The Regional Airports Divisions and Airports District Offices will provide assistance to ACR to the extent possible to help ACR in the implementation of this Order and will notify ACR if it becomes aware of any Title VI issues, and in carrying out grant-related sanctions.

10. Other FAA Grants Program Organizations. The Acquisition, Materiel, and Grants Division under the Office of Finance and Management, and the Centers of Excellence Program Office under the Office of NextGen, respectively, are responsible for the management and administration of

aviation research and centers of excellence grant programs. Offices that oversee the research programs funded by the grants include the Offices of Airports, Environment and Energy, Aerospace Medicine, and Commercial Space Transportation. These grants are forms of Federal financial assistance that are subject to Title VI and other non-discrimination laws. Chapter 7 of this Order describes the grants and the administering program offices' responsibilities for Title VI compliance for these grants programs

11. Departmental Office of Civil Rights. Under its delegated authority from the Secretary, the Departmental Office of Civil Rights (DOCR) is responsible for providing leadership, direction, and guidance in carrying out DOT's civil rights programs. Specific functions include:

- a. Establishing Departmental policy concerning the implementation of DOT regulations;
- b. Providing appropriate training to the operating administrations;
- c. Providing guidance and technical assistance;
- d. Periodically reviewing and evaluating the programs of the operating administrations; and
- e. Tracking the status of all DOT complaints.

12. Department of Justice Office of Civil Rights. This office is responsible for setting standards, providing guidance, and overseeing Federal agency enforcement of Title VI. The DOJ Office of Civil Rights often receives Title VI complaints from the public. If the complaint is within the jurisdiction of DOT, specifically FAA, the DOCR will forward the complaint to ACR for processing.

13. General Applicability and Specific References. Title VI and other non-discrimination statutory requirements should be referenced in all FAA regulations, orders, advisory circulars, or other guidance that cover programs or activities to which this Order may apply.

14. Reserved.

Chapter 4. Recipient Obligations

1. Introduction. This Chapter provides an overview of FAA recipient obligations (both airport sponsors and other FAA recipients) and explains how Title VI and other non-discrimination requirements are to be implemented in recipient programs.

(Note: appendix 2 contains the definition of “recipient” and other terms used in this Order. Under the AIP, airport recipients that receive AIP or other FAA funds are also referred to as “airport sponsors” or “sponsors.” The term “airport sponsor” or “sponsor” will be used when a provision in this Order specifically applies to the AIP program, or to an airport context, including where applicable, to nonairport sponsors taking AIP grants).

2. How Obligations are Incurred.

a. The FAA has jurisdiction over recipients who receive funds under any FAA-assisted program, including, but not limited to, the following

(1) Grants authorized by the AIP (49 U.S.C. § 47101 et seq.), and ³

(2) Grants authorized for FAA Aviation Research and FAA Centers of Excellence Programs (P.L. 101-508) (see FAA Order 9550.7A, Research Grants Program, April 19, 1996, and

(3) Congressionally mandated guidelines for Centers of Excellence (P.L. 101-508; 49 U.S.C. § 44513)).

b. Recipients that receive Federal financial assistance in the form of loans, grants or donation of Federal property, interest in Federal property, or in the lending of FAA personnel, training, material, equipment, and other assistance.

c. Recipients become obligated to comply with Title VI and other non-discrimination statutes when they apply for and accept Federal financial assistance from the FAA.

3. Title VI Grant Assurances and Duration of Obligations.

a. Recipients of funds from DOT or its operating agencies are required to execute the Standard DOT Title VI/Non-Discrimination assurances (appendix 4), or any updated version that may be

³ Grants authorized by the Airport and Airway Development Act of 1970, as amended (AADA), which set up the Airport Development Aid Program (ADAP), are subject to the provisions of 14 CFR part 152, Subpart E. Although the AADA has expired, grant assurances continue in effect as described in Paragraph 3 of this Chapter. The last ADAP grants expired in 2002. Only the grant assurances and conditions in ADAP grants used to buy land for an airport continue in effect so long as the land is used as an airport. Only three ADAP grants for the purchase of land were issued, and the grant assurances related to these acquisitions of land apply in perpetuity. As to these three grants only, any discrimination/affirmative action issue that may arise would be reviewed under current Adarand principles since part 152 has been superseded by operation of law. See Adarand Constructors, Inc. v. Peña, 515 U.S. 200 (1995).

required by DOT or the FAA. In accordance with Section 6 of these assurances and 49 CFR § 21.7(a)(1), a recipient generally remains obligated to the requirements of 49 CFR part 21 for the period during which the Federal financial assistance is extended to the program. Where the Federal financial assistance is to provide (or is in the form of) personal property, real property or interest therein or structures or improvements thereon, the assurance obligates the sponsor or any transferee for the longer of the following periods:

(1) The period during which a property that is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or,

(2) The period during which the recipient or sponsor retains ownership or possession of the property.

b. All grant agreements between the FAA and a sponsor must include, by reference, the general civil rights assurances found in the Sponsor Grant Assurances. [The sponsor] will comply with such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from funds received from this grant. This assurance obligates the sponsor for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide (or is in the form of) personal or real property or interest therein or structures or improvements thereon, in which case the assurance obligates the sponsor or any transferee for the longer of the following periods: (a) the period during which the property is used for a purpose for which Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits or (b) the period during which the sponsor retains ownership or possession of the property.

In addition, the Standard DOT Title VI/Non-Discrimination Assurances are incorporated, which includes the standard Title VI assurances in appendix 4.

4. Scope of Coverage.

a. The Civil Rights Restoration Act of 1987, as clarified by the requirements in Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendment Act of 1972, and the Age Discrimination Act of 1975, extends to all portions of the recipient's program or facility, including those portions that do not receive Federal funding directly.

b. Title VI/Nondiscrimination requirements apply to primary or direct recipients and subrecipients. Additionally, direct recipients and subrecipients must require their contractors, concessionaires, lessees, and tenants to comply with Title VI/Nondiscrimination requirements, and to pass these requirements to their subcontractors, sublessees, and subtenants.

c. Under the AIP, most airport sponsors are direct recipients. FAA does have a number of State Block Grant sponsors that distribute AIP or other FAA funds to the states' non-primary airports. The State Block Grant sponsor (direct recipient) must ensure that the non-primary airports (subrecipients) will fully comply with Title VI and 49 U.S.C. § 47123.

d. Airport sponsors include states, cities, counties, port authorities, Indian tribes, independent airport authorities, and other entities. Many of these are governmental units and administer other programs, in addition to the airport program, and may have received grants from several Federal agencies for programs such as crime control, schools, and health. The coverage of 49 CFR Part 21 is, however, limited to only that portion of the recipient which is involved in the airport program, and it may become necessary to determine what that portion is. To illustrate, since AIP grants are for airport planning, environmental analysis, noise compatibility planning, airport development, or implementing noise compatibility projects, the FAA's jurisdiction is limited to the portion of the governmental unit which is engaged in administering the airport program. This interpretation is consistent with regulatory provisions pertaining to enforcement. If enforcement becomes necessary, sanctions are limited to the particular entity or part thereof and to the particular program, or part thereof, in which noncompliance has been found (49 CFR § 21.13(c)(4)).

5. Nondiscrimination in Services, Benefits, and Use of Facilities. Under 49 CFR § 21.5(b)(7) and 49 U.S.C. § 47123 (for airport sponsors), recipients are expected to take affirmative action to assure that no person is excluded from participation in or denied the benefits of the program or activity on the grounds of race, color, national origin, sex, or creed, even in the absence of prior discriminatory practice or usage (the FAA recommends that the recipient appoint a person to serve as a **Title VI/Nondiscrimination Coordinator** and develop a **Title VI/Nondiscrimination Plan** that covers the implementation of the recipient's obligations). Additionally, no person may be denied services or benefits of a program or activity on the basis of age (see Paragraph 9 of this Chapter below). The FAA-assisted educational institutions are also prohibited from discriminating on the basis of sex. (see 49 CFR part 25). The FAA recipient must:

a. Adopt the standard DOT Title VI/Nondiscrimination clauses and provisions under DOT Order 1050.2A and any specific FAA clauses in their contracts, leases, deeds, and other applicable instruments, and requiring the applicable standard provisions in subcontracts, subleases, etc.;

b. Notify beneficiaries (including LEP beneficiaries) of the recipient's obligations under Title VI and other non-discrimination laws, and the availability of services, such as language assistance, and the right to file a complaint;

c. Develop a Title VI/Nondiscrimination complaint procedure;

d. Record and maintaining records of Title VI/Nondiscrimination investigations of complaints and lawsuits, and submitting to the FAA Office of Civil Rights copies of complaints within 15 days of receipt;

e. Collect racial and ethnic data to show the extent to which minority groups are beneficiaries of the recipient's programs and services, and collecting data to determine LEP needs and potential environmental justice impacts;

f. Provide meaningful access to the benefits, services, information, and other important portions of the recipient's programs and activities for persons who are LEP;

g. Adopt prescribed methods for assuring non-discrimination by contractors, concessionaires, lessees, tenants, and others; and

h. Provide FAA information or reports of the recipient's Title VI/Nondiscrimination program upon request.

6. Nondiscrimination in Employment.

a. The employment practices of all FAA recipients are subject to the non-discrimination provisions of 49 CFR part 21 under the following conditions:

(1) When a primary objective of the Federal financial assistance is to provide employment (49 CFR § 21.5(c) (1)); or

(2) When discrimination in employment practices results in excluding persons from participating in, receiving the benefits of, or subjecting them to discrimination or another violation of the regulations under any program to which the rule applies (49 CFR § 21.5(c)(3)).

b. Recipients who are educational institutions are required to comply with subpart E of 49 CFR part 25, which prohibits discrimination on the basis of sex in employment in education programs or activities.

c. Recipients who issue Federally-assisted construction contracts in excess of \$10,000 are required to comply with the equal employment opportunity requirements issued by the Department of Labor under Executive Order 11246, "Equal Employment Opportunity." This Order does not address those requirements.

7. Nondiscrimination in Contracting Activities.

a. The recipient's local contracting opportunities (other than FAA-assisted contracts and airport concessions) are covered by 49 CFR part 21 (and 49 U.S.C. § 47123, if the recipient is an airport sponsor), and FAA's policy on non-discrimination. An airport sponsor, for example, is obligated to assure that the minority community in the airport's area is advised of the airport's business opportunities, that bids are solicited from qualified minority firms, and that awards are made without regard to race, color, national origin, sex, or creed. (49 CFR part 21 Appendix C (1) (x)).

b. Participation by Disadvantaged Business Enterprises (DBE) in AIP contracts, and Airport Concession Disadvantaged Business Enterprises (ACDBE) in airport concession contracts, are covered respectively by the regulations in 49 CFR parts 26 and 23. Title VI is a statutory basis for the DBE and ACDBE programs. This Order does not address these procedures.

8. Nondiscrimination in Project Site Selections.

a. Under 49 CFR § 21.5(b)(3) (and 49 U.S.C. § 47123 for airport sponsors), and FAA policy on non-discrimination, FAA recipients and applicants for assistance may not make selections with the

purpose or effect of discriminating against persons on the basis of their race, color, national origin, sex, or creed. Recipients and applicants must:

(1) Collect racial, ethnic, LEP, and other related data as appropriate to conduct effective outreach to ensure project information is disseminated to affected minority and LEP populations, and to solicit and consider their input in the decision-making process;

(2) Conduct environmental reviews that identify and assess the impacts on minority populations; and

(3) Propose measures to avoid, minimize, and/or mitigate disproportionately high and adverse environmental and public health, and interrelated social and economic effects on minority populations; consider alternatives to proposed projects to eliminate potential discrimination under Title VI and 49 U.S.C. § 47123; and select the option or options that will achieve environmental justice and compliance with Title VI, DOT Order 5610.2(a), and 49 U.S.C. § 47123.

b. Title VI and other non-discrimination requirements also apply to related actions such as the appraisal and acquisition of property or land, relocation assistance, payments for moving, and replacement housing payments that may result from a site selection decision.

