

TITLE VI ESSENTIALS

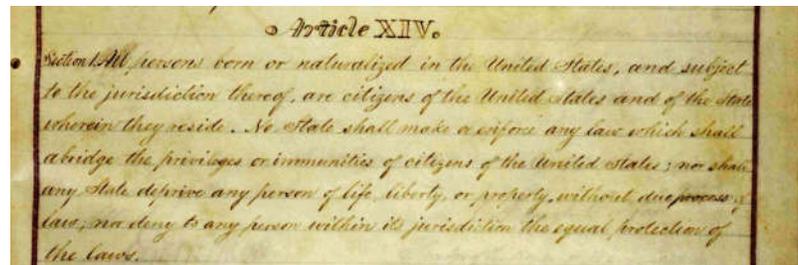


TITLE VI - INTRODUCTION

What is the law?

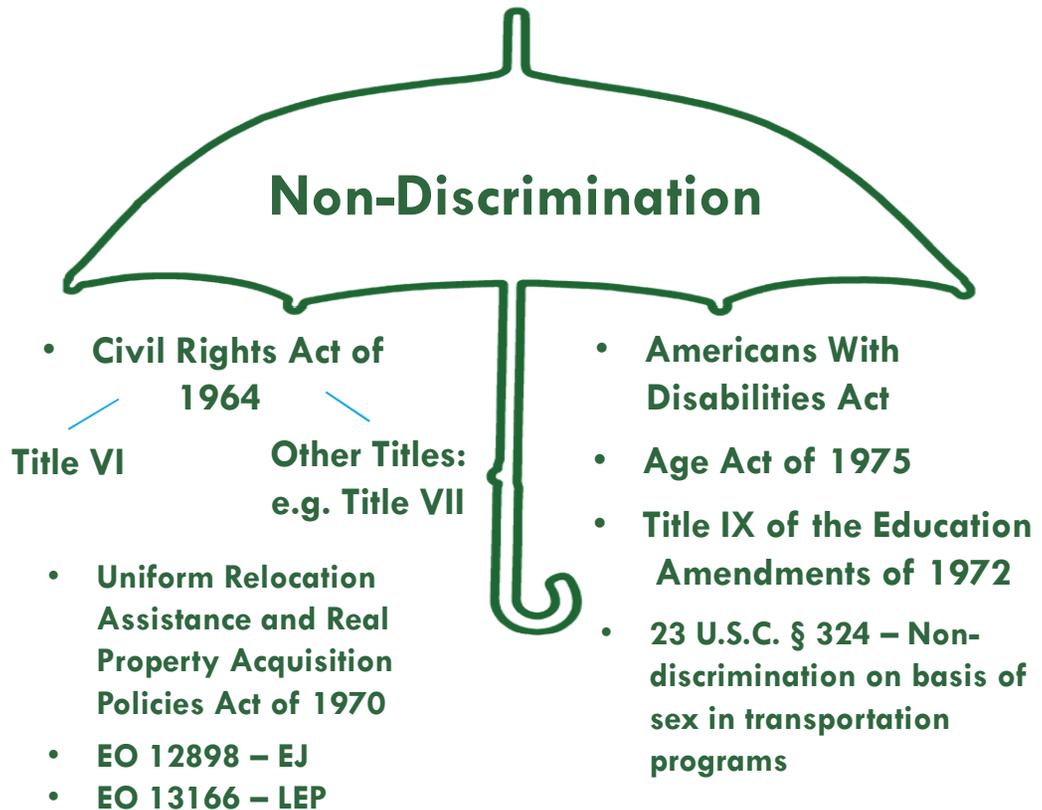
“No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”

Title VI of the Civil Rights Act of 1964; 42 U.S.C. § 2000d, et seq.



