



THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

April 22, 2010

William E. Reukauf
Associate Special Counsel
U.S. Office of Special Counsel
1730 M Street, NW, Suite 218
Washington, DC 20036

Re: OSC File No. DI-09-0965

Dear Mr. Reukauf:

I am responding to your letter of March 25, 2009, which referred for investigation concerns raised by Peter Silva, a Civil Rights Specialist at the Federal Highway Administration (FHWA), relating to FHWA's enforcement of the requirements of Title VI of the Civil Rights Act of 1964. I delegated responsibility for investigating this matter to the Department of Transportation (DOT) Office of Inspector General (OIG). Enclosed is the OIG Report of Investigation.

Mr. Silva contends in his complaint that FHWA failed to comply with the investigation requirement contained in DOT Title VI regulations. 49 C.F.R. Part 21. He also claims that he reported this deficiency to his supervisor who declined to initiate a compliance review or investigation. Part 21 requires a prompt investigation of possible noncompliance with DOT Title VI requirements. 49 C.F.R. § 21.11 (c). Based on findings resulting from FHWA's National Civil Rights Baseline Assessment, OIG identified nineteen State Transportation Agencies (STAs) with possible Title VI program deficiencies in violation of 49 C.F.R. Part 21. Of the nineteen, fifteen possibly lacked sufficient administrative mechanisms to give a reasonable guarantee that the State could comply with its civil rights obligations and four STAs additionally failed to provide a Title VI assurance statement. OIG surveyed the respective nineteen FHWA State Division offices and found that as a result of these findings, nine FHWA State Division offices conducted investigations; ten Division offices did not.

Thus, OIG substantiated by a preponderance of the evidence apparent violations of Part 21's investigation requirement by ten FHWA State Division offices. OIG also found, however, that the ten Division offices have generally been working with the STAs to remedy the deficiencies identified in the Baseline Assessment and that FHWA appears to be following the intent of the regulation to ensure compliance by the STAs with their Title VI obligations. OIG did not substantiate Mr. Silva's claim about his supervisor, finding that the supervisor did not have the authority or responsibility to initiate a compliance review or investigation.

FHWA Administrator Mendez accepted OIG's findings concerning the allegation against Mr. Silva's supervisor, agreeing that she did not have the requisite authority to initiate an investigation. With respect to OIG's conclusion that FHWA State Division offices failed their regulatory obligation to initiate an investigation of possible non-compliance, the

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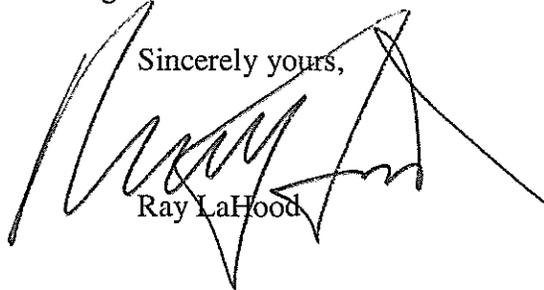
William E. Reukauf

Administrator acknowledged that the ten State Division offices did not initiate separate investigations on non-complying issues. He explained they did not initiate the investigations because the Baseline Assessment served as the tool to identify the non-complying issues and the Divisions promptly began working with the STAs to bring about compliance and program improvements, thus negating the need to initiate an investigation.

Administrator Mendez advises that all STAs, except for Utah, now have signed Title VI assurances. In addition, for all STAs that have not yet corrected their deficiencies, including Utah, FHWA Headquarters Office of Civil Rights (HCR) intends to immediately implement a more aggressive and systematic approach to expedite State corrective actions to ensure Title VI compliance by all STAs. HCR also intends to provide greater monitoring of the Divisions' Title VI compliance component to ensure timely and effective Title VI enforcement.

I appreciate Mr. Silva's diligence in raising these concerns.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Ray LaHood', is written over the typed name. The signature is stylized and somewhat abstract, with a large loop at the end.

Ray LaHood

Enclosure

REPORT OF INVESTIGATION	INVESTIGATION NUMBER #I09E000343SINV	DATE Jan. 8, 2010
TITLE Re: Title VI Investigation Noncompliance	PREPARED BY: Gabrielle Hessman Attorney Investigator Special Investigations and Analysis, JI-3 U.S. Department of Transportation Office of Inspector General	STATUS FINAL
	DISTRIBUTION HOA-1, HOA-3, HCR-1	APPROVED BY: JI-1, JI-3

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BACKGROUND

On March 25, 2009, U.S. Department of Transportation Secretary Ray LaHood received an investigative referral from the U.S. Office of Special Counsel (OSC). A civil rights specialist within the Federal Highway Administration (FHWA) Resource Center disclosed concerns to OSC that his supervisor and FHWA management violated the civil rights enforcement provision of 49 C.F.R. Part 21 by not investigating state transportation agencies' noncompliance with certain Title VI civil rights assurance obligations. The Secretary delegated investigative responsibility to the Office of Inspector General. Attachment 1 describes the methodology of our investigation.

Under Department of Transportation (DOT) regulations, recipients of Federal financial assistance must provide the Department with an assurance statement that they will comply with their Title VI obligation to not discriminate, and they must implement administrative mechanisms that give the Secretary a reasonable guarantee that the state can comply with its civil rights obligations.

Between 2006 and 2008, FHWA conducted civil rights baseline assessments of 51 state transportation agencies (including the District of Columbia and Puerto Rico), covering five FHWA civil rights program areas (Disadvantaged Business Enterprise, Contract Compliance, State Internal EEO/Affirmative Action Programs, Title VI Program, and Americans with Disabilities Act). During the assessments, a number of states self-identified Title VI program deficiencies. On August 27, 2007, the complainant, who served as a FHWA Resource Center advisor on several state self-assessments, reported these Title VI deficiencies to his supervisor and requested that she initiate a formal compliance review under the authority of FHWA's agency-specific Title VI regulation, 23 C.F.R. Part 200. She declined.

Under 49 C.F.R. § 21.11, the Secretary is required to conduct an investigation if it appears a recipient of DOT Federal financial assistance may have failed to comply with its Part 21 civil rights obligations.

SYNOPSIS

Our investigation substantiated by a preponderance of the evidence an apparent violation of 49 C.F.R. § 21.11. We also substantiated the complainant's concern of widespread problems with state transportation agencies' Title VI compliance. We identified 4 states that failed to provide the Title VI assurance statement, and 19 states that lacked administrative mechanisms to give the Secretary a reasonable guarantee that the state can comply with its civil rights obligations. Following the individual baseline assessments, 9 FHWA state division offices conducted investigations as required; 10 division offices did

not. We also, however, found that FHWA state division offices have generally been working with the state transportation agencies to remedy the deficiencies identified in the assessments.

The allegation against the complainant's supervisor is unfounded. She did not have the authority or responsibility to initiate a compliance review or investigation.

Below are the details of our investigation.

DETAILS:

Allegation 1: FHWA violated 49 C.F.R. § 21.11 when it failed to initiate an investigation of state transportation agencies' inability to produce Title VI assurance documentation during the Assessment.

FINDINGS

1. We substantiated possible violations of 49 C.F.R. Part 21 by state transportation agencies who failed to provide Title VI assurance statements or failed to demonstrate administrative mechanisms to provide the Secretary with reasonable assurances that they can comply with Title VI.

Part 21 broadly requires recipients of DOT Federal financial assistance to provide assurances that their program will comply with anti-discrimination statutes and regulations. Attachment 2 is a copy of the Standard DOT Title VI Assurances statement. In addition to providing an assurance statement, Part 21 requires Federal aid recipients to demonstrate such methods of administration that give the Secretary a reasonable guarantee that the state recipient will comply with anti-discrimination provisions.

We obtained a copy of the FHWA National Civil Rights Program Baseline Assessment Final Report dated January 2009 (Attachment 3). This report compiled the results of the individual state baseline assessments, and was submitted to the FHWA Associate Administrator for Civil Rights.

The Final Report states that the intent of the assessment was "to determine a baseline of the civil rights program." It further states "this exercise served more as a pre-test to evaluating compliance - offering a relaxed, collaborative environment to 'assess' rather than 'review.' The assessments provided the data with which the FHWA can more accurately determine the State Transportation Agencies' (STA) civil rights program implementation posture and allocate resources accordingly . . . The assessments were not designed or intended to censure non-compliance."

We interviewed the Associate Administrator regarding the circumstances surrounding the development of the baseline assessments and Final Report. He confirmed the non-punitive nature of the assessments and reported that compliance improvements have been made across all states. The Associate Administrator was not aware of which FHWA state division offices conducted formal investigations as required because these offices report to the FHWA Director of Field Services and not to the Office of Civil Rights.

The Final Report rated each program area within each state as either Low Risk (met baseline - only general monitoring required), Moderate Risk (warrants technical and/or training attention), or High Risk (warrants leadership attention). The Report concluded that the Americans with Disabilities Act and Title VI programs are most in need of FHWA's attention, and recommended that FHWA place a national emphasis that includes education and technical assistance. The state-specific Title VI assessment findings varied from states not producing the required assurance statement to states not providing adequate civil rights program documentation and staffing. A review of the Final Report validates complainant's concern that some state transportation agencies were not adequately supporting their civil rights regulatory obligations and that further action was required. The Final Report, however, also provides seven examples of states that made significant improvements following the assessments.

We obtained and reviewed the individual baseline state assessment reports for possible Title 49 CFR Part 21 non-compliance. We identified 4 states that failed to provide the Title VI assurance statement, and 19 states that lacked administrative mechanisms to give the Secretary a reasonable guarantee that the state can comply with its civil rights obligations. Attachment 4 is a summary sheet of our review of the individual baseline assessments.

2. We substantiated an apparent violation of 49 C.F.R. § 21.11 by 10 FHWA state division offices.

This regulation states in part:

Investigations. The Secretary will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation will include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this part. (emphasis added)

We surveyed the FHWA state division offices whose state assessments were listed as either moderate risk or high risk in the Baseline Assessment Final Report to determine what actions, if any, they have taken following the results of the baseline assessments.

We asked division offices if they had taken any investigatory measures, if they reviewed the state transportation agencies' Title VI practices or policies, the circumstances of any possible noncompliance, and other factors relevant to a determination of compliance. Some offices reported that they did not initiate an investigation; however, the actions they described taking may comply with 49 C.F.R. § 21.11's description of an investigation. The results of this survey are included on Attachment 4. Based on the survey responses, we conclude that 9 FHWA state division offices conducted investigations as required; 10 division offices did not.