9. Age Discrimination Act of 1975. Subject to certain exemptions, the Age Discrimination Act of 1975 prohibits recipients of Federal financial assistance from discriminating against program beneficiaries based on age (42 U.S.C. § 6101 et seq.). FAA recipients must agree to comply with the Age Discrimination Act of 1975. This assurance is included the Sponsor Certification Section (C (1)(o)) in the FAA's Airport Sponsor grant assurances, required by 49 U.S.C. § 47123.

10. Reserved.

Chapter 5. Title VI Monitoring of Airport Projects

1. Introduction. Under the AIP program, the FAA issues grants to airport sponsors for airport development, planning, environmental analysis, and noise compatibility programs. Under certain conditions, the FAA also issues grants to non-airport sponsors (i.e., States or units of local government) in areas around the airport to undertake noise compatibility program projects. The FAA must assure that AIP projects comply with Title VI requirements, 49 U.S.C. § 47123 and the DOT Order on Environmental Justice (DOT Order 5610.2(a)) and 49 CFR part 21. Under the Title VI MOU, Airport Nondiscrimination Compliance Staff may, under limited circumstances, conduct Title VI and 49 U.S.C. § 47123 reviews for proposed AIP-funded major airport development. The pilot program extends through January 1, 2015. This Chapter sets forth the procedures to be followed where ACR conducts reviews of certain AIP projects prior to FAA approval of the projects. This Chapter is effective through the term of the Title VI MOU and any extensions thereto.

2. ARP Notification to ACR.

a. As agreed to in the MOU, the ARP regional or district office responsible for a proposed major airport development project will publish a Notice of Intent (NOI) in the *Federal Register* to prepare an EIS for that development.

b. After publishing the NOI, the ARP regional environmental specialist must notify the Director, Civil Rights Eastern/New England Region and AEA-9 via email, that FAA has published the NOI.

c. The email notification must also be emailed by the ARP representative to the following email address: 9-AEA-ACR-TitleVI MOU.

d. When the Environmental Protection Agency (EPA) publishes the Notice of Availability (NOA) for the draft EIS, in the *Federal Register*, the ARP Regional Environmental Specialist must notify AEA-9 about that NOA, via email, at 9-AEA-ACR-TitleVI MOU.

e. The Regional Environmental Specialist must attach a copy of the sections from the draft EIS addressing Environmental Justice consequences and proposed mitigation, and send it to 9-AEA-ACR-Title VI MOU within one (1) day of EPA's publication of the NOA.

3. AIP Grant Applications.

a. The AIP grant application must incorporate the FAA civil rights assurances, (Assurance # 30 of the Airport Grant Assurances, Assurances 17 of the Non airport Sponsor Assurances) by reference and the Standard DOT Title VI/ Non-Discrimination Assurances by reference as specified in 49 CFR § 21.7 (See appendix 4) and

b. The responsible ARP regional staff must ensure that the grant assurances and the Standard DOT Title VI Assurance is either included with the grant application or incorporated by reference before issuing the grant.

4. Compliance Reviews by ACR.

a. Airport Nondiscrimination Compliance Staff may conduct reviews of some or all of the projects identified in Sections 2 and 3 above for compliance with Title VI requirements, 49 U.S.C. § 47123, the DOT Order on Environmental Justice (DOT Order 5610.2(a)), and 49 CFR part 21. These reviews will assess whether:

- (1) Input from minority and low-income populations was adequately solicited and considered;
- (2) All disproportionate and adverse social, economic, and environmental impacts on minority and low-income populations were identified;
- (3) The potential disproportionate and adverse, or disparate impacts, on minority and low-income populations were avoided, minimized, or mitigated under DOT Order 5610.2(a);
- (4) These mitigation actions comply with Title VI, that is, whether there was a justified business necessity for the preferred alternative; whether there was a no less adverse alternative; and whether the preferred alternative was not a pretext for discrimination; and
- (5) Any other issue impacting compliance with Title VI was addressed and resolved.

b. If a project will be funded through a combination of AIP grant funds and PFC revenue, any pre-award determination of the project should be accomplished only once in accordance with the procedures for AIP grants in this Chapter.

c. For projects reviewed by Airport Nondiscrimination Compliance Staff under Section 4 (a), it will provide comments on the draft EIS and the final EIS to the responsible Airports Regional Office by the deadlines specified in the *Federal Register* Notice.

5. Documents and Information for Reviews.

a. The responsible Airports Division will support the Airport Nondiscrimination Compliance Staff efforts to obtain from applicants or recipients all documents and information necessary to facilitate a compliance determination under Section 4 (a) above, including, but not limited to:

- (1) Information on any potential compliance issue(s) that had been identified at an EIS scoping meeting, or through the public involvement process;
- (2) Transcripts of any public hearings which concern potential compliance issues;
- (3) Relevant portions of the draft and final EIS, including a description of disproportionately high and adverse effects on minority and low-income populations that the project is expected to cause; and
- (4) The following information, where relevant, appropriate, and practical:
 - (a) the population to be served and/or affected by race, color, or national origin;

(b) public outreach and involvement activities undertaken to ensure that minority and LEP populations are afforded meaningful access to project information and participation in decision-making;

(c) where there are LEP individuals within these populations, the language assistance that was used to provide program access; and

(d) proposed steps to guard against disproportionately high and adverse effects on persons on the basis of race, color, or national origin.

b. If the sponsor does not provide the necessary information within the designated timeframe, Airport Nondiscrimination Compliance Staff must contact the airport sponsor for assistance.

c. The sponsor's failure to submit information required by 49 CFR § 21.9(b), may rise to a level of noncompliance with the sponsor's federal obligations, and may affect processing of an AIP grant applicable to the proposed major airport development.

d. Airport Nondiscrimination Compliance Staff, via email, must advise the responsible Airports regional or district office environmental specialist responsible for grant administration and documentation when the sponsor has submitted the required information.

e. The Equal Employment Opportunity (EEO) Specialist must provide a copy of the sponsor's submittal to the regional or district office specialist responsible for grant administration and documentation for the proposed major development project. The regional or district office specialist must place a copy of the information submitted in the project's grant documentation record.

6. Title VI Pre-Award Checklist. A Title VI pre-award checklist ("Title VI Pre-Award Checklist for Airport Sponsors Seeking Airport Improvement Program (AIP) funding for Projects with Environmental Impact Statements (EISs) for Major Airport Development Projects") is available to airport sponsors to assist them in complying with Title VI in the environmental review process. This checklist is provided in appendix 3 of this Order. ARP must provide a copy of the checklist to airport sponsors with projects for major airport development projects i.e., a new airport, a new runway, or a major runway extension) requiring an EIS.

7. Reserved.

Chapter 6. Title VI/Nondiscrimination Monitoring of Airport Sponsors

1. Overview. ACR is responsible for reviewing the practices of airport sponsors to determine whether they are complying with the Title VI regulations in 49 CFR Part 21, and with other non-discrimination requirements.

a. Airport Nondiscrimination Compliance Staff may develop a multi-year plan for conducting compliance reviews, and may use a variety of methods for conducting reviews, including desk reviews only, and comprehensive on-site reviews, which include an initial desk review component.

2. Selecting the Airport. Airport Nondiscrimination Compliance Staff will consider the following factors in selecting airports for compliance reviews, including:

a. Whether complaints have been filed against the sponsor or if there are other indicators of possible noncompliance;

b. Whether the sponsor has agreed to implement remedial actions resulting from a pre-award review;

c. The airport's size, complexity, and geographical location; and

d. Suggestions from advocacy groups, FAA Airports Division, and other officials as appropriate. Airport Nondiscrimination Compliance Staff will inform all appropriate parties, including the responsible Airports Division staff, the regional administrator, regional civil rights directors, and the regional legal counsel of upcoming reviews in their region.

3. Compliance Standards. A post-award review may examine any aspect of a sponsor's compliance with Title VI and other non-discrimination requirements, including whether the sponsor implemented commitments made following a pre-award review conducted in accordance with Chapter 5. Airport Nondiscrimination Compliance Staff will apply the compliance standards in appendix 7 and any appropriate ones in appendix 6.

4. Conducting the Compliance Review. Preparations for a compliance review should include: defining the scope of the review and compliance areas; identifying the data that will be needed; developing a schedule; and providing adequate written notice to the airport sponsor's Title VI Coordinator of the upcoming review. There should be adequate coordination with the airport sponsor's point of contact to enable the sponsor to make documents, airport staff, concessionaires, contractors, and others available during the site visit, and to arrange for logistical issues such as security.

a. Desk review. Airport Nondiscrimination Compliance Staff's review of a sponsor's compliance can be limited to a desk review of sponsor responses to a list of document requests and questions. Due to resource constraints, this method may offer the opportunity to increase the number of airports that can be reviewed in a fiscal year. In a review where an on-site visit is conducted, a desk review is usually conducted prior to the visit. In such cases, the preparations for the compliance review will include requesting the airport sponsor to provide information prior to the on-site review.

b. On-site review. The purpose of the on-site visit is to: provide Airport Nondiscrimination Compliance Staff with an opportunity to review original airport documents, such as airport leases and contracts in their entirety, identify compliance issues not apparent in written documents, confirm initial findings through observations and interviews with all pertinent parties, and provide technical assistance.

c. The on-site review should consist of the following components: an entrance or introductions meeting; data collection and review, including interviews with appropriate airport officials, contractors, concessionaires, airline representatives, and other airport tenants; and an exit meeting, where the review team will provide a summary of preliminary findings.

5. Compliance Determinations. With regard to Title VI and other non-discrimination laws, a sponsor is in compliance when the sponsor has taken all appropriate and correct actions to ensure non-discrimination and there has been no finding of discrimination or a violation.

a. A sponsor has not fully complied with Title VI (or 49 U.S.C. § 47123), when it has not implemented a requirement such as posting a non-discrimination notice; incorrectly applied a requirement, or applied the requirement correctly in some aspects, but needs to take further action to achieve full compliance. The sponsor is considered deficient when it has not fully complied with a regulatory requirement.

b. A sponsor is in non-compliance when there is evidence that it has discriminated against individuals or groups of airport beneficiaries; where its neutral policies or practices result in discrimination against a particular group based on its race, color, national origin, sex, creed, or age; or when it has refused or failed to take corrective actions after attempts have been made to resolve the matter voluntarily.

6. Compliance Report.

a. Airport Nondiscrimination Compliance Staff will issue a written report to the airport sponsor after completing the on-site review and receiving all requested information. The report should address each area or issue reviewed: the applicable regulatory references and requirements, the findings, and the compliance determinations, including any recommended actions. The report should be finalized, with input from the airport sponsor. It should include a mutually agreed upon plan for voluntary compliance, if necessary.

b. Prior to its issuance, the report should be reviewed and coordinated with ACR-4, and the responsible regional counsel and Airports Division staff.

7. Voluntary Compliance. The goal of the compliance review is to achieve voluntary compliance by the sponsor where Airport Nondiscrimination Compliance Staff identifies a deficiency in compliance, or finds non-compliance. Airport Nondiscrimination Compliance Staff will make all efforts to assist the sponsor in achieving voluntary compliance, including providing technical assistance and training, and seeking the assistance of the responsible Airports regional office.

8. Enforcement. If an airport sponsor refuses to correct deficiencies, or does not meet the terms of a voluntary compliance agreement, and efforts to resolve the matter are not successful, Airport Nondiscrimination Compliance Staff will follow procedures for enforcement in Chapter 10.

9. Close-Out of Compliance Review. Airport Nondiscrimination Compliance Staff will close-out the compliance review by notifying the airport sponsor that there are no outstanding compliance issues, or that the compliance issues have been resolved by the airport sponsor. Airport Nondiscrimination Compliance Staff must provide a copy of the notification to the responsible Airports regional office.