TITLE VI - INTRODUCTION

Relationship between Title VI and Other Civil Rights Laws



TITLE VI - INTRODUCTION

23 C.F.R. § 200.5(p) *Title VI Program*. The system of requirements developed to implement Title VI of the Civil Rights Act of 1964. References in this part to Title VI requirements and regulations shall not be limited to only Title VI of the Civil Rights Act of 1964. **Where appropriate, this term also refers to the civil rights provisions of other Federal statutes to the extent that they prohibit discrimination on the grounds of race, color, sex, or national origin** in programs receiving Federal financial assistance of the type subject to Title VI itself.

TITLE VI - INTRODUCTION

What is the law?

Civil Rights Restoration Act of 1987

- Rejected 1984 Supreme Court decision in *Grove City College v. Bell* (465 U.S. 555)
- Amended Title VI definition of “programs and activities” to restore expansive coverage



Restoration Act Title VI Coverage by Entity Type*

State or Local Government

All of the operations of:

(1)(A) a **department, agency, special purpose district, or other instrumentality of a State** or of a local government; or

(B) the entity of such State or local government that **distributes such assistance** and each such department or agency... to which the assistance is extended,...

... any part of which is extended Federal financial assistance.

Educational Institution

All of the operations of:

(2)(A) a college, university, or other postsecondary institution, or a public system of higher education; or

(B) a local educational agency (as defined in Section 8801 of Title 20), system of vocational education, or other school system;

... any part of which is extended Federal financial assistance.

TITLE VI - INTRODUCTION

Civil Rights Restoration Act of 1987: Examples

1. If city, county, or other local public agency (LPA) receives FHWA financial assistance through State DOT, then entire road and highway transportation program for LPA covered by Title VI, but not activities unrelated to the road and highway program.

For Title VI to apply to LPA's other programs and activities, LPA would need to receive federal financial assistance from another federal agency. E.g. if city receives funding from (1) FHWA for highways and roads and (2) the U.S. Department of Justice for police training, then Title VI would apply to the city's highways and road and police programs and activities.

TITLE VI - INTRODUCTION

Civil Rights Restoration Act of 1987: Examples

2. However, if an LPA office receives federal financial assistance funds and then distributes it to other internal departments, the receiving office is covered by Title VI as well as the internal departments.

For example, if a city mayor's office distributes FHWA funding to the city's transportation department, then Title VI applies to the mayor's office and the city transportation department.

TITLE VI - INTRODUCTION

What is the case law?

Alexander v. Sandoval, 532 U.S. 275
(2001)

U.S. Supreme Court Held the Title VI statute does not allow for private lawsuits based on **disparate impact**. The private right of action is only for **disparate treatment**.



TITLE VI - INTRODUCTION

What is the case law?

Alexander v. Sandoval (cont.)

However, the Court recognized federal agencies may pass disparate impact regulations, **which are enforceable under administrative law by those agencies**. Therefore:

- Persons may file complaints with federal agencies against recipients;
- Federal agencies may initiate compliance reviews; and
- Federal agencies may find recipients non-compliant, resulting in potential loss of federal funding.

Why is this important? Recipients have used *Sandoval* to argue federal agencies lack authority (jurisdiction) over disparate impact discrimination.

TITLE VI - INTRODUCTION

What is the law? – Excepted Activities

Title VI generally does not apply to:

1. Employment practices unless the primary purpose of the federal financial assistance is to provide employment.
2. Activities of the federal government, itself.

TITLE VI - BASICS

Who is protected?

Title VI applies to all “persons.” Courts have interpreted the Equal Protection Clause of the Fourteenth Amendment and analogous language in civil rights laws to mean that Title VI protects all persons in the United States.

Applies to direct and indirect effects on those persons.



TITLE VI - BASICS

What is a recipient?

A recipient is an entity that receives financial assistance from a federal agency. The regulations define a recipient as:

“...any State, territory, possession, the District of Columbia, or Puerto Rico, or any political subdivision thereof, or instrumentality thereof, any public or private agency, institution, or organization, or other entity, or any individual, in any State, territory, possession, the District of Columbia, or Puerto Rico, to whom Federal financial assistance is extended, directly or through another recipient, including any successor, assignee, or transferee thereof, but such term does not include any ultimate beneficiary.”

