

Colorado Department of Transportation (CDOT)

Title VI Compliance Review

Final Report

December 2012

Federal Transit Administration



**PREPARED BY**

The DMP Group, LLC

Washington, DC





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1. GENERAL INFORMATION

Grant Recipient: Colorado Department of Transportation (CDOT)

City/State: Denver, CO

Grantee Number: 1160

Executive Official: Donald E. Hunt

Executive Director

Colorado Department Transportation

4201 East Arkansas Avenue

Shumate Building

Denver, CO 80222

On-Site Contact: Cecelia Garcia

Civil Rights Specialist

Center for Equal Opportunity

Report Prepared by: The DMP Group, LLC

2233 Wisconsin Avenue NW, Suite 405

Washington, DC 20007

Site Visit Dates: March 27–29, 2012

Compliance Review

Team Members: John Potts, Lead Reviewer

Donald Lucas, Reviewer

Gregory Campbell, Reviewer

1. JURISDICTION AND AUTHORITIES

The Federal Transit Administration (FTA) Office of Civil Rights is authorized by the Secretary of Transportation to conduct civil rights compliance reviews. The Colorado Department of Transportation (CDOT) is a recipient of FTA funding assistance and is therefore subject to the Title VI compliance conditions associated with the use of these funds pursuant to the following:

* Title VI of the Civil Rights Act of 1964 (42 U.S.C. Section 2000d)
* Federal Transit Laws, as amended (49 U.S.C. Chapter 53 et seq.)
* Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601, et seq.)
* Department of Justice regulation, 28 CFR part 42, Subpart F, “Coordination of Enforcement of Nondiscrimination in Federally-Assisted Programs” (December 1, 1976, unless otherwise noted)
* DOT regulation, 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” (June 18, 1970, unless otherwise noted)
* Joint FTA/Federal Highway Administration (FHWA) regulation, 23 CFR part 771, “Environmental Impact and Related Procedures” (August 28, 1987)
* Joint FTA/FHWA regulation, 23 CFR part 450 and 49 CFR part 613, “Planning Assistance and Standards” (October 28, 1993, unless otherwise noted)
* DOT Order 5610.2, “U.S. DOT Order on Environmental Justice to Address Environmental Justice in Minority Populations and Low-Income Populations,” (April 15, 1997)
* DOT Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficient Persons (December 14, 2005)
* Section 12 of FTA’s Master Agreement 17 (October 1, 2011)

1. PURPOSE AND OBJECTIVES

#### Purpose

The Federal Transit Administration (FTA) Office of Civil Rights periodically conducts discretionary reviews of grant recipients and sub-recipients to determine whether they are honoring their commitments, as represented by certification, to comply with the requirements of 49 U.S.C. 5332. In keeping with its regulations and guidelines, FTA determined that a Compliance Review of CDOT’s Title VI Program was necessary.

The Office of Civil Rights authorized The DMP Group, LLC, to conduct the Title VI Compliance Review of CDOT. The primary purpose of this Compliance Review was to determine the extent to which CDOT has met its General Reporting and Program-Specific Requirements and Guidelines, in accordance with FTA Circular 4702.1A, “Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Recipients.” Members of the Compliance Review team also discussed with CDOT the requirements of the DOT Guidance on Special Language Services to Limited English Proficient (LEP) Beneficiaries that is contained in Circular 4702.1A. The Compliance Review had a further purpose to provide technical assistance and to make recommendations regarding corrective actions, as deemed necessary and appropriate. The Compliance Review was not an investigation to determine the merit of any specific discrimination complaint filed against CDOT.

#### Objectives

The objectives of FTA’s Title VI Program, as set forth in FTA Circular 4702.1A, “Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Recipients,” are:

* Ensure that the level and quality of transportation service is provided without regard to race, color, or national origin
* Identify and address, as appropriate, disproportionately high and adverse human health and environmental effects, including social and economic effects of programs and activities on minority populations and low-income populations
* Promote the full and fair participation of all affected populations in transportation decision making
* Prevent the denial, reduction, or delay in benefits related to programs and activities that benefit minority populations or low-income populations
* Ensure meaningful access to programs and activities by persons with limited English proficiency

The objectives of Executive Order 13166 and the “DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries” are for FTA grantees to take reasonable steps to ensure “meaningful” access to transit services and programs for limited English proficient (LEP) persons.

1. BACKGROUND INFORMATION

The Colorado Department of Transportation (CDOT) is the agency of state government responsible for transportation in Colorado. CDOT is responsible for maintaining a 9,146-mile highway system, including 3,447 bridges. CDOT’s Division of Transit and Rail provides assistance to numerous transit systems in the state. Following are key events in CDOT’s history:

* 1909 – The first highway bill was passed by forming a three-member Highway Commission to approve work and allocate funds.
* 1916– The Federal Road Act was passed and funds were allocated to the states based on specific criteria.
* 1917 – The State Highway Fund was created and the State Highway Department (CDOH [Colorado Department of Highways]) was formed. The department consisted of a five-member Highway Commission, executive director, and staff.
* 1952– A new eight-member, policymaking Highway Commission was established.
* 1968 – The legislature reorganized highway matters and created the Division of Highways.
* 1987– The General Assembly increased the number of highway commissioners to 11.
* 1991 – CDOH became Colorado Department of Transportation (CDOT).
* 2009 – The Division of Transit and Rail within CDOT was created by legislation.
* 2010 – CDOT celebrated its 100-year anniversary.

Colorado’s transportation system is managed by CDOT under the direction of the state Transportation Commission. The Commission, non-partisan and statutorily-authorized, comprises 11 commissioners who represent specific districts. Each commissioner is appointed by the Governor and confirmed by the Senate and serves a four-year term.

Along with its highway, aeronautics, and transportation safety responsibilities, CDOT’s operations include a Division of Transit and Rail, which provides statewide leadership on transit and rail. The CDOT Division of Transit and Rail is responsible for the administration of Federal Transit Administration (FTA) Sections 5304, 5309, 5310, 5311, 5316, and 5317 grants. As a regulatory condition of obtaining these funds, CDOT is required to administer a program that establishes Title VI goals and objectives for itself and its sub-recipients. CDOT provides funding to six Section 5304 sub-recipients, six Section 5309 sub-recipients, 38 Section 5310 sub-recipients, 40 Section 5311 sub-recipients, 12 Section 5316 sub-recipients, and six Section 5317 sub-recipients.

CDOT’s Executive Director is ultimately responsible for assuring full compliance with the provisions of Title VI and has directed that non-discrimination is required of all agency employees. Pursuant to federal statute 23 CFR 200.9 (b) (1), the Director has established an adequately-staffed Civil Rights Unit to fulfill Title VI statutory and regulatory requirements. This Civil Rights unit, located at CDOT Headquarters, is known as the Center for Equal Opportunity (CEO). The CEO has been delegated the responsibility for Title VI compliance, and its Director has been designated the CDOT Title VI Officer. The Title VI Officer has access to the Executive Director via the Director of the Division of Human Resources and Administration, to whom the CEO Director has direct reporting responsibilities. The Title VI Officer oversees CEO staff, including the Title VI Coordinator. The Title VI Coordinator prepares implementation plans, conducts annual assessments of pertinent CDOT program areas, makes recommendations to enhance compliance, investigates and resolves Title VI complaints, and prepares all necessary reports.

The Center for Equal Opportunity was created in 1994 in response to a need to coordinate the Department’s civil rights programs and create a resource of cross- trained civil rights staff for greater effectiveness. The Center is responsible for developing and implementing the Department’s civil rights and non- discrimination programs in accordance with state and federal laws under the direction of CDOT’s Transportation Commission and Executive Director.

CDOT’s Mission is “To provide the best multi-modal transportation system for Colorado that most effectively moves people, goods, and information.” CDOT’s Vision is “To enhance the quality of life and the environment of the citizens of Colorado by creating an integrated transportation system that focuses on safely moving people and goods by offering convenient linkages among modal choices.”

The following table represents a demographic profile of the state of Colorado using data from the 2000 and the 2010 Census. The table shows the 2000 and 2010 population by racial/ethnic group, the increase (or decrease) in population from 2000 to 2010, and the percentage of the racial/ethnic group population to the total population in both 2000 and 2010. The table also shows the 2000 and 2010 population of individuals below the poverty level (Low-Income) and individuals who speak English less than “very well” (limited English proficient).

From 2000 to 2010, the total population of the CDOT service area increased 16.9 percent. The White population increased 14.9 percent, the Black population increased 22.2 percent, the Hispanic population increased 41.2 percent, the Asian population increased 46 percent, the American Indian/Alaskan Native population increased 26.6 percent, and the Hawaiian/Pacific Islander increased 43.3 percent.

In 2010, 81.3 percent of the total population was White, 4 percent was Black, 20.7 percent was Hispanic, 2.8 percent was Asian, 1.1 percent was American Indian/Alaskan Native, and 0.1 percent was Hawaiian/Pacific Islander.

According to the 2000 Census, 388,952 persons (9.0 percent of the population) had income below the poverty level and 267,504 persons (6.2 percent of the population) had limited English proficiency (LEP). The information for low income and LEP persons for 2010 are estimates (see footnote below table).

