

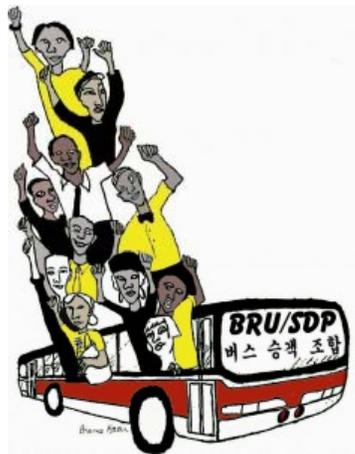
MAKING OUR VOICES HEARD

Strengthening FTA's Title VI and Environmental Justice
Protections for Public Transportation

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Guillermo Mayer, Senior Staff Attorney
Public Advocates Inc.

A Collaboration of:



Why We Are Here

- FTA is proposing to update its Title VI guidelines and to create new guidelines for Environmental Justice.
- This is a unique opportunity to strengthen protections in public transportation for years to come.
- FTA's guidelines provide tools to communities to address allegations of discrimination in transportation decision-making.

Recent Examples

- In 2009, we successfully used the FTA guidelines on Title VI to redirect \$70 million in stimulus funds away from the Oakland Airport Connector and use it instead to preserve existing transit service.
- In 2010, the Bus Riders Union used FTA's Title VI guidelines to launch a federal investigation into the discriminatory impact of LA Metro's decision to eliminate nearly 1 million hours of bus service.

What Is At Stake?

Our Ability To:

- Ensure all communities benefit fairly and equitably from public transportation investments at the local, regional and state levels.
- Hold transportation officials accountable for decisions that impact our communities.
- Challenge service cuts, fare hikes, inequitable funding patterns, and other decisions that disproportionately harm communities of color and low-income populations.

What Is Title VI?

Title VI of the Civil Rights Act of 1964 is the federal law that prohibits any recipient of federal funds from discriminating on the basis of **race, color or national origin**.



President Johnson and Rev. Martin Luther King Jr. after the Civil Rights Act of 1964 is signed into law.

Discrimination Prohibited

The regulations implementing Title VI prohibit two types of discrimination:

1. Intentional discrimination

1. Disparate impact

- Actions that have the *effect* of discriminating on the basis of race, color or national origin, regardless of intent.
- Disparate impact exists when an action has a disproportionate and adverse impact on a protected class and (a) it does not advance a substantial legitimate need, or (b) there is a less discriminatory alternative.

What Is the Executive Order 12898 on Environmental Justice?

Requires federal agencies to make EJ part of their mission by identifying and addressing disproportionately high and adverse human health or environmental effects of their programs, policies and activities on minority and/or low-income populations.



President Clinton signed the Executive Order 12898 on Environmental Justice in 1994.

What Does Title VI Mean for Transit?

- **Equal benefits:** Public transportation benefits must be provided in a nondiscriminatory manner.
- **Fair public participation:** Public participation in transportation decision-making must be promoted in a nondiscriminatory manner.
- **Protections for LEP populations:** Persons with limited English proficiency must be provided meaningful access to transit benefits and decision-making.

What Does EJ Mean for Transit?

- **Fair share of burdens:** Public transportation activities must avoid, minimize or mitigate any disproportionate and adverse effects on minority and low-income populations.
- **Fair share of benefits:** Public transportation decisions must prevent the denial of, reduction in, or significant delay in, the receipt of benefits by minority and/or low-income populations.
- **Fair public participation:** Decisions must be made with the opportunity for full and fair participation by all potentially affected communities.

What actions trigger Title VI and EJ?

- Service cuts
- Fare Hikes
- Adding new transit service
- Building a new transit project
- Locating a facility (stations, bus depots)
- Extending a rail line
- Short-term and long-range planning activities

What Is A Circular?

FTA's mechanism for providing instructions and guidelines to its grantees on how to comply with laws and other obligations.

FTA's grantees include:

- Transit providers
- Metropolitan planning organizations
- State departments of transportation

The current Title VI circular is enforceable through compliance reviews and a complaint process for the public.

 U.S. Department of Transportation Federal Transit Administration	CIRCULAR <div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;"> FTA C 4702.1A </div> May 13, 2007
Subject: TITLE VI AND TITLE VI-DEPENDENT GUIDELINES FOR FEDERAL TRANSIT ADMINISTRATION RECIPIENTS	
<ol style="list-style-type: none"> 1. PURPOSE. The purpose of this circular is to provide recipients and subrecipients of Federal Transit Administration (FTA) financial assistance with guidance and instructions necessary to carry out the U.S. Department of Transportation's ("DOT" or the "Department") Title VI regulations (49 CFR part 21) and to integrate into their programs and activities considerations expressed in the Department's Order on Environmental Justice (Order 5610.2), and Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficient ("LEP") Persons (70 FR 74087, December 14, 2005). 2. CANCELLATION. This circular supersedes FTA Circular 4702.1 "Title VI Program Guidelines for Federal Transit Administration Recipients," dated May 26, 1988. 3. SCOPE. This circular applies to all recipients of financial assistance from the Federal Transit Administration. 4. REFERENCES. <ol style="list-style-type: none"> a. Title VI of the Civil Rights Act of 1964 (42 U.S.C. Section 2000d). b. Federal Transit Laws, as amended (49 U.S.C. Chapter 53 et seq.). c. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601, et seq.). d. 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). e. 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). 	

