**TITLE VI COMPLIANCE REVIEW**

**OF THE**

**Utah Department of Transportation (UDOT)**

**Salt Lake City, Utah**

**Final Report**

**November 2010**

**Prepared For**

**U.S. DEPARTMENT OF TRANSPORATION**

**FEDERAL TRANSIT ADMINISTRATION**

**OFFICE OF CIVIL RIGHTS**

**Prepared By**

**THE DMP GROUP, LLC**

**5600 Colorado Avenue NW**

**Washington, DC 20011**

Table of Contents

I. GENERAL INFORMATION 1

II. JURISDICTION AND AUTHORITIES 2

III. PURPOSE AND OBJECTIVES 3

IV. BACKGROUND INFORMATION 5

V. SCOPE AND METHODOLOGY 9

VI. FINDINGS AND RECOMMENDATIONS 15

1. Inclusive Public Participation 15

2. Language Access to LEP Persons 19

3. Title VI Complaint Procedures 20

4. Record of Title VI Investigations, Complaints, and Lawsuits 21

5. Notice to Beneficiaries of Protection Under Title VI 23

6. Annual Title VI Certification and Assurance 26

7. Environmental Justice Analysis of Construction Projects 27

8. Submit Title VI Program 28

9. Statewide Planning Activities 31

10. Program Administration 32

11. Providing Assistance to Subrecipients 36

12. Monitoring Subrecipients 38

VII. SUMMARY OF FINDINGS AND CORRECTIVE ACTIONS 40

VIII. ATTENDEES 44

1. GENERAL INFORMATION

Grant Recipient: Utah Department of Transportation (UDOT)

City/State: Salt Lake City, Utah

Grantee Number: 1164

Executive Official: Mr. John R. Njord, P.E.

Executive Director

Utah Department of Transportation

4501 South 2700 West

Salt Lake City, UT 84119-5998

Report Prepared By: The DMP Group, LLC

 5600 Colorado Avenue NW

 Washington, DC 20011

Site Visit Dates: May 3 – 6, 2010

Compliance Review

Team Members: John Potts, Lead Reviewer

Dana Lucas, 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 Utah Department of Transportation (UDOT) 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 UDOT’s Title VI Program was necessary.

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

#### 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.

IV. BACKGROUND INFORMATION

### The Utah Department of Transportation (UDOT) is a state agency that plans, develops, and maintains the statewide transportation network in Utah. UDOT is the agency responsible for administering the FTA Section 5304, 5310, 5311, 5316 and 5317 programs. UDOT also plays an oversight role in the Section 5309 program and leads the dispute resolution process when disputes arise among direct recipients of Section 5309 funds. The Utah Transportation Commission has final approval of projects. The Commissioners are appointed by the Governor.

###

### The UDOT Systems Planning and Programming Division supports UDOT’s overall efforts through four major business units. The Public Transit Team (PTT) is the unit within the UDOT Systems Planning and Programming Division responsible for administering and managing the FTA Section 5310, 5311, 5316, and 5317 programs. PTT also administers the Section 5304 Statewide Planning and Research Program that is part of the Consolidated Planning Grant transferred from FTA to the Federal Highway Administration (FHWA).

In 2010, there were six public transportation systems that received Section 5311 funding for rural general public transportation service. The rural public transportation systems operated fixed route and demand response services.

There were 30 entities that received Section 5310 funding, the Elderly Individuals and Individuals with Disabilities Program. There were 69 Section 5310 funded vehicles in operation that had remaining federal interest, and FTA and UDOT funded approximately 15 new vehicles annually.

There were nine recipients of Section 5316 funding, Job Access Reverse Commute Program (JARC) and nine recipients of Section 5317 funding, New Freedom.

UDOT did not have any Section 5305, Metropolitan Planning and State Planning and Research Program, or Section 5307, Urbanized Area Formula Program, subrecipients, at the time of the Compliance Review.

With the exception of the Section 5309 program, PTT is responsible for ensuring the fair and equitable distribution of federal funds within the State, announcing the program and availability of funds, developing a process to solicit, review, and approve funding applications, providing management and technical assistance to applicants and grantees, and administering and monitoring contracts. PTT functions with support from UDOT’s Civil Rights Department, Procurement Department, Consultant Services Department, and Comptroller’s Office. PTT currently functions with five full-time positions. UDOT’s Title VI Coordinator works with PTT to implement the FTA Title VI requirements. According to the *UDOT State Management Plan Federal Transit Grants Program*, dated February 2010:

### *All UDOT offices (including the central and field offices), program areas, field divisions, and subrecipients are required to adhere to the programs established by the UDOT Title VI Plan. The Title VI plan is administered and monitored by the Department’s Title VI Coordinator. The Title VI plan responds to Title VI of the Civil Rights Act of 1964, which prohibits discrimination “on the grounds of race, color, creed, national origin, sex, age, or disability.” It is also in compliance with the Civil Rights Restoration Act of 1987 that established that Title VI is applicable to all programs and activities of federal aid recipients and contractors, whether those programs and activities are federally funded or not.*

### *The Title VI Coordinator is in the Civil Rights section of the Construction Division and has designees in several offices throughout the Department. The program plan establishes each designee’s and department’s responsibilities for ensuring the adequate distribution of Title VI information, monitoring and documentation of each department’s conduct, resolution of any deficiencies, and preparation of an annual report submitted to the USDOT, FTA, and FHWA on Title VI accomplishments.*

The 2000 Census population statistics for the State of Utah are displayed below in Table 1. The population of Utah is predominately white (89.2 percent), with Hispanics being 9.0 percent, Asians being 1.7 percent, and American Indians and Alaska Natives being 1.3 percent of the population.