**Demographics of Colorado**

**Racial/ Ethnic Breakdown**

|  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Racial/ Ethnic Group** | **Colorado 2000** | | **Colorado 2010** | | | **Change in the State of Colorado** | | | |
| **Number** | **Percent** | **Number** | **Percent** | | **Number** | | **Percent change ethnic group** | **Percent change total population** |
| White | 3,560,005 | 82.8% | 4,089,202 | 81.3% | | 529,197 | | 14.9% | -1.5% |
| Black | 165,063 | 3.8% | 201,737 | 4.0% | | 36,674 | | 22.2% | 0.2% |
| American Indian/ Alaska Native | 44,241 | 1.0% | 56,010 | 1.1% | | 11,769 | | 26.6% | 0.1% |
| Asian | 95,213 | 2.2% | 139,028 | 2.8% | | 43,815 | | 46.0% | 0.6% |
| Hawaiian/ Pacific Islander | 4,621 | 0.1% | 6,623 | 0.1% | | 2,002 | | 43.3% | 0.0% |
| Other Race | 309,931 | 7.2% | 364,140 | 7.2% | | 54,209 | | 17.5% | 0.0% |
| Two or More | 122,187 | 2.8% | 172,456 | 3.4% | | 50,269 | | 41.1% | 0.6% |
| Hispanic Origin[[1]](#footnote-1) | 735,601 | 17.1% | 1,038,687 | 20.7% | | 303,086 | | 41.2% | 3.6% |
| **Total** | **4,301,261** | **100%** | **5,029,196** | **100%** | | **727,935** | |  | **16.9%** |
|  |  |  |  | |  | |
| Low Income | 388,952 | 9.0% | 613,5622 | | 12.2% | |
| Limited English | 267,504 | 6.2% | 248,3472 | | 5.0% | |

Source: 2000 and 2010 U.S. Census

1. SCOPE AND METHODOLOGY

#### 

#### Scope

The Title VI Compliance Review of CDOT examined the following requirements as specified in FTA Circular 4702.1A:

1. General Reporting Requirements and Guidelines – all applicants, recipients, and sub-recipients shall maintain and submit the following:
2. Annual Title VI Certification and Assurance
3. Title VI Complaint Procedures
4. Record of Title VI Investigations, Complaints, and Lawsuits
5. Language Access to LEP Persons
6. Notice to Beneficiaries of Protection under Title VI
7. Submit Title VI Program
8. Environmental Justice Analysis of Construction Projects
9. Inclusive Public Participation
10. Program-Specific Requirements and Guidelines for State DOTs and Other Administering Agencies – State DOTs and Other Administering Agencies, administering Elderly Individuals and Individuals with Disabilities, Rural and Small Urban Area, Job Access and Reverse Commute (JARC), and New Freedom funding programs, shall also submit the following:
11. A copy of procedures to certify that the statewide planning process is in compliance with Title VI
12. A description of the procedures the agency uses to pass through FTA financial assistance in a non-discriminatory manner;
13. A description of the procedures the agency uses to provide assistance to potential sub-recipients in a non-discriminatory manner
14. A description of how the agency monitors its sub-recipients for compliance with Title VI and the results of the monitoring

#### Methodology

Initial interviews were conducted with the FTA Headquarters Civil Rights staff and the FTA Region VIII Civil Rights Officer to discuss specific Title VI issues and concerns regarding CDOT. An agenda letter covering the review was sent to CDOT advising it of the site visit and indicating additional information that would be needed and issues that would be discussed. The Title VI Review team focused on the compliance areas that are contained in FTA Title VI Circular 4702.1A that became effective on May 13, 2007. These compliance areas are (1) General Reporting Requirements and Guidelines and (2) Program-Specific Requirements and Guidelines for State Departments of Transportation and Other Administering Agencies. The General Reporting Requirements and Guidelines now include implementation of the Environmental Justice (EJ) and Limited English Proficiency (LEP) Executive Orders.

CDOT was requested to provide the following information regarding the Title VI Requirements and Guidelines of FTA Circular 4702.1A:

* List of all CDOT sub-recipients by FTA program area (e.g., FTA Section 5305, 5310, 5311, 5316, and 5317 sub-recipients).
* Map or chart of the distribution of CDOT administered FTA Section 5305, 5310, 5311, 5316, and 5317 funding throughout the state. The areas covered by each sub-recipient and the dollars awarded in the past three years should be noted, as well as the number of vehicles, where appropriate. The map or chart should also identify areas where minority and low-income populations exceed the statewide averages.
* Demographic profile of the state that includes the identification of the locations of socioeconomic groups, including low-income and minority populations, as covered by Title VI and the Executive Order on Environmental Justice.
* Any studies or surveys conducted by CDOT, its consultants, or other interested parties (colleges or universities, community groups, etc.) regarding ridership, service levels and amenities, passenger satisfaction, passenger demographics or fare issues for its rural public transit service and regarding transit planning and service provided by FTA Section 5305, 5310, 5311, 5316, and 5317 sub-recipients, during the past three years.
* CDOT Organization Chart for the Department and for the unit responsible for administration of FTA grant programs.
* Summary of CDOT’s and its FTA Section 5305, 5310, 5311, 5316, and 5317 sub-recipients’ current efforts to seek out and consider the viewpoints of minority, low-income, and LEP populations in the course of conducting public outreach and involvement activities.
* Copy of CDOT’s four-factor analysis of the needs of persons with LEP, if updated since its most recent FTA Title VI Assessment and Implementation Plan 2010, dated March 2011.
* Copy of CDOT’s plan for providing language assistance for persons with Limited English Proficiency that is based on the USDOT LEP Guidance, if updated since its most recent FTA Title VI Assessment and Implementation Plan 2010, dated March 2011.
* List of FTA Section 5310, 5311, 5316, and 5317 sub-recipients that have conducted the four-factor analysis and have developed language assistance plans for persons with limited English proficiency.
* List of FTA Section 5310, 5311, 5316, and 5317 sub-recipients that have procedures for investigating and tracking Title VI complaints and documentation that the procedures for filing complaints are available to members of the public upon request, if updated since its most recent FTA Title VI Assessment and Implementation Plan 2010, dated March 2011.
* List of FTA Section 5310, 5311, 5316, and 5317 sub-recipients that have procedures for investigating and tracking Title VI complaints and documentation that the procedures for filing complaints are available to members of the public upon request.
* List of any investigations, lawsuits, or complaints naming CDOT that alleges discrimination on the basis of race, color, or national origin during the past three years. This list must include:
* the date the investigation, lawsuit, or complaint was filed
* a summary of the allegation(s)
* the status of the investigation, lawsuit, or complaint
* actions taken by CDOT in response to the investigation, lawsuit, or complaint
* Copy of CDOT’s Notice to Beneficiaries of Protections Under Title VI.
* Description of efforts made by CDOT to apprise members of the public of the protections against discrimination afforded to them by Title VI.
* List of FTA Section 5310, 5311, 5316, and 5317 sub-recipients that have notified members of the public of the protection against discrimination afforded to them by Title VI.
* Copies of any environmental justice assessments conducted for construction projects during the past three years and, if needed, a description of the program or other measures used or planned to mitigate any identified adverse impact on the minority or low-income communities, including FTA Section 5310, 5311, 5316, and 5317 sub-recipients.
* CDOT’s statewide transportation planning process that identifies the needs of low-income and minority populations.
* CDOT’s analytical process that identifies the benefits and burdens of the State’s transportation system investments for different socioeconomic groups, identifying imbalances, and responding to the analyses produced.
* Copy of the procedures used for certifying that the statewide planning process complies with Title VI.
* Description of how CDOT develops its competitive selection process or annual program of projects for Section 5310, 5311, 5316, and 5317 programs submitted to FTA as part of its grant applications. This description should emphasize the method used to ensure the equitable distribution of funds to sub-recipients that serve predominantly minority and low-income populations, including Native American tribes, where present.
* Description of CDOT’s criteria for selecting transit providers to participate in any FTA grant program.
* Record of requests for Section 5310, 5311, 5316, 5317 funding. The record should identify those applicants that would use grant program funds to provide assistance to predominantly minority and low-income populations. The record should also indicate whether those applicants were accepted or rejected for funding.
* Description of how CDOT monitors its Section 5310, 5311, 5316, and 5317 sub-recipients for compliance with Title VI and a summary of the results of this monitoring, including:
* the process for ensuring that all sub-recipients are complying with the General Reporting Requirements of FTA Circular 4702.1A
* the process for sub-recipients who provide transportation services to verify that their level and quality of service is provided on an equitable basis, including the development of system-wide service standards and verification that service provided to predominantly minority and low-income communities meets these standards
* Description of CDOT’s procedures to assist potential sub-recipients in applying for Section 5310, 5311, 5316, and 5317 funding, including any efforts to assist applicants that would serve predominantly minority and low-income populations.
* Description of the assistance CDOT provides to sub-recipients, upon their request, to help them comply with the FTA Title VI General Reporting Requirements. The following are examples of information that may be provided to sub-recipients:
* sample notices to the public informing beneficiaries of their rights under Title VI and procedures on how to file a Title VI complaint
* sample procedures for tracking and investigating Title VI complaints filed with a sub-recipient
* demographic information on the race, income, and English proficiency of residents served by the sub-recipient

CDOT assembled most of the documents prior to the site visit and provided them to the Compliance Review team for advance review. A detailed schedule for the three-day site visit was developed.

