

What Contractors & Consultants need to know about Nondiscrimination & Accessibility:

A Crash Course in Title VI & ADA Requirements

Presented by:

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Overview

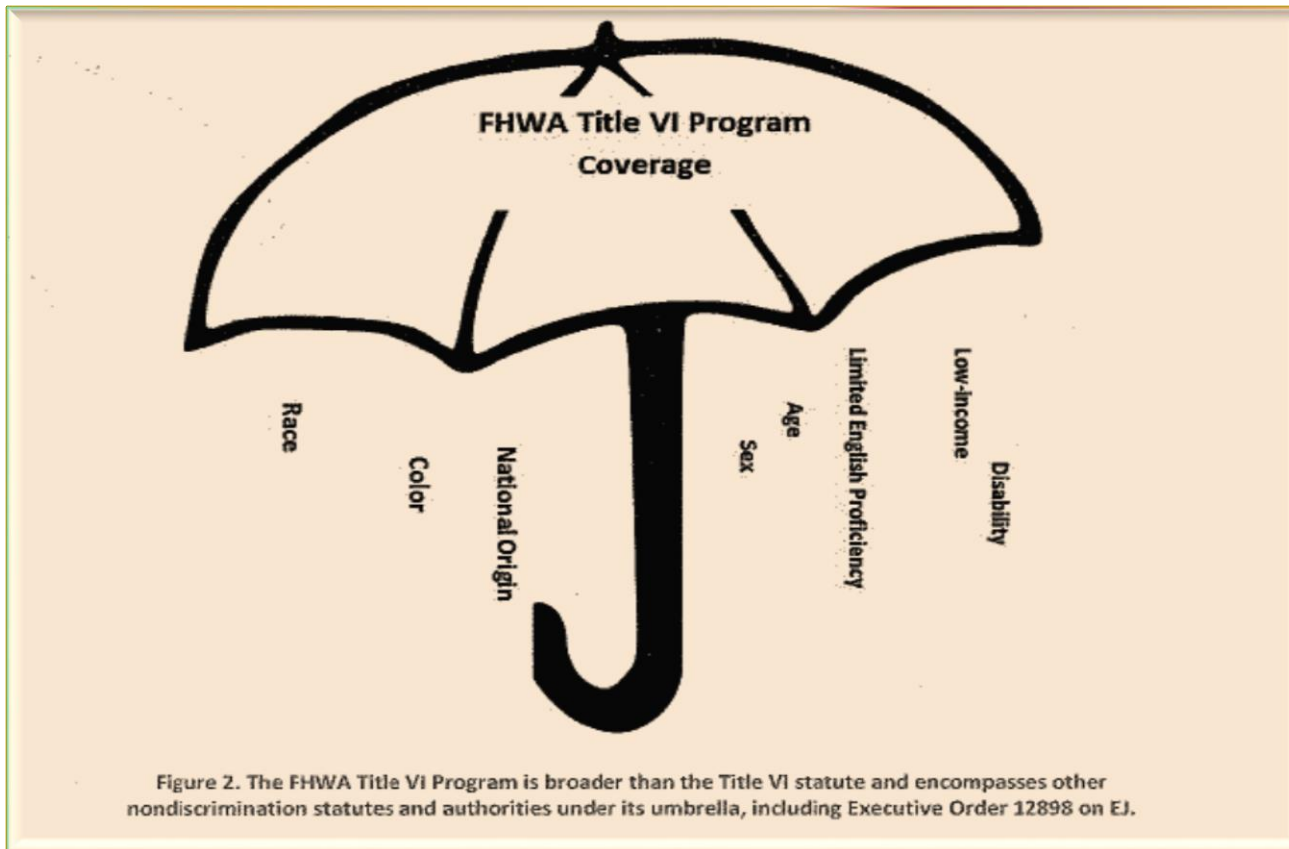
In this module you will learn:

- Which laws & regulations govern Accessibility & Nondiscrimination
- How these regulations relate to INDOT programs
- How we integrate these requirements into our business practices, and
- How they are enforced



A Visual:

Think of Title VI as a Large Umbrella broadly covering ALL programs:



Title VI of the Civil Rights Act of 1964

“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 subjected to discrimination under any program or activity receiving Federal financial assistance.” (42 U.S.C. 2000d)



Purpose of Title VI

- To eliminate discrimination in federally funded programs and activities.
- To ensure equitable distribution of public funds for public benefit.