3. Since the baseline assessments, FHWA state division offices have been working with the state transportation agencies to remedy deficiencies.

Based on our review of the Baseline Assessment Final Report and our survey of FHWA state division offices, we found that all division offices have taken some steps to remedy possible deficiencies by working with the state transportation agencies and providing additional technical assistance and education. In addition, many state transportation agencies have reported that deficiencies either are corrected or they are taking steps to correct them.

On September 3, 2009, the FHWA Associate Administrator for Civil Rights forwarded a copy of the Final Report to all Division Administrators and notified them that they are now required to complete a civil rights program self-assessment every three years, beginning in 2010 for those states that were assessed in 2007 (Attachment 5). FHWA Office of Civil Rights will provide the states with revised technical assistance tools to assist the self-assessments.

We conclude that although FHWA may have technically violated 49 C.F.R. § 21.11, the agency appears to be following the regulation's intent to ensure compliance with state transportation agencies' Title VI obligations.

Allegation 2: The Civil Rights Technical Service Team Leader in the FHWA Resource Center violated 49 C.F.R. §21.11 when she failed to initiate an investigation of state transportation agencies' inability to produce Title VI documentation during the Assessment.

FINDINGS

This allegation is unfounded.

In 49 C.F.R. Part 21, the term "Secretary" is defined to include the "the Secretary of Transportation or . . . any person to whom he has delegated his authority in the matter

concerned." We found no evidence that the Secretary delegated investigative authority to the Civil Rights Technical Service Team Leader.

The FHWA Resource Center maintains 13 technical service teams which provide technical support, program assistance, and training to FHWA headquarters and division offices, and to FHWA partners. The team leader leads the Civil Rights Technical Service team. Attachment 6 contains information relating to the role and responsibility of the Civil Rights Technical Service team.

The Civil Rights Technical Service Team Leader served as a technical advisor during the baseline assessments. She is not within the FHWA state division offices' chain of command and has no authority over the state transportation agencies. The Team Leader's scope of authority is limited to providing training, education, and technical advice to the FHWA Division and Headquarters.

OIG investigators interviewed the Director of the FHWA Resource Center, who is the Team Leader's supervisor. The Director was asked whether the Team Leader was authorized to conduct compliance reviews or investigations. The Director replied: "No. [She] is a team leader for the Resource Center teams, and she is in a position of providing training and technical assistance."

The FHWA Associate Administrator for Civil Rights also told investigators that the Team Leader did not have authority or responsibility to conduct an investigation under Part 21.

ADDITIONAL INFORMATION

The investigative referral letter from OSC stated that the complainant requested his supervisor conduct a compliance review under the authority of 23 C.F.R. § 200.11. As such we believe it is necessary to also comment on this regulation.

Title 23 regulations specifically apply to FHWA, while Title 49 regulations generally apply to all DOT agencies. Title 23 C.F.R. § 200.11 provides procedures for processing Title VI reviews. Specifically, this regulation provides that "if the regional Title VI review report contains deficiencies and recommended actions, the report shall be forwarded by the Regional Federal Highway Administrator to the Division Administrator who will forward it with a cover letter to State highway agency for corrective action." The division office is then to schedule a meeting with the recipient within thirty days of receipt of the "deficiency report," and recipients shall be given ninety days to correct deficiencies.

In our opinion, this regulation is inapplicable. FHWA stated that the baseline assessments were not a compliance review, a term we believe is synonymous with Title

VI program reviews as described in 23 C.F.R. Part 200. Even if it were a Title VI compliance review, 23 C.F.R. Part 200 does not require investigations in the event of suspected non-compliance with a state's Part 200 civil rights obligations. If a deficiency is identified during a Part 200 Title VI review, the procedures under Section 200.11 require the issuance of a deficiency notice by FHWA followed by self-corrective action by the state transportation agency. If the state refuses to voluntarily comply, then a recommendation of non-compliance is forwarded to the FHWA Office of Civil Rights. The state transportation agencies were made aware of possible deficiencies in their respective baseline assessment reports and made efforts to voluntarily correct those deficiencies. Therefore, if 23 C.F.R. Part 200 was applicable, the evidence supports a finding that FHWA complied with its enforcement obligations under this regulation.

In any event, the Civil Rights Team Leader has no authority or responsibility under 23 C.F.R. § 200.11. Under this regulation, the authority to issue a deficiency notice lies with the FHWA division offices and the FHWA regional division offices (whose authority was transferred to the FHWA Directors of Field Services since the issuance of this regulation).

ATTACHMENT 1

Methodology of Investigation

ATTACHMENT 1: METHODOLOGY

We conducted our investigation with an OIG supervisory investigator, senior investigator, and attorney investigator. To address the whistleblower's concerns, we interviewed and held discussions with the following individuals:

- Peter Silva, Civil Rights Technical Expert, FHWA Resource Center
- Teresa Banks, Civil Rights Team Leader, FHWA Resource Center
- Bernetta Collins, Director, FHWA Resource Center
- Allen Masuda, Associate Administrator, FHWA Office of Civil Rights

Our team also surveyed the Federal Highway Administration state division offices and inquired what actions the individual divisions took in response to the respective state baseline assessments.

In addition, our investigative team identified, gathered, and reviewed numerous records and documents related to the allegations, including: the National Civil Rights Baseline Assessment guidance, findings, state assessments, memoranda, and emails; Resource Center scope documentation; FHWA Division scope documentation; and Teresa Banks' FHWA biography.

ATTACHMENT 2

Standard DOT Title VI Assurances Statement

Standard DOT Title VI Assurances

Standard DOT Title VI Assurance

DOT 1050.2
Dated 8/24/71

The (Title of Recipient) (hereinafter referred to as the "Recipient") HEREBY AGREES THAT as a condition to receiving any Federal financial assistance from the Department of Transportation it will comply with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d-42 U.S.C. 2000d-4 (hereinafter referred to as the Act), and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964 (hereinafter referred to as the Regulations) and other pertinent directives, to the end that in accordance with the Act, Regulations, and other pertinent directives, no person in the United States shall, on the grounds of race color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Recipient receives Federal financial assistance from the Department of Transportation, including the (*Name of Appropriate Administration*), and HEREBY GIVES ASSURANCE THAT it will promptly take any measures necessary to effectuate this agreement. This assurance is required by subsection 21.7(a)(1) of the Regulations, a copy of which is attached.

More specifically and without limiting the above general assurance, the Recipient hereby gives the following specific assurances with respect to its (*Name of Appropriate Program*):

1. That the Recipient agrees that each "program" and each "facility as defined in subsections 21.23(e) and 21.23(b) of the Regulations, will be (with regard to a "program") conducted, or will be (with regard to a "facility") operated in compliance with all requirements imposed by, or pursuant to, the Regulations.
2. That the Recipient shall insert the following notification in all solicitations for bids for work or material subject to the Regulations and made in connection with all (*Name of Appropriate Program*) and, in adapted form in all proposals for negotiated agreements:

The (Recipient), in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidden that it will affirmatively insure that in any contact entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

3. That the Recipient shall insert the clauses of Appendix A of this assurance in every contract subject to the Act and the Regulations.
4. That the Recipient shall insert the clauses of Appendix B of this assurance, 'as a covenant running with the land, in any deed from the United States effecting a transfer of real property, structures, or improvements thereon, or interest therein.

5. That where the Recipient receives Federal financial assistance to construct a facility, or part of a facility, the assurance shall extend to the entire facility and facilities operated in connection therewith.
6. That where the Recipient receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the assurance shall extend to rights to space on, over or under such property.
7. That the Recipient shall include the appropriate clauses set forth in Appendix C of this assurance, as a covenant running with the land, in any future deeds, leases, permits, licenses, and similar agreements entered into by the Recipient with other parties: (a) for the subsequent transfer of real property acquired or improved under *(Name of Appropriate Program)*; and (b) for the construction or use of or access to space on, over or under real property acquired, or improved under *(Name of Appropriate Program)*.
8. That this assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property or interest therein or structures or improvements thereon, in which case the assurance obligates the Recipient or any transferee for the longer of the following periods: (a) the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which the Recipient retains ownership or possession of the property.
9. The Recipient shall provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he delegates specific authority to give reasonable guarantee that it, other recipients, subgrantees, contractors, subcontractors, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Act, the Regulations and this assurance.
10. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Act, the Regulations, and this assurance.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts or other Federal financial assistance extended after the date hereof to the Recipient Department of Transportation under the *(Name of Appropriate Program)* and is binding on it, other recipients, subgrantees, contractors, subcontractors, transferees, successors in interest and other participants in the *(Name of Appropriate Program)*. The person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Recipient

Dated _____

(Recipient)

by _____
(Signature of Authorized Official)

APPENDIX A

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

- (1) **Compliance with Regulations:** The contractor shall comply with the Regulation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- (2) **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- (3) **Solicitations for Subcontractors, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- (4) **Information and Reports:** The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the *(Recipient)* or the *(Name of Appropriate Administration)* to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to the *(Recipient)*, or the *(Name of Appropriate Administration)* as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5) **Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the *(Recipient)* shall impose such contract sanctions as it or the *(Name of Appropriate Administration)* may determine to be appropriate, including, but not limited to:
 - (a.) withholding of payments to the contractor under the contract until the contractor complies, and/or
 - (b.) cancellation, termination or suspension of the contract, in whole or in part.
- (6) **Incorporation of Provisions:** The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The contractor shall take such action with respect to any subcontract or procurement as the *(Recipient)* or the *(Name of Appropriate Administration)* may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the *(Recipient)* to enter into such litigation to protect the interests of the *(Recipient)*, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

APPENDIX B

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

(GRANTING CLAUSE)

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

(HABENDUM CLAUSE)

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

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

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

APPENDIX C

The following clauses shall be included in all deeds, licenses, leases, permits, or similar instruments entered into by the *(Name of Recipient)* pursuant to the provisions of Assurance 6(a).

The (grantee, licensee, lessee, permittee, etc., as appropriate) for himself, his heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land"] that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this (deed, license, lease, permit, etc.) for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

[Include in licenses, leases, permits, etc.]

That in the event of breach of any of the above nondiscrimination covenants, *(Name of Recipient)* shall have the right to terminate the [license, lease, permit, etc.] and to re-enter and repossess said land and the facilities thereon, and hold the same as if said [licenses, lease, permit, etc.] had never been made or issued.

