**TITLE VI COMPLIANCE REVIEW**

**OF THE**

**Nevada Department of Transportation (NDOT)**

**Carson City, Nevada**

**Final Report**

**March 2011**

**Prepared For**

**U.S. DEPARTMENT OF TRANSPORATION**

**FEDERAL TRANSIT ADMINISTRATION**

**OFFICE OF CIVIL RIGHTS**

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1. GENERAL INFORMATION

Grant Recipient: Nevada Department of Transportation (NDOT)

City/State: Carson City, Nevada

Grantee Number: 1625

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Director

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Site Visit Dates: July 27 – 29, 2010

Compliance Review

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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 Nevada Department of Transportation (NDOT) 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).
* 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).
* FTA Circular 4702.1A, “Title VI and Title VI-Dependent Guidelines For Federal Transit Administration Recipients”, May 17, 2007.

1. PURPOSE AND OBJECTIVES

#### Purpose

The Federal Transit Administration (FTA) Office of Civil Rights periodically conducts discretionary reviews of grant recipients and subrecipients 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 NDOT’s Title VI Program was necessary.

The Office of Civil Rights authorized The DMP Group, LLC to conduct the Title VI Compliance Review of NDOT. The primary purpose of this Compliance Review was to determine the extent to which NDOT 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 NDOT 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 complaints filed against NDOT.

#### 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 Nevada Department of Transportation (NDOT) is a state agency that plans, develops, and maintains the statewide transportation network in Nevada. The Governor of the State of Nevada designated NDOT as the agency to administer and manage the Federal Transit Administration (FTA) funded programs in Nevada.

The Transit and Small Urban Section within NDOT’s Planning Division is responsible for administering and managing the Section 5303, 5304, 5309, 5310, 5311, 5316, and 5317 programs. There are five positions within the Transit and Small Urban Section, including the Manager, the Transit Planning Coordinator, and three Transit Planners. Several divisions within NDOT support the Transit and Small Urban Section’s administration and management of the FTA programs: Accounting, Contract Compliance, Internal Audit, and Human Resources. The State Attorney General and the Department of Administration’s Purchasing Division also assist in the administration and management of the FTA programs.

The Contract Compliance Manager within NDOT’s Contract Compliance division is designated as the NDOT Title VI Coordinator. For all Title VI matters, the Contract Compliance Manager reports to the NDOT Civil Rights Officer who reports directly to the Director of NDOT.

In 2010, there were 15 FTA subrecipients, including ten municipalities and five private non-profit entities, which received Section 5311 funding for rural general public transportation service. The subrecipients operated demand response service open to the general public, intercity bus service, and fixed-route service with complementary ADA paratransit service. At the time of the Compliance Review, there were no transit facilities in the state constructed with Section 5311 funds.

There were eight subrecipients that received Section 5310 funding, the Elderly Individuals and Individuals with Disabilities Program. Subrecipients included private non-profit, public, and tribal organizations. NDOT uses Section 5310 funding primarily for vehicles and purchase of service arrangements, respectively. There were 69 Section 5310 funded vehicles in operation that had remaining federal interest and FTA and NDOT fund approximately 15 new vehicles annually.

There were two subrecipients of Section 5316 funding, Job Access Reverse Commute Program (JARC) and one subrecipient of Section 5317 funding, New Freedom.

Prior to 2007, NDOT provided Section 5307 funding, the Urbanized Area Formula Program, for operating and capital assistance to the Carson City Metropolitan Planning Organization (MPO). NDOT discontinued the practice of applying for Carson City MPO’s urban funds and the Carson City MPO is now a direct recipient of FTA Section 5307 funds.

NDOT had one active ARRA grant. Projects funded by that grant were:

* Purchase 46 buses
* Purchase 22 bus shelters
* Construction of a fuel station for the Laughlin facility
* Purchase equipment

A demographic profile of the state of Nevada from the 2000 Census, as presented on the following table, showed that 75.2 percent of the population was White non-Hispanic, 6.8 percent was Black, 19.7 percent was Hispanic, 4.5 percent was Asian, and 1.3 percent was American Indian.

**Table 1 – Demographics of the NDOT Service Area**

Source: 2000 U.S. Census

|  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Racial/ Ethnic Group** | Las Vegas | | Carson City | | Reno | | Rest of Nevada | | Total | |
| **Number** | **Percent** | **Number** | **Percent** | **Number** | **Percent** | **Number** | **Percent** | **Number** | **Percent** |
| White | 334,230 | 69.9 | 44,744 | 85.3 | 139,793 | 77.5 | 983,119 | 76.4 | 1,501,886 | 75.2 |
| Black | 49,570 | 10.4 | 946 | 1.8 | 4,651 | 2.6 | 80,310 | 6.2 | 135,477 | 6.8 |
| American Indian and Alaska Native | 3,570 | 0.7 | 1,259 | 2.4 | 2,271 | 1.3 | 19,320 | 1.5 | 26,420 | 1.3 |
| Asian | 22,879 | 4.8 | 930 | 1.8 | 9,555 | 5.3 | 56,902 | 4.4 | 90,266 | 4.5 |
| Hawaiian/Pacific Islander | 2,145 | 0.4 | 76 | 0.1 | 1,004 | 0.6 | 5,201 | 0.4 | 8,426 | 0.4 |
| Other Race | 46,643 | 9.7 | 3,391 | 6.5 | 16,712 | 9.3 | 92,608 | 7.2 | 159,354 | 8.0 |
| Two or More | 19,397 | 4.1 | 1,111 | 2.1 | 6,494 | 3.6 | 49,426 | 3.8 | 76,428 | 3.8 |
| Hispanic Origin[[1]](#footnote-1) | 112,962 | 23.6 | 7,466 | 14.2 | 34,616 | 19.2 | 238,926 | 18.6 | 393,970 | 19.7 |
| Total Population | **478,434** | **100%** | **52,457** | **100%** | **180,480** | **100%** | **1,286,886** | **100%** | **1,998,257** | **100%** |
|  |  |  |  |  |  |  |  |  |  |  |
| Limited English Proficiency | 90,656 | 18.9 | 5,205 | 9.9 | 31,185 | 17.3 | 200,762 | 15.6 | 205,685 | 10.5 |
| Low-Income | 56,053 | 11.9 | 4,923 | 10.0 | 22,232 | 12.6 | 420,659 | 32.7 | 316,593 | 15.8 |

V. SCOPE AND METHODOLOGY

#### 

#### Scope

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

1. General Reporting Requirements and Guidelines - all applicants, recipients, and subrecipients 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; and
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, as well as designated recipients in large urbanized areas for JARC and New Freedom, 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 subrecipients in a non-discriminatory manner;
14. A description of how the agency monitors its subrecipients 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 IX Civil Rights Officer to discuss specific Title VI issues and concerns regarding NDOT. An agenda letter covering the Review was sent to NDOT 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.