EVERYONE PAYS = EVERYONE PLAYS

Title VI is for everyone



Civil Rights Restoration Act of 1987

- Clarified and restored the intent of Title VI.
- The scope of Title VI includes ALL programs and activities of Federal-aid recipients and contractors regardless if the programs are federally funded or not.



INDOT's Title VI Responsibilities:

- Designate a Title VI Manager
- Ensure Programmatic Implementation throughout your agency
- Develop, Post & Implement a Title VI policy
- Implement a Complaint Policy
 - Maintain a Complaint Log
- Evaluate the following for discrimination:
 - Programs / facilities
 - Activities



INDOT's Title VI Responsibilities:

- Adhere to the signed Assurances of Nondiscrimination & include the appropriate appendices where applicable
- Disseminate Title VI information to beneficiaries & stakeholders: Include Title VI in your Public Involvement Plan
- Monitor Subrecipients for Compliance
- Develop, Post & Implement your annual program documents:
 - Title VI Implementation Plan, and
 - Annual Goals & Accomplishments Report



INDOT's Title VI Manager / Staff:

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INDOT's Title VI Mission Statement

The Indiana Department of Transportation will implement compliance with Title VI of the Civil Rights Act of 1964 (Title VI); 49 CFR § 26; and related statutes and regulations to ensure that no person is excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity receiving federal financial assistance from the U.S. Department of Transportation (DOT) on the grounds of religion, race, color, national origin, disability, sex, sexual orientation, gender identity, age, low income status or limited English proficiency .



INDOT's Complaint Policy

Requirements:

- Develop a **grievance procedure**.
- Develop a **complaint form** that clearly identifies the Title VI Coordinator by name & provides contact information.

INDOT has a complaint policy:

<http://www.in.gov/indot/3003.htm>

- Complaints must be reduced to writing.
- Online-fillable and PDF printable forms available at:
<http://www.in.gov/indot/2750.htm>
- Receipt triggers timeframes; first is 10 days!
- Confidentiality
- No retaliation



Assurances of Nondiscrimination:

As a condition of receiving Federal Funds, INDOT (and ALL recipients & subrecipients of those funds) must sign **Assurances of Nondiscrimination**.

- Create a contractual obligation
- Require programmatic compliance: DO's & Dont's
- Contain appendices that **MUST** be included in certain kinds of agreements so that the contractual obligation follows the money to further subrecipients.

INDOT's Title VI Assurances:

http://www.in.gov/indot/files/DBWI_TitleVIAssurances.pdf



Programmatic Implementation:

Requirements:

- Build a communication network of trained agency representatives in different divisions, program areas, agencies, etc. such that adequate awareness & data collection & analysis can occur.

INDOT has Title VI Liaisons:

- In every District &
- In all program areas known to have Title VI “implications”.

INDOT has Program Area Representatives:

- In every subdistrict &
- In all program areas where subject matter expertise is required to gather, monitor, collect and / or analyze data.



Limited English Proficiency (LEP)

Executive Order 13166 requires federal-aid recipients to take reasonable steps to ensure meaningful access to their services to **Limited English Proficiency persons**.

4 factor analysis:

- > number LEP persons encountered, > need for assistance
- Frequency of contact with LEP persons
- Importance of program or service provided (warning signs)
- Available resources (reasonable test)



Environmental Justice



Executive Order 12898
Requires all federal
agencies to make
Environmental Justice
("EJ") part of their
mission by identifying
and addressing the
effects of all programs,
policies, and activities
on **minority and low-
income populations.**