[Include in deed.]*

That in the event of breach of any of the above nondiscrimination covenants, *(Name of Recipient)* shall have the right to re-enter said lands and facilities thereon, and the above described lands and facilities shall thereupon revert to and vest in and become the absolute property of *(Name of Recipient)* and its assigns.

The following shall be included in all deeds, licenses, leases, permits, or similar agreements entered into by *(Name of Recipient)* pursuant to the provisions of Assurance 6(b).

The (grantee, licensee, lessee, permittee, etc., as appropriate) for himself, his personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds, and leases add "as a covenant running with the land") that (1) no person on the ground of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the ground of, race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964), and as said Regulations may be amended.

[Include in licenses, leases, permits, etc.]*

That in the event of breach of any of the above nondiscrimination covenants, *(Name of Recipient)* shall have the right to terminate the [license, lease, permit, etc.] and to re-enter and repossess

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

said land and the facilities thereon, and hold the same as if said [license, lease, permit, etc.] had never been made or issued.

[Include in deeds]

That in the event of breach of any of the above nondiscrimination covenants, *(Name of Recipient)* shall have the right to re-enter said land and facilities thereon, and the above described lands and facilities shall thereupon revert to and vest in and become the absolute property of *(Name of Recipient)* and its assigns.

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

ATTACHMENT 3

**FHWA National Civil Rights Program Baseline Assessment
Final Report**

**Federal Highway Administration
National Civil Rights Program
Baseline Assessment**

**FINAL REPORT
January 2009**



Submitted To:

Allen Masuda, Associate Administrator
Federal Highway Administration Office of Civil Rights

Submitted By:

Bernetta L. Collins, Civil Rights National Baseline Project Lead
Federal Highway Administration Office of Civil Rights

Federal Highway Administration National Civil Rights Program Baseline Assessment Final Report



U.S. Department
of Transportation
**Federal Highway
Administration**

Acknowledgements

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Executive Summary

One of the measurements for the Federal Highway Administration's (FHWA) Strategic Implementation Plan includes an Organizational Excellence Goal. That Goal contains a national strategy for civil rights under the Program Delivery performance objective (OE1). This performance objective required that civil rights baseline assessments be conducted on 50% of all States during FY 2007 and the remaining 50% in FY 2008. The standards for meeting the baseline were determined by using the regulatory requirements for each program area as codified in regulations, statutes and other enacting legislation.

The Assessment Team, consisting of Division Office Civil Rights Specialists, Resource Center and Headquarters Civil Rights personnel, analyzed the assessment reports of 51 State Transportation Agencies (STA). The resulting national trends and recommendations are provided herein for your review and considered implementation.

The Assessment Approach

During FY 2006, the Headquarters Office of Civil Rights (HCR) established civil rights multidisciplinary workgroups representing all levels of FHWA: Headquarters, Resource Center and the Division Offices. Each workgroup developed civil rights technical assistance tools (TAT) to help improve the FHWA/States civil rights program. To ensure consistency in the delivery of the baseline assessments, the civil rights technical assistance tools created for each of the five major civil rights program areas were used. Additionally, each state's program was assessed based on the four program elements that cross-cut individual program disciplines: organization and staffing, program plans and documents, program implementation, and data collection and analysis.

National Trends and Recommendations

Based on the results of 51 assessments, the program that most often met the regulatory baseline (lowest risk) is the Disadvantaged Business Enterprise (DBE) Program, meeting baseline in 74.5% of states. The program presenting the most challenge in terms of program regulatory implementation was the Americans with Disabilities Act (ADA) program, meeting baseline in 19.6% of states. ADA was followed by Title VI (37.2%), State Internal/BEO (49.0%) and Contractor Compliance (54.9%), respectively. There were also noted systemic issues regarding cross-cutting elements pertaining to organization and staffing, and program data collection and reporting.

Based on the aforementioned, the following recommendations are offered. If adapted and combined with the continued commitment of FHWA's executive leadership and division administration, these recommendations will bolster FHWA's national civil rights program effectiveness.

1. **Observation:** The Americans with Disabilities Act and Title VI programs are most in need of FHWA's attention. **Recommendation:** Place a national emphasis that includes education and technical assistance on the Americans with Disabilities Act and Title VI. FHWA should target its resources to help STAs improve the administration of the ADA/504 and Title VI program areas.

2. **Observation:** There is an organizationally fragmented approach to civil rights program compliance, enforcement, and monitoring throughout the nation. **Recommendation:** The FHWA leadership should discourage the fragmentation of the Civil Rights program into sub-units of an STA. Furthermore, the Division Administrators should work with leadership at the STA to encourage the establishment of Civil Rights units whose elevation in the STA is at the same level of authority and responsibility of other direct line offices and departments within the STA. This level of authority would allow the Civil Rights office to provide the leadership, guidance and direction needed to implement all program requirements uniformly and consistently on a statewide basis. In addition, this organizational structure would demonstrate to all customers, partners and stakeholders that the STA attaches a high level of importance to Civil Rights and is committed to the effective implementation of its various program requirements.
3. **Observation:** There is a deficiency of civil rights program knowledge in the field. In some cases, this included the expertise level of Division Office staff. **Recommendation:** The FHWA should create or seek to implement programs to enhance civil rights professionals' continued education and program knowledge. The FHWA should continue efforts to leverage its resources by nourishing the civil rights Discipline Support Systems initiatives through the joint efforts of the Strategic Workforce Council. The FHWA should take an active and innovative role in the development of civil rights program resource sharing and/or clusters nationwide. While clusters can enhance the civil rights program knowledge in the field it is imperative that clusters receive guidance and direction from HCR to ensure uniformity and consistency nationwide.
4. **Observation:** There is an absence of, or weak data collection, analysis, and monitoring systems. **Recommendation:** The FHWA should place significant emphasis on the importance of program reporting requirements. For example, the FHWA should take advantage of the opportunity to partner with the United States Department of Transportation Secretary's Office in developing and implementing national electronic reporting mechanisms and requirements.

Conclusion:

The FHWA Assessment Team applauds many of the efforts STAs employ to meet regulatory requirements in the face of difficult economic and human resource challenges. Nevertheless, many assessments revealed areas that unless vigorously addressed will lay a firm foundation for entrenched program inefficiencies and vulnerability.

SPECIAL ACKNOWLEDGEMENT

The FHWA Headquarters Office of Civil Rights and the Baseline Assessment Team members wish to acknowledge and thank the State Transportation Agencies' Executive Directors, Federal Highway Administration's Division Administrators, and their respective staff for their time and support during this process.

Federal Highway Administration National Civil Rights Baseline Assessment Report January 2009

Background

State Transportation Agencies (STA) rely on the Federal Highway Administration (FHWA) and its leadership, management, and staff to help them administer the Federal-aid highway civil rights program in a manner that achieves its stated goals and objectives. Those objectives include compliance with civil rights laws and implementing regulations, holding managers and supervisors accountable, and ensuring that sub-recipients and contractors comply with civil rights requirements. The FHWA civil rights program is unique in that it encompasses both internal and external civil rights matters specific to transportation. As such, civil rights has specific objectives that impact every area of the transportation spectrum. It is with these objectives in mind that the civil rights baseline was conducted.

Relationship to Performance/Strategic Plan:

The FHWA Strategic Implementation Plan includes an Organizational Excellence Goal which contains a civil rights national strategy, under the Program Delivery performance objective (OE1). This performance objective states,

“FHWA partnerships develop, maintain and improve capability to deliver and steward the FHWA program with high performance and integrity.”

One of the measurements for this performance objective is that civil rights baseline assessments be conducted on 50% of all States during FY 2007 and the remaining 50% in FY 2008. This was a major undertaking for FHWA, especially considering that many of the Divisions do not have full-time civil rights specialists. The FHWA Directors of Field Services (DFS) asked the Headquarters Office of Civil Rights (HCR) to provide assistance in achieving this objective. The DFSs understood that to accomplish this objective successfully required a partnership approach involving Headquarters, Divisions and the Resource Center. In response, HCR organized a Civil Rights Assessment Team.

FHWA's FY 2009 Implementation Plan, Program Delivery and Stewardship Goal (PD1) states: Develop and continually improve the partnership's ability to delivery our programs on time and on budget while demonstrating high quality and integrity. The civil rights measure states:

“Examine 50 percent of states whose baseline assessments revealed technical assistance needed; number of states provided technical assistance; number of states agreeing to voluntary program improvement plan.”

The results detailed in this report are the basis by which Civil Rights will meet this measure.

Purpose:

These were not compliance reviews. Determining a baseline of the civil rights program was the intent of these assessments. Webster defines baseline as “*the data used as a reference with which to compare future observations or results.*” This exercise served more as a pre-test to evaluating

compliance - offering a relaxed, collaborative environment to "assess" rather than "review." The assessments provided the data with which the FHWA can more accurately determine the State Transportation Agencies' (STA) civil rights program implementation posture and allocate resources accordingly.

Objectives:

The objectives of the baseline were:

- To help FHWA achieve a national strategy that assists Division Offices and STAs by improving their ability to deliver the federal-aid highway program with high performance and integrity;
- To assist the Division Offices in evaluating and improving the STA's implementation of the Title VI, Americans with Disabilities Act (ADA), Contractor Compliance, State Internal EEO, and the Disadvantaged Business Enterprise Programs (DBE);
- To provide technical assistance, education, and awareness of the civil rights program requirements using the Civil Rights Technical Assistance Tools.

In meeting these objectives, the baseline assessments identified processes and practices in FHWA Division Offices and STAs critical in addressing and developing program enhancements. An adjunct to the process was the sharing of successful practices/processes used throughout the nation in meeting the various requirements of the program obligations.

The assessments were not designed or intended to censure non-compliance. FHWA's request and support of this assessment was its desire to improve how STAs (1) Meet Federal regulatory requirements in all program areas, (2) Strengthen internal and external civil rights opportunities; and (3) Promote commitment and dedication to serving their citizens. To that end, organizational, programmatic, and procedural opportunities for improvements were identified, and suggestions presented to FHWA and STA leadership for program enhancement.

Developing the Assessment Approach

During FY 2006, the HCR established several civil rights multidisciplinary workgroups representing all levels of FHWA: Headquarters, Resource Center and the Division Offices. Each workgroup developed civil rights technical assistance tools to help improve the FHWA/States civil rights program. To ensure consistency in the delivery of the baseline assessments, the HCR used the TATs developed for Title VI, ADA, Contractor Compliance, State Internal EEO and DBE.