10. Reserved.

Chapter 7. Monitoring Compliance in Grant Programs Other than the AIP

1. General. The FAA administers other grant programs, in addition to the AIP (See Chapter 2). The recipient obligations of FAA grant programs other than the AIP are described in Chapter 4. A majority of the recipients of grants awarded under these programs are educational institutions. The Department of Education provides Federal financial assistance programs to many educational institutions. Its Office of Civil Rights is responsible for monitoring the compliance of those institutions. Although there exists no formal agreement between the Department of Education and DOT, DOT's policy is to defer to the Department of Education in making compliance determinations regarding educational institutions under Title VI, whenever appropriate, so as to avoid duplication of efforts. This Chapter reflects that approach. Airport Nondiscrimination Compliance Staff will serve as FAA's liaison office with the Department of Education Office of Civil Rights.

2. Responsibilities of Grant and Program Offices. The Acquisition, Materiel, and Grants Division, the Centers of Excellence Program Office, and all responsible FAA program offices that administer a program of Federal financial assistance other than the AIP for airport planning and development will take the following actions:

a. Ensure that each applicant for a grant, and any subrecipient, has executed the Standard DOT Title VI/ Non-Discrimination Assurances (appendix 4) as a condition of any grant award (if the research grant is funded with AIP funds, the civil rights assurances in AIP grant agreements would also be required).

b. If the recipient is an educational institution, obtain information from Airport Nondiscrimination Compliance Staff that the recipient is currently in compliance with Title VI prior to any award of a grant. (If the recipient is not an educational institution, and has executed the assurances in paragraph 2(a) above, proceed with the award process),

c. Decline to award any grant if the Standard DOT Title VI assurances have not been executed or if Airport Nondiscrimination Compliance Staff has notified the responsible program grants office that the Department of Education Office of Civil Rights has determined that the recipient is not in compliance with Title VI. Prior to taking such action, the program office will consult with Airport Nondiscrimination Compliance Staff, who will review the issue with ACR-4 and AGC, and

d. Refer any complaints of discrimination from grant recipients, or grant beneficiaries, and any other matter which may raise an issue of non-compliance to Airport Nondiscrimination Compliance Staff.

e. Forward an annual report due no later than October 31 to the Director, Civil Rights, Eastern and New England Regions and Airport Nondiscrimination Compliance certifying that the program or grants office has completed the above actions in Paragraph 2(a) through 2(d) of this Chapter. The report should also list the grants and amount of each grant issued in the fiscal year by the name of the recipient.

3. Responsibilities of the Airport Nondiscrimination Compliance Staff (AEA/ANE-9). This staff will:

a. Provide the program or grants office with the Title VI compliance status of a potential FAA recipient that is under the jurisdiction of the Department of Education;

b. Provide technical assistance and training on Title VI and non-discrimination matters;

c. Process complaints against recipients not under the jurisdiction of the Department of Education, and coordinate with the Department of Education on complaints filed against FAA recipients that are under the Department of Education's jurisdiction; and

d. Review annual reports from the program or grants offices to determine if any follow up actions are needed.

4. Reserved.

Chapter 8. Title VI/Nondiscrimination Complaints

1. General. Any person (or any specific class of persons) who believes that he or she has been subjected to discrimination prohibited by Title VI, or by another non-discrimination statute referenced in this Order, may personally or through a representative file a complaint with DOCR or ACR.⁴

This Chapter provides FAA offices that oversee Federal financial assistance programs with basic information on ACR's processing of Title VI and other non-discrimination complaints. ACR intends that this information will assist FAA offices in responding to initial inquiries on complaint matters from recipients and others.

2. Filing Formal Complaints.

a. Time frame for filing complaints. A complaint must be filed not later than 180 days after the date of the alleged violation unless the time for filing is extended by ACR. (49 CFR § 21.11(b)).

b. All complaints should be sent to ACR at:

Office of Civil Rights
Federal Aviation Administration
800 Independence Ave. SW, Room 1030
Washington, DC 20591

c. Complete complaint. The complaint must be a complete complaint (see definition of a "complete complaint" in appendix 2).

d. Citation of specific statute/regulation. A complainant need not specifically allege that Title VI, 49 CFR part 21, or another non-discrimination statute has been violated. An allegation of discrimination because of race, color, national origin, sex or creed by a complainant is sufficient.

e. Complaint anonymity. Complainants may choose to keep their identities confidential throughout the complaint process. ACR will respect confidentiality requests in these instances except to the extent necessary to investigate the complaint and resolve the matter, including any hearing conducted or judicial proceeding (49 CFR § 21.11(e)). If a complainant chooses to insist upon anonymity despite ACR's determination that the investigation cannot proceed without divulging the complainant's identity, ACR will administratively close the complaint.

⁴ Any person who believes that he or she has been discriminated against by an airport sponsor, in violation of as civil rights grant assurance, may alternatively file a complaint with the FAA Administrator under 14 CFR Part 16, "Rules of Practice for Federally-Assisted Airport Enforcement Proceedings". Those complaints are processed and docketed by the FAA Office of the Chief Counsel. This Order does not cover the 14 CFR Part 16 complaint process.

3. Complaint Processing Information

a. ACR reserves the Authority to accept or reject complaints of discrimination under Title VI and other non-discrimination statutes. Acceptance is based on the following factors: timeliness; completeness; and whether FAA has jurisdiction.

b. Airport Nondiscrimination Compliance Staff will process the complaint. It will also acknowledge receipt of the complaint and inform the complainant and the respondent of the acceptance or rejection of the complaint, or portions thereof, for investigation.

c. An Airport Nondiscrimination Compliance Staff investigator will conduct fact-finding, and will attempt to resolve the complaint. Attempts to resolve the complaint may take place at any time, before or after an investigation. As part of the fact-finding and investigation, the staff investigator may contact the complainant for additional information and may request that the respondent respond to the complaint allegations, or provide information relevant to the investigation.

d. Airport Nondiscrimination Compliance Staff will issue a Letter of Finding (LOF), on the merits of the complaint, or otherwise issue a letter closing the complaint if it was resolved informally, or closed in some other manner. The DOT standard for issuing complaint decisions is 180 days from the investigating office's receipt of the complaint. This standard is based on the reasonable expectation that the complainants and respondents will provide all requested information to the Airport Nondiscrimination Compliance Staff investigator on time.

e. The FAA has adopted an informal review process called "Request for Reconsideration", that can be used by a complainant who has received a LOF of no violation. The request must be in writing (or submitted initially in an alternate format, which FAA must ultimately put into writing) and sent to ACR-1 within 30 days of receipt of FAA's letter closing the complaint. The request must identify (1) the specific finding to be reconsidered, and (2) the basis for the request, including facts or evidence to support the request. Requests for reconsideration based solely on general disagreements with the investigative findings or remedies negotiated to bring the airport sponsor into compliance with the law will not be accepted. Airport Nondiscrimination Compliance Staff will process requests for reconsideration in coordination with ACR-4. ACR-4 must concur in any decision not to accept a request for reconsideration. Reasons for reconsidering a decision include, but are not limited to, the following:

- (1) Complaint allegations were not investigated,
- (2) The investigation was insufficient, (e.g. there was a failure to interview complainant's witnesses or perform an on-site visit when one was necessary),
- (3) Facts or evidence from the complainant were not adequately considered,
- (4) Issues were investigated under the wrong authority or the correct authority was applied inappropriately,
- (5) Material information became available that was not available previously,

(6) Fraud or misrepresentation occurred; or

(7) The FAA's decision would have a substantial impact on its policies, practices, or operations.

f. DOT Order 1000.18, "External Civil Rights Complaints Processing Manual." (September 2007) has more detailed procedures on complaint processing. (An electronic copy can be found at www.civilrights.dot.gov/page/publications).

4. Complaints Against Air Carriers. Complaints against air carriers alleging discrimination because of race, color or national origin, sex, or creed in providing public services or use of facilities are not covered by 49 CFR part 21, and the other statutes described in this Order. When ACR receives such a complaint, it will forward it to:

Assistant General Counsel for Aviation Enforcement and Proceedings
ATTN: Aviation Consumer Protection Division, C-75
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590
E-mail: airconsumer@OST.DOT.GOV

5. Complaints Against Lessees or Contractors (Other than Air Carriers).

a. If a complaint alleges that a lessee or contractor to an airport sponsor subject to 49 CFR part 21 (except an air carrier) engaged in discrimination based on race, color, or national origin, in providing public services or use of facilities, ACR will notify the DOOCR and request that the DOJ Office of Civil Rights review the complaint. If the DOJ Office of Civil Rights prosecutes the case in accordance with Title III of the Civil Rights Act of 1964 concerning public accommodations, ACR will not investigate the matter unless DOOCR and the DOJ Office of Civil Rights makes a request. If the DOJ Office of Civil Rights does not proceed under Title III, ACR will investigate the complaint. Generally, ACR will submit information requests and other communications in connection with the investigation to the airport operator, not the lessee or contractor as the FAA's oversight responsibility is with the airport sponsor as the grant recipient. The airport sponsor must, in turn, require the lessee or contractor to provide appropriate information that is under their control which the FAA needs to complete the investigation.

b. If a complaint alleges that a lessee or contractor to an airport sponsor subject to 49 U.S.C. 47123 (except an air carrier) engaged in discrimination based on sex or creed, in providing public services or use of facilities, ACR will process the complaint under the procedures referenced in this Chapter.

6. Complaints of Employment Discrimination Against Recipients. Regulations of the Equal Employment Opportunity Commission (EEOC), 29 CFR part 1691, and the DOJ, 28 CFR part 42, govern the handling of complaints alleging employment discrimination based on race, color, religion (creed), sex, or national origin by tenant employees or Federally-assisted contract employees against

recipients. ACR may refer these complaints to the EEOC, or may process them itself, if there are special circumstances warranting FAA's attention. Such special circumstances may include allegations of a pattern and practice of employment discrimination, or a Title VI allegation in addition to allegations of employment discrimination.

7. Age Discrimination Act Complaints.

a. Complaints against recipients involving services or benefits. As agency policy, ACR will investigate allegations of discrimination in services, benefits, or accommodations based on age against a sponsor that has received an AIP grant, under the procedures referenced in this Chapter. The following is an example of an Age Discrimination Act complaint: An airport expansion project includes the acquisition of residences and replacement housing payments under 49 CFR § 24.401. A person affected by the project alleges that he received a lower compensation because of his age as compared to a similarly situated resident.

b. Employment complaints against recipients. ACR will refer any allegation of employment discrimination based on age to the EEOC for review under the Age Discrimination in Employment Act of 1967, as amended.

c. Complaints against airport tenants and lessees. The obligations of airport tenants and lessees such as concessionaires are normally set out in the agency's implementing regulations. Neither the Age Discrimination Act nor the Department of Health and Human Services (HHS) general regulations address the obligations of these entities. In the absence of a DOT rule or other guidance under the Age Discrimination Act, FAA has no jurisdiction over complaints against such an entity. Example: A complaint alleges that a car rental concession at a Federally-assisted airport discriminated based on age when it did not permit a woman to drive the car rented by her father because she is under 25 years old. If ACR receives such a complaint, ACR will refer it to the HHS Office of Civil Rights, and inform DOCR of this referral.

8. Reserved.

Chapter 9. Informal Resolution

1. General. FAA's ultimate responsibility is to ensure non-discrimination in the programs to which it provides financial assistance. Title 49 § 21.11(d) requires that compliance matters (deficiencies and noncompliance found as a result of a complaint or a compliance review) be resolved by informal means whenever possible. Informal means include all methods to obtain the respondent's voluntary compliance prior to starting enforcement proceedings. FAA will apply the informal resolution approach that the 49 CFR part 21 regulations requires to all compliance matters that are based on other non-discrimination statutes cited in this Order.⁵ Under Title VI, ACR must determine that voluntary compliance cannot be achieved before taking formal enforcement action.

a. ACR encourages resolving a complaint informally throughout the complaint process. During the initial discussions with the complainant and the recipient, the investigator should ask their suggestions on acceptable relief and resolution options. However, these efforts should not begin until ACR has accepted the complaint for investigation under 49 CFR part 21.

b. The DOT Policy Statement on Alternative Dispute Resolution (ADR) expresses the Department's commitment to advancing national transportation goals through ADR. ADR is a collaborative, consensual dispute resolution approach. It describes a variety of problem-solving processes that are used in lieu of litigation or other adversarial proceedings to resolve disagreements. ADR encompasses mediation, facilitation, conciliation, fact-finding, mini-trials, negotiation, negotiated rulemaking, neutral evaluation, policy dialogues, use of ombuds, arbitration, and other processes that usually involve a neutral third party who assists the parties in preventing, minimizing the escalation of, and resolving disputes. ADR is consistent with 49 CFR part 21's mandates to resolve compliance matters by informal means whenever possible.

c. Airport Nondiscrimination Compliance Staff may provide technical assistance to the respondent in resolving the complaint.