TITLE VI - BASICS

What is a recipient? (cont.)

Primary Recipients

Recipient entities that administer a federally-assisted program and are authorized or required to extend federal financial assistance to other recipients. For FHWA, state transportation authorities (STAs) are the most common. **Subject to 49 C.F.R. Part 21 and 23 C.F.R. Part 200.**

Subrecipients

Recipient entities that administer a federally-assisted program and receive federal financial assistance from primary recipients. For FHWA, cities, counties, and MPOs are the most common. **Subject to 49 C.F.R. Part 21.**

TITLE VI - BASICS

Contractors

Private entities under contract with a state, local, or federal entity to perform services or furnish goods. See 2 C.F.R. § 200.330.

Private entities are considered recipients/subrecipients **only if they carry out an inherently governmental function**. E.g. if a firm is awarded a state DOT contract to construct or design a road project, it would not be considered a recipient. However, if a firm carries out policymaking (not merely making recommendations or requesting contract changes), it may be considered a recipient.

TITLE VI - BASICS

Contractors

If a contractor is a recipient, then the appropriate Title VI regulations apply.

If a contractor is not a recipient, prohibited from discrimination under Title VI through USDOT Order No. 1050.2A. Enforced through contract sanctions by recipients. Also, FHWA may find the recipient in noncompliance if it fails to monitor and enforce Title VI through contract remedies.

Takeaway: most private entities that provide goods and services for FHWA recipients/subrecipients are considered contractors.

Where an entity does not fit squarely into the subrecipient “test,” the federal agency must use its judgment. The regulations stress that the substance of the relationship, rather than the governing instrument (e.g. contract, agreement, etc.) is what matters.

KEY STATE REQUIREMENTS

1. Implementation Plans: States “shall **annually** submit an **updated** Title VI implementing plan to the Regional Federal Highway Administrator for **approval** or **disapproval**.” 23 CFR § 200.9(b)(11).
2. Responsible Title VI Coordinator with easy access to leadership. 23 CFR § 200.9(b).
3. Internal program area reviews / Data Collection and Analysis. 23 CFR § 200.9(b)(4-5).
4. Subrecipient Reviews. 23 CFR 200.9(b)(7). Also required for Title VI per 28 C.F.R § 42.410: “Each state agency administering a continuing program which receives federal financial assistance shall be required to establish a Title VI compliance program for itself and other recipients which obtain federal assistance through it.”

KEY STATE REQUIREMENTS

5. Complaint processing. 23 CFR 200.9(b)(3).

https://www.fhwa.dot.gov/civilrights/programs/title_vi/titleviqa.cfm

6. Internal training for State Program Managers. 23 CFR 200.9(b)(9).

7. Limited English Proficiency Plan. Executive Order 13166 (implementing *Lau v. Nichols*, 414 U.S. 563 (1974), which held disparate impact based on language access can constitute national origin discrimination).

KEY LOCAL PUBLIC AGENCY REQUIREMENTS

Regulations do not provide many express requirements for Local Public Agencies (LPAs), however, as Recipients subject to 49 C.F.R. Part 21, they are required to provide “methods of administration” to give FHWA a “reasonable guarantee” of compliance. 49 C.F.R. § 21.7(b).



KEY LOCAL PUBLIC AGENCY REQUIREMENTS

At a minimum, LPAs must:

- Submit annual signed Title VI Assurances to the State DOT and insert language from DOT Order 1050.2A into all contracts and agreements.
- Designate a responsible point of contact to coordinate Title VI efforts.
- Route complaints
- Collect demographic data on their programs and activities.
- Conform to state (primary) recipient's policies and procedures and coordinate with risk-based review process.