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

**Racial/ Ethnic Breakdown of**

**Salt Lake City, the Rest of Utah and**

**the Total State of Utah**

Source: 2000 U.S. Census

|  |  |  |  |
| --- | --- | --- | --- |
| **Racial/ Ethnic Group** | Salt Lake City | Rest of Utah | State of Utah |
| **Number** | **Percent** | **Number** | **Percent** | **Number** | **Percent** |
| White | 143,933 | 79.2 | 1,849,042 | 90.1 | 1,992,975 | 89.2 |
| Black | 3,433 | 1.9 | 14,224 | 0.7 | 17,657 | 0.8 |
| American Indian and Alaska Native | 2,442 | 1.3 | 27,242 | 1.3 | 29,684 | 1.3 |
| Asian | 6,579 | 3.6 | 30,529 | 1.5 | 37,108 | 1.7 |
| Hawaiian/Pacific Islander | 3,437 | 1.9 | 11,708 | 0.6 | 15,145 | 0.7 |
| Other Race | 15,482 | 8.5 | 77,923 | 3.8 | 93,405 | 4.2 |
| Two or More | 6,437 | 3.5 | 40,758 | 2.0 | 47,195 | 2.1 |
| Hispanic Origin[[1]](#footnote-1) | 34,254 | 18.8 | 167,305 | 8.2 | 201,559 | 9.0 |
| Total Population | **181,743** | **100%** | **2,051,426** | **100%** | **2,233,169** | **100%** |

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Low-Income | 27,305 | 15.3 | 179,023 | 8.7 | 206,328 | 9.4 |
| Limited English Proficiency | 42,051 | 25.1 | 211,198 | 10.3 | 253,249 | 12.5 |

**V. SCOPE AND METHODOLOGY**

#### Scope

The Title VI Compliance Review of UDOT 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 State Administrating 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 VIII Civil Rights Officer to discuss specific Title VI issues and concerns regarding UDOT. An agenda letter covering the Title VI Compliance Review was sent to UDOT advising it of the site visit and indicating additional information that would be needed and issues that would be discussed. The Title VI Compliance Review site visit was held concurrently with the UDOT State Management Review (SMR) site visit. The results of the UDOT SMR are contained in a separate report. The Title VI Compliance 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.

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

|  |
| --- |
| **0. Background** |
| 1. UDOT’s most recent State Management Plan(s) for FTA-funded Section 5310, 5311, 5316, and 5317 programs.
 |
| 1. List of all UDOT subrecipients by FTA program area, e.g., FTA Section 5309, 5310, 5311, 5316, and 5317 subrecipients.
 |
| 1. A map or chart of the distribution of FTA Section 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.
 |
| 1. 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.
 |
| 1. UDOT Organization Chart for the Department and for the unit responsible for administration of FTA grant programs.
 |
| 1. Sample copies of current funding agreements/contracts between UDOT and its FTA-funded subrecipients, including Section 5309, 5310, 5311, 5316, and 5317 subrecipients.
 |
| 1. Any studies or surveys conducted by UDOT, 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.
 |
| **General Reporting Requirements** |
| **1. Inclusive Public Participation (FTA C. 4702.1A, IV.9.)** |
| 1. Summary of UDOT’s 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.
 |
| **2. Language Access to LEP Persons (FTA C. 4702.1A, IV.4.)** |
| 1. A copy of UDOT’s four factor analysis of the needs of persons with Limited English Proficiency.
 |
| 1. A copy of UDOT’s plan for providing language assistance for persons with Limited English Proficiency that is based on the USDOT LEP Guidance
 |
| **3. Title VI Complaint Procedure (FTA C. 4702.1A, IV.2.)** |
| 1. UDOT’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.
 |

|  |
| --- |
| **4. Record of Title VI Investigations, Complaints and Lawsuits (FTA C. 4702.1A, IV,3.)** |
| 1. A list of any investigations, lawsuits, or complaints naming UDOT 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 UDOT in response to the investigation, lawsuit, or complaint.
 |
| **5. Notice to Beneficiaries of Protection Under Title VI (FTA C. 4702.1A, IV.5.)** |
| 1. Copy of UDOT’s Notice to Beneficiaries of Protections Under Title VI
 |
| 1. Description of efforts made by UDOT to apprise members of the public of the protections against discrimination afforded to them by Title VI.
 |
| **6. Annual Title VI Certification and Assurance (FTA C. 4702.1A, VI.1.)** |
| No documents requested. |
| **7. Environmental Justice Analysis of Construction Projects (FTA C. 4702.1A, IV.8.)** |
| 1. 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 5309, 5310, 5311, 5316, and 5317 subrecipients.
 |
| **8. Submission of Title VI Program (FTA C. 4702.1A, IV.7.)** |
| No documents requested. |
| **PROGRAM-SPECIFIC REQUIREMENTS FOR STATE DOTS** |
| **9. Statewide Transportation Planning (FTA C. 4702.1A, VI.1.)** |
| 1. UDOT’s statewide transportation planning process that identifies the needs of low-income and minority populations.
 |
| 1. UDOT’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.
 |
| 1. A copy of the procedures used for certifying that the statewide planning process complies with Title VI.
 |
| **10. Program Administration (FTA C. 4702.1A, VI.2.)** |
| 1. A description of how UDOT 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.
2. A description of UDOT’s criteria for selecting transit providers to participate in any FTA grant program.
3. A 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.
 |