2. Methods Used. ACR may use, among others, the following informal methods to resolve noncompliance issues:

a. Exchange of correspondence. Prior to issuing a Letter of Finding (LOF) or an investigative report in a complaint, or a notice of reasonable cause following a review, Airport Nondiscrimination Compliance Staff may resolve the issues through an exchange of correspondence such as letters or e-mails with the respondent. The correspondence must clearly establish that the respondent affirms that it has already taken or will take specific action to remedy the non-compliance issues.

b. Verbal communications. Prior to issuing a LOF or an investigative report in a complaint, or a notice of reasonable cause following a review, Airport Nondiscrimination Compliance Staff

⁵ For example, CFR 14 CFR§16.21 requires the complainant to attempt informal resolution with the airport sponsor before filing a complaint under this part. ACR may assist in facilitating the parties' attempts at reaching an informal resolution of the complaint.

and the respondent may resolve issues through verbal communications such as telephone calls or face-to-face meetings. If these methods are used the complaint file must include documentation of these discussions between the FAA representative and the respondent, making clear that there is mutual understanding of the actions to be taken.

c. Voluntary compliance agreements. Voluntary compliance agreements, sometimes referred to as settlement agreements, may be used to informally resolve compliance matters before or after Airport Nondiscrimination Compliance Staff issues LOF is issued or a notice of reasonable cause following a review. Such agreements usually result from negotiations between Airport Nondiscrimination Compliance Staff and the respondent or its representatives. A voluntary compliance agreement must:

(1) Be in writing and signed by Airport Nondiscrimination Compliance Staff and a representative of the respondent who can commit the respondent to the necessary corrective actions;

(2) Address each cited violation;

(3) Specify the corrective or remedial action to be taken, within a stated period of time, to resolve the compliance matters;

(4) Provide for submission of appropriate documents to the FAA which verify that the respondent has executed the steps agreed to; and

(5) Specify the enforcement actions that the FAA will take if the respondent fails to implement the corrective or remedial acts.

d. Alternative dispute resolutions. Other ADR approaches include: conciliation, facilitation, or mediation, using a neutral third party as a facilitator or mediator. Airport Nondiscrimination Compliance Staff may use any of these methods after receiving approval from ACR-4.

3. Complaint Closure After Informal Resolution. If the matter is resolved informally, the complaint will be closed. Airport Nondiscrimination Compliance Staff's letter closing the complaint will reiterate the specific issues, the corrective actions the respondent has taken, and the schedule for taking additional necessary actions.

4. Follow-Up Monitoring. Airport Nondiscrimination Compliance Staff will carry out appropriate monitoring activities to ensure that a respondent or a recipient implements the remedial steps to which it committed in a voluntary compliance agreement or in a letter to the FAA. If there is a finding that the terms of such an agreement have not been implemented, Airport Nondiscrimination Compliance Staff will consult with ACR-4, regional counsel, and the responsible Airports regional office to determine whether the matter should be referred to AGC-610 for commencement of enforcement proceedings in accordance with Chapter 10, Enforcement.

5. Reserved.

Chapter 10. Enforcement

1. Referrals for Action Under 49 CFR Part 21.

a. Applicants, sponsors and other FAA grant recipients are subject to the enforcement procedures set forth in 49 CFR §§ 21.11 through 21.19. If FAA finds reasonable cause to believe that a sponsor or recipient has failed to comply, it will notify the recipient in accordance with 49 CFR § 21.11(d) and attempt to resolve the issues through informal means. If Airport Nondiscrimination Compliance Staff, with assistance from the responsible regional counsel and Airports Division staff, is unable to resolve the matter by informal means Airport Nondiscrimination Compliance Staff will refer the matter to ACR-4 for coordination with AGC-610 under 49 CFR § 21.13.⁶ ACR may recommend suspension, termination, or refusal to grant or to continue Federal financial assistance or other appropriate steps.

b. AGC-610 will undertake appropriate coordination with the DOT Office of the General Counsel in carrying out the provisions of 49 CFR § 21.13. ACR-4 will also notify DOCR of the referral of actions to DOT Office of the General Counsel. Whenever the Office of the Secretary completes the enforcement proceedings set forth in 49 CFR §§ 21.13, 21.15, and 21.17 with regard to airport sponsor recipients, ACR-1 will notify ARP-1 and request that ARP-1 direct the responsible Airports Division to implement appropriate grant related sanctions.

2. Deferring Action on an Airport Grant Application.

a. If ACR has reasonable cause to believe that there is noncompliance, Airport Nondiscrimination Compliance Staff may request that the responsible Airports regional office temporarily defer action on a pending application for an airport grant in accordance with 49 CFR Part 21 to the extent allowed by law. A request for deferral may only be used with respect to applications. By contrast, payments on previously approved grants must continue until such time as the procedures of 49 CFR §§ 21.13, 21.15, and 21.17 have been completed, as well as other legal processes required under 49 U.S.C. § 47107. Authority for deferral is found in 49 CFR § 21.13(b), which states that DOT is not required to provide Federal financial assistance during the pendency of administrative proceedings. 49 CFR Part 21 requires an express finding after the opportunity for a hearing has been provided to the recipient.

b. As outlined in Department of Justice regulations 28 CFR § 50.3, deferral is appropriate for a reasonable period of time, provided that the procedure is consistent with the achievement of the objectives of the statute authorizing the Federal financial assistance.

c. When deferral is used, efforts to secure voluntary compliance shall be initiated without delay and be completed as soon as possible. If efforts to achieve voluntary compliance fail, the matter should be promptly referred to AGC-610 for commencement of further enforcement proceedings in accordance with this Chapter.

3. Reserved.

⁶ An alternate enforcement proceeding is available through 14 CFR Part 16.

Appendix 1. List of Acronyms and Abbreviations

The following acronyms and abbreviations have been used in this Order.

AADA	Airport and Airway Development Act of 1970
AAS	Office of Airport Safety and Standards
ACDBE	Airport Concession Disadvantaged Business Enterprise
ACO	Office of Airport Compliance and Management Analysis
ACR	Office of Civil Rights
ACR-1	Assistant Administrator for Civil Rights
ACR-4	National Airport Civil Rights Policy and Compliance Office
ADAP	Airport Development Aid Program
ADO	Airport District Office
ADR	Alternative Dispute Resolution
AEA/ANE-9	Airport Nondiscrimination Compliance Staff
AEE	Office of Environment and Energy
AEE-400	Environmental Policy and Operations Division
AGC	Office of the Chief Counsel
AGC-610	Office of the Chief Counsel, Airport Law Branch
AIP	Airport Improvement Program
APL	Office of Policy, International Affairs, and Environment
APP	Office of Airport Planning and Programming
ARP	Office of the Associate Administrator for Airports
ARP-1	Associate Administrator for Airports
C.F.R. or CFR	Code of Federal Regulations
DBE	Disadvantaged Business Enterprise
DOCR	DOT Departmental Office of Civil Rights
DOJ	Department of Justice
DOT	Department of Transportation
E.J.	Environmental Justice
E.O.	Executive Order
EEOC	Equal Employment Opportunity Commission
EIS	Environmental Impact Statement
FAA	Federal Aviation Administration
FR or Fed. Reg.	Federal Register
LEP	Limited English Proficiency
LOF	Letter of Finding
MOU ⁷	Memorandum of Understanding
NEPA	National Environmental Policy Act
NOA	Notice of Availability
NOI	Notice of Intent
PFC	Passenger Facility Charge
P.L.	Public Law

⁷ Between the FAA Office of Civil Rights and the FAA Office of Airports to Establish a “Pilot Program” to share Environmental Justice Information in Environmental Impact Statements.

XX/XX/13

1400.11
Appendix 1

U.S.C. United States Code

Appendix 2. Definitions

The following definitions are to be used for this order. In most instances, they are taken from the existing implementing regulations or orders, with the citation referenced where appropriate.

1. Adverse Effects. 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 nonprofit organizations; increased traffic congestion, isolation, exclusion or separation of minority or low-income individuals within a given community or from the broader community; and the denial of, reduction in, or significant delay in the receipt of, benefits of DOT programs, policies, or activities. (DOT Order 5610.2(a)).

2. Airport Improvement Program (AIP). The current airport grant program, which authorizes the FAA to provide Federal financial assistance for airport planning and development projects, and noise compatibility planning and programs.

3. Airport Sponsor. A public agency or private owner of a public-use airport that submits to the Secretary an application for Federal financial assistance from the FAA under the AIP, or another grant program. An airport sponsor that has been awarded Federal financial assistance by the FAA is a recipient of Federal financial assistance. (see U.S.C. § 47102)

4. Applicant. A person who submits an application, request, or plan required to be approved by the Secretary, or by a primary recipient, as a condition of eligibility for Federal financial assistance, and application means such an application, request, or plan. (49 CFR § 21.23)

5. Complete Complaint. A complete complaint is one which is signed by the complainant or the complainant's representative, and which includes at least the following: (a) A written explanation of what happened; (b) information necessary to contact the complainant or complainant's representative (if the complaint is filed initially by e-mail, staff shall request the sender to provide its full name and address, and a signed complaint form or letter); (c) identification of the person or group injured by the alleged discrimination; (d) identification of the person or organization alleged to have discriminated; (e) basis for the alleged discrimination (e.g., race); and (f) sufficient information to understand the facts that led the complainant to believe discrimination occurred and when the discrimination took place. Third party complaints shall describe or identify the alleged victims of discrimination.

6. Disproportionately High and Adverse Effect on Minority Populations. An adverse effect that: (1) is predominantly borne by the minority populations, or (2) will be suffered by the minority population, and is appreciably more severe or greater in magnitude than the adverse effect that will be suffered by the non-minority population. (DOT Order 5610.2(a)).

7. Environmental Justice. According to the U. S. Environmental Protection Agency, Environmental Justice is defined as "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. Fair treatment means that no group of people should bear a disproportionate share of the negative environmental effects resulting from industrial, governmental, or commercial operations or the execution of Federal, State, local and tribal programs and policies. Meaningful involvement means that: 1) people have an opportunity to participate in decisions about activities that may affect their environment and/or health; 2) the public's contribution can influence the regulatory agency's decision; 3) their concerns will be considered in the decision making process; and 4) the decision makers seek to facilitate the involvement of those potentially affected." The DOT's environmental justice strategy in DOT Order 5610.2(a) defines the fundamental concepts of environmental justice in the following three principles:

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

8. Facility. Includes all or any part of structures, equipment, or other real or personal property or interests therein, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration or acquisition of facilities. (49 CFR § 21.23)

9. Federal Financial Assistance includes:

- a. Grants and loans of Federal funds;
- b. Grant or donation of Federal property and interests in property;
- c. Detail of Federal personnel;
- d. The sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient; and
- e. Any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance. (49 CFR § 21.23)

10. Investigator. The FAA ACR employee who conducts a complaint investigation.

11. Limited English Proficient (LEP) Persons. Persons for whom English is not their primary language and who have a limited ability to speak, understand, read, or write English. LEP include people who reported to the U.S. Census that they do not speak English well or do not speak English at all.