Updated Title VI Circular

Overview Requirements:

- Collection and reporting of demographic data
- Preparation of needs assessments
- Public participation
- Adoption and monitoring of service standards
- Disparate impact analyses
- Monitoring and enforcement

Title VI: Data Collection

- Demographic maps and service area profiles
- Ridership surveys
- Racial composition of non-elected boards, councils and advisory boards

Title VI: Needs Assessments

- Metropolitan planning organizations must **identify and consider the mobility needs** of minority populations in its regional planning process
- States must **identify the needs** of minority populations as part of their statewide transportation planning process.

Title VI: Public Participation

Transit providers, MPOs and States must adopt:

- A **Public Participation Plan** to engage minority populations at all levels of decision-making.
- A **Limited English Proficiency Plan** to engage limited English proficient persons.

Title VI: Adoption of Service Standards

- Transit providers must develop service standards for:
 - Transit availability
 - Frequency of service
 - Overcrowding
 - On-time performance
 - Vehicle assignment
 - Transit amenities

Title VI: Disparate Impact Analyses

Transit providers must conduct an “equity analysis” of the impacts on minority populations when:

- Changing transit fares
- Increasing or decreasing transit service
- Locating facilities
- Monitoring transit service standards
- Implementing a New Start, Small Starts or other fixed guideway project (e.g. rail line, subway, Bus Rapid Transit)

Title VI: Disparate Impact Analyses

- MPOs must conduct a disparate impact or “equity” analysis of their short-range and long-range transportation plans.
- State and MPOs must analyze the impacts of the distribution of State and Federal funds for public transportation on minority and non-minority populations.

Title VI: Monitoring & Enforcement

- Transit providers, MPOs and States are required to comply with Title VI and monitor the compliance of any entity to which they extend FTA funds.
- FTA carries out compliance reviews of its grantees to ensure they comply with Title VI.
- **Members of the public may file Title VI complaints with the FTA if they believe themselves to be subject to discrimination.**

New EJ Circular

Overview of Content:

- Clarifies that grantees are contractually obligated to facilitate FTA's compliance with EO 12898 by incorporating EJ principles into their decision-making.
- Provides a detailed recommended framework for conducting environmental justice analyses at the local, regional and state levels.
- Recommends strategies for achieving meaningful public participation of EJ populations
- Contains guidance on integrating EJ principles into long-range planning activities and into NEPA activities.

EJ: Mostly Guidance

- Other than the obligation to facilitate FTA's compliance by incorporating EJ principles into their decision making, there are no specific requirements included.
- The circular is mostly a set of recommended strategies and best practices.
- While helpful, there is no apparent mechanism for enforcing that grantees carry out these recommendations.

What We Like (partial list)

Updated Title VI Circular:

- Continues to enforcement of prohibition against disparate impact discrimination
- Requires robust collection of demographic data
- Requires disparate impact analyses for several key decisions
- Requires monitoring of service standards

What We Like (partial list)

New EJ Circular:

- Provides detailed guidance and framework on incorporating EJ principles
- Notes the need to look at both benefits and burdens.
- Clarifies that grantees are contractually obligated to facilitate FTA's compliance.
- Discusses the similarities and differences between Title VI and EJ.

What We Don't Like (partial list)

- Poorly defines minority and low-income populations.
 - Does not include minority or low-income transit riderships.
- Fails to define threshold for disproportionality.
 - Leaves it up to transit agencies to decide.
- Fare equity analysis misses impact of flat fare increases
 - Doesn't account for impact on socially-vulnerable populations.
- Insufficient public participation opportunities
 - No public “scoping” process for identifying adverse impacts, as well as benefits and burdens.

What We Don't Like (partial list)

- Does not address “mode bias” by transit agencies when monitoring of service standards.
 - Transit agencies can treat rail and bus passengers differently based on different standards.
- EJ is only guidance with no enforcement!
 - No complaint process or compliance reviews by FTA!
- No appeal rights under Title VI for complainants.
 - Yet transit agencies can appeal!

Make Your Voice Heard

- Participate in FTA's Listening Session on November 14th in California.

Ed Roberts Campus
3075 Adeline St., Berkeley, CA 94703
(at Ashby BART Station)
6:00 – 9:00 PM
RSVP at <http://www.FTAinformationSession.com/>

- Submit written comments to the docket. Due Dec. 2nd.

For more information, visit <http://www.fta.dot.gov/13737.html>

- Add your organization to our national sign-on letter
 - Conference call on Friday, Nov. 18th. Contact Richard Marcantonio at rmarcantonio@publicadvocates.org