|  |
| --- |
| **11. Monitoring Subrecipients (FTA C. 4702.1A, VI.3.)** |
| 1. A description of how UDOT monitors its Section 5309, 5310, 5311, 5316, and 5317 subrecipients for compliance with Title VI and a summary of the results of this monitoring, including:
* The process for ensuring that all subrecipients are complying with the General Reporting Requirements of FTA Circular 4702.1A.
* The process for subrecipients 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.
 |
| **12. Providing Assistance to Subrecipients (FTA C. 4702.1A, VI.4.)** |
| 1. A description of UDOT’s procedures to assist potential subrecipients 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.
 |
| 1. A description of the assistance UDOT provides to subrecipients, 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 subrecipients:
* 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 subrecipient.
* Demographic information on the race, income, and English proficiency of residents served by the subrecipient.
 |

UDOT assembled most of the documents it provided for the Compliance Review to the Compliance Review team prior to the site visit for advance review. A detailed schedule for the four-day site visit was developed.

The site visit to UDOT occurred May 3 - 6, 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 Title VI Compliance Review with UDOT senior management staff, the FTA Region VIII Program Manager for State Management Reviews and Tribal Transit, the FTA Headquarters Equal Opportunity Specialist, 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 staff from the UDOT Office of Civil Rights responsible for Title VI Compliance and with staff from the UDOT PTT Unit. During this meeting, the Review team and UDOT staff discussed how UDOT incorporated FTA Title VI requirements into its FTA programs. During the site visit, members of the SMR Review team visited two Section 5311 subrecipients, the Cache Valley Transit District and Park City Transit, and one Section 5310 subrecipient, the Cache Employment and Training, on behalf of the Title VI Review team to ascertain the extent to which Title VI was being incorporated into the UDOT subrecipient activities. At the end of the site visit, an Exit Conference was held with UDOT staff and the contractor Review team. At the Exit Conference, initial findings and corrective actions were discussed with UDOT.

VI. FINDINGS AND RECOMMENDATIONS

The Title VI Compliance Review focused on UDOT's compliance with the General Reporting Requirements and Guidelines and the Program-Specific Requirements and Guidelines for State DOTs 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 two of the twelve areas reviewed. An Advisory Comment was made in one of the two areas: *Environmental Justice Analysis of Construction Projects*. Deficiencies were identified in the following ten Title VI requirement areas:

* *Inclusive Public Participation*
* *Language Access to LEP Persons*
* *Title VI Complaint Procedures*
* *Record of Title VI Investigations, Complaints, and Lawsuits*
* *Notice to Beneficiaries of Protection Under Title VI*
* *Submit Title VI Program*
* *Statewide Planning Activities*
* *Program Administration*
* *Providing Assistance to Subrecipients*
* *Monitoring Subrecipients*

#### 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 UDOT, deficiencies were found regarding UDOT’s compliance with FTA guidance for Inclusive Public Participation. UDOT did not provide any documentation that it or its subrecipients had sought out and considered the viewpoints of minority and LEP populations in the course of conducting public outreach and involvement for FTA funded programs. Prior to the site visit, UDOT provided information regarding its public participation as part of a document entitled *Utah Department of Transportation – Public Transit Team Title VI Report – 3-19-10*. The document included the following:

*Inclusive public participation*

*Annual presentations of information pertaining to FTA Programs are presented at Local Government Meetings in all 29 counties of the State of Utah. All locations of outreach meetings are accessible to the general public. Other involvement activities since our last review include workshops, focus groups, and public forums for Utah’s Coordinated Human Service Public Transportation development. During the last year Mobility Management Planning activities statewide have included all demographic involvement.*

*Each year’s cycle of funding begins with a project development process that is initiated by an announcement of the availability of FTA funds. This announcement is sent via e-mail and mail to each agency listed in the PTT’s database of transportation providers, non-profit organizations, and local government agencies. The announcement is also posted on the UDOT website and posted as legal notices in newspapers. Following the announcement of funds, the PTT invites all interested agencies to attend planning workshops that are conducted in each of the state’s AOG’s. These workshops offer an opportunity for the PTT to interact with potential subrecipients, answer any questions regarding the grant programs, and offer training in other topics. The workshops also serve as an opportunity for improved coordination among proposed projects.*

Further, UDOT provided some additional information for this Review in its document entitled *Documents Required for Title 6 Review*:

*The Public Transit Team announce funds via newspapers, website, e-mails to all demographics, notification to local governmental and planning authorities to disseminate information. The Public Transit Team provides workshops to the general public to offer verbal direction on how to apply for funds.*

These public participation activities were adequate to inform the general public and local governments about the FTA programs but did not address the inclusive public participation requirements of the FTA Circular.

The Civil Rights section of the UDOT State Management Plan (SMP) contained the following language:

*UDOT adheres to Federal Civil Rights requirements through agency monitoring and administration, and the establishment of a Title VI program plan.*

*The PTT also maintains a records file of Section 5310, 5311, 5316, and 5317 Program funding requests that identifies applicants that are minority organizations or provides assistance to minority communities. In order to reach out to minority organizations and inform them of the opportunity to participate in Section programs, the Department will provide annual notices of the availability of funding to all known transit operators, including Indian tribes and minority organizations. Additionally, statewide media coverage is facilitated through Public Notice advertisements.*

During the Review, UDOT did not provide documentation that it had provided annual notices to minority organizations other than tribes.

