



**U.S. Department of  
Transportation**

Office of the Secretary  
of Transportation

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June 28, 2010

Karen P. Gorman, Esq.  
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U.S. Office of Special Counsel  
1730 M Street, NW, Suite 300  
Washington, DC 20036-4505

Re: OSC File No. DI-09-0965

Dear Ms. Gorman:

This is to follow up on your recent request for supplemental information in the above-referenced matter. Please find enclosed a May 27, 2010, memorandum from the Federal Highway Administration (FHWA) Associate Administrator for Civil Rights to FHWA Division Administrators and Directors of Field Service which describes specific actions taken by FHWA since the investigation of this matter by the Office of Inspector General. The memorandum describes the emphasis that FHWA is placing on Title VI oversight and compliance and advises Division Offices that completing a self-assessment is not a substitute for compliance reviews or investigations when noncompliance is indicated. Please treat this memorandum as our supplemental report.

Please do not hesitate to contact me if you have any questions.

Sincerely,

Judith S. Kaleta  
Assistant General Counsel for General Law

Enclosure

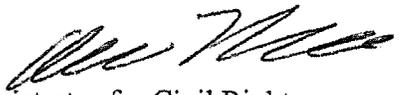


U.S. Department  
of Transportation  
Federal Highway  
Administration

# Memorandum

Subject: **ACTION:** Title VI Program Oversight  
Emphasis

Date: MAY 27 2010

From: Allen Masuda   
Associate Administrator for Civil Rights

In Reply Refer To:  
HCR-1

To: Division Administrators  
Directors of Field Services

This memorandum is being issued to remind you of (1) the critical importance of State Transportation Agencies (STAs) complying with all nondiscrimination laws and regulations and (2) our responsibilities in oversight and enforcement. This supports the U.S. Department of Justice (DOJ) memorandum dated July 10, 2009, inviting Federal Agency Civil Rights Directors and General Counsels to join in "a government-wide initiative to strengthen enforcement of Title VI." Through this memorandum, the DOJ urged each Federal agency to examine anew all aspects of its compliance program. It also encouraged Federal agencies "to submit to [DOJ] Civil Rights Division for litigation Title VI and other civil rights cases that cannot be resolved administratively."

During 2007 and 2008, FHWA conducted Civil Rights Baseline Assessments in all 50 States and the District of Columbia (Attachment 1). The assessment covered the five basic civil rights programs (Title VI, DBE, State Internal EEO, Contractor Compliance, and ADA). To encourage frank discussions with staff of STAs, the Baseline Assessment was not conducted as a compliance review, but rather, as an assessment with the purpose of assisting the STAs in delivering a quality Federal-aid highway program and assisting the Division Offices in evaluating and improving the STAs' implementation of the five major civil rights programs

The results from the Baseline Assessment were extremely valuable to FHWA and the States. We successfully achieved our purpose by identifying areas needing improvements and redirecting our resources where they were most needed. Even today, we are still making improvements through program changes and providing technical assistance and training.



Subsequent to completing the Baseline Assessment, the US DOT Office of Inspector General (IG) received a whistleblower complaint alleging FHWA did not conduct investigations upon finding non-compliance issues in States' Title VI programs. The IG conducted its investigation on the actions taken by the Division Offices on the findings of the individual State baseline assessment reports. More specifically, the IG was interested in what FHWA had done to bring the STAs into compliance where deficiencies existed. The IG focused its attention on 10 States after reviewing our Baseline Assessment records and subsequent responses from the Directors of Field Services.

Though not a formal investigation, the Baseline Assessments identified issues of non-compliance. The issues identified in the 10 non-complying States fell into the following main categories: (1) inadequate STA staffing; (2) failure by the STAs to conduct Title VI reviews of sub-recipients, and (3) the lack of an updated STA Title VI plan that addressed all of the required elements. The level and experience of staffing determines how well an STA can comply with all of the requirements listed in 23 CFR 200.9. For your ready reference and information, Attachment 2 is a brief summary of our Title VI requirements.

We were able to resolve deficiencies in four of the 10 States. For the remaining six States where deficiencies were allowed to continue, we have issued letters placing each of the States in a deficiency status in accordance with 23 CFR 200.9. As a result of these letters and possible subsequent actions, we expect to achieve full compliance in these States.

As an agency, we are committed to instituting a more aggressive oversight emphasis on the Title VI program. The draft 2011 Strategic Implementation Plan was modified to carry this emphasis into the future. This was discussed during the repeat Program Delivery breakout sessions at our Spring Business Meeting. The Fall Business Meeting agenda will include coverage on the DBE and Title VI programs: our recent experiences and lessons learned.

As announced last year, the Divisions that had their Baseline Assessments completed in 2007 are to complete a civil rights self-assessment this fiscal year. The Resource Center will be providing the necessary program assessment tools soon. For those Divisions that had their Baseline Assessment completed in 2008, the self-assessment needs to be completed in fiscal year 2011. The National Review Team (NRT) is currently reviewing the DBE program across the country, coverage of the DBE program during the self-assessment will not be necessary during 2010 and 2011. However, a Division may conduct any follow-up activities on any NRT findings and recommendations during the time the Division conducts its self-assessment.