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

* List of all NDOT subrecipients by FTA program area, e.g., FTA Section 5307, 5309, 5310, 5311, 5316, and 5317 subrecipients.
* A map or chart of the distribution of NDOT administered FTA Section 5307, 5309, 5310, 5311, 5316, and 5317 funding throughout the State. The areas covered by each subrecipient 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.
* A 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 NDOT, 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 5309, 5310, 5311, 5316, and 5317 subrecipients, during the past three years.
* Current description of NDOT’s Section 5307 subrecipients, including service area characteristics and public transit service, including system maps, public timetables, transit service brochures, etc.
* NDOT Organization Chart for the Department and for the unit responsible for administration of FTA grant programs.
* Summary of NDOT’s current efforts to seek out and consider the viewpoints of minority, low-income, and Limited English Proficient (LEP) populations in the course of conducting public outreach and involvement activities.
* A copy of NDOT’s four factor analysis of the needs of LEP persons.
* A copy of NDOT’s plan for providing language assistance to LEP persons that is based on the USDOT LEP Guidance.
* NDOT’s 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.
* A list of any investigations, lawsuits, or complaints naming NDOT 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; and actions taken by NDOT in response to the investigation, lawsuit, or complaint.
* Copy of NDOT’s Notice to Beneficiaries of Protections Under Title VI
* Description of efforts made by NDOT to apprise members of the public of the protections 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 5307, 5309, 5310, 5311, 5316, and 5317 subrecipients.
* NDOT’s most recent Title VI Update that was submitted to FTA.
* FTA Title VI Update Approval Letter
* NDOT’s statewide transportation planning process that identifies the needs of low-income and minority populations.
* NDOT’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.
* A copy of the procedures used for certifying that the statewide planning process complies with Title VI.
* A description of how NDOT 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 subrecipients that serve predominantly minority and low-income populations, including Native American tribes, where present.

NDOT 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 NDOT occurred July 27 - 29, 2010. 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 NDOT senior management staff, the FTA Region IX Regional Civil Rights Officer (via telephone), and the contractor Review team. The Review team showed the participants a U.S. Justice Department Title VI film during the Entrance Conference. Also, during the Entrance Conference, the Review team 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 NDOT Civil Rights Officer and other staff responsible for Title VI Compliance. During this meeting, discussions focused on a detailed examination of documents submitted in advance of the site visit and documents provided at the site visit by NDOT.

The Review team then met with NDOT staff to discuss how NDOT incorporates FTA Title VI requirements into its public transportation program. During the site visit, the Review team visited the Churchill Area Regional Transportation system, a Section 5310, 5311, and ARRA subrecipient, and the Walker River Paiute Tribe, an ARRA subrecipient, to ascertain the extent to which Title VI was being incorporated into the NDOT subrecipient activities. Both organizations served relatively homogenous populations with respect to race, ethnicity, and national origin, however, both were aware of Title VI nondiscrimination guidelines and informally incorporated some of the FTA Circular 4702.1A general reporting requirements into the operation of their systems. Specifically, both maintained partially compliant processes for inclusive public participation, complaint procedures, and language assistance. The Review team advised NDOT to keep subrecipents aware of their obligations under Title VI, to provide assistance to subrecipients in meeting those obligations, and to monitor subrecipients accordingly. At the end of the site visit, an Exit Conference was held with NDOT staff, the FTA Region IX Regional Civil Rights Officer (via telephone) and the contractor Review team. At the Exit Conference, initial findings and corrective actions were discussed with NDOT.

VI. FINDINGS AND RECOMMENDATIONS

The Title VI Compliance Review focused on NDOT'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 four of the twelve areas reviewed. Deficiencies were identified in the following eight Title VI requirement areas:

* *Inclusive Public Participation*
* *Language Access to LEP Persons*
* *Title VI Complaint Procedures*
* *Notification to Beneficiaries of Protection under Title VI*
* *Submit Title VI Program*
* *Statewide Planning Activities*
* *Providing Assistance to Subrecipients*
* *Monitoring Subrecipients*

Following the site visit, NDOT provided documentation to close out the following three deficiencies:

* *Inclusive Public Participation*
* *Statewide Planning Activities*
* *Monitoring Subrecipients*

At the time of the final report, five deficiencies remained open.

#### 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 NDOT, deficiencies were found regarding NDOT’s compliance with FTA guidance for Inclusive Public Participation. Prior to the site visit, NDOT stated it used a variety of public outreach methods, including properly noticed annual public meetings, public inclusion in the development of plans and studies, statewide committees, NDOT’s website, advertisements, and word of mouth by committee members and subrecipients.

NDOT submitted its *Coordinated Human Service Transportation Plan March 2008 (CSHTP)* and referred to this document as a good example of outreach to minority and low-income populations. A review of the document did confirm outreach to the elderly, persons with disabilities, and low-income persons, however, there was no mention of any outreach to minorities.

Included in the CHSTP were results from two surveys conducted in 2008. First, the Nevada Transportation Services and Needs Survey was distributed to several public, private, and tribal organizations of various sizes. While there were no direct questions related to race or ethnicity, one question did ask, “Is there a tribal outreach program in your area?” Eighteen of the respondents answered “No” to this question, and 6 answered “Yes.” This suggested that all NDOT FTA subrecipients may not be complying with the FTA Circular 4702.1A Inclusive Public Participation requirement to seek out and consider the viewpoints of minority, low-income, and LEP populations in the course of conducting public outreach and involvement activities.

Second, a January 2008 telephone survey of 23 transportation providers in Nevada included 12 questions that focused on the identification of service needs, gaps in service, and recommendations for improving transportation services. While the majority of the survey was unrelated to Title VI, two comments were registered by respondents when asked if, “there were any recommendations that they would offer that would improve transportation services and/or coordination by service providers in the state?” The Churchill County Senior Center stated that they would like to see more “…coordination with the Paiute Shoshone Tribe.” The Pyramid Lake Paiutes stated, “[they] would like to involve the tribe in planning.”

Finally, NDOT submitted a document entitled *Statewide Transportation Planning Public Participation Process for Urbanized and Non-urbanized Areas*. This document detailed the processes by which NDOT provided the public with early and continuous opportunities to participate in statewide planning. In this document, NDOT provided general statements when describing who they involved in the planning process, to include all individuals or groups who are potentially affected by transportation decisions. NDOT further stated that “those persons traditionally underserved by existing transportation systems such as low income or minority households and the elderly are explicitly encouraged to participate in the public involvement process.” During the Review, NDOT did not provide any documentation of specific actions to encourage minority households to participate in the public involvement process.