The site visit to CDOT occurred March 27–29, 2012. The individuals participating in the review are listed in Section VIII of this report. An Entrance Conference was conducted at the beginning of the Compliance Review with CDOT senior management staff and the contractor review team. The review team showed the participants a U.S. Justice Department Title VI film during the Entrance Conference and explained the goals of the review and the needed cooperation of staff members. A detailed schedule for conducting the on-site visit was discussed.

Following the Entrance Conference, the Title VI Compliance Review team met with the CDOT Transit Grants Manager and staff from the Center for Equal Opportunity responsible for Title VI compliance. During this meeting, discussions focused on a detailed examination of documents submitted in advance of the site visit.

The review team then met with CDOT staff to discuss how CDOT incorporates FTA Title VI requirements into its public transportation program. During the site visit, the review team visited the Town of Breckenridge, a Section 5311 sub-recipient, and the Senior Resources Center, a Section 5310 sub-recipient, to ascertain the extent to which Title VI was being incorporated into the CDOT sub-recipient activities. At the end of the site visit, an Exit Conference was held with CDOT staff, the FTA Region VIII Regional Civil Rights Officer (via telephone), and the contractor review team. At the Exit Conference, initial findings and corrective actions were discussed with CDOT.

VI. FINDINGS AND RECOMMENDATIONS

The Title VI Compliance Review focused on CDOT’s compliance with the General Reporting Requirements and Guidelines and the Program-Specific Requirements and Guidelines for States and Other Administering Agencies. This section describes the requirements and findings at the time of the Compliance Review site visit. In summary, no deficiencies were identified in 7 of the 12 areas reviewed. An Advisory Comment was made in 1 of the 12 areas: Submit Title VI Program. Deficiencies were identified in the following four Title VI requirement areas:

* Language Access to LEP Persons
* Title VI Complaint Procedures
* Statewide Planning Activities
* Program Administration

Subsequent to the site visit, CDOT provided documentation to close one of the two deficiencies in Title VI Complaint Procedures.

#### FINDINGS OF THE GENERAL REPORTING REQUIREMENTS AND GUIDELINES

1. Inclusive Public Participation

**Guidance:** *FTA recipients should seek out and consider the viewpoints of minority, low-income, and LEP populations in the course of conducting public outreach and involvement activities. An agency’s public participation strategy shall offer early and continuous opportunities for the public to be involved in the identification of social, economic, and environmental impacts of proposed transportation decisions.*

**Findings:** During this Title VI Compliance Review of CDOT, no deficiencies were found regarding CDOT’s compliance with FTA guidance for Inclusive Public Participation. CDOT provided sufficient documentation to demonstrate that its public participation practices satisfied the requirements of FTA Circular 4702.1A, IV-9. In its most recent FTA Title VI Assessment & Implementation Plan 2010, CDOT summarized its Title VI public outreach and involvement activities as follows:

* CDOT’s Center for Equal Opportunity assists facilitation of inclusive public participation for all CDOT sponsored activities.
* In March 2010, CDOT partnered with the Regional Transportation District (RTD) to host the FHWA/FTA “Partnering with Communities on Major Projects to Assure Success in DBE Participation, Diversity in Employment and Workforce Development.” Minority and low-income communities were invited to participate with RTD and CDOT to identify common expectations, establish common goals, and work toward a cooperative work partnership for multi-modal projects.
* Major outreach events were held in conjunction with the economic recovery program known as the American Recovery & Reinvestment Act (ARRA). Colorado received U.S. DOT/ARRA funding in both highway- and transit-related projects. Outreach events were held, and minority and low-income communities participated in informational and project related meetings. Information was disseminated through the U.S. mail service, email distribution lists, community organizations, minority-focused media, and community organizations—October 2009, January 2010, March 2010.
* Multi-modal business development workshops were held by CDOT staff from the Center for Equal Opportunity in Grand Junction to increase the number of small, disadvantaged businesses working on CDOT transportation projects (highway and transit)—March 2010
* Coordinated and presented to impacted communities of concern across Colorado information on transportation opportunities both for businesses and services to citizens in partnership with the Colorado Workforce Centers in Durango, Alamosa, Montrose, and Pueblo.
* Presented Civil Rights Title VI and DBE specific information to COMTO a nonprofit transit oriented organization which membership that includes transit representatives, leadership, business and community members of the minority, women and disabled communities of Colorado.
* Partnered with the Colorado Office of Economic Development Minority Business Office to provide to minority, women, and disabled communities workshops on specific transportation information and details on how to access and participate in transportation programs and services.

Prior to the site visit, CDOT provided a draft document entitled “A Guide to Public Participation in the Transportation Planning Process,” dated November 10, 2011. The purpose of this document was as follows:

This document presents methods and opportunities for public participation within the transportation planning process at the Colorado Department of Transportation. It provides information on CDOT’s organization and mission, long-range transportation planning and programming processes, and the ways in which the public, agencies, special interest groups, and others can get and stay involved.

Included in this document was a section on “Outreach to Underserved Communities,” which specifically addressed Title VI Inclusive Public Participation requirements. In this section, CDOT states the following:

Social impacts should be recognized early and monitored continually throughout the transportation decision-making process. Enhanced public input and participation at all points of statewide transportation planning helps to ensure meaningful participation and non-discrimination as mandated by Title VI and environmental justice requirements.

To address environmental justice issues, the transportation needs of low-income and minority populations must be considered. The integration of environmental justice principals into the long-range transportation planning process should be consistent in all CDOT regions and CDOT headquarters.

CDOT also identified and addressed barriers to inclusive participation, as follows:

|  |  |  |
| --- | --- | --- |
| **Barrier** | **Method** | **How CDOT Addresses the Barrier** |
| **Cultural** | Research culture, customs, language, and community styles. | Working actively with CDOT’s Center for Equal Opportunity, cultural barriers are reduced through cultural training for staff and connecting with local community leaders. |
| Identify employees of diverse cultural backgrounds that can help improve outreach and communication. |
| Identify and reach out to local community organizations and leaders. |
| **Language** | Identify community bilingual speakers. | Working actively with CDOT’s Center for Equal Opportunity, to the extent possible, solicit in-house interpreters to assist in dealing with language barriers in the planning process in accordance with Executive Order 13166, “Improving Access to Services for Persons with Limited English Proficiency.” Specifically, CDOT has made improvements in providing Web pages and major documents in Spanish. |
| Ensure that materials are in languages that are representative of where the meeting or outreach is taking place. |
| Provide interpreters. |
| **Mobility and Other Disabilities** | Ensure that facilities are accessible. | CDOT staff is attentive to any calls or other forms of communication where individuals request assistance to participate in the planning and programming processes. This includes but is not limited to, meeting access (in compliance with the Americans with Disabilities Act, as amended) or meeting materials in Braille or large print. |
| Provide materials in large print format or Braille for the visually impaired. |
| Use sign language interpreters. |
| At meetings, offer hearing aid amplifiers and other hearing assistance devices. |
| Use a telecommunication device for communication via telephone with hearing-impaired. |
| **Economic/ Income** | Schedule meetings or face-to-face interactions at convenient times and locations. | CDOT considers meeting locations in terms of multimodal accessibility and meeting times that help to not only provide participant convenience but snacks and child care, where appropriate. |
| Provide snacks by using local community members or local catering. |
| Provide child care. |
| Provide financial incentives for meeting attendance. |

The document also listed a wide range of public involvement tools and techniques which included, but were not limited to:

* World Wide Web
* Digital presentations
* Demographic profile maps
* Interactive voting programs
* Interactive computer programs
* Public meetings
* Video
* Media strategy
* Online surveys
* Online discussion boards
* Online mapping and commenting tools
* Social media
* Internet blogging (weblogging)
* Scenario tools
* Public information material
  + Advertisements (display and legal notices)
  + Newsletters
  + Badges and buttons
  + Brochures
  + Fact sheets
  + FAQs
  + Fliers
  + Magnets and press releases
  + Progress bulletins
  + Summaries of reports
  + Models
  + Fast-food place mats and utility bill stuffers
  + Grocery bags
* Mailing lists
* Advisory committees
* Telephone town halls

Additionally, prior to the site visit, CDOT provided a document entitled “Colorado Department of Transportation (CDOT)–Title VI Compliance Review Materials for Colorado’s Statewide Long-Range Transportation Planning Process, March 1, 2012.” The following Inclusive Public Participation language was included in this document:

CDOT–DTD staff developed an inclusive public outreach approach that matched the overall level of effort for the 2035 Statewide Transportation Plan Amendment. Using CDOT’s mailing database of over 4,700 citizens, elected officials, and organizational contacts, e-mail and print postcards were sent to stakeholders notifying them of the availability of the Plan Amendment. The 2035 Statewide Transportation Plan Amendment was made available to the public at CDOT Headquarters office, the 6 CDOT engineering regional offices, 16 state depository libraries, and 40 neighborhood libraries. Staff performed an analysis to identify neighborhood libraries located in low-income and minority areas to increase document access and participation. The 40 neighborhood libraries made available to the public both English and Spanish draft and final versions of the plan amendment document. Each library and CDOT office provided information on how to submit comments and each comment submitted received a written response. Located on the CDOT website is a complete record of the comments received and the depository and neighborhood libraries where the document could be found during the 30-day public comment period.