12. Major Airport Development . Includes, for example, a new airport, a new runway or a major runway extension.

13. Minority. A person who is:

- a. Black (a person having origins in any of the black racial groups of Africa);
- b. Hispanic or Latino: a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race;
- c. Asian American: a person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent;
- d. American Indian and Alaskan Native: a person having origins in any of the original people of North America, South America (including Central America), and who maintains cultural identification through tribal affiliation or community recognition); or
- e. Native Hawaiian and Other Pacific Islander: people having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands. (DOT Order 5610.2(a))

14. Passenger Facility Charge (PFC). Means a charge imposed by a public agency on passengers enplaned at a commercial service airport it controls. PFC funds are not Federal financial assistance.

15. Primary Recipient. Any recipient that is authorized or required to extend Federal financial assistance to another recipient for the purpose of carrying out the program (49 CFR § 21.23). Note that for the purposes of this Order, the word *primary* does not relate to the activity level of the airport.

16. Program or activity. Includes any program, project, or activity for the provision of services, financial aid, or other benefits to individuals (including education or training, health, welfare, rehabilitation, housing, or other services, whether provided through employees of the recipient of Federal financial assistance or provided by others through contracts or other arrangements with the recipient, and including work opportunities), or for the provision of facilities for furnishing services, financial aid or other benefits to individuals. A program receiving Federal financial assistance shall be deemed to include any services, financial aid, or other benefits provided with the aid of Federal financial assistance or with the aid of any non-Federal funds, property, or other resources required to be expended or made available for the program to meet matching requirements or other conditions which must be met in order to receive the Federal financial assistance, and to include any services, financial aid, or other benefits provided in or through a facility provided with the aid of Federal financial assistance or such non-Federal resources. (49 CFR § 21.23)

17. Recipient. May mean any State, territory, possession, the District of Columbia, or Puerto Rico, or any political subdivision thereof, of instrumentality thereof, any public or private agency, institution, or organization, or other entity, or any individual, in any State, territory, possession, the District of Columbia, or Puerto Rico, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assignee, or transferee thereof, but such term does not include any ultimate beneficiary under any such program. (49 CFR § 21.23).

18. Respondent. An airport sponsor, airport tenant, concessionaire, contractor, or lessee covered by contractual requirements of non-discrimination pursuant to 49 CFR Part 21 that is the subject of a discrimination complaint. A respondent may also include a FAA recipient that is not an airport sponsor, such as a research center that has received a FAA research grant.

19. Secretary. The Secretary of Transportation or, except in 49 CFR § 21.17(e), any person to whom the Secretary has delegated authority in the matter concerned.

20. Subrecipient. A recipient that is extended Federal financial assistance by a primary recipient.

Appendix 3 - MOU with Airports

Memorandum of Understanding Between
 The
 FAA Office of Civil Rights
 And The FAA Office of Airports
to Establish a "Pilot Program" to Share Environmental Justice
Information in Environmental Impact Statements EISs)

BACKGROUND:

Title VI of the Civil Rights Act of 1964 (Title VI), ensures that everyone in the United States has the right to take part in and receive benefits a federally-funded action provides regardless of race, color, or national origin. Federal Aviation Administration's (FAA) non-discrimination statute, Title 49 U.S.C. § 47123 requires the Secretary of Transportation (Secretary) to take affirmative action to ensure that an individual is not excluded for the above reasons as well as a person's creed or sex.

The Secretary effectuates the provisions of Title VI obligations for federally-funded transportation projects, through Title 49, part 21 of the Code of Federal Regulations (CFR). That title addresses non-discrimination in the Department of Transportation's (DOT) federally-assisted programs. Title 49 CFR § 21.9(b)¹, requires each recipient of DOT funding to keep records and submit to the Secretary timely, complete, and accurate compliance reports. The records enable the Secretary to determine if those recipients have complied or are complying with part 21 requirements. As a result, airport sponsors receiving federal funding through the FAA's Airport Improvement Program (AIP), must make the information section 21.9(b) requires available to the FAA. FAA acts on the Secretary's behalf to ensure Title VI compliance for federally-funded aviation actions.

Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" requires federal agencies, to the greatest extent practicable and as permitted by law, to ensure their programs and actions achieve environmental justice. The agencies do so to determine if their activities have disproportionately high and adverse human health or environmental effects on minority populations and low-income populations.

In April 1997, the Department of Transportation, issued Order 5610.2, "Environmental Justice in Minority Populations and Low-Income Populations." That Order provides procedures for Departmental agencies to comply with Executive Order 12898. The DOT Order addresses disproportionately high and adverse effects on minority and low income populations. In the Order's Appendix, "Minority" is defined generally as a person who is Black, Hispanic, Asian America, or American Indian and Alaskan Native.² Accordingly, minorities protected under the

¹ Regulation requires sponsors to have available for the Secretary racial and ethnic data showing the extent to which minority groups are beneficiaries of programs receiving Federal financial assistance.

Executive Order to some extent overlap with the populations protected by Title VI or 49 U.S.C.

§ 47123.

The Office of Airports (ARP) examines environmental justice impacts associated with major airport development' as it completes its responsibilities under the National Environmental Policy Act (NEPA). The FAA typically prepares an EIS for such projects (unless an Environmental Assessment has enabled the FAA to determine that there are no significant impacts). To comply with the Executive Order and the DOT Order, portions of the EIS evaluate the proposed project for the potential of disproportionately high and adverse effects on minority populations or disproportionately high and adverse effects on low-income populations.

The Office of Civil Rights (ACR) and ARP recognize that the environmental justice analyses in those EISs are suitable sources of information on the minority populations Title VI covers. ACR believes that information is pertinent in determining a sponsor's compliance with Title VI and 49 CFR § 21.9(b). Therefore, ACR and ARP have developed the procedures in this MOU to share the environmental justice information in some ARP-prepared EISs.

RESPONSIBILITIES: The following paragraphs summarize the duties of ACR and ARP respectively.

ACR: ACR provides leadership to ensure no FAA action involves unlawful discrimination. In doing this, ACR works with airport sponsors to ensure public participation in and proper management of FAA program benefits without regard to race, color, national origin, sex or creed. Therefore, ACR works to ensure airport sponsors meet Title VI and 49 U.S.C. § 47123 requirements.

ARP: ARP provides leadership in planning and developing a safe, efficient national airport system to meet the needs of the Nation's aviation interests, while considering the environmental effects of those actions. In meeting these responsibilities, ARP reviews airport layout plans (ALP) an airport sponsor presents to FAA for approval. Often, the sponsor seeks financing under the AIP to fund the proposed airport development projects shown on an ALP. In completing its NEPA responsibilities for these actions, ARP examines project impacts on low-income and minority populations as part of its environmental review.

PURPOSE OF THE MOU: ACR and ARP have developed this MOU to establish a "pilot program" on how ACR will use environmental justice sections of EISs ARP prepares for major airport development for which the FAA may provide AIP funding.

² In addition, the DOT Order defines low-income populations, but we are not including that information in this MOU because it does not pertain to Title VI requirements.

³ For purposes of this MOU, "major airport development" means a new airport, a new runway or a major runway extension. See Order 5050.4B, Chapter I, paragraph 9.1 for a definition of "major runway extension."

How ARP and ARC will share information to assist airport sponsors in complying with title VI and 49 U.S.C. § 47123 requirements

This MOU presents a process ACR and ARP have developed to assist ACR in its Title VI and 49 U.S.C. § 47123 review for proposed AIP-funded major airport development. ACR will complete that review before ARP issues an AIP grant to an airport sponsor seeking AIP funding for that development.

The MOU also presents a process to assist airport sponsors in meeting 49 CFR § 21.9(b) minority population reporting requirements. ACR and ARP developed the attached "Title VI Pre-Award Checklist for Airport Sponsors Seeking Airport Improvement Program (AIP) Funding for Projects with Environmental Impact Statements (EISs) for Major Airport Development Projects"(Checklist). ACR and ARP will encourage airport sponsors seeking AIP funding to use this optional Checklist in conjunction with an EIS's environmental justice information to meet section 21.9(b) requirements.

To ensure proper processing of the information requested by Title VI and 49 U.S.C. § 47123, ACR and ARP will work as necessary to complete these steps:

1. The ARP regional or district office responsible for a proposed major airport development publishes a Notice of Intent (NOI) in the *Federal Register* to prepare an EIS for that development. Immediately after publishing the NOI, the Regional Environmental Specialist will notify the Director, Civil Rights Eastern/New England Region and Airport Nondiscrimination Compliance, AEA-9, via email, that FAA has published the NOI. The notification email should be sent directly to mail box 9-AEA-ACR-Title VI MOU.
2. When the Environmental Protection Agency (EPA) publishes the Notice of Availability (NOA) for the draft EIS, in the *Federal Register*, the Regional Environmental Specialist will notify AEA-9 about that NOA, via email, at 9-AEA-ACR-TitleVI MOU. The Regional Environmental Specialist will attach a copy of the sections from the draft EIS addressing environmental justice consequences and proposed mitigation, to that email address within one (1) day of EPA's publication of the NOA.

At the same time, the Regional Environmental Specialist will send the sponsor a copy of the optional Checklist via email. In that email, the Regional Environmental Specialist will advise the sponsor that the information in the optional Checklist will satisfy the sponsor's reporting requirements under 49 CFR § 21.9(b). That email will instruct the sponsor to submit the required information to ACR within 30 days of the date EPA publishes the NOA for the final EIS in the *Federal Register* via the checklist or an alternative format of their choice.

3. The ACR Equal Employment Opportunity Specialist (EEO Specialist) assigned to the project will send comments via email to the Regional Environmental Specialist addressing the **draft** EIS's environmental justice consequences and proposed mitigation sections. The

EEO Specialist must provide that information to the Regional Environmental Protection Specialist no later than 5 calendar days after the comment period ends as stated in the **draft** EIS NOA.

4. The Regional Environmental Specialist will review the EEO Specialist's comments on the **draft** EIS sections noted in Item 3. Since ARP is responsible for preparing the EIS for major airport development and approving that development, the Regional Environmental Specialist will make the final decisions on revisions to the **draft** EIS regarding the sections noted above. If an Airport District Office (ADO) is responsible for the EIS, the Regional Environmental Specialist will make those decisions in consultation with the ADO.

If the Regional Environmental Specialist disagrees with the EEO Specialist's input on the environmental justice consequences or mitigation sections, the Regional Environmental Specialist will provide his or her rationale to the EEO Specialist. Before ARP completes the **final** EIS, the EEO and Regional Environmental Specialists shall attempt to resolve the matter. If the EEO and Regional Environmental Specialists are unable to resolve the matter, they should elevate the matter to their respective managers.

5. When EPA publishes the NOA for the project's **final** EIS in the *Federal Register*, the Regional Environmental Specialist will send the sponsor a copy of the NOA via email. In that email, the Regional Environmental Specialist will remind the sponsor to provide the information required in 49 CFR § 21.9(b) within 30 days of the NOA publication date to the EEO Specialist assigned to the project via the checklist or an alternative format of their choice.

6. The Regional Environmental Specialist will then send a copy of the email noted in Item 5 to the EEO Specialist. That transmittal email will also include contact information for the ARP regional or district office specialist responsible for grant administration and documentation.

7. The EEO Specialist will review the information submitted within 30 days of receiving it. If the sponsor's submission is not complete, the EEO Specialist will notify the sponsor via email. That email will explain in detail the EEO Specialist's concerns related to the information submitted and a request for a revised submission by a certain date.

8. If the sponsor does not provide the necessary information within the designated timeframe, the EEO Specialist will contact the sponsor to request the information.

9. The sponsor's failure to submit information required by 49 CFR § 21.9(b), may rise to a level of noncompliance with the sponsor's federal obligations, and may affect processing of an AIP grant applicable to the proposed major airport development.

10. The EEO Specialist, via email, will advise the regional or district office specialist responsible for grant administration and documentation when the sponsor has submitted

the required information.

11. The EEO Specialist will provide a copy of the sponsor's submittal to the regional or district office specialist responsible for grant administration and documentation for the proposed major development project. The regional or district office specialist will place a copy of the information submitted in the project's grant documentation record.