FTA Circular 4702.1A, 4.9 states that:

 *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.*

The FTA Circular also states that the public participation strategy of agencies such as UDOT:

 *…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.*

The FTA Circular 4702.1A, IV. 9(a) identifies the following Effective Practices for Fulfilling the Inclusive Public Participation Requirement, including:

1. *Coordinating with individuals, institutions, or organizations and implementing community-based public involvement strategies to reach out to members in the affected minority and/or low-income communities.*
2. *Providing opportunities for public participation through means other than written communication, such as personal interviews or use of audio or video recording devices to capture oral comments.*
3. *Using locations, facilities, and meeting times that are convenient and accessible to low-income and minority communities.*
4. *Using different meeting sizes or formats, or varying the type and number of news media used to announce public participation opportunities, so that communications are tailored to the particular community or population.*
5. *Implementing DOT’s policy guidance concerning recipients’ responsibilities to LEP persons to overcome barriers to public participation.*

During the Review, UDOT did not provide any specific documentation that it or its subrecipients had sought out and considered the viewpoints of minority and LEP populations in the course of conducting public outreach and involvement for FTA funded program as described in the Circular.

**Corrective Actions and Schedules:** Within 90 days, UDOT must submit to the FTA Equal Opportunity Specialist in FTA’s 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.

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 UDOT, deficiencies were found regarding UDOT’s compliance with FTA requirements for Language Access to LEP persons. Prior to the site visit, UDOT indicated that it had not completed a four factor analysis or developed a language assistance plan related to FTA funded transit projects, however, UDOT PTT indicated that it planned to work with the UDOT Civil Rights Department to complete the appropriate steps to comply with FTA requirements.

During the site visit, the Review team discussed the elements required for a LEP assessment and a language access plan. A film was also shown to further illustrate the requirements and importance of providing meaningful access to individuals who were LEP. The elements discussed were as follows:

| **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
 |

**Corrective Actions and Schedules:** Within 90 days, UDOT must submit to the FTA Equal Opportunity Specialist in FTA’s Headquarters Office of Civil Rights a LEP Assessment and Language Access Plan that meets the requirements of FTA C 4702.1A and *DOT Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficient Persons, (December 14, 2005).*

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 UDOT, deficiencies were found regarding UDOT’s compliance with FTA requirements for Title VI Complaint Procedures. UDOT did not have a clear procedure for investigating and tracking Title VI complaints filed against it and its subrecipients. During the Review, UDOT provided documentation of two different procedures for investigating and tracking Title VI complaints. One complaint procedure was in the document entitled *Utah Department of Transportation, Title VI Program, Non Discrimination in the Federal Aid Highway Program*. A different complaint procedure was in the *UDOT State Management Plan Federal Transit Grants Program*, dated February 2010. This complaint procedure was also in the document entitled *Utah Department of Transportation – Public Transit Team Title VI Report – 3-19-10* and in the document entitled *Documents Required for Title 6 Review*. On the UDOT website, there was another document entitled *Utah Department of Transportation Title VI Requirements For FTA Sub-Recipients Rev. 10-99* that had a complaint procedure in Part 3, *Title VI Discrimination Complaints*, that was different than the other two procedures. By having multiple Title VI complaint procedures, the public could easily be confused regarding where and how to file Title VI complaints.

**Corrective Actions and Schedules:** Within 90 days, UDOT must submit to the FTA Equal Opportunity Specialist in FTA’s Headquarters Office of Civil Rights a clear procedure for investigating and tracking Title VI complaints filed against it and its subrecipients. UDOT must document how this information would be made available to members of the public upon request.

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 UDOT, deficiencies were found regarding UDOT’s compliance with FTA requirements for Record of Title VI Investigations, Complaints, and Lawsuits. Prior to the site visit and in its document entitled *Utah Department of Transportation – Public Transit Team Title VI Report – 3-19-10* that was submitted to FTA and in the document entitled *Documents Required for Title 6 Review* that was prepared for this Review, UDOT indicated that there were currently no active Title VI investigations, lawsuits or complaints filed against UDOT/Public Transit Plans and Programs. However, during the site visit, UDOT indicated that while no Title VI complaints had been filed against UDOT, some subrecipients did have active complaints. UDOT indicated that they obtained a list of complaints from its subrecipients as part of the application process. However, UDOT did not provide a list of active complaints from its subrecipients to FTA or the Review team.

**Corrective Actions and Schedules:** Within 30 days, UDOT must submit to the FTA Equal Opportunity Specialist in FTA’s Headquarters Office of Civil Rights a list of active Title VI complaints pertaining to UDOT or its subrecipients and written procedures that ensure all Title VI complaints, investigations and lawsuits will be properly recorded and tracked.