During the site visit, the review team discussed the draft document entitled “A Guide to Public Participation in the Transportation Planning Process” with CDOT staff. Since the document was still in draft form, CDOT was asked what was currently used to ensure adequate Inclusive Public Participation. CDOT noted that the guide, while in draft form, was the current guidance used for public involvement and outreach. It was suggested that CDOT adopt the document as final as soon as possible. In conjunction with its sub-recipient monitoring activities, it was also reiterated that CDOT provide guidance to and otherwise ensure that its sub-recipients develop their own inclusive public participation plans and record their outreach efforts for reporting to CDOT every three years for inclusion in CDOT’s triennial Title VI program submittal.

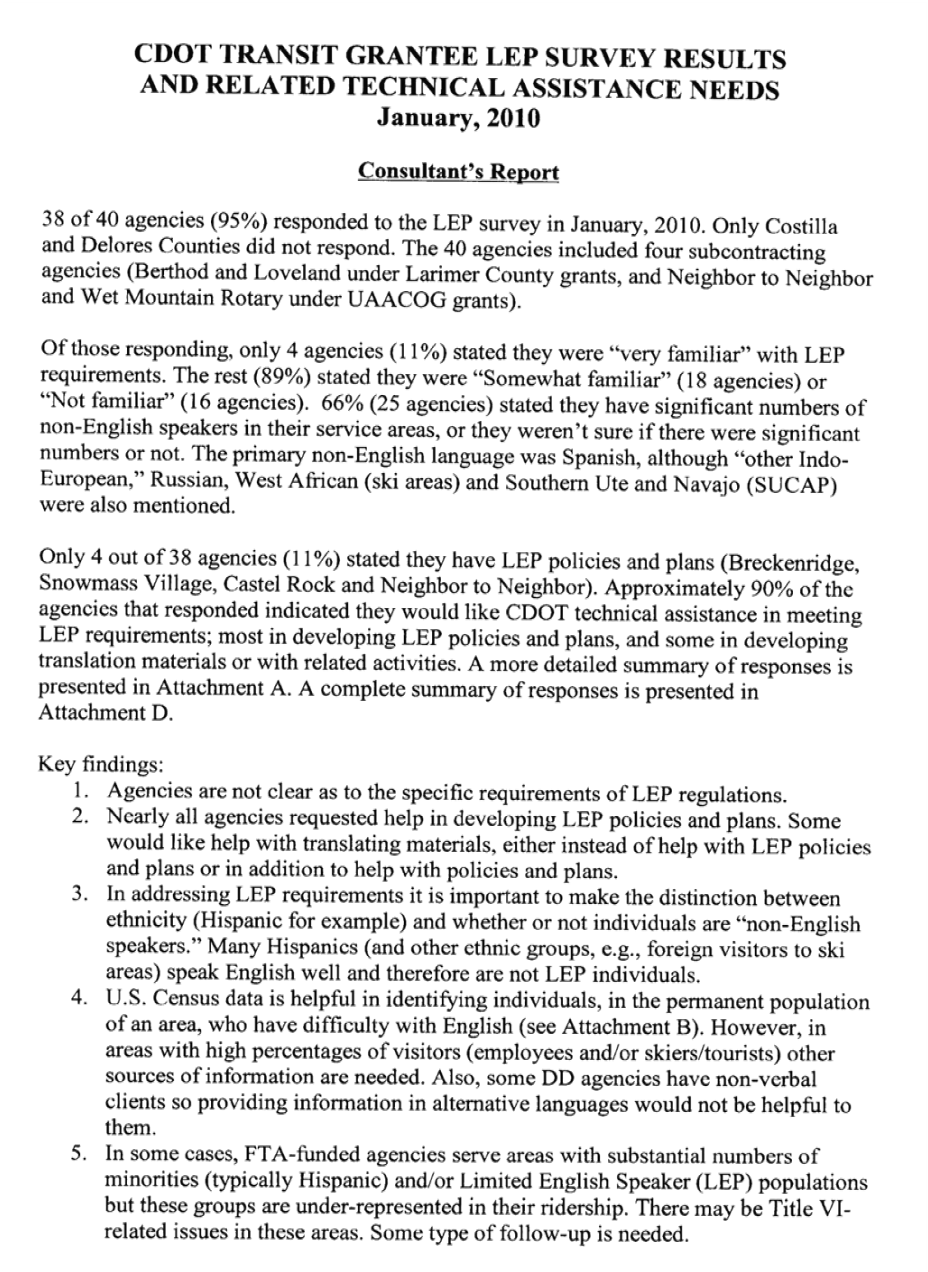
2. Language Access to LEP Persons

**Requirement:** *FTA recipients shall take responsible steps to ensure meaningful access to the benefits, services, information, and other important portions of its programs and activities for individuals who are Limited English Proficient (LEP).*

**Findings:** During this Title VI Compliance Review of CDOT, deficiencies were found regarding CDOT’s compliance with FTA requirements for Language Access to LEP persons. Prior to the site visit, CDOT provided several documents, including its CDOT Transit Unit Limited English Proficiency (LEP) Survey*;* its most recent LEP analysis, which included its four-factor analysis and a Language Assistance Plan (LAP); and several subrecipient LEP guidance and technical assistance documents. CDOT’s most recent four-factor analysis and LAP did not include all of the elements required by FTA Circular 4702.1A, IV-4, as described in the following table:

| **Elements Required for LEP Four-Factor Analysis and Language Assistance Plan**  **(per FTA C. 4702.1A, IV, 4. a. and DOT Policy Guidance)** | | |
| --- | --- | --- |
|  | **In CDOT**  **Plan?** | **Notes/Comments** |
| **Part A – Four-Factor Analysis** | | |
| 1. Demography –number or proportion of LEP persons eligible to be served or likely to be encountered | Partial | CDOT used 2008 American Community Survey (ACS) data to determine LEP populations in the Denver-Aurora and Boulder urbanized areas, as well as in Weld and Larimer Counties. CDOT did not use any other resource (i.e., survey results, school district data, community outreach feedback, regional planning organization data, etc.) as recommended by DOT LEP Guidance to determine LEP populations throughout the rest of the State. |
| 1. Frequency of Contact – frequency with which LEP individuals come in contact with program and/or activities | No | CDOT did not determine the frequency with which LEP persons come into contact with its services and programs. |
| 1. Importance – nature and importance of program, activity, or service to people’s lives | No | CDOT did not engage its user community through regional planning organizations, community groups, individual interviews, surveys, or the like to determine the nature and importance of its programs and activities to LEP persons throughout the state. CDOT did make a general statement that it was critical that its services be accessible to all. |
| 1. Resources – resources available and costs | No | Whereas CDOT stated that it had provided financial assistance to sub-recipients to assist in translating key documents, it had not assessed or determined which LEP measures it made available, or the costs associated with providing those LEP measures. |
| **Part B – Develop Language Assistance Plan** | | |
| 1. Identification of LEP persons | Partial | See Factor 1. |
| 1. Language assistance measures | Partial | CDOT listed the following LEP measures developed and/or implemented from 2009–2010:   * Developed sample LEP plan for its sub-recipients * Hosted four regional LEP workshops for its sub-recipients * Provided financial assistance to sub-recipients for translation services * Led CDOT/FTA training on how to conduct a four factor analysis * Conducted subrecipient survey of LEP practices and needs   CDOT listed the following LEP goals for 2011–2012:   * Develop a brochure that provides LEP services and contact information. * Provide a Title VI & LEP Guidelines handout for sub-recipients. * Develop and implement a Title VI Program LEP reporting form. * Provide a Translator Resource Directory. * Translate key documents as appropriate. * Identify community resources. * Place public notices at all stations and in all vehicles, and measures targeted to overcome linguistic, institutional, cultural, economic, historical or other barriers that may prevent minority and low-income people and populations from effectively participating in a recipient’s decision-making process.   At the time of the site visit, these had not been developed or implemented. |
| 1. Training of staff | No | CDOT confirmed training its sub-recipients but not its staff. |
| 1. Provide notice to LEP persons | No | CDOT did not confirm it was providing notice to LEP persons as recommended by DOT LEP Guidance. |
| 1. Monitor and update LAP | Partial | In its LEP Plan, CDOT provided a list of LEP-related activities it completed from 2009–2010 and a list of activities it intended to complete from 2011–2012. These lists were not provided according to an established LAP monitoring and update policy. It was recommended that CDOT consider monitoring/ updating its plan once every three years. |

In January 2010, CDOT hired a consultant to conduct a survey of its sub-recipients to determine their understanding of LEP guidelines and requirements and whether they had implemented LEP measures in the provision of their programs and services. The results of the survey are as follows:



In response to the survey findings, CDOT conducted four LEP training workshops between July 9, 2010, and August 6, 2010. In addition, CDOT developed LEP subrecipient technical assistance documents, including templates and information on how to conduct a four-factor analysis.