NDOT’s methods for including the general public in transportation planning included:

* Coordination through statewide committees
  + State Transportation Board
  + Statewide Transportation Technical Advisory Committee
  + Nevada Aviation Technical Advisory Committee
  + Nevada Bicycle Advisory Board
  + Advisory Committee for Transit
* NDOT Website
* NDOT Newsletters
* Public Information Office
* Planning Public Meetings and Hearings
* Planning Public Notices/Public Comment
* Public Events / Advertisements/ Surveys

NDOT’s methods for including the traditionally underserved included:

* Quarterly meetings with the Advisory Committee for Transit (ACT). ACT was comprised of representatives from the Nevada Department of Housing and Rehabilitation, Nevada State Health Division, Nevada Division of Aging Services, Retired Senior Volunteer Program, Ormsby Association of Retarded Citizens, tribal councils, senior centers, transit providers, and employers.
* Transportation planning meeting notices posted at senior centers, bicycle advisory groups, transit recipients and providers, legislative offices, libraries, and NDOT regional offices.
* NDOT Planning staff visits to the small urban areas of the state and to the tribes each spring and fall during the development of key plans, including the Statewide Long-Range Transportation Plan. At the fall workshops, NDOT transportation plans, programs, projects, and application processes were discussed. In the spring, projects and programs relevant to each particular county and tribal area were discussed.

During the site visit, the Review team noted that, while NDOT did appear to actively engage in ongoing outreach to the general public and indicated that it reached out to low-income and minority populations to get feedback and engage them in the planning process, no documentation was provided to confirm the early and continuous involvement of minorities in planning activities, as required by FTA Circular 4702.1A. Discussions with NDOT staff revealed that considerable outreach to tribal organizations did occur annually, however, the records of these outreach efforts were not provided. In addition, the Review team noted that, while the highest concentrations of minority populations could be found in the urbanized area of Las Vegas, the rest of the state was 18.6 percent Hispanic, 6.2 percent Black, and 4.4 percent Asian. NDOT did not provide any documentation confirming outreach to these minority groups.

After the site visit, NDOT submitted an updated *Title VI Permanent Program Plan October 2010*. In *Section IV*, *Program Area Monitoring and Review Process*, NDOT established that the Planning Division was responsible for “the overall strategies and goals of the transportation planning process to ensure Title VI compliance,” including:

* *The service equities of the planning data collection and analysis for impacts on different socio-economic groups;*
* *The public involvement processes to improve performance and take action to reduce participation barriers for minority and low-income populations.*

The plan further stated that annually, no later than July 31st, the Planning Division must submit an annual report to the Civil Rights Officer, to include:

* *Whether a process has been developed to identify the needs of minority and low-income populations and whether demographic information has been used to assess the distribution of benefits across these groups;*
* *Whether there is an analytical process in place to assess the benefits/burdens of transportation system investments on minority and low-income populations, and what data source and tools are used to support such an analysis;*
* *Whether there is a public involvement strategy for engaging minority and low-income populations in transportation decision-making and reducing participation barriers;*
* *Whether the public involvement process is routinely evaluated and whether any efforts were made to improve performance, especially with regard to minority and low-income populations.*
* *Efforts made to engage minority and low-income populations in the public outreach effort and public outreach efforts made to utilize media targeted to these groups;*
* *Methods used to ensure that issues/concerns raised by minority and low-income populations are considered in the decision-making process.*

In addition, according to the updated plan, the NDOT Communication Office was responsible for providing communication outreach activities for all NDOT programs, activities and external information data, to include:

* *Develop public involvement strategies for engaging minority and low-income populations in transportation decision-making and for reducing participation barriers.*
* *Evaluate NDOT’s public involvement process and develop strategies to improve communication especially with regard to minority and low-income populations.*
* *Oversee efforts made to engage minority and low-income populations in the public outreach effort, and public outreach efforts utilizing media targeted to these groups; and*
* *Identify methods used to ensure that issues/concerns raised by minority and low-income populations are considered in the decision-making process.*

The approaches identified in the October 2010 Title VI Plan are adequate to close the deficiencies in this area.

1. 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 NDOT, deficiencies were found regarding NDOT’s compliance with FTA requirements for Language Access to LEP persons. Prior to the site visit, NDOT stated that it did not have a LEP plan.

During the site visit, the NDOT Civil Rights Officer indicated that a Title VI Program Interdisciplinary Group was in the process of being created, and this group would be responsible for addressing the DOT LEP requirement once the group was formed. The Review team provided technical assistance on what was required by FTA Circular 4702.1A and *DOT LEP Guidance* with respect to providing Language Access to LEP persons. Specifically, the Review team explained the four-factor assessment and Language Assistance Plan development requirements in the table below:

| **Elements Required for LEP Assessment and Language Access Plan**  **(Per FTA C. 4702.1A, IV, 4. a. and DOT Policy Guidance)** | |
| --- | --- |
| **Part A – Four-Factor Assessment** | |
| 1. Demography –The number or proportion of LEP persons eligible to be served or likely to be encountered |
| 1. Frequency of Contact - the frequency with which LEP individuals come in contact with the program and/or activities |
| 1. Importance - the nature and importance of the program, activity, or service to people's lives; |
| 1. Resources - the resources available and costs |
| **Part B - Develop Language Assistance Plan** | |
| 1. Identification of LEP Persons |
| 1. Language Assistance Measures |
| 1. Training of Staff |
| 1. Provide Notice to LEP Persons |
| 1. Monitor and Update the LAP |

The Review team also showed the video "Breaking Down The Language Barrier: Translating Limited English Proficiency into Practice", answered questions, and provided NDOT with LEP reference material, including the DOT LEP website [www.lep.gov](http://www.lep.gov) and the LEP handbook entitled “*Implementing the Department of Transportation’s Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficient (LEP) Persons A Handbook for Transportation Providers, April 13,* 2007.

In response to the draft report and in a letter dated February 24, 2011, NDOT stated that, on or before April 25, 2011, it will develop and provide to the FTA a Language Assistance Plan that meets all the requirements of FTA Circular 4702.1A IV.4 and DOT LEP Guidance.

**Corrective Actions and Schedules:** Within 90 days, NDOT must submit to the FTA Equal Opportunity Specialist in the FTA Headquarters Office of Civil Rights a Language Assistance Plan that meets the requirements to provide meaningful access to Limited English Proficient (LEP) persons, as described in FTA Circular 4702.1A and *DOT LEP Guidance Concerning Recipients’ Responsibilities to Limited English Proficient Persons.*

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 NDOT, deficiencies were found regarding NDOT’s compliance with FTA requirements for Title VI Complaint Procedures. Prior to the site visit, NDOT submitted the following complaint procedures:

*Complaints, regardless of where they are reported, are to be filed within 180 days of the alleged incident. Complaints are to be submitted in writing, signed and dated. Complaints are to be forwarded to the NDOT Contract Compliance Manager who follows an investigative plan. After the complaint is investigated, an Investigative Summary report of the findings is submitted to the Contract Compliance Manager, who analyzes the report and determines the appropriate action. The Contract Compliance Manager prepares a Statement of Agency Decision reflecting the department’s final determination. If the finding is adverse to the complainant, NDOT advises them of their avenues of appeal. Copies of all complaints are forwarded to the FHWA within 60 days of receipt of the complaint.*

The Review team noted that NDOT’s complaint procedures were not posted on its website, and NDOT did not confirm that they were made available elsewhere. In addition, the complaint procedures did not inform individuals of their right to also file a complaint with the FTA or any other federal agency. NDOT did reference the FHWA, indicating that, within 60 days, all complaints were forwarded to the FHWA.