During FY 2007, 28 STAs were assessed. The results of those initial assessments were documented in the 2007 National Baseline Report. The first baseline assessment was conducted in April 2007 and the two-year process ended in November 2008. Building on and learning from the 2007 experience, the Office of Civil Rights established a baseline assessment guidebook.

The guidebook provided each Division Office the TATs for these five civil rights core program areas, included the correct answers and regulatory citations for the TAT questions, copies of program regulations, and on-site assessment strategies, i.e. team member roles/responsibilities, opening and closing discussion points, etc. The guidebook was also used to train team members on how to conduct an assessment -- again, to generate and maintain as much consistency as possible. Divisions with full time civil rights employees who opted to conduct their assessments

without assistance were also trained in the use of the tool and asked to submit their report using the standardized format.

Scope

The Technical Assistance Tools (TAT) consists of questions and answers that were considered when making overall observations and recommendations.

The scope focused on the five basic FHWA civil rights program areas:

1. Disadvantaged Business Enterprise (DBE)
2. Contract Compliance (CC)
3. State Internal EEO/Affirmative Action Program (SIEEO)
4. Title VI Program (Title VI)
5. Americans with Disabilities Act (ADA/504)

However, the TAT responses were only one consideration. In addition, all civil rights program areas involve four basic elements:

1. *Organization and Staffing* - examining the overall organization of civil rights program staff, including organizational alignment, duties, etc.
2. *Program Plans and Documents* - reviewing the general quality, effectiveness, timeliness, and implementation of program documents.
3. *Program Implementation – Policies and Procedures* - concerning whether the program was being implemented as approved, whether the policies/procedures were being followed consistent with the requirements, their effectiveness, distribution, etc.
4. *Data Collection and Analysis* - identifying whether processes for collecting and analyzing data was consistent and effective for program monitoring and evaluation.

Considering the STAs activities and position in these elements, combined with TAT results, determined overall baseline.

Methodology

The civil rights baseline is ultimately a three-phase process:

PHASE I: Facilitating roundtable-style discussions with staff and recording participant responses to program specific questions; reviewing documentation and systems in support of responses.

PHASE II: Propose recommendations and strategies for addressing national trends, i.e., developing programs to identify and remove barriers, etc. Present recommendations to leadership.

PHASE III: Implementation: A focused, national implementation process will be developed based on these national results, per FHWA's Strategic Implementation Plan for FY 2009.

The majority (40 of 51) of the baseline assessments were conducted using a team approach. Team members included a program expert from either HCR or the Resource Center Civil Rights Technical Service Team (RC-TST), and the Division Office program specialist. While actual on-

site approaches differed slightly, each Division Office used the TATs and complimenting documents as the base for program examination.

Unlike the department's risk assessment process where no single approach or methodology necessarily applies to all Divisions or States, the baseline assessment procedures applied and were easily implemented nationally. Yet, of the three types of risk assessments most used by FHWA Division Offices, the civil rights baseline assessments most closely resembled that of a program assessment, i.e., a systematic analysis of specific (civil rights) program requirements.

Though the Civil Rights Baseline Assessments differs from the more familiar risk assessment process, the following conclusions are identified in the vernacular of risk. The terms are used to provide ready association to the more familiar "high, moderate and low" risk conclusions, yet as previously stated, determinants by which these conclusions are reached are significantly different. For purposes of comparisons, the following holds:

Baseline Assessment Program Result	Baseline Assessment Follow-Up Needed	Risk Assessment Equivalent
Red	Leadership	High Risk
Yellow	Technical	Moderate Risk
Green	General Monitoring	Low Risk

A red civil rights baseline indicator is identified in program areas where, if an official compliance review were conducted, corrective action would be required under a corrective action plan. Moderate baseline results (yellow), in the vernacular of a risk assessment equates to an area where program improvements could be obtained with minimal or remedial assistance and/or intervention. Finally, a green indicator suggests an area where attainment of program objectives and adherence to implementing statutes and procedures are most firmly established, thus producing low risk.

These definitions differ significantly from the standard risk statement of "if this event happened, then this is the likely impact" scenario. The civil rights assessments conclusions are based entirely on the respective implementing authorities, the STA's ability to demonstrate their intended results, and the four cross-cutting factors.

About Civil Rights

As indicated by Figure 1 below, the Federal-aid highway civil rights program is organized under the Title VI provisions of the 1964 Civil Rights Act. Title VI is the primary impetus for the other civil rights program requirements and/or activities.

However, in conducting the baseline assessments it was determined that Title VI is second only to the Americans with Disabilities Act in its relative lack of program attention. The Disadvantaged Business Enterprise program has for years been the civil rights program receiving the greatest attention. This attention stems from a number of issues, not the least of which are the huge dollar amounts associated with the program, and legal actions related to challenges of unconstitutionality and allegations of fraud and abuse.

Unfortunately, many states are reorganizing their civil rights functions not understanding that Title VI must be the lead in all civil rights activities. Not because the baseline indicates it, but because the law requires it. Title VI protects all people within our borders – citizens and non-citizens. And to the extent that we manage, implement or monitor programs receiving federal

financial assistance, we must ensure our program and that of our partners comply with the requirements of this Civil Rights law. Specifically, FHWA and our state partners are responsible for ensuring that FHWA's Civil Rights Program conforms to federal requirements. And we must ensure that internal fiscal and human resources align effectively to meet these regulatory requirements and expectations.

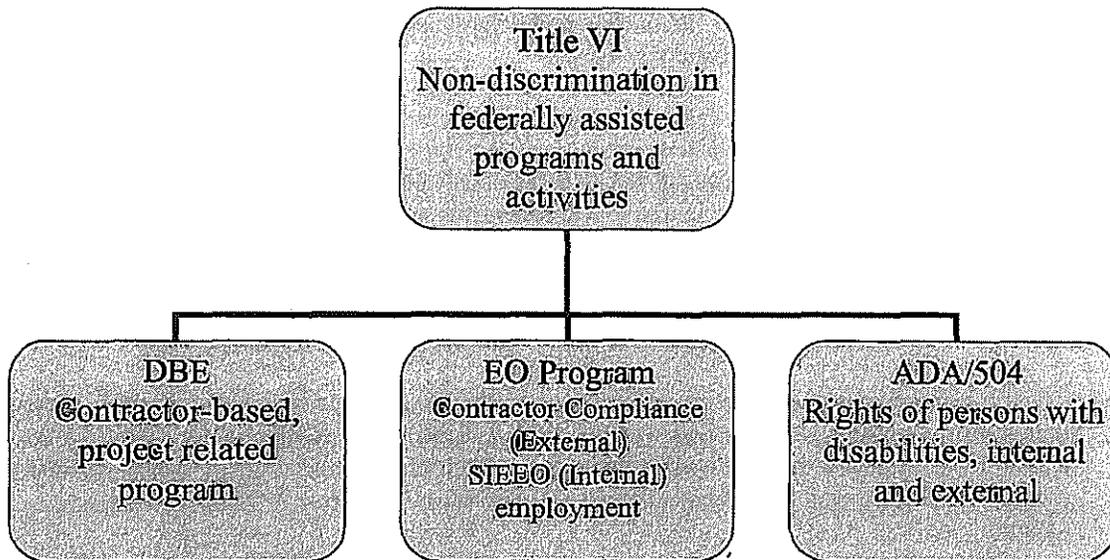


Figure 1

While some STAs have offices that manage civil rights implementation, monitoring, and enforcement activities, the majority (approximately 76%) rely on units such as Personnel/HR, Construction, and Environment for monitoring and enforcement at varying levels.

As such, the civil rights program responsibilities within most STAs are splintered. This disjointed or splintered approach to civil rights program implementation significantly hampers the ability to consistently supervise and enforce program implementation and compliance measures statewide. Furthermore, limited staff and employee turnover in the offices with civil rights responsibilities significantly affect the ability to build and sustain a program that operates effectively and in compliance with regulatory requirements.

Baseline National Trends

The program where the baseline was most often met (lowest risk) is the Disadvantaged Business Enterprise Program. The program presenting the most challenge in program implementation was the Americans with Disabilities Act (ADA) program. This program met baseline in only 10 of the 51 assessments, or at the rate of 19.6 percent. Figure 2 below identifies each of the five program areas and the resulting attainment levels.

STAs invest time and attention to the DBE program, resulting in implementing the program according to the regulatory requirements, exhaustive though they are. As mentioned earlier, a primary contributor to this concentration is the very high risk (dollars and time) associated with

program challenges. As such, the DBE program from the civil rights baseline view is doing extremely well.

On the other hand, the ADA/504 and Title VI are lagging behind. Both programs generally serve under-privileged and often voiceless communities. Therefore, an intense public outcry would need to occur to present an extreme fiscal threat – one that the DBE program could muster with one disgruntled contractor. Nonetheless, the impact to the communities served by Title VI and ADA (or not served) is massive. With changing demographics and greater national emphasis, both Title VI and ADA are increasingly visible.

The Equal Opportunity Program, Part I which is Contractor Compliance and Part II State Internal EEO, complete the civil rights baseline circuit. Both program areas focus on employees and base an agency's (or contractor's) civil rights health on the results of their efforts in managing their workforce without discrimination. These two areas may also receive much more national attention in the days to come.

FHWA needs to be positioned to assist our partners in effectively implementing current regulatory requirements and preparing for future ones in all civil rights program areas.

The following figures provide the national baseline determinations for each program area. Figure 2 presents the overall national trend. Figures 3 through 5 identify trends based on "risk." Green equals low risk, or met baseline, yet still warrants regular monitoring. Yellow indicates moderate risk or that the area warrants technical attention. Red means high risk or warrants leadership attention.