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 Web site.*

**Findings:** During this Title VI Compliance Review of UDOT, deficiencies were found regarding UDOT’s compliance with FTA requirements for Notice to Beneficiaries of Protection under Title VI. Prior to the site visit, UDOT indicated that it had Title VI posters in all public viewing areas. However, there were no posters available for viewing in UDOT’s offices. UDOT also indicated that it required all subrecipients to provide Title VI posters in all public viewing areas. Further, UDOT provided a website link, (<http://www.udot.utah.gov/main/uconowner.gf?n=139063807119540018>) for a downloadable poster and stated that it required its subrecipients to post this poster in all public viewing areas. However, the poster was entitled *Equal Employment Opportunity is THE LAW* and referenced primarily Equal Employment Opportunities, not Title VI. The poster is shown on the next page.



UDOT also indicated that the SMP was available on the UDOT website for the public to reference UDOT’s Title VI policies and procedures. However, UDOT’s SMP did not provide a Notice to Beneficiaries as required by FTA Circular 4702.1A. The UDOT SMP Section 4.9 Civil Rights reads as follows:

***4.9 CIVIL RIGHTS***

*UDOT adheres to Federal Civil Rights requirements through agency monitoring and administration, and the establishment of a Title VI program plan.*

*The PTT also maintains a records file of Section 5310, 5311, 5316, and 5317 Program funding requests that identifies applicants that are minority organizations or provides assistance to minority communities. In order to reach out to minority organizations and inform them of the opportunity to participate in Section programs, the Department will provide annual notices of the availability of funding to all known transit operators, including Indian tribes and minority organizations. Additionally, statewide media coverage is facilitated through Public Notice advertisements.*

*4****.9.1 Agency Monitoring and Administration****: UDOT complied with the requirements of Federal Civil Rights on April 29, 1988 by executing and filing a one-time assurance with FTA. Subrecipients are required to file with the Department similar assurances in agreement form. The assurances in the agreement are written as follows:*

*“As a condition of receiving federal financial assistance under the UMTA Mass Transportation Act of 1964, as amended, it will ensure that:*

*A. No person on the basis of race, color, or national origin will be subjected to discrimination in the level and quality of transportation services and transit-related benefits.*

*B. The agency will compile, maintain, and submit in a timely manner Title VI information required by UMTA Circular 4702.1 and in compliance with the Department of Transportation’s Title VI regulation, 49 CFR Part 21.9.*

*C. The agency will make it known to the public that those person or persons of transportation services and transit-related benefits may file a complaint with the Federal Transit Administration and/or the U.S. Department of Transportation.”*

***4.9.2******Title VI Program Plan****: All UDOT offices (including the central and field offices), program areas, field divisions, and subrecipients are required to adhere to the programs established by the UDOT Title VI Plan. The Title VI plan is administered and monitored by the Department’s Title VI Coordinator. The Title VI plan responds to Title VI of the Civil Rights Act of 1964, which prohibits discrimination “on the grounds of race, color, creed, national origin, sex, age, or disability.” It is also in compliance with the Civil Rights Restoration Act of 1987 that established that Title VI is applicable to all programs and activities of federal aid recipients and contractors, whether those programs and activities are federally funded or not.*

*The Title VI Coordinator is in the Civil Rights section of the Construction Division and has designees in several offices throughout the Department. The program plan establishes each designee’s and department’s responsibilities for ensuring the adequate distribution of Title VI information, monitoring and documentation of each department’s conduct, resolution of any deficiencies, and preparation of an annual report submitted to the USDOT, FTA, and FHWA on Title VI accomplishments.*

As noted below, UDOT’s State Management Plan (SMP) did not include all the elements required in a Title VI Notification to Beneficiaries:

| **Elements Required in Title VI Notification****(Per FTA Circular 4702.1A Chapter IV Section 5.a)** | **Included in UDOT SMP?** |
| --- | --- |
| 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 |

At the time of the Compliance Review site visit, the SMP available on UDOT’s website was dated July 2009 and marked as an Administrative Draft.

**Corrective Actions and Schedules:** Within 90 days, UDOT must submit to the FTA Equal Opportunity Specialist in FTA’s Headquarters Office of Civil Rights an updated Notice to Beneficiaries that includes all the elements required by FTA Circular 4702.1A. UDOT must provide documentation that it has distributed the revised Notice to the public in a manner other than its website. UDOT must document that its subrecipients have distributed an updated Notice to Beneficiaries that includes all the required elements.

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 UDOT, no deficiencies were found regarding UDOT’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. UDOT executed its FY 2010 Annual Certifications and Assurances in TEAM on November 3, 2009. UDOT checked as applicable, *01 Assurances Required For Each Applicant*. 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 UDOT, no deficiencies were found regarding UDOT’s compliance with FTA guidance for Environmental Justice (EJ) Analyses of Construction Projects. During the Review, UDOT indicated that it had three active construction projects:

* Cache Valley Transit Department – Addition to Administration Building
* Park City Transit – Vehicle and Maintenance Facility
* Cedar Area Transit – Vehicle Storage and Maintenance Bay

All of the projects qualified for Categorical Exclusions (CE) and were approved by FTA Region VIII.