NDOT’s Civil Rights Officer acknowledged that these complaint procedures did not comply with FTA Circular 4702.1A and indicated that they would be updated accordingly.

After the site visit, NDOT submitted updated Title VI Complaint Procedures in its *Title VI Permanent Program Plan October 2010*. NDOT’s updated complaint procedures did communicate that individuals may also file complaints directly with the U.S. Department of Transportation (USDOT) and the Federal Highway Administration (FHWA). To minimize any confusion on the part of the complainant and to ensure timely handling of complaints, the Review team suggests adding the Federal Transit Administration as a resource for registering Title VI complaints.

It is also suggested that clearer language be developed describing who is responsible for the handling of a complaint and when, particularly when an investigation has begun. NDOT’s updated complaint procedures stated,

*At the direction of the Civil Rights Officer, the* ***Contract Compliance Manager*** *or other qualified investigator, following an investigative plan approved by the Civil Rights Officer, will gather relevant information in a fair and impartial manner and will submit a report of findings to the* ***Contract Compliance Manager****.*

Assuming there was only one Contract Compliance Manager, this statement suggested that the Contract Compliance Manager could submit the investigative report to himself/herself. The Review team suggests that NDOT revise this language to be less confusing.

NDOT’s updated Title VI complaint procedures further stated that, “copies of Title VI complaints and investigative reports will be forwarded to FHWA within 60 days of receipt of the complaint.” The Review team suggests that NDOT forward copies of the complaints and investigative reports to the FTA as well.

The Review team noted that NDOT’s *Title VI Permanent Program Plan October 2010* included complaint procedures for filing Equal Employment Opportunity (EEO) complaints. NDOT’s EEO complaint procedures were more clearly stated, and introduced no potential confusion with respect to the complaint handling chain of command. In addition, the EEO complaint procedures did a better job of communicating the types of information that should be included in the complaint. The Review team suggests that NDOT consider incorporating (and possibly adopting) many of the elements (in form and substance) of its EEO complaint procedures in its Title VI complaint procedures.

NDOT did provide notice of an individual’s right to file a Title VI complaint in its Non-Discrimination Statement of Policy. However, NDOT did not demonstrate that the Non-Discrimination Statement of Policy was sufficiently made available to the public. The Review team did not see it on the NDOT website, and NDOT did not indicate how the Policy was disseminated publicly.

In response to the draft report and in a letter dated February 24, 2011, NDOT stated that, on or before March 30, 2011, it will submit to FTA Title VI complaint procedures that will more clearly explain who is responsible for handling Title VI complaints. These procedures will also require all Title VI complaints to be forwarded to the FTA along with NDOT’s follow-up response and recommended remediation and/or resolution of each complaint. NDOT will also develop and submit a new Title VI complaint form. NDOT further stated that its updated Title VI complaint procedures will be posted on its new website, currently under redevelopment. The new website is expected to be operational by April 25, 2011.

**Corrective Actions and Schedules:** Within 90 days, NDOT must submit to the FTA Equal Opportunity Specialist in the FTA Headquarters Office of Civil Rights Title VI Complaint Procedures that conforms to FTA Circular 4702.1A, IV, 2*.*

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 NDOT, no deficiencies were found regarding NDOT’s compliance with FTA requirements for Record of Title VI Investigations, Complaints, and Lawsuits. Prior to the site visit, NDOT submitted a narrative description of a discrimination lawsuit registered with the FHWA, not the FTA. Since NDOT did not have any FTA Title VI investigations, complaint, or lawsuits, there was no record to submit. The Review team did note that, in the future, NDOT should develop a complaint list that included all the information required by FTA Circular 4702.1A, IV, 3 as follows:

1. The recipient and/or subrecipient that allege discrimination on the basis of race, color, or national origin.
2. The date the investigation, lawsuit, or complaint was filed
3. A summary of the allegation(s)
4. The status of the investigation, lawsuit, or complaint
5. Actions taken by the recipient or subrecipient in response to the investigation, lawsuit, or complaint.
6. 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 Web site.*

**Findings:** During this Title VI Compliance Review of NDOT, deficiencies were found regarding NDOT’s compliance with FTA requirements for Notice to Beneficiaries of Protection under Title VI. Prior to the site visit, NDOT submitted the *Nevada Department of Transportation Title VI Permanent Program Plan July 25, 2009*. The Nondiscrimination Statement of Policy included in this document did not contain all of the elements required by FTA Circular 4702.1A, IV, 5.a, as 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 NDOT’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 | No |
| A description of the procedures that members of the public should follow in order to file a discrimination complaint against the recipient. | No |

NDOT indicated that this nondiscrimination assurance was included in subrecipient applications but was not made available to the public via its website or elsewhere. A review of the NDOT website confirmed this to be the case.

After the site visit, NDOT submitted an updated Non-Discrimination Statement of Policy. This updated Policy did not include all the elements required by FTA Circular 4702.1A, as 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 NDOT’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 | No |
| A description of the procedures that members of the public should follow in order to file a discrimination complaint against the recipient. | Yes |

In addition, NDOT’s policy included the following statement:

*“Any person who is not an employee of the State of Nevada and who feel that they have been discriminated against because of the impact of NDOT’s programs, policies and activities, may file written complaint…”*

Employees, in their personal lives as residents of the State of Nevada, could possibly experience discrimination as defined by FTA Circular 4702.1A and should be able to file a Title VI complaint accordingly.

In response to the draft report and in a letter dated February 24, 2011, NDOT stated that its Non-Discrimination Statement of Policy will be updated to include information on how an individual can request additional information on NDOT’s Title VI obligations and how to file a Title VI complaint. NDOT’s updated Non-Discrimination Statement of Policy will be posted on the new NDOT website, which is expected to be operational by April 25, 2011. By this same date, NDOT will provide a plan for disseminating its Non-Discrimination Statement of Policy.

**Corrective Actions and Schedules:** Within 90 days, NDOT must submit to the FTA Equal Opportunity Specialist in the FTA Headquarters Office of Civil Rights a Title VI Notice to Beneficiaries of Protection Under Title VI that complies with FTA Circular 4702.1A and provide confirmation that the updated Title VI Notice has made available to the public, per the Circular.