<i>Baseline National Trends</i>	Program	Green	Yellow	Red
	Title VI	37.2%	15.6%	45.0%
	ADA	19.6%	21.5%	58.8%
	Contractor Compliance	54.9%	27.4%	17.6%
	State Internal/EEO	49.0%	29.4%	21.5%
	DBE	74.5%	11.7%	5.8%

Figure 2

**GREEN (Low Risk):
General Monitoring Warranted – Met Baseline**

PROGRAM	# States	Percent
Title VI	19 of 51	37.2 %
American with Disabilities Act	10 of 51	19.6 %
Contractor Compliance	28 of 51	54.9 %
State Internal/EEO	25 of 51	49.0 %
DBE	38 of 51	74.5 %

Figure 3

**YELLOW (Moderate Risk):
 Warrants Technical and/or Training Attention**

PROGRAM	# States	Percent
Title VI	8 of 51	15.6 %
American with Disabilities Act	11 of 51	21.5 %
Contractor Compliance	14 of 51	27.4 %
State Internal/EEO	15 of 51	29.4 %
DBE	6 of 51	11.7 %

Figure 4

**RED (High Risk):
 Warrants Leadership Attention**

Title VI	23 of 51	47.0 %
American with Disabilities Act	30 of 51	58.8 %
Contractor Compliance	9 of 51	17.6 %
State Internal/EEO	11 of 51	21.5 %
DBE	2 of 51	5.8 %

Figure 5

Using Baseline Assessment Results

The Baseline Assessment is one of several methods used to enhance program management throughout FHWA. However, managing results is just as important as determining them - if not more so. As mentioned earlier, the second phase of the civil rights assessments involves presenting recommendations and strategies to help STAs succeed. Accordingly, HCR and RC TST will work with leadership in developing a systematic approach for addressing "high risk" (red) and moderate risk (green) program areas. In addition to being identified in the 2009 Strategic Implementation Plan, these efforts will ultimately lead to improved processes, procedures and meeting program objectives.

A Useful Experience

The following illustrates significant program achievements made by some states as a result of their assessment. Although not all inclusive, these examples exemplify the earnestness FHWA's leadership exhibited in addressing issues arising from the FY2007 assessments and the recommendations presented.

- Delaware** DelDOT submitted a Title VI Program Plan. DelDOT submitted a revised DBE UCP document. Provided DBE Training (Basic Equal Opportunity Requirements for Federal Contracts) in January and March of 2008. DelDOT hosted an ADA forum and convened a panel of experts to discuss DelDOT's ADA program. DelDOT's external complaint procedure was published on the State Register. DelDOT conducted a public meeting to discuss the DBE goal setting, and DelDOT developed a contractor compliance program plan, including a compliance manual. Training was provided to the contracting community on requirements contained in the manual.
- Georgia** GDOT's Title VI Coordinator participated in two FHWA Title VI training sessions. GDOT established a team of Title VI liaisons from each program area. GDOT conducted Title VI training at several district offices and at the central office. GDOT conducted EEO training in all district offices, and submitted a DBE program plan. GDOT changed their DBE consultation process to meet FHWA requirements.
- Illinois** IDOT prepared and submitted the "Bureau of Small Business Enterprises Policy, Procedure, and Resource Manual". IDOT updated and submitted the Internal EEO/Affirmative Action Plan. The Division Office provided IDOT a listing of civil rights report due dates and contacts them a week prior to each; this has improved the timeliness of receipt. IDOT has submitted a Revised Title VI Plan for review, and IDOT prepared and submitted a Limited English Proficiency Plan in draft which the Division reviewed and provided comment.
- Indiana** Indiana's Division Administrator and Civil Rights Specialist met with INDOT executives and program managers. Results from the Division and State's joint efforts include: the production of an ADA Policy Statement, nondiscrimination assurances, and hiring of an ADA program manager (co-duty Title VI manager). INDOT also began conducting an ADA Self-Evaluation and Transition Plan. In Title VI, INDOT provided the division with a Title VI policy statement, and Title VI nondiscrimination assurances. INDOT hired a Title VI program manager (co-duty ADA), and began the process of developing an integrated Title VI management approach. In Internal EEO, INDOT hired a full-time Affirmative Action Officer.

Maryland Maryland State Highway Administration (MSHA) held mandatory training for all District Equal Opportunity Officers including consultants. MSHA completed and submitted the contractor compliance review schedule and contractor compliance review report. MSHA submitted and received FHWA comment on an internal grievance procedure for ADA. MSHA is working with the ADA Transition Plan for public comment. MSHA submitted an updated DBE program plan that includes the latest USDOT regulatory requirements.

New Jersey NJDOT updated the Title VI Assurance to reflect required federal provisions. Developed a Title VI complaint log. Conducted Title VI sub-recipient reviews. Submitted its Annual Title VI Implementation Plan. Appointed an LEP Coordinator. NJDOT committed to submit updated contractor compliance policies and procedures; adopted the Civil Rights Labor Management System (CRLMS) to meet data and reporting needs. NJDOT submitted a current Affirmative Action Program, and convened a senior leadership EEO Group. NJDOT submitted a Self-Evaluation for the ADA Implementation Plan, developed an internal grievance process for ADA, and instituted an ADA workgroup of nineteen stakeholders to assess how NJDOT addresses ADA responsibilities. NJDOT appointed a DBE program manager.

Rhode Island RIDOT indicated they will: submit the final Title VI Plan by May 1. Provide a final DBE program document to FHWA by April 2009; provide a final Contractor Compliance document by November 2009, provide a final ADA Transition Plan by March 31, 2010, and provide a final Affirmative Action Plan by April 2009.

Observations & Recommendations

STAs' Civil Rights programs have many strengths, as evidenced and outlined in individual reports. Most are attempting to implement the program in good faith considering the fragmented nature of the program's administration, lack of expertise in certain areas, and the limited assigned resources. As stewards, partners and leaders in program implementation, FHWA has a responsibility to identify areas where the maximum benefit can be gained for civil rights beneficiaries. The following observations and recommendations are offered to that end.

1. **Observation:** Americans with Disabilities Act and Title VI programs are most in need of FHWA's attention. **Recommendation:** Place a national emphasis that includes education and technical assistance on the Americans with Disabilities Act and Title VI throughout the department. FHWA should target its resources to help STAs improve the administration of the ADA/504 and Title VI program areas.
2. **Observation:** 76% of STAs' Civil Rights functions are divided among other units or offices. Because of competing demands for funding, STAs over the last few years have experienced a significant loss in personnel, often resulting in the dispersing or dismantling of the program units. Consequently, there is an organizationally fragmented approach to civil rights program compliance, enforcement, and monitoring. This movement toward decentralization and fragmentation is diametrically opposed to the following civil rights regulatory language....

DOJ coordination regulations (28 C.F.R. 42.404(a)) require each Federal agency or department to provide Title VI guidelines for each type of Federal financial assistance program under its jurisdiction. DOJ's 1979 "Checklist for a Federal Agency's Title VI Enforcement Effort" (Checklist) provides guidance for the implementation, compliance and enforcement of the Title VI program. Among other things, the Checklist requires that the Federal agency and department guidelines be distributed to recipients, beneficiaries and the general public. Also, the Checklist requires the establishment of policies and procedures to clarify and heighten understanding of Title VI compliance. It is with these authorities that FHWA's Office of Civil Rights (HCR) presents the following clarification.

Independent Civil Rights Office

Pursuant to DOJ's Checklist, the "civil rights unit" referred to in 23 CFR 200.9(b)(1)&(2) specifies an "independent office," strategically located in the organization, with clear backing and support from the head of the State Transportation Agency (STA), coupled with "sufficient formal authority to ensure that discrimination is [effectively] eradicated in the agency's Federally-assisted programs." The Checklist further indicates that the head of the civil rights office (CRO) should report "to a sufficiently high level authority within the agency to be effective;" that is, the Chief Administrative Officer.

It is HCR's position that the CRO should be neither a subunit nor subordinate to any other program or division within the recipient's agency or apparatus. Consistent with DOJ's guidance on organizational structure of the Civil Rights Office contained in the Checklist, the CRO should be placed "on an equal plane with the program or operational divisions in the overall structure of the agency." Moreover, DOJ has maintained that "A strong civil rights office is needed" and that "[c]ivil rights staff should report to civil rights, not program office, supervisors. The independence of the civil rights enforcement function is needed when civil rights interests conflict with operational programmatic interests." ¹

¹ Excerpt from draft Title VI White Paper, 2008, Mohamed Dumbuya, FHWA National Title VI Coordinator. (To date only distributed to the DA Civil Rights Advisory Group)

- 2 (a): **Observation:** Only eleven percent (11%) of state civil rights managers are members of the executive management team. **Recommendations:** The FHWA leadership should discourage the fragmentation of the Civil Rights program into sub-units of an STA. Furthermore, the Division Administrators should work with leadership at the STA to encourage the establishment of Civil Rights units whose elevation in the STA is at the same level of authority and responsibility of other direct line offices and departments within the STA. This level of authority would allow the Civil Rights office to provide the leadership, guidance and direction needed to implement all program requirements uniformly and consistently on a statewide basis. In addition, this organizational structure would demonstrate to all customers, partners and stakeholders that the STA attaches a high level of importance to Civil Rights and is committed to the effective implementation of its various program requirements.
3. **Observation:** There is a deficiency of civil rights program knowledge in the field. In some cases, this included the expertise level of Division Office staff. **Recommendation:** The FHWA should create or seek to implement programs to enhance civil rights professionals' continued education and program knowledge. The FHWA should continue to fully support and implement those action items identified in the Discipline Support Action Plan. The FHWA should take an active and innovative role in the development of civil rights program resource sharing and/or clusters nationwide. While clusters can enhance the CR program knowledge in the field it is imperative that clusters receive guidance and direction from HCR to ensure uniformity and consistency nationwide.
4. **Observation:** There is an absence of, or weak data collection, analysis, and monitoring systems. **Recommendation:** The FHWA should place significant emphasis on the importance of reporting requirements. For example, the FHWA should take advantage of opportunities to partner with the United States Department of Transportation Secretary's Office in developing and implementing national electronic reporting mechanisms and requirements.
5. **Observation:** Most STAs lack effective data collection, analysis, and monitoring system for civil rights programs. The absence of a data system prevents the accurate and efficient collection and analysis of statistical data in a timely manner, and prevents the quantitative and qualitative monitoring of program funds and statewide performance.

Many STAs are relying heavily on other state governmental agencies to "crunch the numbers" for them. However, more often than not, the results are far from FHWA or other federal transportation standards, and therefore, of little use in accurately depicting program posture. Additionally, DBE data is increasingly important as STAs attempt to set program and contract-specific goals based on program requirements and results of legal challenges. The lack of understanding the numerical significance (once received from other agencies) and possessing the general perception of how to use the results appears to be factors contributing to the high risk (red) indicators for programs such as State Internal/EEO.

Recommendations:

- FHWA should allocate resources to partner with USDOT and other modal administrations in the development and implementation of an on-line data collection and analysis system. The centralization of data input and adhoc retrieval ability will enhance the department's efforts in validating the usefulness and societal benefits of the various civil rights program areas.