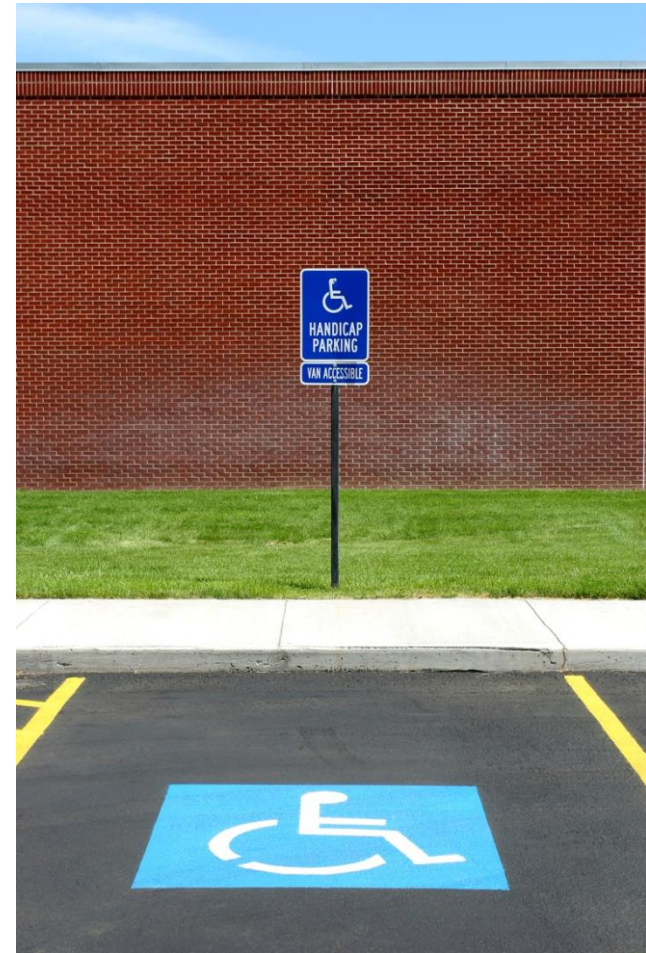
EJ Requirements

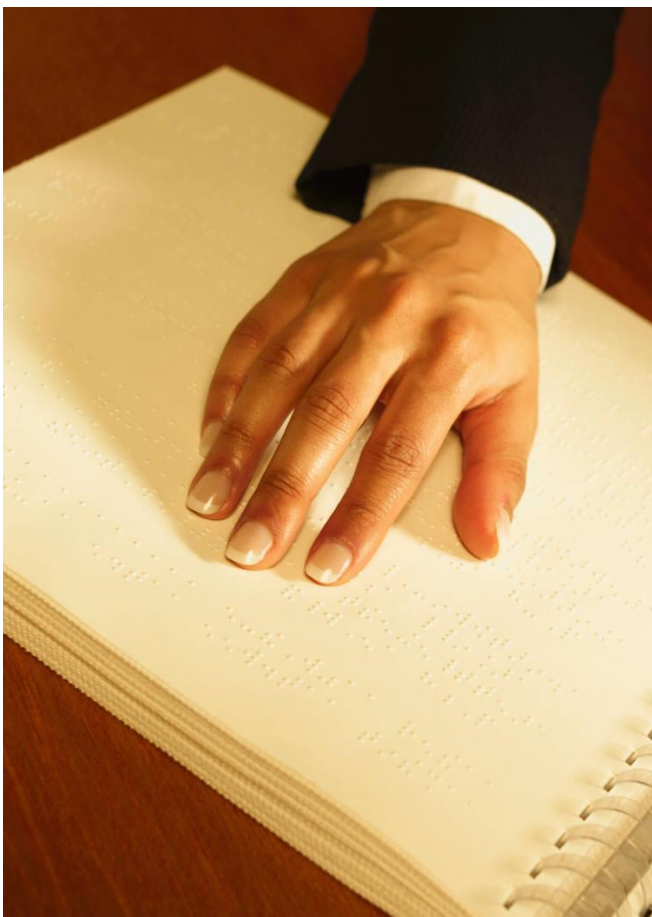
- Make a meaningful effort to involve minorities and low income populations in the decision making process.
- Evaluate the nature, extent and incidence of probable, favorable and adverse human health or environmental impacts on protected populations.
- Incorporate EJ considerations throughout the project development process.



Americans with Disabilities Act

- Applies to all **public entities**
- Requires provision of program access and effective communication
- Includes public transportation
- Enforced by U.S. Dept. of Justice





Section 504 of the Rehabilitation Act of 1973:

“No qualified handicapped person shall, solely, by reason of his **handicap**, be excluded from participating in, be denied the benefits of, or be subjected to discrimination under **any program or activities that receives or benefits** from Federal financial assistance.”