CDOT must follow up with its sub-recipients to ensure that Title VI requirements and DOT LEP guidance are being implemented.

In response to the draft report, in a letter dated October 9, 2012, CDOT requested an extension until March 30, 2013, to complete the corrective actions detailed in the Draft report. CDOT’s plan for completing the corrective actions was as follows:

CDOT will use data from the census, Colorado Department of Education, local cultural organizations, and its regional and local plans to determine the number and proportion of persons with LEP eligible to be served or likely to be encountered.

CDOT will use the completed four-factor analyses submitted by its sub-recipients, as well as data gathered from its regional and local planning processes, including feedback from regional planning organizations, community groups and individuals, to determine the frequency and contact with which persons with LEP come in contact with its programs and activities.

CDOT will use the completed four-factor analyses submitted by its sub-recipients, as well as data gathered from its regional and local planning processes, including feedback from regional planning organizations, community groups and individuals, to determine the nature and importance of its programs and services.

CDOT will analyze its internal resources and those of its sub-recipients to determine how those resources can be utilized to further assist LEP populations.

In addition, CDOT indicated that it had confirmed that approximately 25 percent of its sub-recipients had conducted the required LEP four-factor analysis. CDOT stated that along with the completion of its LEP four-factor analysis and LAP, it will ensure all its sub-recipients conduct the required LEP four-factor analysis by March 30, 2013.

**Corrective Actions and Schedules:** Within 60 days of the final report, CDOT must submit to the FTA Region VIII Civil Rights Officer:

* Completed four-factor analysis for itself.
* Completed four-factor analyses for its sub-recipients.

A detailed implementation plan to complete LAPs for itself and its sub-recipients (if necessary) that meet the requirements to provide meaningful access to LEP persons, as described in FTA Circular 4702.1A and DOT LEP Guidance.

1. Title VI Complaint Procedures

**Requirement:** *FTA recipients shall develop procedures for investigating and tracking Title VI complaints filed against them and make their procedures for filing a complaint available to members of the public upon request.*

**Findings:** During this Title VI Compliance Review of CDOT, deficiencies were found regarding CDOT’s compliance with FTA requirements for Title VI Complaint Procedures. Prior to the site visit, CDOT submitted its Title VI Complaint Procedures in response to this review (Complaint Procedure A); the Title VI complaint procedures included in its most recent Title VI submittal (Complaint Procedure B.); and its Title VI Complaint Form. Information on how to file a complaint was also posted on CDOT’s website.

During the site visit, the review team reviewed Complaint Procedure A and Complaint Procedure B and concluded that the procedures were different, as follows:

|  |  |
| --- | --- |
| **CDOT Complaint Procedure A** | **CDOT Complaint Procedure B** |
| The investigator will complete FHWA Title VI Complaint Summary form regarding the investigation. If the investigation is conducted by a Region Civil Rights Specialist, then the original FHWA Summary form will be sent to the CEO. | The investigator will complete a Title VI Complaint Summary regarding the investigation. If the investigation is conducted by a Region Civil Rights Specialist, then the original summary will be sent to the CEO. |
| The HQ Center for Equal Opportunity will transmit the original FHWA Summary form and a copy of the final investigative report to FHWA within 10 days of receipt. | The HQ Center for Equal Opportunity will transmit appropriate CDOT Executive Management and Federal Partner (FTA) the summary and a copy of the final investigative report to appropriate parties within 10 days of receipt. The complainant may appeal to FTA. FTA’s Office of Civil Rights will respond within 30 to 60 days of receiving the appeal. |
| Complaints made against CDOT will be forwarded to the Center for Equal Opportunity and transmitted to FHWA for appropriate investigation and disposition. Complaint procedures are made available to CDOT staff, contractors and the public on the CDOT website at <http://www.coloradodot.infolprograms/equal-access-programs>. | Complaints made against CDOT will be forwarded to the Center for Equal Opportunity and transmitted to the appropriate U.S. DOT modal agency for appropriate investigation and disposition. |

CDOT posted Complaint Procedure A on its website. CDOT did not confirm that it distributed Complaint Procedure B to the public. The review team discussed the need for CDOT to have complaint procedures detailing the processing of complaints filed against recipients and sub-recipients of FTA-funded programs and to make those procedures available to the public. CDOT indicated that, if possible, it would like to have one Title VI complaint procedure for FHWA and FTA and was advised it could do that, but it had to develop a complaint procedure that clearly explained where the two processes differed and how FTA Title VI complaints were handled by the agency.

Complaint Procedure B was generally sufficient for handling FTA Title VI complaints (in that it did not reference FHWA); however, the following modifications were recommended:

1. CDOT needs to determine whether it will use its complaint form for recording FTA Title VI complaints.
2. CDOT can, but is not required to, send final complaint reports and determinations to FTA within 10 days of completing its investigation. CDOT is only required to send a list of its FTA Title VI complaints every three years as a part of its triennial Title VI program submittal.
3. FTA Title VI Complaints filed against CDOT can be investigated by CDOT initially, unlike FHWA Title VI complaints. CDOT should develop an internal process for handling complaints against itself. If a complainant chooses to appeal a CDOT investigation determination, then CDOT should consider referring the complaint to the FTA for appeals.

CDOT must also ensure that its sub-recipients have FTA Title VI complaint procedures that are made available to the public.

After the site visit, CDOT submitted updates to its FTA Title VI complaint procedures per the review team’s comments; however, CDOT must still make these procedures available to the public. The review team confirmed that, at the time of the draft report, CDOT had not made the updated procedures available to the public through its website, nor had it provided documentation that the updated procedures were otherwise available.

In response to the draft report, in an email dated October 16, 2012, CDOT stated that its Title VI complaint procedures were available on its website, which was confirmed by the review team.

Regarding sub-recipient Title VI complaint procedures, CDOT stated that it intended to use workshops and semi-annual conferences to train sub-recipients on Title VI requirements, including the need to have Title VI complaint procedures. Further, CDOT indicated that it would consider updating its State Management Plan to ensure continued compliance with these requirements. However, CDOT did not provide a final plan for ensuring its sub-recipients had complaint procedures. CDOT stated, “… the center for Equal Opportunity and Division of Transit and Rail have begun evaluating approaches to develop a plan and ensure compliance.”

**Corrective Actions and Schedules:** Within 60 days of the final report, CDOT must submit to the FTA Region VIII Civil Rights Officer an Implementation Plan for its sub-recipients to have complaint procedures.

1. Record of Title VI Investigations, Complaints, and Lawsuits

**Requirement:** *FTA recipients shall prepare and maintain a list of any active investigations conducted by entities other than FTA, lawsuits, or complaints naming the recipients that allege discrimination on the basis of race, color, or national origin. This list shall include the date that the investigation, lawsuit, or complaint was filed; a summary of the allegation(s); the status of the investigation, lawsuit, or complaint; and actions taken by the recipient in response to the investigation, lawsuit, or complaint.*

**Findings:** During this Title VI Compliance Review of CDOT, no deficiencies were found regarding CDOT’s compliance with FTA requirements for Record of Title VI Investigations, Complaints, and Lawsuits. Since CDOT did not have any FTA Title VI investigations, complaints, or lawsuits, there was no record to submit. During the site visit, CDOT provided a copy of its log for tracking complaints that recorded all of the information required by FTA Circular 4702.1A, IV, 3.

1. Notice to Beneficiaries of Protection Under Title VI

**Requirement:** *FTA recipients shall provide information to the public regarding their Title VI obligations and apprise members of the public of the protections against discrimination afforded to them by Title VI. Recipients shall disseminate this information to the public through measures that can include but shall not be limited to a posting on its website.*

**Findings:** During this Title VI Compliance Review of CDOT, no deficiencies were found regarding CDOT’s compliance with FTA requirements for Notice to Beneficiaries of Protection under Title VI. Prior to the site visit, CDOT provided the Review team with the following documentation:

* A document outlining the requirement to notify beneficiaries of protection under Title VI.
* A copy of CDOT’s Title VI Notice to Beneficiaries
* CDOT’s Title VI Notice to Beneficiaries poster.
* CDOT’s Title VI Complaint Form
* CDOT’s New Rider Information Guide, which included a Statement of Rights/Filing a complaint section

The review team read through the documents provided and discussed the FTA requirements for Notice to Beneficiaries of Protection under Title VI. The results of that review/discussion are illustrated in the following table:

| **Elements Required in Title VI Notice to Beneficiaries**  **(per FTA Circular 4702.1A Chapter IV Section 5.a)** | **Included in  CDOT’s Notice?** |
| --- | --- |
| A statement that the agency operates programs without regard to race, color, and national origin | Yes |
| A description of the procedures that members of the public should follow in order to request additional information on the recipient’s nondiscrimination obligations | Yes |
| A description of the procedures that members of the public should follow in order to file a discrimination complaint against the recipient. | Yes |

Whereas CDOT did not have a list of sub-recipients that had a Title VI Notice to Beneficiaries, it did have a monitoring process in place to confirm subrecipient compliance in this area. CDOT was advised to maintain a list of sub-recipients and whether they comply with the General Reporting Requirements and Guidelines of FTA Circular 4702.1A, including the requirement to have a Title VI Notice to Beneficiaries.