- FHWA should continue to reinforce and implement the data collection/analysis processes and monitoring systems for the DBE, OJT, Internal EEO, Contractor Compliance and Title VI programs. FHWA should take the lead in producing (with STA assistance) tools that can assist with the more complex statistical needs associated with each program.
- FHWA Division Administrators should place greater importance on the timely submission and accuracy of “slow data” – that required physically from the STA.

PROMISING PRACTICES:

There were many unique and innovative practices for implementing areas within the civil rights programs presented during the assessments. The Resource Center Civil Rights Technical Services Team has created a special Promising Practices section on their web page that will highlight many of these ideas.

- The web page link is:
<http://www.fhwa.dot.gov/resourcecenter/teams/civilrights/solutions.cfm> There will also be a convenient link from the HCR homepage.

CONCLUSION

The Civil Rights Baseline Assessments was a useful and beneficial process for FHWA and our State partners. While initially it was difficult to “sell” as a non-abrasive, helpful process, the word got out....that’s exactly what it was. The process as designed allayed many fears, i.e., the guidebook, the training, the webinar, the tools, the opening and closing sessions with management, all combined to create an inclusive, productive process.

Though the civil rights baseline assessments have concluded, the work to be done based on the results has barely begun. Division Offices, as mentioned in the “A Useful Experience” section of this report, wasted little time in their efforts to better their overall programs. We certainly applaud those efforts. And while each Division is different and in some respects needs to view program implementation somewhat differently, the civil rights regulations and program objectives are universal...this exercise was about the whole. We, too, will take our next task seriously. As required in the Strategic Plan, the HCR and RC TST will jointly review the outcome of this assessment and offer our assistance in developing voluntary action plans, technical assistance, training, and where necessary, mentorship.

Thank you for the opportunity to assist you as we strive to make FHWA’s Civil Rights Program the very best.

ATTACHMENT 4

**OIG Summary of Individual Baseline Assessments and
Survey of Division Offices**

ATTACHMENT 4

OIG Summary of Individual Baseline Assessments and Survey of Division Offices

STATE	ASSURANCE STATEMENT PROVIDED? [1]	DEMONSTRATED ADMIN MECHANISMS TO ENSURE COMPLIANCE? [1]	DID FHWA DIVISION OFFICE CONDUCT INVESTIGATION? [2]	WHAT ACTIONS HAVE BEEN TAKEN BY THE DIVISION OFFICE AND/OR WHAT PROGRESS HAS BEEN MADE BY THE STATE TRANSPORTATION AGENCIES? [2]
AL	No	NO. The Title VI coordinator does not have authority to administer an effective state-wide program. AL does not conduct Title VI reviews of sub-recipients.	No	The Alabama Division has worked closely with the state by providing technical advice and assistance. AL has responded to the Assessment findings and taken action to remedy the deficiencies, including producing signed assurances.
AZ	No	NO. Arizona has not conducted Title VI reviews of its sub-recipients and program officials have not received Title VI training.	Yes	The Arizona Division is currently reviewing the state's Title VI programs and policies. The state added a new Title VI specialist and is re-crafting its policies. AZ has submitted its assurances.
DE	No	NO. There was an absence of written policies, procedures, and guidelines to support a civil rights program. Delaware had no procedures set for compliance reviews.	Yes	The Delaware Division met with the state and encouraged action. Delaware hired a civil rights director, and has created an action plan to correct deficiencies including a Title VI compliance program.
GA	Yes	NO. Georgia's Title VI coordinator does not have sufficient authority and responsibility to administer an effective Title VI program. Georgia does not conduct program reviews of its sub-recipients. Staff do not have adequate training.	Yes	The Georgia Division conducted a 2009 Title VI review of the state using regulations and Assessment findings. The Division is working with the new Title VI coordinator to improve the programs.
IA	Yes	NO. Iowa lacked the Title VI program reviews, evaluations, and monitoring that are essential for an effective Title VI program.	No	The IA assessment and recommendations for improvement were transmitted to IA DOT. IA has chartered a team to further evaluate its civil rights programs.
IN	Yes	NO. Indiana needed to update its Title VI plan to show how it is fulfilling its responsibilities, include nondiscrimination policies, and prepare procedures for processing and resolving Title VI complaints.	No	The report included recommendations for improvement. A follow-up review was conducted by the IN Division and determined IN was taking steps towards improving its Title VI programs.
KY	Yes	NO. Inadequate staff and lack of formal processes for monitoring Title VI activities.	No	The Kentucky Division worked with the state to implement recommendations from its 2006 assessment. The state has hired a Title VI coordinator and is working towards strengthening its programs.
MD	Yes	NO. Inadequate staff and lack of procedures to eliminate discrimination and conduct compliance reviews. Maryland has not conducted Title VI reviews of its sub-recipients.	Yes	The Maryland Division worked with the state to correct deficiencies. Maryland has hired a Title VI coordinator and is completing a Title VI review plan. The state prepared a 2009 Title VI Accomplishments Report for the Division.

ATTACHMENT 4

OIG Summary of Individual Baseline Assessments and Survey of Division Offices

STATE	ASSURANCE STATEMENT PROVIDED? [1]	DEMONSTRATED ADMIN MECHANISMS TO ENSURE COMPLIANCE? [1]	DID FHWA DIVISION OFFICE CONDUCT INVESTIGATION? [2]	WHAT ACTIONS HAVE BEEN TAKEN BY THE DIVISION OFFICE AND/OR WHAT PROGRESS HAS BEEN MADE BY THE STATE TRANSPORTATION AGENCIES? [2]
ND	Yes	NO. North Dakota has inadequate staffing to accomplish its civil rights objectives. It also does not have procedures in place to conduct Title VI reviews of its sub-recipients.	No	The North Dakota Division forwarded Assessment findings to the state and coordinated a meeting to discuss those findings. The Division has monitored the state's activities. North Dakota has hired a Title VI coordinator and drafted a Title VI plan.
NE	No	NO. Nebraska does not have sufficient staffing to comply with 49 CFR Part 21. The staffing levels and processes are inadequate.	No	The Nebraska Division worked with the state who has hired additional civil rights staff and is improving its program processes.
NJ	Yes	NO. New Jersey has inadequate staffing and has not conducted Title VI reviews of its sub-recipients.	Yes	The Division provided the state with a formal notice of deficiencies found in the Assessment.
NV	Yes	NO. Nevada's civil rights department was inadequately staffed. The staff require additional training. The state has not conducted annual Title VI reviews of its sub-recipients.	Yes	The Nevada Division reviewed the state's Title VI programs and procedures. The Division recommended that the state hire a full-time Title VI officer. The position was recently approved but the position has not been filled. The Division continues to provide technical assistance and education.
OH	Yes	NO. Ohio needed to adequately staff an independent civil rights unit and it needed to conduct Title VI reviews of its sub-recipients.	Yes	The Ohio Division initiated a 2007 Title VI review prior to the Assessment because of risks identified in previous reviews.
OK	Yes	NO. Oklahoma needs to create processes for sub-recipient Title VI compliance reviews and complaint processes.	No	The Oklahoma Division worked closely with the state to create a Title VI plan and provided technical assistance and training. Oklahoma drafted a new plan and hired a Title VI coordinator.
PA	Yes	NO. The civil rights unit is not adequately staffed. PA does not conduct Title VI reviews of its sub-recipients.	Yes	The Pennsylvania Division monitors the state's annual submission to ensure compliance with Title VI requirements.
SC	Yes	NO. South Carolina does not have adequate staffing in place and is not performing Title VI reviews on its sub-recipients.	No	South Carolina has procedures in place for conducting sub-recipient reviews and the Title VI coordinator now has easy access to the Secretary.
UT	Yes	NO. Utah has inadequate staff to administer the Title VI program.	No	The Utah Division met with the state and the state agreed to perform corrective actions. The Division is providing Utah with additional training and assistance. Utah is committing to establishing an FHWA-approved Title VI program.

ATTACHMENT 4

OIG Summary of Individual Baseline Assessments and Survey of Division Offices

STATE	ASSURANCE STATEMENT PROVIDED? [1]	DEMONSTRATED ADMIN MECHANISMS TO ENSURE COMPLIANCE? [1]	DID FHWA DIVISION OFFICE CONDUCT INVESTIGATION? [2]	WHAT ACTIONS HAVE BEEN TAKEN BY THE DIVISION OFFICE AND/OR WHAT PROGRESS HAS BEEN MADE BY THE STATE TRANSPORTATION AGENCIES? [2]
WI	Yes	NO. Wisconsin does not have a compliance program and does not conduct sufficient program reviews. Also, additional Title VI staff training is required.	No	The Wisconsin Division identified 21 areas for improvement and the state initiated informal measures to make the improvements. Wisconsin has a new sub-recipient Title VI plan and the Wisconsin Division provided additional staff training.
WY	Yes	NO. Wyoming's civil rights program is inadequately staffed and they are not conducting Title VI reviews of sub-recipients.	Yes	The Wyoming Division stated that their baseline assessment was the investigation. Afterwards, it initiated discussions with the state who, in turn, hired a civil rights coordinator. The state also revised its Title VI plans. And it is no longer identified as "high risk" by the Division.

NOTES:

[1] Summary of data contained in individual state baseline assessments.

[2] Summary of data obtained from OIG survey to FHWA state division offices.

ATTACHMENT 5

**September 3, 2009 Action Memo to All Division
Administrators**



U.S. Department
of Transportation
Federal Highway
Administration

Memorandum

Subject: **ACTION:** Final Report for the National
Civil Rights Program Baseline
Assessment

Date: September 3, 2009

From: 
Allen Masuda
Associate Administrator for Civil Rights
Washington, DC

In Reply Refer To:
HCR-1

To: Division Administrators

Attached for your use and information is a copy of the Final Report for the National Civil Rights Program Baseline Assessment. The individual State assessments were completed during 2007 and 2008 and the report for your State was sent to you soon after the team's visit.

This national program review covered 51 of the 52 States and assessed the 5 major program areas of civil rights (Title VI, DBE, ADA/504, State internal EEO, and contractor compliance), State organizational structure and procedures, and data collection and analysis.

For your easy reference, attached is the summary for your State which was included in the original report. We recently added the Red - Yellow - Green indicators for each of your 5 program areas. Only 4 States were judged Green in all 5 categories and 2 States received Red in all 5 categories. As committed from the start of the baseline assessments, we are not providing the rating table covering all of the States in this Final Report.