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 NDOT, no deficiencies were found regarding NDOT’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. NDOT executed its FY 2010 Annual Certifications and Assurances in TEAM on 12/15/2009. NDOT 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 NDOT, no deficiencies were found regarding NDOT’s compliance with FTA guidance for Environmental Justice (EJ) Analyses of Construction Projects. NDOT did not have any major construction projects in its entire FTA program. NDOT was advised that the current requirements for an EJ analysis have been revised with the issuance of FTA Circular 4702.1A. These requirements are noted below:

| **Elements Required in Environmental Justice Analysis of Construction Projects**  **(Per FTA Circular 4702.1A Chapter IV, 8a-f)** |
| --- |
| 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 |
| 1. A discussion of all adverse effects of the project both during and after construction that would affect the identified minority and low-income population. |
| 1. 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. |
| 1. 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. |
| 1. A discussion of the remaining effects, if any, and why further mitigation is not proposed. |
| 1. 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. |

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 NDOT, deficiencies were found regarding NDOT’s compliance with FTA requirements to Submit Title VI Program. NDOT submitted its FTA Title VI Program on January 20, 2010 and it was conditionally approved by the FTA. According to documents submitted by NDOT prior to the site visit, this original submittal was intended for and submitted to the FHWA. Upon review of NDOT’s submittal, FHWA identified several revisions that were necessary in order for the NDOT submittal to comply with the FHWA requirements. Once the revisions were made, FHWA arranged for NDOT to create and submit one final submittal to FHWA and FTA. FTA agreed to accept the submittal as long as there was a section in the revised NDOT submittal that included all the FTA-required elements for a Title VI Submittal.

In response, NDOT submitted its *Title VI Permanent Program Plan Revised July 25, 2009*. This latest submission was not developed according to FTA Circular 4702.1A and, therefore, did not contain the required elements for Title VI Submittal, as described in the following table:

| **ELEMENTS REQUIRED FOR TITLE VI PROGRAM** | |
| --- | --- |
| **GENERAL REQUIREMENTS**  **(Per FTA C. 4702.1A, IV, 7. a. (1) – (5))** | **In NDOT 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. | No |
| * 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. | No |
| * A copy of the agency procedures for tracking and investigating Title VI complaints. | No |
| * 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. | No |
| * 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. | No |
| **pROGRAM SPECIFIC REQUIREMENTS for state dot’s**  **(Per FTA C. 4702.1A, VI, 5. a. (1) – (4))** |  |
| 1. A copy of the procedures used for certifying that the statewide planning process complies with Title VI. | No |
| 1. A description of the procedures the agency uses to pass-through FTA financial assistance in a non-discriminatory manner. | No |
| 1. A description of the procedures the agency uses to provide assistance to potential subrecipients applying for funding in a non-discriminatory manner. | No |
| 1. A description of how the agency monitors its subrecipients for compliance with Title VI and a summary of the results of this monitoring. | No |

The Review team provided technical assistance on what was required in the Circular to Submit a Title VI Program that conformed to the General Reporting and Program-Specific Requirements and Guidelines for State DOT’s.

After the site visit, NDOT submitted an updated *Title VI Permanent Program Plan* *October 2010*. This latest submission was not developed according to FTA Circular 4702.1A and, therefore, did not contain the required elements for Title VI Submittal, as described in the following table:

| **ELEMENTS REQUIRED FOR TITLE VI PROGRAM** | |
| --- | --- |
| **GENERAL REQUIREMENTS**  **(Per FTA C. 4702.1A, IV, 7. a. (1) – (5))** | **In NDOT 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. | No |
| * 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. | No |
| * A copy of the agency procedures for tracking and investigating Title VI complaints. | Yes  (deficient) |
| * 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. | No |
| * 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  (deficient) |
| **pROGRAM SPECIFIC REQUIREMENTS for state dot’s**  **(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. | Partial  (no demographic profile. Need to include most recent Statewide Coordinated Human Services Transportation Plan) |
| * A description of the procedures the agency uses to pass-through FTA financial assistance in a non-discriminatory manner. | No |
| * A description of the procedures the agency uses to provide assistance to potential subrecipients applying for funding in a non-discriminatory manner. | Partial  (lacking demographic information on race, income, and English proficiency) |
| * A description of how the agency monitors its subrecipients for compliance with Title VI and a summary of the results of this monitoring. | Yes |

In response to the draft report and in a letter dated February 24, 2011, NDOT stated that, by April 25, 2011, it will forward for FTA’s review a revised Title VI Submittal that includes all required elements.

**Corrective Actions and Schedules:** Within 90 days, NDOT must submit to the FTA Equal Opportunity Specialist in the FTA Headquarters Office of Civil Rights a Title VI Program developed according to FTA Circular 4702.1A under the General Reporting Requirements and Guidelines and Program-Specific Requirements and Guidelines for State DOTs.

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

This section covers the Program-Specific Requirements and Guidelines for State DOTs and Other State 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, as well as designated recipients in large urbanized areas for JARC and New Freedom.

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 NDOT, deficiencies were found regarding FTA requirements for Statewide Planning Activities. NDOT maintained a fairly comprehensive Statewide Transportation Planning program. During the Review, NDOT did not provide any documentation that it had an analytical basis in place for certifying compliance with Title VI. The following table contains guidance for conducting Statewide Planning Activities and whether NDOT followed the guidance:

| **GUIDANCE ON CONDUCTING STATEWIDE PLANNING**  **(Per FTA C. 4702.1A, VI, 1. a. – c.)** | **In NDOT Submittal?** |
| --- | --- |
| * 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. | No |
| * 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 |

After the site visit, NDOT submitted an updated *Title VI Permanent Program Plan October 2010*. This Plan included a comprehensive and coordinated NDOT planning process that requires the active and ongoing inclusion of Title VI considerations in the conduct of operations and planning across the agency. NDOT’s Plan provided for the following:

*The Planning Division head has the primary responsibility for assuring that multi-modal planning and the results of that planning are executed in accordance with Title VI. The division will appoint a Title VI interdisciplinary team member to assist them with this task. This process requires consideration of social, economic, and environmental effects of a proposed plan or program on identified groups to avoid biased programs. The Team member also monitors the transportation planning activities of the various Metropolitan Planning Organizations (MPO’S) to ensure consistency with Title VI compliance requirements. The elements monitored include the following:*