DURATION OF THE PILOT PROGRAM:

ACR and ARP will conduct the pilot program this MOU establishes for a 3-year period. The program applies only to major airport development: 1) for which an airport sponsor seeks AIP funding; and 2) whose Notice of Intent to Prepare an EIS ARP publishes in the *Federal Register* on or after January 1, 2012.

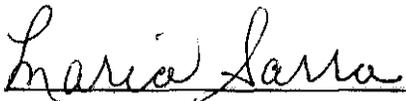
After conducting the pilot program for a 3-year period (i.e., until January 1, 2015), ACR and ARP will review the results of the program. After the review, ACR and ARP will decide whether to: 1) continue, modify or discontinue the process this MOU establishes; or 2) expand the program, to include other airport actions addressed in documented categorical exclusions, environmental assessments or EISs prepared for other airport actions for which an airport sponsor seeks AIP funding.

AMENDING THIS MOU:

ACR or ARP may suggest amendments to this MOU. The requesting office originating the change must submit the proposed changes in writing. The reviewing office has 30 days from the date of that submittal to consider and respond to the proposed changes. ACR and ARP must both agree before any amendments to this MOU will be in effect.

Terminating the MOU:

ACR or ARP may terminate its participation in this MOU. The office wishing to terminate the MOU must provide the other office a 30-day notice of its termination and provide written reasons for that decision.



Maria Sarra
Director, Eastern, New England Region
and Airport Non-Discrimination Compliance,
Office of Civil Rights (AEA-9)

02/06/12



Benito DeLeon
Director, Office of Airport
Planning and Programming (APP-1)

02/06/12

Title VI Pre-Award Checklist for Airport Sponsors Seeking Airport Improvement Program (AIP) Funding for Projects with Environmental Impact Statements (EISs) for Major Airport Development Projects

Title VI of the Civil Rights Act of 1964 ensures that everyone in the United States has the right to take part in and receive benefits a federally-funded action provides. Title VI and 49 U. S. C. 47123 prohibits withholding that right based on race, color, or national origin, sex or creed.

Title 49 Code of Federal Regulations (CFR) part 21 effectuates the provisions of Title VI and 49 U.S.C. § 47123 to ensure non-discrimination under any program or activity receiving Federal financial assistance from the Department of Transportation. Specifically, 49 CFR § 21.9(b), requires recipients of federal grants (e.g., airport sponsors) to provide racial and ethnic data showing the extent to which members of these groups are beneficiaries of federally-funded programs. To do so, that section requires potential federal grant recipients (airport sponsors) to keep records and submit certain information to confirm the recipient's compliance with 49 CFR part 21 (see Items 1 through 3 below). If an airport sponsor, as a potential recipient of an AIP grant, chooses not to use this Checklist to submit that information, the sponsor must use another format to provide the information clearly and accurately.⁸

Department of Transportation Order 5610.2, "Environmental Justice in Minority Populations and Low-Income Populations," requires DOT agencies to address project-induced potential disproportionately high and adverse effects on low-income and minority populations. The FAA Office of Airports (ARP) provides that information in EISs it prepares for major airport development projects.

The FAA Office of Civil Rights (ACR) believes that information provided in this Checklist is pertinent in determining the airport sponsor's compliance with Title VI and 49 U.S.C. § 47123.

Note: Major airport development projects are often supported by multiple grants, including reimbursable grants over many years. Airport Sponsors should provide information for Items 1 through 3 when completing the Checklist for a major development project's initial grant. Airport Sponsors should then complete Items 2 and 3 for a grant FAA may provide subsequent to that initial grant.

Airport sponsor-provided information to address 49 CFR § 21.9(b) requirements:

Name of Airport Sponsor _____
 Name of Airport _____
 Location of Airport (include city and state) _____
 Project Description(s): _____

⁸ Use of the sample checklist is optional. FAA encourages airport sponsors to utilize the sample checklist to ensure that they comply with FAA reporting requirements and to assist in their submittal of information necessary for the FAA to ascertain compliance with 49 CFR Part 21.

1. Please provide any of the following information, if the condition(s) apply to the proposed major airport development:

a. Title VI issues, including issues related to race and ethnicity (e.g., minority populations), raised at EIS scoping meeting or through other public involvement process(es);

b. The airport sponsor's and FAA responses to those issues;

c. Data from the final EIS or another source providing information on the race, color, or national origin of the affected community; and

d. Mitigation measures in the final EIS or Record of Decision that will be implemented to mitigate impacts on affected people on the basis of race, color, or national origin; and

e. Any other information demonstrating the airport sponsor's efforts to inform protected populations of the protections against discrimination afforded them by Title VI, 49 U.S.C. § 47123 and 49 CFR Part 21.

None

2. A list of any airport-related Title VI lawsuits, complaints or investigations filed against the airport sponsor in the year preceding the date FAA plans to issue the AIP grant for this project. Please attach a summary of the findings resulting from the lawsuit(s), complaint(s) and/or investigations.

None (If None, continue with question 3).

3. A list of any airport-related Title VI compliance review(s) the airport sponsor received in the two years preceding the date FAA plans to issue the AIP grant for the project. Include the name and agency of the person(s) who conducted the review and any findings made regarding Title VI non-compliance.

None

Voluntary Optional Information (not required by 49 CFR Part 21)

1. Information on Environmental Justice issues raised at a public meeting(s) or other public involvement process.

Appendix 4. Use of Standard DOT Title VI/ Non-Discrimination Assurances¹⁰**DOT Order No. 1050.2A**

The (***Title of Recipient***) (herein referred to as the “Recipient”), **HEREBY AGREES THAT**, as a condition to receiving any Federal financial assistance from the U.S. Department of Transportation (DOT), through the Federal Aviation Administration (FAA), is subject to and will comply with the following:

Statutory/Regulatory Authorities

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (entitled *Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964*);
- 49 U.S.C. § 47123 (Nondiscrimination Statute), 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;
- Americans with Disabilities Act of 1990, as amended, (42 U.S.C. § 12101 *et seq.*), (prohibits discrimination on the basis of disability);
- 28 CFR § 50.3 (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964);
- 49 CFR part 28 (entitled *Enforcement Of Nondiscrimination On The Basis Of Handicap In Programs Or Activities Conducted By The Department Of Transportation*);
- 49 CFR part 37 (entitled *Transportation Services For Individuals With Disabilities (ADA)*);
- 28 CFR part 35 (entitled *Discrimination On The Basis Of Disability In State And Local Government Services*).

The preceding statutory and regulatory cites hereinafter are referred to as the “Acts” and Regulations,” respectively.

¹⁰ In addition to the Standard DOT Title VI/ Non-Discrimination assurances provided in appendix 4, the FAA Office of Airports requires all AIP and other grant agreements to contain a general civil rights assurance that prohibits discrimination on the basis of sex, creed, age, and disability, in addition to race, color, and national origin (see Chapter 4, paragraph 3(b), of this Order for the full text of the assurance).

General Assurances

In accordance with the Acts, the Regulations, and other pertinent directives, circulars, policy, memoranda, and/or guidance, the Recipient hereby gives assurance that it will promptly take any measures necessary to ensure that:

“No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity,” for which the Recipient receives Federal financial assistance from DOT, including the FAA.

The Civil Rights Restoration Act of 1987 clarified the original intent of Congress, with respect to Title VI and other Non-discrimination requirements (The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973), by restoring the broad, institutional-wide scope and coverage of these non-discrimination statutes and requirements to include all programs and activities of the Recipient, so long as any portion of the program is Federally assisted.

Specific Assurances

More specifically, and without limiting the above general Assurance, the Recipient agrees with and gives the following Assurances with respect to its Federally assisted Airport Improvement Program:

1. The Recipient agrees that each “activity,” “facility,” or “program,” as defined in §§ 21.23 (b) and 21.23 (e) of 49 CFR § 21 will be (with regard to an “activity”) facilitated, or will be (with regard to a “facility”) operated, or will be (with regard to a “program”) conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.
2. The Recipient will insert the following notification in all solicitations for bids, Requests For Proposals for work, or material subject to the Acts and the Regulations made in connection with all Airport Improvement Program grants and in all proposals for agreements regardless of funding source:

*“The **(Title of Recipient)**, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.”*

3. The Recipient will insert the clauses of Appendix A and E of this Assurance in every contract or agreement subject to the Acts and the Regulations.
4. The Recipient will insert the clauses of Appendix B of this Assurance, as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Recipient.

5. That where the Recipient receives Federal financial assistance to construct a facility, or part of a facility, the Assurance will extend to the entire facility and facilities operated in connection therewith.
6. That where the Recipient receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the Assurance will extend to rights to space on, over, or under such property.
7. That the Recipient will include the clauses set forth in Appendix C and Appendix D of this Assurance, as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Recipient with other parties:
 - a. for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
 - b. for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.
8. That this Assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the Assurance obligates the Recipient, or any transferee for the longer of the following periods:
 - a. the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or
 - b. the period during which the Recipient retains ownership or possession of the property.
9. The Recipient will provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he/she delegates specific authority to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Acts, the Regulations, and this Assurance.
10. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Acts, the Regulations, and this Assurance.
11. Recipient agrees to include the required federal provision in its federally-funded contracts including, but not limited to, provisions contained in Sponsor Assurances Paragraph c(1).

The Sponsor agrees to comply (and require any sub-recipients, sub-grantees, contractors, successors, transferees, and/or assignees to comply) with all applicable provisions governing the **Federal Aviation Administration** access to records, accounts, documents, information, facilities, and staff. The Sponsor also recognizes that he or she must comply with any program or compliance reviews, and/or complaint investigations conducted by the **Federal Aviation Administration**. The Sponsor must keep records, reports, and submit the material for review upon request to **Federal Aviation Administration**, or its designee in a timely, complete, and accurate way. Additionally, the Sponsor must comply with all

other reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.

The Sponsor gives this ASSURANCE in consideration of and for obtaining any Federal grants, loans, contracts, agreements, property, and/or discounts, or other Federal-aid and Federal financial assistance extended after the date hereof to the recipients by the U.S. Department of Transportation under the **Airport Improvement Program**. This ASSURANCE is binding on the Sponsor, sub-recipients, sub-grantees, contractors, subcontractors and their subcontractors', transferees, successors in interest, and any other participants in the **Airport Improvement Program**.

APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, **Federal Aviation Administration**, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor’s obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the **Federal Aviation Administration** to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the **Federal Aviation Administration**, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor’s noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the **Federal Aviation Administration** may determine to be appropriate, including, but not limited to:

- a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the **Federal Aviation Administration** may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

APPENDIX B**CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY**

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of Assurance 4:

NOW, THEREFORE, the Federal Aviation Administration as authorized by law and upon the condition that the (*Title of Recipient*) will accept title to the lands and maintain the project constructed thereon in accordance with (*Name of Appropriate Legislative Authority*), for the (**Airport Improvement Program**), and the policies and procedures prescribed by the **Federal Aviation Administration** of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the (*Title of Recipient*) all the right, title and interest of the U.S. Department of Transportation/Federal Aviation Administration in and to said lands described in Exhibit A attached hereto and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto (*Title of Recipient*) and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the (*Title of Recipient*), its successors and assigns.

The (*Title of Recipient*), in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]* (2) that the (*Title of Recipient*) will use the lands and interests in lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended[, and (3) that in the event of breach of any of the above-mentioned non-discrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said land, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the Federal Aviation Administration and its assigns as such interest existed prior to this instruction].*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to make clear the purpose of Title VI.)