UDOT was advised for future projects that the requirements for an EJ analysis were 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 serving large urbanized areas 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 UDOT, deficiencies were found regarding UDOT’s compliance with FTA requirements to Submit Title VI Program. Prior to the site visit, UDOT provided a document entitled *Utah Department of Transportation, Title VI Program, Non Discrimination in the Federal Aid Highway Program*. UDOT indicated at the site visit that the document was ten years old and was never finalized. Upon review of this document, it was determined that the Title VI Program document was primarily for its FHWA Title VI Program, contained outdated references to the FTA programs, and did not contain the elements required by the FTA Circular. In addition, UDOT submitted a document entitled *Utah Department of Transportation – Public Transit Team Title VI Report,* dated March 19, 2010, that it had submitted to FTA and which had not received FTA approval at the time of the site visit. Upon review of the document, it was determined it was formatted to follow the elements in a FTA Title VI Program submittal but did not address the elements substantively. For example, the section on the Requirement to Provide Meaningful Access to LEP Persons contained the following in its entirety:

*The Public Transit Team announce funds via newspapers, website, e-mails to all demographics, notification to local governmental and planning authorities to disseminate information. The Public Transit Team provides workshops to the general public to offer verbal direction on how to apply for funds.*

The statements above do not describe any language assistance measures and does not meet the requirement to develop a language assistance plan. The following table contains the elements required for a Title VI Program submittal.

| **ELEMENTS REQUIRED FOR TITLE VI PROGRAM** |
| --- |
| **GENERAL REQUIREMENTS** **(Per FTA C. 4702.1A, IV, 7. a. (1) – (5))** | **In UDOT 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****(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 |

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

**FINDINGS OF THE PROGRAM-SPECIFIC REQUIREMENTS AND GUIDELINES FOR STATE DEPARTMENTS OF TRANSPORTATION AND OTHER STATE 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, as well as and 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 UDOT, deficiencies were found regarding the FTA requirements for Statewide Planning Activities. During the Review, UDOT did not provide 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 UDOT provided information pursuant to the guidance:

| **GUIDANCE ON CONDUCTING STATEWIDE PLANNING** **(Per FTA C. 4702.1A, VI, 1. a. – c.)** | **In UDOT 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.
 | 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 |

During the Review, UDOT did provide maps showing the distribution of FTA funding throughout the state by the minority and low-income population and the population in poverty. It also provided a demographic profile of the state. UDOT indicated in its document entitled *Documents Required for Title 6 Review* that “UDOT is in the process of hiring a Title VI officer to implement and oversee UDOT’s FTA and FHWA compliance”.

**Corrective Actions and Schedules**: Within 90 days, UDOT must submit the FTA Equal Opportunity Specialist in FTA’s Headquarters Office of Civil Rights documentation that it has an analytical basis in place for certifying compliance of its FTA-funded programs with Title VI.

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 UDOT, deficiencies were found regarding UDOT’s compliance with FTA requirements for Program Administration. During the Review, UDOT did not provide documentation that it had performed the Program Administration activities as described in the Circular, such as:

* Describing the competitive selection process that emphasized the method used to ensure the equitable distribution of funds to subrecipients that served predominantly minority and low-income populations, including Native American tribes, where present,
* Maintaining a record of requests for funding that identified those applicants that would use grant program funds to provide assistance to predominantly minority and low-income populations, or
* Assisting potential subrecipients who might have served minority and low-income populations.

UDOT’s State Management Plan (SMP), entitled *UDOT State Management Plan Federal Transit Grant Programs*, dated February, 2010, described a competitive selection procedure for passing through FTA funds to subrecipients. Section 2.5.2 of the SMP stated:

### *Equitable Distribution of Funds: The PTT has adopted policies and procedures to ensure that the competitive selection process is conducted in an open and transparent matter, resulting in a fair and equitable distribution of funds among agencies across the state, including tribal governments and other entities servicing Native Americans. This does not mean that the selection process will result in an equal allocation of resources among projects or communities. Instead, equitable distribution refers to equal access to, and equal treatment by, a fair and open competitive selection process.*

Although the section mentioned *tribal governments and other entities servicing Native Americans*, it did not describe 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. During the Review, UDOT did not provide any adopted procedures that ensured a fair and equitable distribution that included the consideration of predominantly minority and low-income populations or *tribal governments and other entities servicing Native Americans*.

The Civil Rights section of the SMP contained the following language:

*UDOT adheres to Federal Civil Rights requirements through agency monitoring and administration, and the establishment of a Title VI program plan.*

*The PTT also maintains a records file of Section 5310, 5311, 5316, and 5317 Program funding requests that identifies applicants that are minority organizations or provides assistance to minority communities. In order to reach out to minority organizations and inform them of the opportunity to participate in Section programs, the Department will provide annual notices of the availability of funding to all known transit operators, including Indian tribes and minority organizations. Additionally, statewide media coverage is facilitated through Public Notice advertisements.*

During the Review, UDOT did not provide documentation that it maintained a records file as described above. The records file provided during the Review, a document entitled *UDOT 2009 FTA APPLICATION CYCLE 5310-5311-5316-5317 Federal Programs*, did not identify applicants that were minority organizations or provided assistance to minority communities. Another “Record of Requests for Funding” table provided in the document entitled *Documents Required for Title 6 Review* also did not identify applicants that were minority or low-income organizations or provided assistance to minority or low-income communities.

The UDOT Application for Section 5310, 5311, 5316, and 5317 funding provided during the Review contained a section on Civil Rights and that section contained the following questions:

* *Has your agency had any lawsuits or complaints lodged against them involving civil rights issues in the past three years?*
* *If Yes, describe how many and indicate if they have been resolved*
* *Agency is minority owned?*
* *Agree to comply with all applicable federal civil rights laws and regulations?*

There were no questions that collected information as to whether an applicant served predominantly minority or low-income populations, including Native American tribes. The UDOT Application Review Sheet that was used to rank applications contained a Civil Rights section that was based on responses to the questions above.