* *The overall strategies and goals of the transportation planning process to ensure Title VI compliance;*
* *Monitor the utilization of demographic information to identify minority and low-income populations and examine the distributions of the benefits/burdens of the transportation plans and activities on these groups;*
* *The service equities of the planning data collection and analysis for impacts on different socio-economic groups;*
* *The public involvement processes to improve performance and take action to reduce participation barriers for minority and low-income populations;*
* *Environmental Justice (E.O. 12898) issues to identify and locate minority and low-income populations that may be impacted by transportation planning programs;*
* *Compliance with E.O. 13166, Limited English Proficiency, to improve access and understanding of transportation planning processes for those in the population confronted with language barriers;*
* *Efforts made to assure that female and minority-owned firms have an equal opportunity to participate in consultant planning agreements; and*
* *Transportation planning accomplishments and problem areas.*

***Annual Review:***

*The following items in the Planning Division will be reviewed and provided by the division interdisciplinary team member in an annual report submitted to the Civil Rights Officer no later than July 31 each year:*

* *Strategies used to ensure that components of the transportation planning process comply with Title VI;*
* *Whether a demographic profile of the state that includes identification of minority and low-income populations has been developed;*
* *Whether a process has been developed to identify the needs of minority and low-income populations and whether demographic information has been used to assess the distribution of benefits across these groups;*
* *Whether there is an analytical process in place to assess the benefits/burdens of transportation system investments on minority and low-income populations, and what data source and tools are used to support such an analysis;*
* *Whether there is a public involvement strategy for engaging minority and low-income populations in transportation decision-making and reducing participation barriers;*
* *Whether the public involvement process is routinely evaluated and whether any efforts were made to improve performance, especially with regard to minority and low-income populations;*
* *Efforts made to engage minority and low-income populations in the public outreach effort and public outreach efforts made to utilize media targeted to these groups;*
* *Methods used to ensure that issues/concerns raised by minority and low-income populations are considered in the decision-making process;*
* *Composition of the Division of Transportation Planning workforce and internships by position title, race and gender;*
* *Number of consultant planning agreements awarded and the dollar value; Number of female and minority-owned firms with dollar value;*
* *Methods used to encourage the use of female and minority planning consultants and subconsultants;*
* *Amount of federal money passed to individual MPOs through NDOT for transportation planning;*
* *Number of planning hearings held and in what location, percentage of female and minority participation;*
* *Number of public information meetings/open houses that were held including percentages of female and minority participation;*
* *Efforts made to take Environmental Justice concerns into consideration in the transportation planning process;*
* *Title VI complaints received regarding transportation planning or the public involvement process; and*
* *Significant accomplishments and actions planned for the ensuing year.*

In addition, NDOT issued Request for Approach (RFA) No. 193-10-802: *Statewide Coordinated Human Services Transportation Plan (SCHSTP*). In this RFA, NDOT expanded on its requirements for its transportation planning consultant to include and/or expand statewide demographic information and analysis in the development of its next SCHSTP. In a response dated August 18, 2010, NDOT’s transportation planning consultant submitted the following:

***Demographic Analysis***

*[We] will conduct comprehensive data collection and analysis of state and countywide demographic information.*

* + *Update the demographic data in the 2008 Nevada Statewide Coordinated Human Services Plan including median age, population that is disabled, median household income, and race. We will also review auto ownership data to help us identify areas with high transit need. We will evaluate the data on a statewide level, as well as for each county.*
  + *Obtain GIS land use data from state, county and city agencies to identify areas of significant residential development, as well as major trip generating locations such as shopping centers, schools, office buildings, etc. We will compare this information to transit route information to determine areas of incongruities.*
  + *Create GIS layers that display the demographic data and survey data for each county. The maps will be useful to quickly assess demographic conditions, existing services, and service needs. The most important use of this data will be to determine the areas of highest potential for increased need, or new service.*

NDOT’s efforts were sufficient to close the deficiency in this area.

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 NDOT, no deficiencies were found regarding NDOT’s compliance with FTA requirements for Program Administration. During the Review, NDOT described a grant application process that started in February of each year, whereby the NDOT Transit and Small Urban Section posted advertisements in newspapers statewide, on its website, and at various locations throughout the state regarding the availability of funds. NDOT also emailed grant applications to current subrecipients and encouraged those subrecipients to share the application with other potential subrecipients. NDOT stated that many of the subrecipients have assisted transit providers in low-income and minority areas with the grant application process. Applications were due by April 15th of each year. Late applications were set aside and only considered if additional funding was available. Prospective applicants were required to make public notices of their intent to apply for FTA grant funds by advertising in their local newspapers.

Once the application process closed, NDOT Transit and Small Urban Section staff reviewed all applications for completeness. Providers who submitted incomplete applications were given a reasonable amount of time to submit any missing information before the application was rejected.

Applications were then reviewed by a committee comprised of members from different divisions within NDOT, as well as members from the local MPOs. The committee scored and ranked each application based on six criteria with a maximum number of points for each criteria, as follows:

* Service = 25 point maximum
* Financial = 15 point maximum
* Coordination = 20 point maximum
* Maintenance & Safety = 20 point maximum
* Community Support & Customer Satisfaction = 15 point maximum
* Unmet Needs/Barriers = 5 point maximum

The Review team noted that the criteria sheets contained instructions and several areas that were related to Title VI:

1. NDOT application stated that applicants should discuss *“…equal access to [their] programs and use of [their] service by all persons eligible for use of the requested funds. This includes but is not limited to…issues involving Title VI nondiscrimination…”*
2. Community Support & Customer Satisfaction - took into consideration the applicant’s letters of support, survey reports, and public involvement.
3. Unmet Needs/Barriers – took into consideration the applicant’s current needs, future needs, and impacts from economic, social, and local trends.

The Review team also noted that the NDOT subrecipient tracking form included two columns that indicated whether a subrecipient provided service in minority and/or low-income areas. During the site visit, NDOT explained that Census data was used to determine areas where minority and/or low-income populations exceeded the state average. Accordingly, NDOT tracked those subrecipients who provided service in those areas to ensure that FTA resources made available through NDOT were reaching minority and low-income populations throughout the state.

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

|  |  |
| --- | --- |
| **GUIDANCE ON PROGRAM ADMINISTRATION**  **(Per FTA C. 4702.1A, VI, 2. a. (1) – (5))** | **In NDOT 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 subrecipients that serve predominantly minority and low-income populations, including Native American tribes, where present. | Yes |
| * 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. | Yes |
| * A description of the agency’s procedures to assist potential subrecipients 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. | Yes |

1. Providing Assistance to Subrecipients

**Requirement:**  *FTA recommends that agencies assist their subrecipients 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 NDOT, deficiencies were found regarding NDOT’s compliance with FTA guidance for Providing Assistance to Subrecipients. The following table contains guidance for Providing Assistance to Subrecipients and whether NDOT followed the guidance:

|  |  |
| --- | --- |
| **GUIDANCE ON PROVIDING ASSISTANCE TO SUBRECIPIENTS**  **(Per FTA C. 4702.1A, VI, 4. a. – c.)** | **NDOT** |
| * Sample notices to the public informing beneficiaries of their rights under Title VI and procedures on how to file a Title VI complaint. | No |
| * Sample procedures for tracking and investigating Title VI complaints filed with a subrecipient. | No |
| * 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.) | No |

During the Review, NDOT stated that it provided grant application assistance to prospective applicants and encouraged service providers in minority and low-income areas to apply for grants through such mechanisms as workshops, staff visits, and existing subrecipients.