1. Annual Title VI Certification and Assurance

**Requirement:** *FTA**recipients shall submit its annual Title VI certification and assurance as part of its Annual Certifications and Assurances submission to FTA (in the FTA web based Transportation Electronic Award Management (TEAM) grants management system.*

**Findings:** During this Title VI Compliance Review of CDOT, no deficiencies were found regarding CDOT’s compliance with FTA requirements for Annual Title VI Certification and Assurance. The FTA Civil Rights Assurance is incorporated in the Annual Certifications and Assurances submitted annually to FTA through the Transportation Electronic Award and Management (TEAM) system. CDOT executed its FY 2011 Annual Certifications and Assurances in TEAM on November 15, 2011. CDOT checked as applicable,01. Certifications and Assurances required of all applicants. This is the category where the nondiscrimination assurance is located.

1. Environmental Justice Analysis of Construction Projects

**Guidance:** *FTA**recipients should integrate an environmental justice analysis into its National Environmental Policy Act (NEPA) documentation of construction projects. (Recipients are not required to conduct environmental justice analyses of projects where NEPA documentation is not required.). In preparing documentation for a categorical exclusion (CE), recipients can meet this requirement by completing and submitting FTA’s standard CE checklist, which includes a section on community disruption and environmental justice.*

**Findings:**  During this Title VI Compliance Review of CDOT, no deficiencies were found regarding CDOT’s compliance with FTA guidance for Environmental Justice Analyses of Construction Projects. CDOT did not have any major construction projects in its FTA program. The review team explained, in detail, the requirements for a CE (including the completion of the FTA CE Checklist), EA, and EIS. FTA Circular 4702.1A, IV.8 requires the following:

Recipients preparing documentation for a categorical exclusion (CE) can meet this requirement by completing and submitting FTA’s standard CE checklist, which includes a section on community disruption and environmental justice. FTA recommends that recipients preparing an environmental assessment (EA) or environmental impact statement (EIS) integrate into their documents the following components:

* 1. A description of the low-income and minority population within the study area affected by the project, and a discussion of the method used to identify this population (e.g., analysis of Census data, minority business directories, direct observation, or a public involvement process).
  2. A discussion of all adverse effects of the project both during and after construction that would affect the identified minority and low-income population.
  3. A discussion of all positive effects that would affect the identified minority and low-income population, such as an improvement in transit service, mobility, or accessibility.
  4. A description of all mitigation and environmental enhancement actions incorporated into the project to address the adverse effects, including, but not limited to, any special features of the relocation program that go beyond the requirements of the Uniform Relocation Act and address adverse community effects such as separation or cohesion issues; and the replacement of the community resources destroyed by the project.
  5. A discussion of the remaining effects, if any, and why further mitigation is not proposed.
  6. For projects that traverse predominantly minority and low-income and predominantly non-minority and non-low-income areas, a comparison of mitigation and environmental enhancement actions that affect predominantly low-income and minority areas with mitigation implemented in predominantly non-minority or non-low-income areas. Recipients and sub-recipients that determine there is no basis for such a comparison should describe why that is so.

CDOT was advised that for future construction projects, it should reference FTA EJ requirements in the planning stage to ensure that it was taking the appropriate steps to address FTA EJ concerns.

1. Submit Title VI Program

**Requirement:** *FTA recipients that are State Departments of Transportation or Other Administrating Agency are required to document their compliance with the general reporting requirements by submitting a Title VI Program to FTA’s Regional Civil Rights Officer once every three years.*

**Findings:** During this Title VI Compliance Review of CDOT, an Advisory Comment was issued regarding CDOT’s compliance with FTA requirements to Submit Title VI Program. Prior to the site visit, CDOT submitted its most recent FTA Title VI Assessment & Implementation Plan 2010 dated March 2011 and the approval letter from the FTA dated March 31, 2011. The following table summarizes CDOT’s 2010 Title VI Program with respect to FTA Circular 4702.1A.:

| **ELEMENTS REQUIRED FOR TITLE VI PROGRAM** | |
| --- | --- |
| **General Requirements and Guidelines**  **(per FTA C. 4702.1A, IV, 7. a. (1) – (5))** | **In CDOT Title VI Program Submittal?** |
| A summary of public outreach and involvement activities undertaken since the last submission and a description of steps taken to ensure that minority and low-income people had meaningful access to these activities. | Yes |
| A copy of the agency’s plan for providing language assistance for persons with limited English proficiency that was based on the DOT LEP Guidance or a copy of the agency’s alternative framework for providing language assistance. | Yes |
| A copy of the agency procedures for tracking and investigating Title VI complaints. | Yes |
| A list of any Title VI investigations, complaints, or lawsuits filed with the agency since the time of the last submission. This list should include only those investigations, complaints, or lawsuits that pertain to the agency submitting the report, not necessarily the larger agency or department of which the entity is a part. | Yes |
| A copy of the agency’s notice to the public that it complies with Title VI and instructions to the public on how to file a discrimination complaint. | Yes |
| **Program-Specific Requirements and Guidelines for State DOTs**  **(per FTA C. 4702.1A, VI, 5. a. (1) – (4))** |  |
| A copy of the procedures used for certifying that the statewide planning process complies with Title VI. | Yes |
| A description of the procedures the agency uses to pass-through FTA financial assistance in a non-discriminatory manner. | Yes |
| A description of the procedures the agency uses to provide assistance to potential sub-recipients applying for funding in a non-discriminatory manner. | Yes |
| A description of how the agency monitors its sub-recipients for compliance with Title VI and a summary of the results of this monitoring. | Yes |

Whereas CDOT included all elements for Submit Title VI Program required by FTA Circular 4702.1A, its Plan included several references to FHWA. The review team recommended that CDOT address the following comments:

* There were two sections labeled “Program-Specific Requirements.” One should be re-labeled “General Reporting Requirements and Guidelines” according to the information included in this section.
* The plan contained all appropriate elements, but was not well organized. The FTA Title VI reporting areas were not listed in the Plan’s Table of Contents and appeared as though they were simply added to CDOT’s FHWA Title VI Submittal.
* Document contained information that was not required by the FTA (several FHWA references.) CDOT should consider creating a separate FTA Title VI Submittal.

The review team advised CDOT to create a separate FTA Title VI program submittal to include only those elements required by FTA Circular 4702.1B applicable to State Departments of Transportation for its next triennial submission.

**FINDINGS OF THE PROGRAM-SPECIFIC REQUIREMENTS AND GUIDELINES FOR STATE DEPARTMENTS OF TRANSPORTATION OR OTHER ADMINISTERING AGENCIES**

This section covers the Program-Specific Requirements and Guidelines for State DOTs and Other Administering Agencies, administering Elderly Individuals and Individuals with Disabilities, Rural and Small Urban Area, Job Access and Reverse Commute (JARC), and New Freedom funding programs.

1. Statewide Planning Activities

**Requirement:** *State DOTs should have an analytic basis in place for certifying their compliance with Title VI. Examples of this analysis can include, a demographic profile of the State that includes identification of the locations of socioeconomic groups, including low-income and minority populations as covered by the Executive Order on Environmental Justice and Title VI, a statewide transportation planning process that identifies the needs of low-income and minority populations or an analytical process that identifies the benefits and burdens of the State’s transportation system investments for different socioeconomic groups, identifying imbalances, and responding to the analyses produced.*

**Findings**: During this Title VI Compliance Review of CDOT, deficiencies were found regarding CDOT’s compliance with FTA requirements for Statewide Planning Activities.

CDOT did not have a statewide transportation planning process that identified the needs of low-income and minority populations or an analytical process that identified the benefits and burdens of the State’s transportation system investments for different socioeconomic groups, identifying imbalances, and responding to the analyses produced, as described in FTA Circular 4702.1A.

The following table contains guidance for conducting Statewide Planning Activities and whether CDOT followed the guidance:

| **Guidance on Conducting Statewide Planning**  **(per FTA C. 4702.1A, VI, 1. a. – c.)** | **In CDOT Documentation?** |
| --- | --- |
| A demographic profile of the state that includes identification of the locations of socioeconomic groups, including low-income and minority populations as covered by the Executive Order on Environmental Justice and Title VI. | Yes |
| A statewide transportation planning process that identifies the needs of low-income and minority populations. | No |
| An analytical process that identifies the benefits and burdens of the State’s transportation system investments for different socioeconomic groups, identifying imbalances, and responding to the analyses produced. | No |

In its “Colorado 2035 Statewide Transportation Plan Socioeconomic Technical Report,” CDOT included a section on Environmental Justice. In this section, CDOT used maps to identify the distribution of minority and low-income persons throughout the state. CDOT used these maps to identify the quality of Colorado highways located in areas where minority and low-income populations were most dense compared to the rest of the state. The maps were used for FHWA environmental justice purposes. Whereas these maps were useful, CDOT did not use these maps to analyze FTA Title VI transit-related concerns in the same areas.