The following table contains Circular guidance for Program Administration and whether UDOT followed the guidance, either in the *State Management Plan* or any other document:

|  |  |
| --- | --- |
| **GUIDANCE ON PROGRAM ADMINISTRATION****(Per FTA C. 4702.1A, VI, 2. a. (1) – (5))** | **In UDOT 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.
 | No |
| * A description of the agency’s criteria for selecting transit providers to participate in any FTA grant program.
 | Yes, in SMP |
| * 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 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.
 | No |
| * 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.
 | No |

**Corrective Actions and Schedules:** Within 90 days, UDOT must submit to the FTA Equal Opportunity Specialist in FTA’s Headquarters Office of Civil Rights documentation that it has procedures in place to fulfill FTA C 4702.1A requirements for Program Administration.

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 UDOT, deficiencies were found regarding UDOT’s compliance with FTA guidance for Providing Assistance to Subrecipients. UDOT did not provide documentation that it was providing assistance to subrecipients as described in FTA C 4702.1A. In its document entitled, *Utah Department of Transportation – Public Transit Team Title VI Report – 3-19-10*, UDOT provided the following discussion regarding providing assistance to subrecipients:

*Program Administration – Procedures used to provide assistance to potation (Sic.) subrecipients in a non discriminatory manner*

*Each year’s cycle of funding begins with a project development process that is initiated by an announcement of the availability of FTA funds. This announcement is sent to each agency listed in the PTT’s database of transportation providers, non-profit organizations, and local government agencies. The announcement is also posted on the UDOT website and posted as legal notices in newspapers. Following the announcement of funds, the PTT invites all interested agencies to attend planning workshops that are conducted in each of the state’s AOG’s. These workshops offer an opportunity for the PTT to interact with potential subrecipients, answer any questions regarding the grant programs, and offer training in other topics. The workshops also serve as an opportunity for improved coordination among proposed projects.*

The information provided above did not meet the requirement of the Circular, as shown below. On the UDOT website, there was a document entitled *Utah Department of Transportation Title VI Requirements For FTA Sub-Recipients Rev. 10-99*. The document did contain sample complaint procedure, but it was inconsistent with the information on complaint procedures found in the UDOT SMP. The following table contains guidance for Providing Assistance to Subrecipients and whether UDOT provided documentation pursuant to the guidance:

|  |  |
| --- | --- |
| **GUIDANCE ON PROVIDING ASSISTANCE TO SUBRECIPIENTS****(Per FTA C. 4702.1A, VI, 4. a. – c.)** | **UDOT**  |
| * Sample notices to the public informing beneficiaries of their rights under Title VI and procedures on how to file a Title VI complaint.
 | Not a correct Notice |
| * Sample procedures for tracking and investigating Title VI complaints filed with a subrecipient.
 | No, see section on Complaints |
| * 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, UDOT provided two documents, one entitled *FTA Title VI& Civil Rights Non-Discrimination* and the other entitled *FTA Section 5311Title VI, Civil Rights & LEP*. These documents did convey some of the FTA Circular requirements. At the site visit, UDOT indicated that it was planning to provide documents like those to subrecipients in future application processes.

**Corrective Actions and Schedules:** Within 90 days, UDOT must submit to the FTA Equal Opportunity Specialist in FTA’s Headquarters Office of Civil Rights documentation that it has procedures in place to fulfill FTA C 4702.1A requirements for Providing Assistance to Subrecipients.

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 UDOT, deficiencies were found regarding UDOT’s compliance with FTA requirements for Monitoring Subrecipients. During the Review, UDOT did not provide documentation that it had a process for ensuring that all subrecipients were complying with the general reporting requirements of the Circular. On the UDOT website, there was a document entitled *Utah Department of Transportation Title VI Requirements For FTA Sub-Recipients Rev. 10-99*. It was developed as instructions “to provide guidance and instructions necessary to carry out Title VI of the Civil Rights Act of 1964, as amended, as it applies to FTA sub-recipients...”. The guidance in the document was based on the prior FTA Title VI C 4702.1 and did not contain the general reporting requirements of FTA C 4702.1A.

The following table contains guidance for Monitoring Subrecipients and whether UDOT followed the guidance:

|  |  |
| --- | --- |
| **GUIDANCE ON MONORITING SUBRECIPIENTS****(Per FTA C. 4702.1A, VI, 3. a. – b.)** | **UDOT**  |
| * The agency should document its process for ensuring that all subrecipients are complying with the general reporting requirements of this circular.
 | No, old guidance |
| * 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 |

**Corrective Actions and Schedules:** Within 90 days, UDOT must submit to the FTA Equal Opportunity Specialist in FTA’s Headquarters Office of Civil Rights documentation that it has procedures in place to fulfill FTA C 4702.1A requirements for Monitoring Subrecipients.