With respect to complying with Title VI General Reporting Requirements and Guidelines, NDOT stated that it provided technical assistance to subrecipients during monitoring reviews (Title VI-related questions NDOT asked when conducting subrecipient monitoring are discussed in the next section.) If NDOT determined that a subrecipient’s Title VI Program was noncompliant, NDOT staff would put the subrecipient in contact with another subrecipient that had a compliant program so it could adopt the compliant program, if possible. During the Review, NDOT did not provide documentation that it met the requirements for Providing Assistance to Subrecipients, as described in FTA Circular 4702.1A.

After the site visit, NDOT submitted an updated *Title VI Permanent Program Plan October 2010*. Included in the Plan were an updated Title VI Non-Discrimination Policy Statement and Title VI Complaint procedures. As an attachment to the Plan, NDOT included “*Benchmark Activities*” to be completed prior to submitting its next Title VI Submittal in 2011. NDOT’s benchmark activities included the following:

* *The Title VI Plan will be widely disseminated to the general public and to appropriate state and local agencies, metropolitan planning organizations and other community organizations throughout the State of Nevada. The Title VI Plan will also be placed on the Nevada DBE website at:* [*www.nevadadbe.com*](http://www.nevadadbe.com)*.*
* *The NDOT Civil Rights Division will provide two state-wide Title VI training programs for Local Public Agencies (LPAs) and Metropolitan Planning Organizations (MPOs). One training program will occur in Southern Nevada and another training program will occur in Northern Nevada. The training programs will be designed to assist the LPAs and MPOs to understand their responsibilities as related to the Title VI Program and to develop their individual Title VI Plans.*
* *The Civil Rights Division will conduct three reviews of LPAs and MPOs within the State in relation to their Title VI Program Plan requirements. Each LPA and MPO selected will be notified of the review and take part in the evaluation and assessment exit session. A written report will be provided to the individual LPA and MPO. The report will be maintained and included in the annual Accomplishment Report.*
* *The Civil Rights Department will conduct three Title VI Contractor reviews. The reviews will be conducted in Northern and Southern Nevada. Copies of the reviews will be sent to FHWA. These reviews will be conducted by each of the two Contract Compliance Investigators.*

While NDOT planned to disseminate the *Title VI Permanent Program Plan* (which included its Non-Discrimination Policy Statement and Title VI Procedures) throughout the state, and planned to conduct Title VI training and contractor reviews to ensure compliance with Title VI, these efforts do not fully meet the requirement to Provide Assistance to Subrecipients per FTA Circular 4702.1A. NDOT must first address compliance issues associated with its Non-Discrimination Policy Statement and Title VI Complaint Procedures and then make them available to subrecipients. NDOT must also provide demographic information on the race, income, and English proficiency of residents served by the subrecipient. Finally, the Review team suggests that, in addition to disseminating information as a part of the *Title VI Permanent Program Plan* through workshops , training , and reviews, NDOT should provide this information on its website as a helpful resource for subrecipients to download and use for planning purposes, as needed.

In response to the draft report and in a letter dated February 24, 2011, NDOT stated that, by April 25, 2011, in addition to updating its Non-Discrimination Statement of Policy and Title VI complaint procedures, it will submit a revised NDOT Title VI Permanent Program Plan to include demographic information on race, income and English proficiency of individuals served by its subrecipients.

**Corrective Actions and Schedules:** Within 90 days, NDOT must submit to the FTA Equal Opportunity Specialist in the FTA Headquarters Office of Civil Rights documentation that it provides assistance to subrecipients, as described in FTA Circular 4702.1A.

1. Monitoring Subrecipients

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

**Findings:** During this Title VI Compliance Review of NDOT, deficiencies were found regarding NDOT’s compliance with FTA requirements for Monitoring Subrecipients. The following table contains guidance for Monitoring Subrecipients and whether NDOT followed the guidance:

|  |  |
| --- | --- |
| **GUIDANCE ON PROVIDING ASSISTANCE TO SUBRECIPIENTS**  **(Per FTA C. 4702.1A, VI, 3. a. – b.)** | **NDOT** |
| * The agency should document its process for ensuring that all subrecipients are complying with the general reporting requirements of this circular. | No |
| * 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 subrecipients who provide transportation services verify that their level and quality of service is provided on an equitable basis. Recipients should ask subrecipients to develop system-wide service standards and verify that service provided to predominantly minority and low-income communities meets these standards. | Not Requested by FTA |

During the Review, NDOT provided a copy of a form entitled Nevada Department of Transportation Office of Public Transportation (Section 5311, Section 5316 (JARC), Section 5310, Section 5309) Annual Project Review. The form was used by NDOT program oversight personnel to monitor subrecipients’ compliance with state and federal guidelines on an annual basis. In Section XII – Management and Financial Procedures, NDOT asked the following Title VI-related questions:

1. *Do you primarily provide service to any of the following populations: (Black, Hispanic, Asian, Pacific Islander, or American Indian)? If no, do you provide service to any of the following populations: (Black, Hispanic, Asian, Pacific Islander, or American Indian)?*
2. *Have you had any complaints of discrimination in the last year?*
3. *Have you refused service to anyone within the following populations: (Black, Hispanic, Asian, Pacific Islander, or American Indian) within the past year? If yes, please explain.*

While these questions represented an attempt to monitor subrecipients’ minority ridership and discrimination complaints, they did not confirm a subrecipient’s compliance with the general reporting requirements and guidelines, as required by the FTA Circular.