These self-assessments will center on program/process improvements as well as serving as a means to provide early and systematic identification of compliance issues and helping us direct our resources to where they are needed the most. Completing a self-assessment is not a substitute for conducting compliance reviews or investigations where greater detail and in-depth evaluation is warranted. In accordance with 49 CFR 21.11(c), ***"The Secretary will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply..."*** STAs should not be given the impression that they will not be the subject of a Title VI investigation simply because they participated in a self-assessment. A Division Office

should initiate a review or investigation based on a risk assessment, findings of a self-assessment, or whenever there is reason to believe there is noncompliance.

The Office of Civil Rights is working with the office of Human Resources to fill a full-time Title VI Program Manager position at Headquarters. The individual selected for this position will provide technical and policy guidance and will assist the Divisions in oversight activities to ensure full compliance with Title VI. This involvement will start with the 2010 self-assessments and carry over into the 2011 self-assessments and include participating with the Divisions on compliance reviews. Mohamed Dumbuya has been reassigned to a shared position with the Virginia Division and the Resource Center, and will continue to provide guidance and technical assistance on the Title VI matters.

In cooperation with the Resource Center Civil Rights Technical Services Team, we are arranging for a FHWA meeting with the National AASHTO Civil Rights Symposium in Norfolk, Virginia. The Symposium will be held September 13 – 15, and the FHWA meeting will be held concurrently on Wednesday, September 15. We plan to discuss many civil rights topics with emphasis on DBE and Title VI issues. Within the last three months, we have placed national importance on both of these programs, therefore, I strongly encourage you to send your civil rights program manager to the AASHTO Conference.

Likewise, for our leadership, we will be devoting part of our Fall Business Meeting to DBE and Title VI issues to discuss our progress in both programs as well as better defining what we need to do as an agency.

The IG investigation and findings reminds us that Division Offices are our front line for conducting oversight activities that ensure compliance with our laws and regulations. This applies to all programs and not just those under civil rights. Regardless of how a Division Office employee learns about issues of non-compliance, it is the Division's responsibility to bring the State into compliance and not allow any violation to continue.

Attachment

## Attachment 1 - Baseline Assessment – Year Conducted

### 2007

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AL-07	IL -07	NM -07	VT -07
AK -07	IN -07	NY -07	VA -07
AR -07	ME -07	OK -07	WY -07
CA -07	MD -07	PA -07	
CT -07	MA -07	RI -07	KY Completed in 06
DC -07	MN -07	SC -07	
DE -07	NE -07	SD -07	
FL -07	NV -07	TN -07	
GA -07	NJ -07	UT -07	

### 2008

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AZ -08	MI -08	OH -08	
CO -08	MS -08	OR -08	
HI -08	MO -08	TX -08	
ID -08	MT -08	WA -08	
IA -08	NH -08	WV -08	
KS -08	NC -08	WI -08	
LA -08	ND -08		PR not included

## Attachment 2

### State DOT Title VI Requirements under 23 CFR 200 and 49 CFR 21

1. Must have signed Title VI State Assurances (49 CFR 21.7 & 23 CFR 200.9(a) (1)). Failure or refusal to furnish required assurance is grounds for the termination, refusal to grant or continue Federal financial assistance (49 CFR 21.13(b) & (c)).
2. Must have a method of administration (49 CFR 21.7(b) and US DOT Order 1050.2, item #9) – Basically a Title VI Program.
3. Take affirmative action to correct any deficiencies found by the FHWA within a reasonable time period, not to exceed 90 days (23 CFR 200.9(a) (3)).
4. Conduct annual reviews of all pertinent program areas (23 CFR 200.9(a) (4) and (23 CFR 200.9(b) (6)).
5. Establish a civil rights unit with Title VI Coordinator and Specialist (23 CFR 200.9(b) (1)).
6. Adequately staff the civil rights unit to effectively implement the State civil rights requirements (23 CFR 200.9(b) (2)).
7. Develop procedures for prompt processing and disposition of Title VI complaints received directly by the State (23 CFR 200.9(b) (3)).
8. Develop procedures for the collection of statistical data (race, color, age, disability/handicap, sex, and national origin) of participants in, and beneficiaries of State highway programs (23 CFR 200.9(b) (4)).
9. Develop a program to conduct Title VI reviews of program areas (23 CFR 200.9(b) (5)).
10. Conduct Title VI reviews of sub-recipients including cities, counties, consultant contractors, suppliers, universities, colleges, planning agencies, and other recipients of Federal-aid highway funds (23 CFR 200.9(b) (7)).
11. Review State program directives in coordination with State program officials and, where applicable, include Title VI and related requirements (23 CFR 200.9(b) (8)).
12. Conduct training programs on Title VI and related statutes for State program and civil rights officials, as well as sub-recipients and stakeholders (23 CFR 200.9(b) (9)).
13. Prepare a yearly report of Title VI accomplishments for the past year and goals for the next year (23 CFR 200.9(b) (10)).
14. Submit a Title VI implementing plan to the Division Office for approval or disapproval (23 CFR 200.9(b) (11)).
15. Develop Title VI information for dissemination to the general public and, where appropriate, in languages other than English (23 CFR 200.9(b) (12)).
16. Establish procedures for pre-award and post-award approval reviews (23 CFR 200.9(b) (13)).
17. Establish procedures to identify and eliminate discrimination when found to exist (23 CFR 200.9(b) (14)).
18. Establish procedures for promptly resolving deficiency status within a period not to exceed 90 days (23 CFR 200.9(b) (15)).