APPENDIX C**CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER
THE ACTIVITY, FACILITY, OR PROGRAM**

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the (**Title of Recipient**) pursuant to the provisions of Assurance 7(a):

- A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add “as a covenant running with the land”] that:
1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Non-discrimination covenants, (**Title of Recipient**) will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.*
- C. With respect to a deed, in the event of breach of any of the above Non-discrimination covenants, the (**Title of Recipient**) will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the (**Title of Recipient**) and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX D**CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED
UNDER THE ACTIVITY, FACILITY OR PROGRAM**

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by **(Title of Recipient)** pursuant to the provisions of Assurance 7(b):

- A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, “as a covenant running with the land”) that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.
- B. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above Non-discrimination covenants, **(Title of Recipient)** will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.*
- C. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, **(Title of Recipient)** will there upon revert to and vest in and become the absolute property of **(Title of Recipient)** and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

Appendix 5. Notice of Unlawful Discrimination Poster

Unlawful Discrimination

It is unlawful for airport operators and their lessees, tenants, concessionaires and contractors to discriminate against any person because of race, color, national origin, sex, creed, or disability in public services and employment opportunities. Allegations of discrimination should be promptly reported to the Airport Manager or:

Federal Aviation Administration
Office of Civil Rights, ACR-1
800 Independence Avenue, S.W.
Washington, D.C. 20591

Federal regulations on unlawful discrimination are available for review in the Airport Manager's Office.

Coordinator:
Phone:
Address:

Discriminación Ilegal

Se prohíbe a los operadores de aeropuertos y a sus arrendatarios, inquilinos, concesionarios y contratistas discriminar contra cualquier persona por motivo de raza, color, nacionalidad de origen, sexo, creencias religiosas, impedimento físico o discapacidad en lo que respecta a servicios públicos y oportunidades de empleo. Las alegaciones de discriminación deberán ser dirigidas inmediatamente al Administrador del Aeropuerto o a:

Federal Aviation Administration
Office of Civil Rights, ACR-1
800 Independence Avenue, S.W.
Washington, D.C. 20591

Los reglamentos sobre discriminación ilegal están a la disposición de los interesados para su examen en la oficina del Administrador del Aeropuerto.

Coordinador:
Teléfono:
Dirección:



U.S. Department of Transportation
Federal Aviation Administration

HC-101068

Appendix 6. Compliance Standards for Title VI /Nondiscrimination Pre-Award Reviews of Airport Projects

This appendix contains compliance standards for pre-award reviews of proposed airport projects. Where appropriate, a review may also inquire into compliance with other provisions of 49 CFR part 21, and other non-discrimination requirements, which are included in appendix 5, if relevant and practical. Compliance standards are the requirements in the statutes, regulations, and guidelines that the recipient must meet or apply correctly.

The regulation in 49 CFR part 21 can be accessed at www.ecfr.gov, while the DOT Order 5610.2(a) can be accessed at http://www.fhwa.dot.gov/environment/environmental_justice/.

Compliance Standards:

1. 49 CFR § 21.5(a) states: “No person in the United States shall, on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under, any program to which this part applies.”

Title 49 U.S.C. § 47123 also prohibits airport recipients from excluding individuals from participating in a program or activity funded under the AIP grant program because of their race, color, national origin, sex or creed. The Age Discrimination Act of 1975 prohibits recipients from discriminating on the basis of age in federally-assisted programs.

2. 49 CFR § 21.5(b)(1) states: “Specific discriminatory actions prohibited:

A recipient under any program to which this part applies may not, directly or through contractual or other arrangements, on the grounds of race, color, or national origin:

- (i) Deny a person any service, financial aid, or other benefit provided under the program;
- (ii) Provide any service, financial aid, or other benefit to a person which is different, or is provided in a different manner, than that provided to others under the program;
- (iii) Subject a person to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;
- (iv) Restrict a person in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;
- (v) Treat a person differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership, or other requirement or condition which persons must meet in order to be provided any service, financial aid, or other benefit provided under the program;
- (vi) Deny a person the opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program; or
- (vii) Deny a person the opportunity to participate as a member of a planning, advisory, or similar body which is an integral part of the program.”

3. 49 CFR § 21.5 (b)(2) states: “A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of person to whom, or the situations in which, such services, financial aid, other benefits, or facilities, will be provided under any such program, or the class of persons to be afforded an opportunity to participate in any such program; may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, or national origin.”

4. 49 CFR § 21.5(b)(3) states: “In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding persons from, denying them the benefits of, or subjecting them to discrimination under any program to which this regulation applies, on the grounds of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this part.”

5. 49 CFR part 21, appendix C(a)(1)(viii) states: “Where there are two or more sites having equal potential to serve the aeronautical needs of the area, the airport sponsor shall select the site least likely to adversely affect existing communities. Such site selection shall not be made on the basis of race, color, or national origin.”

6. DOT Order 5610.2(a) provides additional guidance in determining whether a project complies with regulatory standards. As such, it interprets regulatory provisions. (In ACR’s reports to sponsors advising them of the results of a compliance review, ACR staff should always refer to the regulatory provision, rather than the DOT Order.)

a. DOT Order 5610.2(a), paragraph 7(c) provides that DOT operations will be administered so as to identify and avoid discrimination and avoid disproportionately high and adverse effects on minority populations by:

- (1) identifying and evaluating environmental, public health, and interrelated social and economic effects of the proposed project;
- (2) proposing measures to avoid, minimize and/or mitigate disproportionately high and adverse environmental and public health effects and interrelated social and economic effects, and providing offsetting benefits and opportunities to enhance communities, neighborhoods, and individuals affected by DOT programs, policies, and activities, where permitted by law and consistent with the Executive Order;
- (3) considering alternatives to proposed programs, policies, and activities, where such alternatives would result in avoiding and/or minimizing disproportionately high and adverse human health and environmental impacts, consistent with the Executive Order, and
- (4) eliciting public involvement opportunities and considering the results thereof, including soliciting input from affected minority populations in considering alternatives.

b. DOT Order 5610.2(a), paragraph 8(b) provides that: In making determinations regarding disproportionately high and adverse effects on minority populations, each DOT operating administration shall undertake mitigation and enhancement measures that will be implemented and all offsetting benefits to the affected minority populations may be taken into account, as well as the design, comparative impacts, and the relevant number of similar existing system elements in non-minority areas and non-low income areas. (As noted earlier, Title VI and this order does not cover the review of low-income populations.)

c. DOT Order 5610.2(a), paragraph 8(c) provides that: each DOT operating administrations will ensure that any of their respective programs, policies or activities that will have a disproportionately high and adverse effect on a minority population will only be carried out if further mitigation measures or alternatives that would avoid or reduce the disproportionately high and adverse effect 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.

d. DOT Order 5610.2(a), paragraph 8 (d) provides that: each DOT operating administrations will also ensure that any of their respective programs, policies, or activities that will have a disproportionately high and adverse effect on populations protected by Title VI (“protected populations”) will only be carried out if:

- (1) a substantial need for the program, policy, or activity exists, based on the overall public interest, and
- (2) alternatives that would have less adverse effects on protected populations (and that still satisfy the need identified in subparagraph d(1) above), either
 - (a) would have other adverse social, economic, environmental or human health impacts that are severe; or
 - (b) would involve increased costs of extraordinary magnitude.

Compliance review question:

Does the proposed project comply with the above referenced regulatory provisions and guidelines?

Appendix 7. Compliance Standards for Title VI/Nondiscrimination Post-Award Reviews of Airport Sponsors

This appendix contains the standards for reviewing a sponsor's compliance with Title VI, 49 U.S.C. § 47123, and the Age Discrimination Act after a sponsor has been awarded a grant (or other assistance) from the FAA. Other regulatory provisions (49 CFR part 21, etc.) in appendix 6 may also apply to issues examined during a post-award review. Compliance standards are the requirements in the statutes, regulations, and guidelines that the recipient must meet or apply correctly.

A. Records and Reports for Compliance

1. Requirements.

Title 49 CFR § 21.9 and other sections in part 21 require recipients to record, retain, and submit certain information to FAA to assist FAA in determining whether the recipient is in compliance with Title VI requirements. Under 49 U.S.C. § 47123, and the Age Discrimination Act, FAA may require a recipient to collect information, maintain records, or provide reports on creed, sex, or age, if the collection of this information becomes necessary to determine compliance.

a. 49 CFR § 21.9(b) states: "Each recipient shall keep such records and submit to the Secretary, timely, complete, and accurate compliance reports at such time, and in such form and containing such information, as the Secretary may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this part... In general recipients should have available for the Secretary racial and ethnic data showing the extent to which members of minority groups are beneficiaries of programs receiving Federal financial assistance."

b. 49 CFR part 21, appendix C (b)(3) states: "Each airport owner subject to this part shall, within 15 days after he receives it, forward to the Area Manager of the FAA area in which the airport is located a copy of each written complaint charging discrimination because of race, color, or national origin by any person subject to this part, together with a statement describing all actions taken to resolve the matter, and the results thereof." Recipients should also forward complaints alleging sex, creed, or age discrimination to the FAA."

c. 49 CFR part 21 appendix C(b)(3) also states: "Each airport operator shall submit to the Area Manager of the FAA area in which the airport is located a report for the preceding year on the date and in a form prescribed by the Federal Aviation Administrator."

2. Records and Reports.

a. In accordance with 49 CFR § 21.9 (b), the FAA has determined that recipients shall collect racial and ethnic data to enable it to show the extent to which members of minority groups are beneficiaries of the recipient's programs, and activities. The airport sponsor should collect and analyze, for example, the demographic data of its surrounding communities to determine if the services, information, employment and business opportunities that are provided by the airport (and its tenants and concessionaires) are available on a nondiscriminatory basis. Sponsors should also review

racial and ethnic data to determine if there is any disparate or adverse impact resulting from any airport actions or projects, such as for an EIS or another environmental review. Further, data should also be collected to determine the airport's LEP populations, and need for language assistance. Data sources that may be used by airports include: census data, passenger surveys that may identify passengers by the continent and country, customer and tenant surveys to identify airport users, local labor force data to identify potential minority group availability, bidder's lists, and minority business outreach lists, to identify potential minority firms.

b. In accordance with appendix C (b)(3) of 49 CFR part 21, FAA requires sponsors to maintain Title VI complaints records. The complaints and statements are to be forwarded to the Director, Office of Civil Rights, Eastern and New England Regions and Airport Nondiscrimination Compliance. To comply with this requirement a recipient would have to have a system of obtaining from all tenants, concessionaires, and other contractors at the airport subject to 49 CFR part 21, copies of all written complaints that they receive. Complaints based on sex, creed, and age should also be maintained and be forwarded to Airport Nondiscrimination Compliance Staff.

Compliance Review Questions:

1. Does the sponsor maintain the records and collect the data necessary to permit accurate reporting of its compliance?

2. What records are maintained? Are they adequate? What records are not maintained but should be maintained to be compliant with Title VI/Nondiscrimination requirements?

3. Does the sponsor have an adequate system for collecting complaint records from all tenants, concessionaires, and other contractors?

4. Did the sponsor forward within 15 days after receipt, a copy of each written complaint charging discrimination because of race, color, national origin, sex, creed, or age by the recipient of any tenant, concessionaire, or contractor who provides any activity, service, or facility at the airport under lease, contract with, or franchise from the recipient?

5. Does the sponsor review its programs and services, using racial and ethnic data, to determine if they are being provided on a nondiscriminatory basis? Does the sponsor analyze such data to determine if there are any disparate impacts on minority populations resulting from airport actions or projects?

6. The FAA may from time to time request other reports in order to determine compliance, such as reports in connection with a compliance review. Did the sponsor reply in a timely, complete, and accurate fashion to any such requests for information.

B. Recipient Cooperation with the FAA

1. 49 CFR § 21.9(c) states: "Each recipient shall permit access by the Secretary during normal business hours of such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part." 49 CFR § 21.9(c) also states:

“Where any information required of a recipient is in the exclusive possession of any other agency, institution, or person and this agency, institution, or person fails or refuses to furnish this information, the recipient shall so certify and shall set forth what efforts it has made to obtain the information.” An example of such failure or refusal would be a tenant that refuses to divulge information about complaints of discriminatory service that it received.