After the site visit, NDOT submitted a revised Monitoring and Compliance Review Form. The Civil Rights section of this revised Form included the following questions used by NDOT staff to monitor subrecipients’ compliance with Title VI. These questions, shown below, are adequate to close the deficiencies in this area.

|  |  |
| --- | --- |
| ***Review Questions*** |  |
| ***TITLE VI*** | |
| *1. What is the name and title of the person in the organization responsible for ensuring Civil Rights requirements are fulfilled?* | |
| *2. Does the organization comply with the General Requirements of FTA C 4702.1A?*   * *Was the Title VI Certification and Assurance submitted with the last grant application? If No, please provide immediately.* * *Are there complaint procedures for investigating and tracking Title VI complaints, and are those procedures made available to the public?* * *Have any Title VI complaints been filed in the past year?*    + - *If so are the complaints being investigated and a list of the complaints maintained?* * *Is there an LEP (Limited English Proficient) program in place including the four factor analysis?*    + - *If so, are appropriate steps taken to ensure meaningful access to benefits, services, information, and other important programs/activities for individuals who are LEP?* * *Are the organization’s Title VI obligations and the public’s protections against discrimination through Title VI provided to the public through proper noticing? If so, does the notice include the following:*   + - *A statement that the agency operates programs without regard to race, color, and national origin?*     - *A description of procedures that the public should follow in order to request additional information on the organization’s obligations?*     - *A description of the procedures that the public should follow in order to file a discrimination complaint against the organization?* * *Does the organization have any construction projects?*    + - *If so was Environmental Justice included in the Environmental Analysis (not needed if the project received a Categorical Exclusion (CE)) ?* * *Does the organization conduct community outreach activities in order to seek out and consider the viewpoints of minority, low-income, and LEP populated areas?* |  |
| *3. Are written materials (schedules, brochures etc.) provided in languages other than English?* |  |
| *4. How are non-English languages (that are likely to be encountered in the service delivery area) identified?* | |
| *5. How are minority organizations/communities notified of public meetings, program opportunities, new or a change in service (i.e., hours of service, delivery points) using the media, city, and council representatives, etc.?).* | |

The deficiencies in this area are now closed.

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 | D | Public outreach deficiencies | NDOT must submit to the FTA Equal Opportunity Specialist in the FTA Headquarters Office of Civil Rights documentation that it has procedures in place to fulfill the inclusive public participation requirements as described in FTA Circular 4702.1A for itself and its subrecipients. | 90 Days | 11/12/2010 |
| 1. Language Access to LEP Persons | D | Lacking assessment or provisions for LEP persons | NDOT must submit to the FTA Equal Opportunity Specialist in the FTA Headquarters Office of Civil Rights a Language Assistance Plan that meets the requirements to provide meaningful access to Limited English Proficient (LEP) persons, as described in FTA Circular 4702.1A and *DOT LEP Guidance Concerning Recipients’ Responsibilities to Limited English Proficient Persons*. | 90 Days |  |
| 1. Title VI Complaint Procedures | D | Complaints not addressed properly | NDOT must submit to the FTA Equal Opportunity Specialist in the FTA Headquarters Office of Civil Rights Title VI Complaint Procedures that conform to FTA Circular 4702.1A. | 90 Days |  |
| 1. Record of Title VI Investigations, Complaints, and Lawsuits | ND |  |  |  |  |
| 1. Notice to Beneficiaries of Protection Under Title VI | D | Title VI public notification deficiencies | NDOT must submit to the FTA Equal Opportunity Specialist in the FTA Headquarters Office of Civil Rights a Title VI Notice to Beneficiaries of Protection Under Title VI that complies with FTA Circular 4702.1A, and provide confirmation that the updated Title VI Notice has been made available to the public. | 90 Days |  |
| 1. Annual Title VI Certification and Assurance | ND |  |  |  |  |
| 1. Environmental Justice Analysis of Construction Projects | ND |  |  |  |  |
| 1. Submit Title VI Program | D | Other: Program submission does not contain all required elements | NDOT must submit to the FTA Equal Opportunity Specialist in the FTA Headquarters Office of Civil Rights a Title VI Submittal that includes all the General Reporting Requirements and Guidelines and Program-Specific Requirements and Guidelines for State DOT’s, as described in FTA Circular 4702.1A | 90 Days |  |
| **PROGRAM-SPECIFIC REQUIREMENTS FOR STATE DOT’S FTA C. 4702.1A, VI, 1-4** | | | | | |
| 1. Statewide Planning Activities | D | Demographic data lacking | NDOT must submit to the FTA Equal Opportunity Specialist in the FTA Headquarters Office of Civil Rights documentation that it has procedures in place to fulfill the Statewide Planning Activities, as described in FTA Circular 4702.1A | 90 Days | 11/12/2010 |
| 1. Program Administration | ND |  |  |  |  |
| 1. Providing Assistance to Subrecipients | D | Assistance not provided in a nondiscriminatory manner | NDOT must submit to the FTA Equal Opportunity Specialist in the FTA Headquarters Office of Civil Rights documentation that it provides assistance to subrecipients, as described in FTA Circular 4702.1A. | 90 Days |  |
| 1. Monitoring Subrecipients | D | Insufficient oversight of Title VI compliance | * NDOT must submit to the FTA Equal Opportunity Specialist in the FTA Headquarters Office of Civil Rights documentation that its subrecipient monitoring process complies with FTA Circular 4702.1A. | 90 Days | 11/12/2010 |

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 – Nevada Department of Transportation (NDOT)** | | | |
| Norma Norman | Civil Rights Officer | 702-671-8857 | [nnorman@dot.state.nv.us](mailto:nnorman@dot.state.nv.us) |
| Michelle Gardner Lilley | Transit Manager | 775-888-7312 | [mgardner-lilley@dot.state.nv.us](mailto:mgardner-lilley@dot.state.nv.us) |
| Roc Stacey | Contract Compliance Manager | 775-888-7497 | [rstacey@dot.state.nv.us](mailto:rstacey@dot.state.nv.us) |
| Patricia Giomi | Transit Coordinator | 775-888-7463 | [pgiomi@dot.state..nv.us](mailto:pgiomi@dot.state..nv.us) |
| Derek Kirkland | Transportation Planner | 775-888-7466 | [dkirkland@dot.state.nv.us](mailto:dkirkland@dot.state.nv.us) |
| **NDOT Subrecipients** | | | |
| Ernie Maguire | Operations Manager, Churchill Area Regional Transportation (C.A.R.T) | 775-428-2988 | [cart@phonewave.net](mailto:cart@phonewave.net) |
| Lorren Sammaripa | Tribal Chairman, Walker River Paiute Tribe | 775-773-2306 x302 | [l.sammaripa@wrpt.us](mailto:l.sammaripa@wrpt.us) |
| **Federal Transit Administration – FTA** | | | |
| Derrin Jourdan (via telephone) | Regional Civil Rights Officer, FTA Region IX | 415-744-2729 | [derrin.jourdan@dot.gov](mailto:derrin.jourdan@dot.gov) |
| **REVIEW TEAM – The DMP Group, LLC** | | | |
| John Potts | Lead Reviewer | 504-283-7661 | [johnpotts@thedmpgroup.com](mailto:johnpotts@thedmpgroup.com) |
| Donald Lucas | Reviewer | 202-726-2630 | [donald.lucas@thedmpgroup.com](mailto:donald.lucas@thedmpgroup.com) |
| Khalique Davis | Reviewer | 412-952-9007 | [khaliqe.davis@thedmpgroup.com](mailto:khaliqe.davis@thedmpgroup.com) |

1. Per the 2000 Census, people of Hispanic origin can be, and in most cases are, counted in two or more race categories. [↑](#footnote-ref-1)