The review team provided technical assistance to CDOT on how to use its demographic maps, surveys, and coordination with regional planning organizations to address the requirements for Statewide Transportation Planning detailed in FTA Circular 4702.1A, VI-I(a-c). For example, it was recommended that CDOT develop a map identifying the distribution of FTA-funded transit resources throughout the state and overlay that map on its minority and low-income maps to determine whether or not minority and low-income persons are being disproportionately impacted by its statewide planning decisions.

In response to the draft report in a letter dated October 9, 2012, CDOT acknowledged that it did not sufficiently demonstrate compliance in this area during the site visit; however, after further consideration of the requirement, CDOT asserted that it had satisfactorily identified the needs of minority and low-income populations in its planning activities, as required by FTA Circular 4702.1A. To support its assertion, CDOT provided a list of 10 actions it took during the development of its 2035 Statewide Transportation Plan. Seven of the actions taken by CDOT either did not analyze the transit needs of minorities or it was unclear due to lack of support how minority and low-income populations specifically were considered by CDOT. Three of the actions taken by CDOT were potentially demonstrative of CDOT’s compliance in this area; however, further support and review is necessary.

With respect to the seven actions taken by CDOT that did not appear to support CDOT’s assertion of compliance, three were outreach efforts associated with human service transportation and coordination plans, which considered the needs of low-income populations, not minority populations; three were analyses and/or public transit forums that did not clearly explain how the needs of minority and low-income populations were considered; and one referenced demographic maps used for CDOT analyses and needs assessments; however, there was no explanation of how these maps were used to satisfy the Statewide Planning Activities requirement. CDOT must explain how the transit needs of minority and low-income persons were analyzed or assessed for each activity cited as an example of compliance in this area.

The three actions that were potentially demonstrative of compliance in this area were a 2006 statewide opinion survey, a 2006 research study on the mobility needs of low-income and minority households, and the 15 Regional Transportation Plans that, according to CDOT, included a socioeconomic profile of low-income and minority populations within the 15 respective regions. On October 23, 2012, CDOT submitted its “Mobility Needs of Low-Income and Minority Households Research Study,” 2006. In this study, CDOT identified the needs of low-income and minority persons in the state of Colorado, but also acknowledged that “research could be done to identify quantitative goals and criteria for measuring the degree of need for alternative modes in various areas of the state and the degree to which funding programs help address those needs.” It was confirmed that this study was also referenced in its 2035 Statewide Transportation Plan. Whereas CDOT identified the needs of low-income and minority persons, it still must confirm that this effort is part of its normal planning process and not a one-time effort. For example, CDOT must document that its study is updated periodically, e.g., with a new Census or when its results may not be valid for the current period. CDOT must also submit its 2006 statewide opinion survey and at least five Regional Transportation Plans as further documentation of its compliance with FTA Circular 4702.1A Stateside Planning Activities.

In its response to the draft report, CDOT also stated that it was seeking a consultant to assist in the development of its Statewide Transit Plan. The consultant’s scope of work included identifying the needs of low-income and minority populations on a statewide level.

Regarding FTA Circular 4702.1A Guidance on Conducting Statewide Planning, it is reiterated that CDOT must include all of the elements detailed in the table in its Title VI Statewide Planning Activities. In its response to the draft report, CDOT requested clarification on whether having an analytical process for identifying the benefits and burdens of its transportation system investments was optional if it already had a process in place that identified that needs of minority and low-income populations. CDOT must have an analytical process for identifying the benefits and burdens of its transportation system investments in addition to a process that identifies the needs of minority and low-income populations.

At the time of the site visit, technical assistance was provided to CDOT on how to identify and analyze the benefits and burdens of its transportation system investments.

In its response to the draft report, CDOT indicated it could implement the technical assistance provided, but requested further clarification on when the analysis should be conducted. As a corrective action, CDOT must identify and analyze the benefits and burdens of its transportation system investments for different socioeconomic groups, identifying imbalances, and responding to the analyses produced, per the corrective action schedule below. Thereafter, CDOT can include this process as a part of its regular transportation planning activities. Furthermore, CDOT must analyze its current distribution of transportation system investments in comparison to future transportation investments to confirm for itself that future plans are responsive to current imbalances, as required by FTA Circular 4702.1A.

**Corrective Actions and Schedules:** Within 60 days of the final report, CDOT must submit to the FTA Region VIII Civil Rights Officer:

* Confirmation that it has in place a process to identify the needs of its minority and low-income populations in its normal planning activities.

An analytical process that identifies the benefits and burdens of the State’s transportation system investments for its minority and low-income populations, identifying imbalances, and responding to the analyses produced.

1. Program Administration

**Requirement:** *State DOT recipients should document that they pass through Federal Transit Administration (FTA) funds under the Transportation for Elderly Individuals and Individuals with Disabilities, Rural and Small Urban Area Formula Funding, JARC, and New Freedom grant programs without regard to race, color, or national origin and that minority populations are not being denied the benefits of or excluded from participation in these programs.*

**Findings:** During this Title VI Compliance Review of CDOT, deficiencies were found regarding CDOT’s compliance with FTA requirements for Program Administration. Prior to and during the site visit, CDOT provided the following documentation regarding Program Administration:

* An excerpt from its 2009 State Management Plan (SMP) outlining its competitive selection process.
* An excerpt from its 2012–2013 CDOT-FTA Application Instructions outlining its criteria for selecting transit providers.
* Its 2012–2013 CDOT–FTA Application Instructions dated April 2011.
* Its Title VI Tracking Sheet for 2008 Title VI Report.

CDOT did not provide documentation that it was passing through FTA Section 5310, 5311, 5316, and 5317 funds without regard to race, color, or national origin and that minority and low-income populations were not being denied the benefits of or excluded from participation in these programs, as described in FTA Circular 4702.1A.

The following table contains guidance for conducting subrecipient Program Administration and whether CDOT satisfactorily followed the guidance:

|  |  |
| --- | --- |
| **Guidance on Program Administration**  **(per FTA C. 4702.1A, VI, 2. a. (1) – (5))** | **In CDOT Process?** |
| A description of how the agency develops its competitive selection process or annual program of projects submitted to FTA as part of its grant applications. This description should emphasize the method used to ensure the equitable distribution of funds to sub-recipients that serve predominantly minority and low-income populations, including Native American tribes, where present. | Partial, insufficient documentation on method used to ensure equitable distribution of funds to sub-recipients that serve predominantly minority and low-income populations. |
| A description of the agency’s criteria for selecting transit providers to participate in any FTA grant program. | Yes |
| A record of requests for Elderly Individuals and Individuals with Disabilities, Rural and Small Urban Area Formula Funding, JARC, and New Freedom funding. The record should identify those applicants that would use grant program funds to provide assistance to predominantly minority and low-income populations. The record should also indicate whether those applicants were accepted or rejected for funding. | No |
| A description of the agency’s procedures to assist potential sub-recipients in applying for Elderly Individuals and Individuals with Disabilities, Rural and Small Urban Area Formula Funding, JARC, and New Freedom funding, including any efforts to assist applicants that would serve predominantly minority and low-income populations. | Yes |
| State DOTs or other administering agencies may classify applicants as providing service to predominantly minority and low-income populations if the proportion of minority and low-income people in the applicant’s service area exceeds the statewide average minority and low-income population. | N/A |

During the review, CDOT provided its description of the competitive selection process for selecting sub-recipients for the FTA programs. For Title VI, the SMP stated that “the Department better assures that it does not discriminate in the evaluation and selection of projects by having the Interagency Advisory Committee (IAC) members assist in the evaluation and selection of projects to be funded.” The IAC did not have any member that was tasked with the responsibility of reviewing the Title VI requirements of the evaluation and selection process. As described in the SMP, the IAC comprises “… representatives of State agencies, including but not limited to the Department of Local Affairs, the Department of Transportation, the Department of Human Services (Aging and Adult Services office, Developmental Disabilities Services office), and the Public Utilities Commission.” CDOT also provided its description of the competitive selection criteria for selecting sub-recipients for the FTA programs. The competitive selection criteria did not emphasize any method used to ensure the equitable distribution of funds to sub-recipients that serve predominantly minority and low-income populations, including Native American tribes, where present. CDOT had not developed a Record of Requests for its FTA Section 5310, 5311, 5316, and 5317 programs, as required, for the last three years. CDOT did provide its Title VI Tracking Sheet for the 2008 Title VI Report that contained a Record of Requests for grant cycles 2006 to 2009.

In its response to the Draft report, and in a letter dated October 9, 2012, CDOT stated that its Center for Equal Opportunity and Division of Transit and Rail are evaluating approaches to ensure Title VI is considered in the selection of sub-recipients. CDOT further stated that it was considering modifications to its grant applications to better evaluate the applicants’ consideration of minority and low-income populations in the development and delivery of their transit services. CDOT also indicated that once it transitions to a new customer resource management (CRM) system in January 2013, it will use the new system to develop a record of requests.

**Corrective Actions and Schedules:** Within 60 days of the final report, CDOT must submit to the FTA Region VIII Civil Rights Officer procedures to ensure that it will consider Title VI in its competitive selection process or annual program of projects submitted to FTA, including the development of a Record of Requests, as required by FTA Circular 4702.1A.