Compliance Review Questions:

1. Was access to books, records, accounts, and other sources of information, and facilities permitted as was necessary to ascertain compliance?
2. If not, was the reason acceptable?
3. Did any agency, institution, or person having exclusive possession of information necessary for the recipient to demonstrate compliance fail or refuse to furnish this information to the recipient?
4. If yes, identify the agency, institution, or person and the information that it failed or refused to furnish.

C. Notification to Beneficiaries of Title VI/Nondiscrimination Rights

1. 49 CFR § 21.9(d) states: “Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the program under which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the Secretary finds necessary to apprise such persons of the protection against discrimination assured them by the [Civil Rights Act of 1964, as amended] and this part.”

2. 49 CFR part 21, appendix C(b)(2) states: “The airport operator shall; (1) make a copy of this part available at his office for inspection during normal working hours by any person asking for it, and (2) conspicuously display a sign, or signs, furnished by the FAA, in the main public area or areas of the airport, stating that discrimination based on race, color, or national origin is prohibited on the airport.”

Compliance Review Questions:

1. Does the airport sponsor have a copy of 49 CFR part 21 available at this office for inspection?
2. If not, is the reason acceptable? Give explanation.
3. The “Unlawful Discrimination” poster (see appendix 5) is to be furnished by the Airport Nondiscrimination Compliance staff to the recipient. If signs have been furnished, are they conspicuously displayed in the main public area or areas of the airport?
4. If not, is the reason acceptable?

5. What other ways is the recipient using to inform beneficiaries of their Title VI/Nondiscrimination rights?

D. Applications of Title VI/Nondiscrimination Provisions to Recipient Programs and Activities

1. 49 CFR § 21.5 states: “General – no person in the United States shall on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under, any program to which this part applies.”

a. Examples of how this provision applies to airports are contained in appendix C (a)(1)(i) through (x). The following are a couple of examples of how Title VI/Nondiscrimination provisions are applied to an airport program setting:

- (i) “The airport sponsor and any of his lessees, concessionaires, or contractors may not differentiate between members of the public because of race, color, or national origin in furnishing, or admitting to, waiting rooms, passenger holding areas, aircraft tie down areas, restaurant facilities, restrooms, or facilities operated under the compatible use concept.”
- (ii) “The airport sponsor and any of his lessees, concessionaires, or contractors must offer all members of the public the same degree and type of service without regard to race, color, or national origin. This rule applies to fixed base operators, restaurants, snack bars, gift shops, ticket counters, baggage handlers, car rental agencies, limousines and taxis franchised by the airport sponsor, insurance underwriters, and other businesses catering to the public at the airport.”

(The complete text to 49 CFR part 21, appendix C (a)(1)(i) through (x), can be found at www.ecfr.gpoaccess.gov).

b. Means of determining compliance. Determining compliance with the above may be accomplished, for example, by:

- (1) visiting the flight lines, ground transportation stands, tenants, concessionaires, and contractor locations providing service to the public on the airport, and observing the manner in which the service is provided;
- (2) questioning employees, customers, passengers, flight crews and other users of the airport to obtain their evaluation of the compliance status of the sponsor and its tenants, concessionaires, and contractors on the airport; or
- (3) reviewing complaint or customer service records.

2. Prescribed Method Required. Compliance with these requirements necessitates that the sponsor have a prescribed method of assuring non-discrimination. Such methods would include periodic reminders to the sponsor's employees, and to lessees, concessionaires, and contractors on the airport of their responsibilities pursuant to 49 CFR part 21, 49 U.S.C. § 47123, and the Age Discrimination Act, continued monitoring of policies and practices of the sponsor and its lessees, concessionaires, and contractors on the airport to assure that they are not discriminating; and the initiation of corrective action, as appropriate. The emphasis should be on preventing discrimination rather than reacting to it when it occurs.

Compliance Review Questions:

1. Does the sponsor have a prescribed method of assuring non-discrimination?
2. If yes, what are the sponsor's prescribed methods? If not, are the reasons acceptable?

E. Affirmative Action

49 CFR § 21.5(b)(7) states in part: "Even in the absence of prior discriminatory practice or usage, a recipient in administering a program or activity to which this part applies, is expected to take affirmative action to assure that no person is excluded from participation in or denied the benefits of the program or activity on the grounds of race, color, or national origin."

Compliance Review Questions:

1. Is the sponsor taking adequate affirmative action to assure non-discrimination? What actions has the sponsor taken using its prescribed methods?
2. If not, is the reason acceptable? Give explanation.

F. Manner prescribed

49 CFR part 21, appendix C (b)(1) prescribes the manner by which the information should be made available. It states, "Each airport operator shall require each tenant, contractor, and concessionaire who provides any activity, service, or facility at the airport under lease, contract with, or franchise with the airport to covenant in a form specified by the Administrator, Federal Aviation Administration that he will comply with the non-discrimination requirements of this part."

The form of the covenant specified by the Administrator is contained in the standard DOT Title VI Assurances and FAA's civil rights grant assurances.

Compliance Review Questions:

1. Is the appropriate covenant in each lease, contract, or other agreement between the sponsor and entity who provides any activity, service, or facility at the airport?
2. If not, is the reason acceptable? Give explanation.

G. Access to Airport Employment Opportunities

49 CFR part 21, appendix C(a)(1)(ix) states: The recipient “shall coordinate his airport plan with his local transit authority and the [Federal Transit Administration (FTA)] to assure public transportation, convenient to the disadvantaged areas of nearby communities to enhance employment opportunities for the disadvantaged and minority population.”

Compliance Review Question:

1. If the sponsor has an airport plan, has it been coordinated with the local transit authority and FTA? If not, is the reason acceptable?

H. Access to Airport Business Opportunities

49 CFR part 21, appendix C(a)(1)(x) states: The recipient “shall assure that the minority business community in his area is advised of the opportunities offered by airport concessions, and that bids are solicited from such qualified minority firms, and awards made without regard to race, color, or national origin.” (It should be noted that 49 CFR part 21 applies to all contracting programs).

Compliance Review Questions:

1. Does the sponsor reach out to the minority (and woman –owned) business community in his area to advise the community of the opportunities, including concessions opportunities, offered by the airport?
2. Does the sponsor solicit bids or offers from such firms without regard to race, color, or national origin?

I. Limited English Proficiency

49 CFR § 21.5 To ensure that the recipient does not discriminate on the basis of national origin with respect to LEP persons, recipients are required to ensure that LEP persons have meaningful access to their programs and activities. Recipients with significant LEP populations are strongly encouraged to analyze LEP needs to meet their Title VI obligation, and to develop an LEP implementation plan consistent with the DOT guidelines in (70 FR 74087 – 74100 (2005)).

Compliance Review Questions:

1. Does the sponsor collect data to determine if the sponsor has LEP populations?
2. Does the sponsor analyze its services and the need for language assistance by LEP persons using the 4 factor analysis? Has the sponsor developed an LEP implementation plan pursuant to the DOT LEP Guidelines cited above?

3. If need for language assistance is determined, has the sponsor obtained the language assistance resources? How is such assistance made available to LEP persons? Does the sponsor inform LEP beneficiaries of the availability of language assistance services? (Does the airport conduct outreach to LEP communities regarding its language assistance services? Does it have signage to direct LEP persons to sources of assistance?)
4. Is airport staff, especially first responders, trained to assist LEP persons?

J. Environmental Justice (also see appendix 6, and appendix 7) - Compliance with Title VI

49 CFR § 21.5 (b)(2) states: “A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of person to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of persons to be afforded an opportunity to participate in any such program; may not, directly or through contractual or other arrangements, utilize criteria, or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, or national origin.”

Compliance Review Questions:

1. Does the sponsor maintain racial and ethnic data to enable it to determine environmental justice impacts?
2. Does the sponsor have an effective public involvement plan that will enable it to involve minority populations in the decision making process for potential airport projects, and for ongoing environmental justice concerns?
3. Did the sponsor conduct any environment reviews in the last three years? Did any of them have environmental justice impacts? Did the environmental impact reviews comply with Title VI? Did the sponsor complete a Pre-award Title VI Checklist (see appendix 7), or provide the information to the FAA in a different format?

Attachment 1 Contractor Contractual Requirements

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the “contractor”) agrees as follows:

1. **Compliance with Regulations.** The contractor shall comply with Regulations relative to non-discrimination in federally-assisted programs of the Department of Transportation (hereinafter, “DOT”) Title 49, Code of Federal Regulations, part 21, as they may be amended from time to time (hereinafter referred as the “Regulations”), which are herein incorporated by reference and made a part of this contract.

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

3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment.** In all solicitations either by competitive bidding or negotiations made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor’s obligations under this contract and the Regulations relative to non-discrimination on the grounds of race, color, or national origin.

4. **Information and Reports.** The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the Recipient of the Federal Aviation Administration (FAA) to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the Recipient or the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance.** In the event of the contractor’s noncompliance with the non-discrimination provisions of this contract, the Recipient shall impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:

a. Withholding of payments to the contractor under the contract until the contractor complies, and/or

b. Cancellation, termination, or suspension of the contract, in whole or in part.

6. Incorporation of Provisions. The contractor shall include: the provisions of paragraphs 1 through 5 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the Recipient or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the Recipient to enter into such litigation to protect the interests of the Recipient and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Attachment 2
Clauses for Deeds, Licenses, Leases, Permits or Similar Instruments

The following clauses shall be included in deeds, licenses, leases, permits, or similar instruments entered into by the Recipient pursuant to the provisions of Assurances 5(a) and 5(b).

1. The (grantee, licensee, lessee, permittee, etc., as appropriate) for himself, his heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add “as a covenant running with the land”) that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this deed, license, lease, permit, etc.) for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR part 21, Nondiscrimination in Federally-assisted Programs of the Department of Transportation, and as said Regulations may be amended.

2. The (grantee, licensee, lessee, permittee, etc., as appropriate) for himself, his personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases, add “as a covenant running with the land”) that: (1) no person on the grounds of race, color, or national origin, shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin, shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) shall use the premises in compliance with all other requirements imposed by or pursuant to 49 CFR part 21, Nondiscrimination in Federally-assisted Programs of the Department of Transportation, and as said Regulations may be amended.

**Attachment 3
Clauses for Real Property**

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

(GRANTING CLAUSE)

Now, therefore, the Department of Transportation (DOT), as authorized by law, and upon the condition that the (*Name of Recipient*) will accept title to the lands and maintain the project constructed thereon, in accordance with all requirements imposed by or pursuant to Title 49 CFR part 21, pertaining to effectuating the provisions of Title VI of the Civil Rights Act of 1964, does hereby remise, release, quitclaim and convey unto (*the Name of Recipient*) all the right, title and interest of the Department of Transportation in and to said lands described in Exhibit A attached hereto and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto (*Name of Recipient*) and its successors forever, subject, however, to the covenants, conditions, restrictions, and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and shall be binding on (*the Name of Recipient*), its successors and assigns.

(*The Name of Recipient*), in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person shall on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over or under such lands hereby conveyed [,] [and]* (2) that (*the Name of Recipient*) shall use the lands and interests in land and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49 CFR part 21, and as said Regulations may be amended [,] and (3) that in the event of breach of any of the above-mentioned non-discrimination conditions, the DOT shall have the right to re-enter said lands and facilities on said land, and the above described land and facilities shall thereon revert to and vest in and become the absolute property of the DOT and its assigns as such interest existed prior to this instruction.*

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

Appendix 8. FAA Form 1320-19, Directive Feedback Information

Directive Feedback Information

Please submit any written comments or recommendation for improving this directive, or suggest new items or subjects to be added to it. Also, if you find an error, please tell us about it.

Subject: Order

To: Directive Management Officer, _____

(Please check all appropriate line items)

An error (procedural or typographical) has been noted in paragraph _____ on page _____ .

Recommend paragraph _____ on page _____ be changed as follows:
(attached separate sheet if necessary)

In a future change to this order, please include coverage on the following subject
(briefly describe what you want added):

Other comments:

I would like to discuss the above. Please contact me.

Submitted by: _____ Date: _____

Telephone Number: _____ Routing Symbol: _____