VII. SUMMARY OF FINDINGS AND CORRECTIVE ACTIONS

| **Title VI Requirements For Transit Providers**  | **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 | Inadequate documentation of inclusive public participation | UDOT must submit to the FTA Equal Opportunity Specialist in FTA’s 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 |  |
| 1. Language Access to LEP Persons
 | D | Lacking four-factor assessment and language assistance plan for LEP persons | UDOT must submit to the FTA Equal Opportunity Specialist in FTA’s Headquarters Office of Civil Rights a LEP Assessment and Language Access Plan that meets the requirements of FTA C 4702.1A and *DOT Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficient Persons, (December 14, 2005).* | 90 Days |  |
| 1. Title VI Complaint Procedures
 | AC | Inadequate complaint procedures | UDOT must submit to the FTA Equal Opportunity Specialist in FTA’s Headquarters Office of Civil Rights a clear procedure for investigating and tracking Title VI complaints filed against it and its subrecipients. | 90 Days |  |
| 1. Record of Title VI Investigations, Complaints, and Lawsuits
 | D | Inadequate record of Title VI investigations, complaints, and lawsuits | UDOT must submit to the FTA Equal Opportunity Specialist in FTA’s Headquarters Office of Civil Rights a list of active Title VI complaints pertaining to UDOT or its subrecipients and written procedures that ensure all Title VI complaints, investigations and lawsuits will be properly recorded and tracked. | 90 days |  |
| 1. Notice to Beneficiaries of Protection Under Title VI
 | D | Title VI Notification Deficiencies | UDOT must submit to the FTA Equal Opportunity Specialist in FTA’s Headquarters Office of Civil Rights an updated Notice to Beneficiaries that includes all the elements required by FTA Circular 4702.1a. UDOT must provide documentation that it has distributed the revised Notice to the public in a manner other than its website. UDOT must document that its subrecipients have distributed an updated Notice to Beneficiaries that includes all the required elements. | 90 Days |  |
| 1. Annual Title VI Certification and Assurance
 | ND |  |  |  |  |
| 1. Environmental Justice Analysis of Construction Projects
 | AC |  | UDOT is advised that the current requirements for an EJ analysis have been revised with the issuance of FTA Circular 4702.1A.  |  |  |
| 1. Submit Title VI Program
 | D | Lack detailed Title VI Program under FTA Circular 4702.1A | UDOT must submit to the FTA Equal Opportunity Specialist in FTA’s Headquarters Office of Civil Rights a Title VI Program developed according to FTA Circular 4702.1A under the General Reporting Requirements and Program-Specific Requirements for State DOTs and Other Administering Agencies. | 90 Days |  |
| **PROGRAM SPECIFIC REQUIREMENTS – FTA C.4702.1A VI, 1-4** |
| 1. Statewide Planning Activities
 | D | Lack statewide planning activities | UDOT must submit to the FTA Equal Opportunity Specialist in FTA’s Headquarters Office of Civil Rights documentation that it has an analytical basis in place for certifying compliance of its FTA-funded programs with Title VI. | 90 Days |  |
| 1. Program Administration
 | D | Lack program administration | UDOT must submit to the FTA Equal Opportunity Specialist in FTA’s Headquarters Office of Civil Rights documentation that it has procedures in place to fulfill FTA C 4702.1A requirements for Program Administration. | 90 Days |  |
| 1. Providing Assistance to Subrecipients
 | D | Assistance not provided in a non-discriminatory manner | UDOT must submit to the FTA Equal Opportunity Specialist in FTA’s Headquarters Office of Civil Rights documentation that it has procedures in place to fulfill FTA C 4702.1A requirements for Providing Assistance to Subrecipients. | 90 days |  |
| 1. Monitoring Subrecipients
 | D | No procedures for monitoring subrecipients | * UDOT must submit to the FTA Equal Opportunity Specialist in FTA’s Headquarters Office of Civil Rights documentation that it has procedures in place to fulfill FTA C 4702.1A requirements for Monitoring Subrecipients.
 | 90 days |  |

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 – Utah Department of Transportation (UDOT)** |
| William Lawrence | Direct of Program Finance | (801) 956-4129 | wlawrence@utah.gov |
| Leone Gibson | Director, Transit Plans and Programs, Systems Planning and Programming | (801) 964-4508 | lgibson@utah.gov |
| Mumtaz Mullalkhel | Compliance Officer, Systems Planning and Programming | (801) 870-1595 | mmullalkhel@utah.gov |
| Beverly Crawford | Specialized Transit Program Manager, Systems Planning and Programming | (801) 633-2703 | bcrawford@udot.gov |
| Kelly Garner | Accountant, Comptroller | (801) 965-4006 | kgarner@utah.gov |
| Jason Green | Consultant, Systems Planning and Programming | (801) 415-5844 | jasongreen@hwlochner.com |
| Tracy Young | Rural Public Transit Program Manager, Systems Planning and Programming | (801) 520-5492 | tracyyoung@utah.gov |
| Christopher Meredith | Specialized Transit Program Manager, Systems Planning and Programming | (801) 965-4551 | cmeredith@utah.gov |
| Debbie Boulton | Purchasing Agent, Procurement Services | (801) 965-4070 | dboulton@utah.gov |
| Gaye Hettrick | Consultant Services Manager, A and E Contracts | (801) 965-4639 | ghettrick@utah.gov |
| Denice Graham | Civil Rights Manager, Civil Rights | (801) 965-4695 | dgraham@utah.gov |
|  |
| **Federal Transit Administration – FTA** |
| Amber Ontiveros | Civil Rights Officer, FTA Region IX | (415) 744-2729 | amber.ontiveros@fta.dot.gov |
|  |
| **REVIEW TEAM – The DMP Group, LLC** |
| John Potts | Lead Reviewer, The DMP Group | (504) 813-7425 | johnpotts@thedmpgroup.com  |
| Dana Lucas | Reviewer, The DMP Group | (301) 585-2630 | dana.lucas@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)