Nationally, our strength is in the DBE program. Three fourths of the States met or exceeded the baseline for the DBE program. About half the States met or exceeded the baseline for their internal EEO and contractor compliance programs. The two remaining programs, Title VI and ADA/504, exceeded the baseline in only 37% and 20% of the States, respectively. The observations from the baseline assessments indicated we needed to provide more training to FHWA and State staff. Because of this we have redirected our resources to provide more training on Title VI and ADA/504 across the country by classroom training, videoconferences, and webinars. The results of the baseline assessment have also allowed us to concentrate our technical assistance on some States with the lowest ratings.

Three fourths of the States do not have a "civil rights unit." We found various civil rights responsibilities assigned to different offices within the State DOTs and enforcement at varying levels. A "civil rights unit" high enough in the organization with direct access to the chief



administrative officer (CAO) and with sufficient authority to ensure nondiscrimination in all program areas is required by the regulations. The basis for this requirement is to assure that personnel in a State civil rights office do not encounter conflicts of interest or intimidation while implementing and overseeing civil rights programs and investigating complaints across the State and in State programs. Access to the CAO affords timely decisions and expeditious corrective actions. Further, consolidating responsibilities and personnel into a single unit facilitates the development of civil rights expertise within the State DOT and better communications among the civil rights disciplines.

Because of the individual baseline assessment reports, many States in cooperation with their Division Offices have made improvements to their programs. Some examples are described in this report and we have learned of other positive changes. We acknowledge the observations and recommendations for your State may no longer be fully applicable. Therefore, we request that you provide a brief update by email to me, Vickie Anderson, Candace Groudine and Teresa Banks on any changes that have occurred since the assessment was completed in your State.

Because of the value we found in this national effort, we are requiring that each Division complete a civil rights program self assessment every three years and provide the written report to the Office of Civil Rights. For those State that were completed in 2007, a self assessment should be done in FY 2010. We suggest that you encourage your State to participate in this self assessment. We will be providing you with a self-assessment tool for each of the 5 programs. The ones used for the baseline assessment will be modified and enhanced to better serve as a self-assessment tool. The DBE program self-assessment tool is essentially complete while the other 4 will be more fully developed. We plan to complete these over the next few months.

At the AASHTO regional meetings, Jeff Paniati has briefed the State CAOs on the national findings of the baseline assessments. He has encouraged States to consolidate their civil rights functions into one unit and to do better in data collection and analysis. In light of his efforts, I encourage you to revisit with your State CAO, the status of your civil rights program in perspective with the national baseline assessment findings. During this visit, you should reiterate the original recommendations, if they are still appropriate, and emphasize the importance and benefits of having a civil rights unit responsible for all civil right functions.

Attachments:

1. Baseline Summary
2. Baseline Assessment Final Report

ATTACHMENT 6

Resource Center Role and Responsibilities



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FHWA Resource Center

CIVIL RIGHTS TECHNICAL SERVICE TEAM

Transportation touches the lives of all people living in the United States—it affects their economic well-being, their safety, their links to other places, the quality of their environment, their access to education and cultural activities, and their security at home and abroad. Almost any activity that people engage in outside the home such as working, managing personal business, and socializing—relies on access to transportation of some kind, from sidewalk design to the width of airplane aisles.

As leaders for improving mobility on our Nations Highway's through National Leadership, Innovation, and Program Delivery, the FHWA (Federal Highway Administration) has an inherent responsibility to ensure that all people, regardless of Race, Color, National Origin, Sex, Age, Religion or Disability share in the benefits of transportation programs. Civil Rights laws and implementing regulations extend to every facet of the Federal-aid Highway Program. This includes the design and construction of highways—from planning to project development, right-of-way, safety, and protecting the human and natural environment.

Our vision is that: "Our Agency and our Transportation System are the Best in the World."

The FHWA Civil Rights' mission is "To protect the rights of those employed in, benefiting from, or affected by FHWA or the programs, policies and activities of its recipients, sub-recipients, and contractors".

The Civil Rights Technical Service Team (CR TST) at the Federal Highway Administration (FHWA) Resource Center is committed to professional excellence and serving our customers with high quality products and timely services. The CR TST also works in partnership with our Headquarters Office of Civil Rights to develop, promote and implement new policies, guidance, technologies, and National Initiatives to advance the FHWA/State Transportation Agency (STA) civil rights programs. The CR TST is pleased to offer our services and provide our Division Offices and STA with the latest in Civil Rights training, technical assistance and technology deployment in five major civil rights program areas:



CONTACT US
staff / phones

- Technical Service Teams**
- Air Quality
 - Civil Rights
 - Communications and Marketing
 - Construction & Project Mgmt
 - Environment
 - Finance Services
 - Geotech & Hydraulics
 - Knowledge Application
 - Operations
 - Pavement & Materials
 - Planning
 - Safety & Design
 - Structures
- Corporate Management**
Administrative

- **Title VI/Nondiscrimination Program:** The Federal Highway Administration's Title VI/Nondiscrimination Program is governed by Title VI of the Civil Rights Act of 1964. Title VI of the Civil Rights Act of 1964, provides that no person, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. Sex, age, handicap/disability are covered under other laws but recognized by FHWA to enforce our nondiscrimination programs. Each STA receives federal financial assistance from FHWA as well other USDOT agencies. As recipients of FHWA funds, STAs must administer a Title VI/Nondiscrimination program to prevent discrimination and ensure nondiscrimination in all of their programs and activities, as well as those of their subrecipients (cities, counties, etc). The STA's Title VI/Nondiscrimination program must comply with FHWA regulations (23 CFR 200) and USDOT regulations (49 CFR 21). Key elements of a STA's Title VI/Nondiscrimination Program are: Civil Rights organization and staffing; implementation of Title VI policies and procedures; signed USDOT Standard Assurances; programs to conduct Title VI reviews; data collection, analysis and reporting; training, public involvement; procedures to process and resolve complaints.
- **ADA/Section 504:** Title II of the Americans with Disabilities Act (ADA) of 1990 prohibits discrimination against people with disabilities in State/Local Government Services. Section 504 of the 1973 Rehabilitation Act prohibits discrimination on the basis of disability in federally assisted programs. The Federal Highway Administration's (FHWA) ADA/504 program ensures that recipients of Federal-aid and State and local government (public) entities that are responsible for roadways and pedestrian facilities do not discriminate on the basis of disability in any highway transportation program, activity, service or benefit they provide to the public; and ensure that recipients' and public entities' public rights-of-way system (sidewalks) is accessible to people with disabilities. Key ADA/504 requirements which recipients and public entities implement include: administrative requirements (designation of an ADA/504 Coordinator); providing program accessibility (self-evaluation and Transition Plan); constructing

accessible new and altered facilities (curb ramps, buildings); monitoring activities of FHWA sub-recipients (local governments) and provide effective communications to people with disabilities (sign language interpreters). Section 504 requirements under USDOT regulations are 49 CFR 27 and Title II ADA requirements are contained in Department of Justice regulations under 28 CFR 35.

- **Disadvantaged Business Enterprise Program (DBE):** The DBE program is a U.S. Department of Transportation's (USDOT) program that ensures equal opportunity in transportation contracting; addresses the effects of discrimination, and promotes increased participation of DBEs in DOT assisted contracts. The STAs award federally-assisted highway contracts therefore each STA is required to submit a DBE Plan to FHWA for approval. The approved DBE Plan obligates the STA to administer a DBE Program that complies with USDOT regulations under 49 CFR 26. Key elements of a DBE program include: Designation of DBE Liaison Officer; signed Policy Statement; DBE goals and good faith efforts; contract administration procedures; reporting; program monitoring; certification; compliance and enforcement.
- **Contractor Compliance Program:** The FHWA statute (23 USC 140 (a), and regulations under 23 CFR 230 - Subparts A, C, and D, requires STAs to administer an Equal Opportunity Program. The STA's Equal Opportunity Program includes Part I - Contractor Compliance and Part II - State Internal EEO. The Contractor Compliance Program seeks to ensure that Federal contractors and subcontractors performing work on Federal and federally assisted highway contracts do not discriminate in their employment and contracting practices based on race, color, religion, sex, national origin, age or disability. The STAs must administer a contractor compliance program to meet the FHWA regulations. Key elements of a Contractor Compliance program are: organization and staffing; contract compliance review procedures; management of the On-the-Job Training (OJT) program; data collection, analysis, and reporting; and procedures to process complaints against highway contractors.
- **State Internal Equal Employment Opportunity Program (SIEEO):** The FHWA regulations under 23 CFR 230-Subpart C, require STAs to implement an Internal EEO program. The SIEEO

program is comprehensive and includes all elements of a STAs personnel management, policies, and procedures. Key elements of the SIEEO program are: Designation of an Affirmative Action or Internal EEO Officer; implementation of an Affirmative Action Plan; issuance of EEO Policy statement and commitment; data collection, workforce analysis and reporting; removal of barriers; training; processing EEO complaints, accountability of management personnel; program monitoring and evaluation. As a condition for continued receipt of FHWA funds each STA must submit an annual EEO program update to FHWA for approval.