1. Providing Assistance to Sub-recipients

**Requirement:**  *FTA recommends that agencies assist their sub-recipients in complying with the general reporting requirements in Chapter IV. The State DOT or other administrating agency should provide assistance at the request of a subrecipient or as deemed necessary and appropriate.*

**Findings:** During this Title VI Compliance Review of CDOT, no deficiencies were found regarding CDOT’s compliance with FTA guidance for Providing Assistance to Sub-recipients. The following table contains guidance for Providing Assistance to Sub-recipients and whether CDOT followed the guidance:

|  |  |
| --- | --- |
| **Guidance on Providing Assistance to Sub-Recipients**  **(per FTA C. 4702.1A, VI, 4. a. – c.)** | **CDOT** |
| Sample notices to the public informing beneficiaries of their rights under Title VI and procedures on how to file a Title VI complaint. | Yes |
| Sample procedures for tracking and investigating Title VI complaints filed with a subrecipient. | Yes |
| Demographic information on the race, income, and English proficiency of residents served by the subrecipient. (This information will assist the subrecipient in assessing the level and quality of service it provides to communities within its service area and in assessing the need for language assistance.) | Yes |

CDOT had begun the process to provide assistance to its sub-recipients. Prior to the site visit, CDOT provided its 2012–2013 CDOT Grant Applications and Guidelines, examples of a compliant Title VI Notice to Beneficiaries, and the CDOT FTA Title VI Policy. In addition, CDOT provided sample Title VI complaint procedures, a sample complaint form, and a sample complaint tracking log to be used by its sub-recipients to meet FTA Title VI requirements. During the site visit, CDOT also noted that it conducted four LEP training workshops designed to provide LEP-related technical assistance to sub-recipients. A minority and low-income demographic profile of the state was made available to its sub-recipients through its “Colorado 2035 Statewide Transportation Plan Socioeconomic Technical Report.”

1. Monitoring Sub-recipients

**Requirement:** *State DOTs or other State administering agencies should monitor their sub-recipients for compliance with Title VI.*

**Findings:** During this Title VI Compliance Review of CDOT, no deficiencies were found regarding CDOT’s compliance with FTA requirements for monitoring sub-recipients. The following table contains guidance for monitoring sub-recipients and whether CDOT followed the guidance:

|  |  |
| --- | --- |
| **Guidance on Monitoring Sub-Recipients**  **(per FTA C. 4702.1A, VI, 3. a. – b.)** | **CDOT** |
| The agency should document its process for ensuring that all sub-recipients are complying with the general reporting requirements of this circular. | Yes |
| At the request of FTA, in response to a complaint of discrimination, or as otherwise deemed necessary by the State DOT or administering agency, the agency should request that sub-recipients who provide transportation services verify that their level and quality of service is provided on an equitable basis. Recipients should ask sub-recipients to develop system-wide service standards and verify that service provided to predominantly minority and low-income communities meets these standards. | N/A |

CDOT had begun the process to monitor its sub-recipients. Prior to the site visit, CDOT provided 2012 subrecipient site visit questionnaires for its sub-recipients NECALG and VIA Mobility Services, both of which included Title VI questions designed to monitor sub-recipient compliance with the General Reporting Requirements and Guidelines detailed in FTA Circular 4702.1A.

1. SUMMARY OF FINDINGS AND CORRECTIVE ACTIONS

| **Title VI Requirements for State DOTs** | **Findings** | **Description of Deficiencies** | **Corrective Action(s)** | **Response Days/Date** | **Date Closed** |
| --- | --- | --- | --- | --- | --- |
| **GENERAL REPORTING REQUIREMENTS – FTA C. 4702.1A. IV, 1-9** | | | | | |
| 1. Inclusive Public Participation | ND |  |  |  |  |
| 1. Language Access to LEP Persons | D | * Lacking assessment of provisions for LEP persons * Insufficient oversight of Title VI compliance | Submit to FTA Region VIII Civil Rights Officer:   * Completed four-factor analysis for itself. * Completed four-factor analyses for its sub-recipients. * A detailed implementation plan to complete LAPs for itself and its sub-recipients (if necessary) that meet the requirements to provide meaningful access to LEP persons, as described in FTA Circular 4702.1A and DOT LEP Guidance. | 60 Days |  |
| 1. Title VI Complaint Procedures | D | Insufficient oversight of Title VI compliance | Submit to FTA Region VIII Civil Rights Officer, an implementation plan for its sub-recipients to have complaint procedures. | 60 Days |  |
| 1. Record of Title VI Investigations, Complaints, and Lawsuits | ND |  |  |  |  |
| 1. Notice to Beneficiaries of Protection Under Title VI | ND |  |  |  |  |
| 1. Annual Title VI Certification and Assurance | ND |  |  |  |  |
| 1. Environmental Justice Analysis of Construction Projects | ND |  |  |  |  |
| 1. Submit Title VI Program | AC | FTA Title VI Program submittal unclear | Advised to create separate FTA Title VI program submittal to include only those elements required by FTA Circular 4702.1A applicable to State DOTs for next triennial Title VI Program submission. |  |  |
| **PROGRAM-SPECIFIC REQUIREMENTS FOR STATE DOT’S FTA C. 4702.1A, VI, 1-4** | | | | | |
| 1. Statewide Planning Activities | D | No existing basis for Title VI certification | Submit to FTA Region VIII Civil Rights Officer:   * Confirmation that it has in place a process to identify needs of its minority and low-income populations in its normal planning activities. * An analytical process that identifies benefits and burdens of State’s transportation system investments for its minority and low-income populations, identifying imbalances, and responding to analyses produced. | 60 Days |  |
| 1. Program Administration | D | No record of approved and rejected funding requests maintained | Submit to FTA Region VIII Civil Rights Officer procedures to ensure that it will consider Title VI in its competitive selection process or annual program of projects submitted to FTA, including development of a Record of Requests, as required by FTA Circular 4702.1A. | 60 Days |  |
| 1. Providing Assistance to  Sub-recipients | ND |  |  |  |  |
| 1. Monitoring  Sub-recipients | ND |  |  |  |  |

Findings at the time of the site visit: ND = No Deficiencies; D = Deficiency; NA = Not Applicable; NR = Not Reviewed; AC = Advisory Comment

VIII. ATTENDEES

| **NAME** | **ORGANIZATION/TITLE** | **PHONE NUMBER** | **E-MAIL ADDRESS** |
| --- | --- | --- | --- |
| **GRANTEE – Colorado Department of Transportation (CDOT)** | | | |
| Mark Imhoff | Director, Division of Transit and Rail | (303) 757-9007 | [mark.imhoff@dot.state.co.us](mailto:mark.imhoff@dot.state.co.us) |
| Eric Ellis | Transit Grants Manager, Division of Transit and Rail | (303) 757-9766 | [eric.t.ellis@dot.state.co.us](mailto:eric.t.ellis@dot.state.co.us) |
| Debra Gallegos | Manager, Center for Equal Opportunity | (303) 757-9969 | [debra.gallegos@dot.state.co.us](mailto:debra.gallegos@dot.state.co.us) |
| Cecelia Garcia | Civil Rights Specialist, Center for Equal Opportunity | (303) 512-4144 | [cecelia.garcia@dot.state.co.us](mailto:cecelia.garcia@dot.state.co.us) |
| Aaron Willis | Transportation Planner, Division of Transportation Development | (303) 601-7969 | [aaron.willis@dot.state.co.us](mailto:aaron.willis@dot.state.co.us) |
| Tom Mauser | Modal Section Manager, Division of Transit and Rail | (303) 757-9768 | [tom.mauser@dot.state.co.us](mailto:tom.mauser@dot.state.co.us) |
| **CDOT Sub-recipients** | | | |
| Maribeth  Lewis-Baker | Town of Breckenridge | (970) 547-3141 | [meribethl@townofbreckenridge.com](mailto:meribethl@townofbreckenridge.com) |
| Jane Weinberger | Seniors’ Resource Center | (303) 674-2843 | [jweinberger@srcaging.org](mailto:jweinberger@srcaging.org) |
| **Federal Transit Administration – FTA** | | | |
| Rebecca Tanrath | Civil Rights Officer, Region 8 | (720) 963-3313 | [rebecca.tanrath@dot.gov](mailto:rebecca.tanrath@dot.gov) |
| **REVIEW TEAM – The DMP Group, LLC** | | | |
| John Potts | Lead Reviewer | (202) 726-2630 | [johnpotts@thedmpgroup.com](mailto:johnpotts@thedmpgroup.com) |
| Donald Lucas | Reviewer | (202) 726-2630 | [donald.lucas@thedmpgroup.com](mailto:donald.lucas@thedmpgroup.com) |
| Gregory Campbell | Reviewer | (202) 726-2630 | [gregory.campbell@thedmpgroup.com](mailto:gregory.campbell@thedmpgroup.com) |

1. Per the 2000 and the 2010 Census, people of Hispanic origin can be, and in most cases are, counted in two or more race categories.

   2 Per the 2006–2010 American Community Survey 5–Year Estimates. [↑](#footnote-ref-1)