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 Rehabilitation Act of
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 Environmental Justice
 Project Labor
 Agreements(PLA)/Union
 Programs
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 Title VI
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State Internal and
 Affirmative Action
 Programs
 Equal Opportunity
 Contractor
 Compliance and
 On-the-Job
 Training
 Nondiscrimination
 Programs: Title VI
 and Environmental
 Justice
 Equal Employment
 Opportunity (EEO)

and Diversity
Strategic and
Performance
Planning
Risk Assessment
and
Program\Process
Reviews



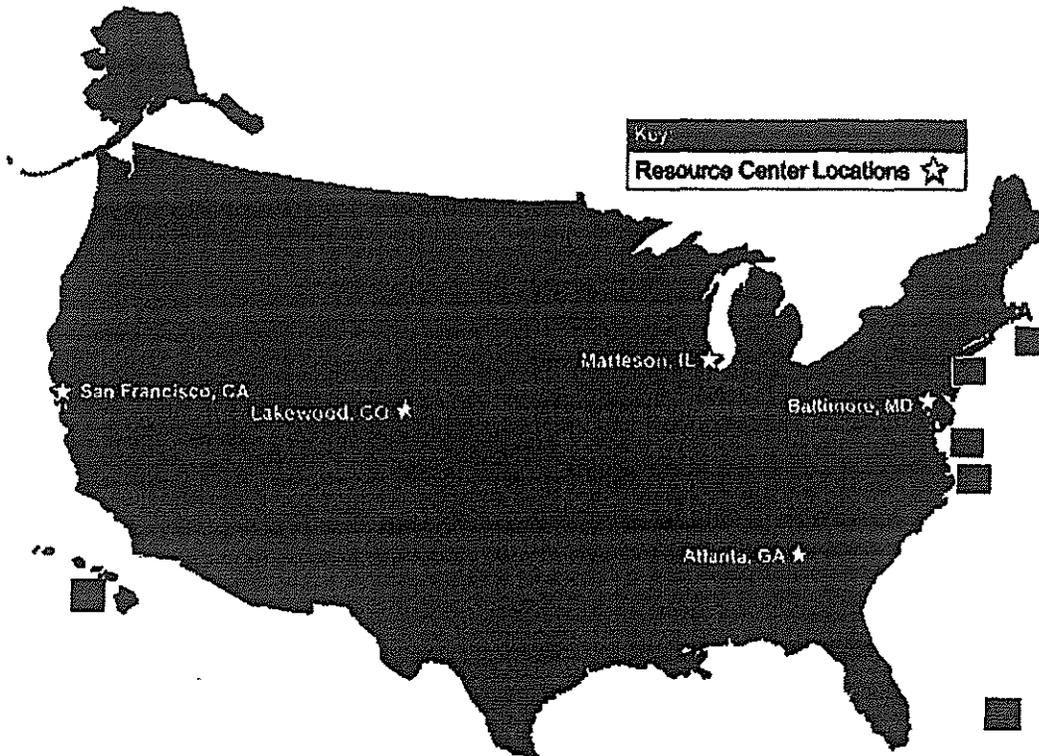
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FHWA Field Offices

Key Field Personnel Directory



The resource center links below provide the hours of operation, addresses, and telephone numbers of the component office locations. The following division offices have their own web sites (click on the map above or the links below):

Resource Center

Division Offices

**Federal Lands
Highway Division
Offices
(see map below)**

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Idaho
Illinois
Indiana
Iowa
Kansas
Kentucky
Louisiana
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Maryland (DelMar)
Massachusetts
Michigan
Minnesota
Mississippi
Missouri
Montana
Nebraska
Nevada
New Hampshire
New Jersey
New Mexico
New York
North Carolina
North Dakota
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Oklahoma
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Philadelphia Metropolitan Office
Puerto Rico
Rhode Island
South Dakota
Tennessee
Texas
Utah
Vermont
Virginia
Washington
West Virginia
Wisconsin
Wyoming

FHWA Field Organization

The field organization delivers program services to the FHWA's partners and customers. This organization consists of resource centers, State-level Federal-aid and Federal Lands Highway divisions.

Resource Center.

The FHWA Resource Center, located in Atlanta, Ga., Baltimore, Md., Matteson, Il., and San Francisco, Ca., provides technical support and program assistance along with training, and technology delivery to FHWA's Division Offices, State Departments of Transportation, Metropolitan Planning Organizations, and other transportation partners.

Federal-aid Division Offices.

These division offices provide front line Federal-aid program delivery assistance to partners and customers in highway transportation and safety services, including but not limited to, planning and research, preliminary engineering, technology transfer, right-of-way, bridge, highway safety, traffic operations, environment, civil rights, design construction and maintenance, engineering coordination, highway beautification, and administration. Each of the fifty-two operating division offices (one in each State, the District of Columbia, and Puerto Rico) is located in the same city as the State department of transportation, which is usually the State capital. In addition, jointly with the Federal Transit Administration, the FHWA operates four metropolitan offices in Philadelphia, Pennsylvania; New York, New York; Chicago, Illinois; and Los Angeles, California, that are extensions of their respective division offices. These offices provide assistance, guidance, and information regarding Federal transportation programs to local, State, and other Federal agencies in these metropolitan areas.

FHWA Directors of Field Services (DFS) organizationally report to Executive Director (HOA-3), Washington, DC.

DFS-North, Joyce Curtis - Connecticut, Illinois, Indiana, Iowa, Maine, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, West Virginia, and Wisconsin.

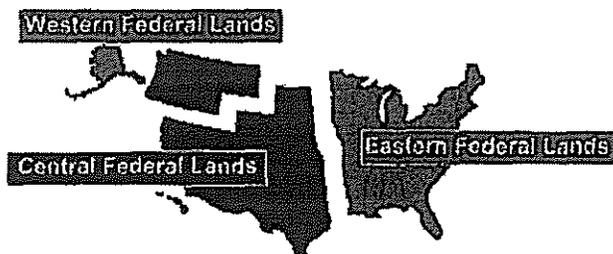
DFS-South, David Gibbs - Alabama, Arkansas, Delaware, District of Columbia, Florida, Georgia, Kansas, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, Puerto Rico, South Carolina, Tennessee, Texas, and Virginia.

DFS-West, Christine Johnson - Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington and Wyoming.

Directors of Field Services Contact Information

Federal Lands Highway Divisions.

The Federal Lands highway (FLH) divisions, which report to the Headquarters Federal Lands Highway Office, administer FLH programs (Forest Highways, Park Roads and Parkways, Public Lands, Refuge Roads, and Indian Reservation Roads); the Defense Access Roads Program; and the Emergency Relief Program on Federally Owned Roads; provide engineering related services to other Federal agencies, FHWA offices, and foreign countries as directed; and carry out technology and training activities related to FLH projects. There are three FLH divisions (Eastern, Central, and Western) located in Sterling, Virginia; Lakewood, Colorado; and Vancouver, Washington; respectively.



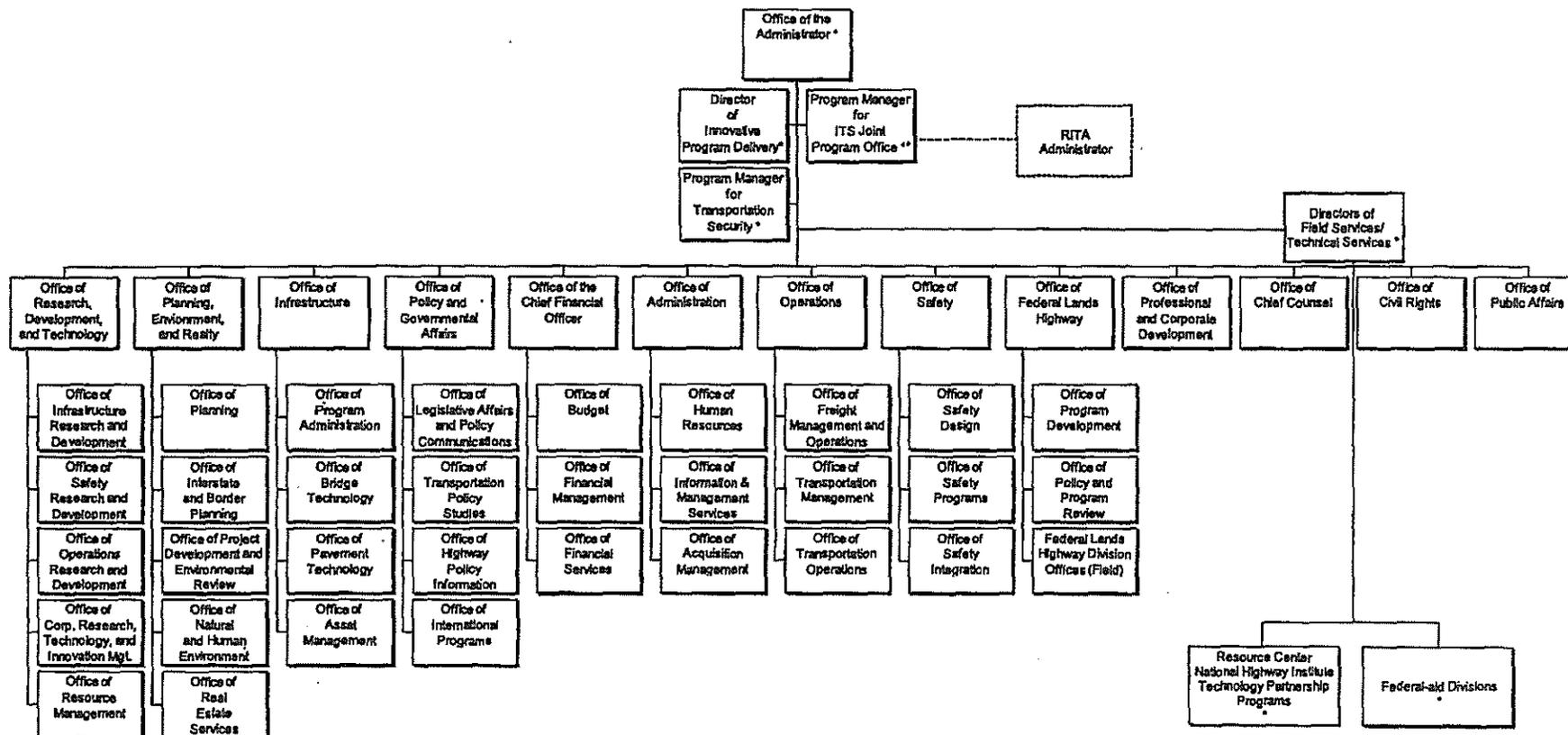
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United States Department of Transportation - Federal Highway Administration

FEDERAL HIGHWAY ADMINISTRATION



* The Office of the Administrator includes the Administrator, Deputy Administrator, and the Executive Director. FHWA's Director of Innovative Program Delivery, the Program Manager for Transportation Security, the Directors of Field Services (DFS), and the Director of Technical Services (DTS) are extensions of the Executive Director's office. The DFSs provide administrative supervision and leadership on strategic initiatives to their constituent Federal-aid division offices. The DTS provides executive direction to the Resource Center, the National Highway Institute, and Technology Partnership Programs.

** The Intelligent Transportation Systems Joint Program Office (ITS JPO), which has a departmentwide role and authority for coordinating ITS program activities and initiatives, is organizationally located within FHWA. The Program Manager for the ITS JPO provides executive direction over the ITS JPO. The Administrator of the Research and Innovative Technology Administration (RITA) has primary responsibility for the strategic oversight and direction of the ITS JPO, including but not limited to, providing policy guidance for ITS programs and activities and coordinating ITS research within the Department. The FHWA Administrator is responsible for ensuring the continuing availability of professional, technical, and administrative services to support the ITS JPO.