ADA & INDOT

- Programs & Facilities must be accessible
 - ADA Transition Plan: 2015
 - New design standards
 - Technical Advisory Committee to answer questions
- Complaint & nondiscrimination policies
- Public Involvement
 - Community Working Group



Who is a Contractor?

- A person who holds a FHWA direct or federally assisted construction contract or subcontract regardless of tier. (23 CFR 230.407 (i))
- Any person who participates through a contract or subcontract in a DOT assisted highway, transit or airport program. (49 CFR 26.5)



Duty to Provide Information & Records

Contractors are required to provide all information and reports required by the Regulations or directives, and permit access to books, records, accounts, other sources of information, and facilities as may be determined by INDOT or FHWA to be pertinent to ascertain compliance



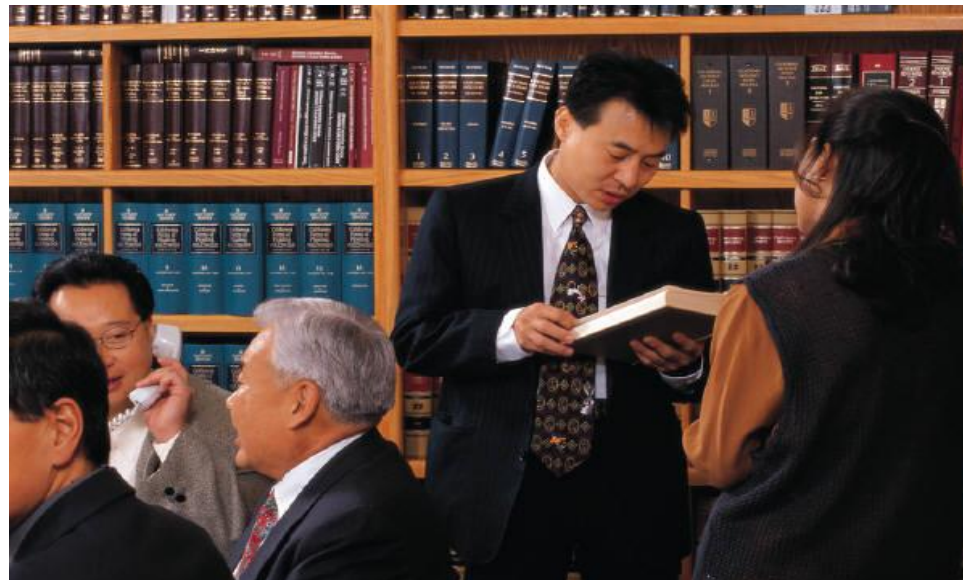
Required Contract Provisions



Contractors are required to include Appendix A in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto

Summary of Duties

- Attend Title VI Training
- Ensure all relevant employees receive Title VI training
- Know where to get Title VI information and assistance



- Display Title VI posters
- Ensure all federally funded contracts have Title VI language
- Have a written complaint procedure
- Develop Title VI and Limited English Proficiency (LEP) plans (LPAs and INDOT)
- Keep records evidencing Title VI compliance
- Monitor race, color, national origin, etc. of those who receive contracts



What is a Complaint?

- An allegation of wrongdoing for which attention, resolution, redress or any other corrective action may be sought
- May be formal or informal, written or unwritten
- It is the result of a perceived violation of law, regulation or policy



Effective Complaint Processing

- **Must have a procedure for:**
 - Receiving
 - Public must know how to make a complaint
 - Tracking
 - Must have a complaint log which includes
 - The filing date
 - Unique complaint number
 - A summary of the allegations
 - Disposition
 - Investigating
 - Determine jurisdiction, prima facie case, methodology, etc.
 - Resolving
 - Informal resolutions
 - Responding
 - Complainant should receive an acknowledgment and explanation of findings
 - Record Keeping
 - Records are confidential and should be kept at least three years



Confidentiality



In accordance with DOT Order 1000.12, a Complainant's identity shall be kept confidential except to the extent necessary for carrying out an investigation.

Retaliation

- No one may intimidate, threaten, coerce or engage in other discriminatory conduct against anyone because they have taken action or participated in an action to secure rights protected by the civil rights laws. (28 CFR 42.108(e))
- Any individual alleging such harassment or intimidation may file a complaint based on retaliation.



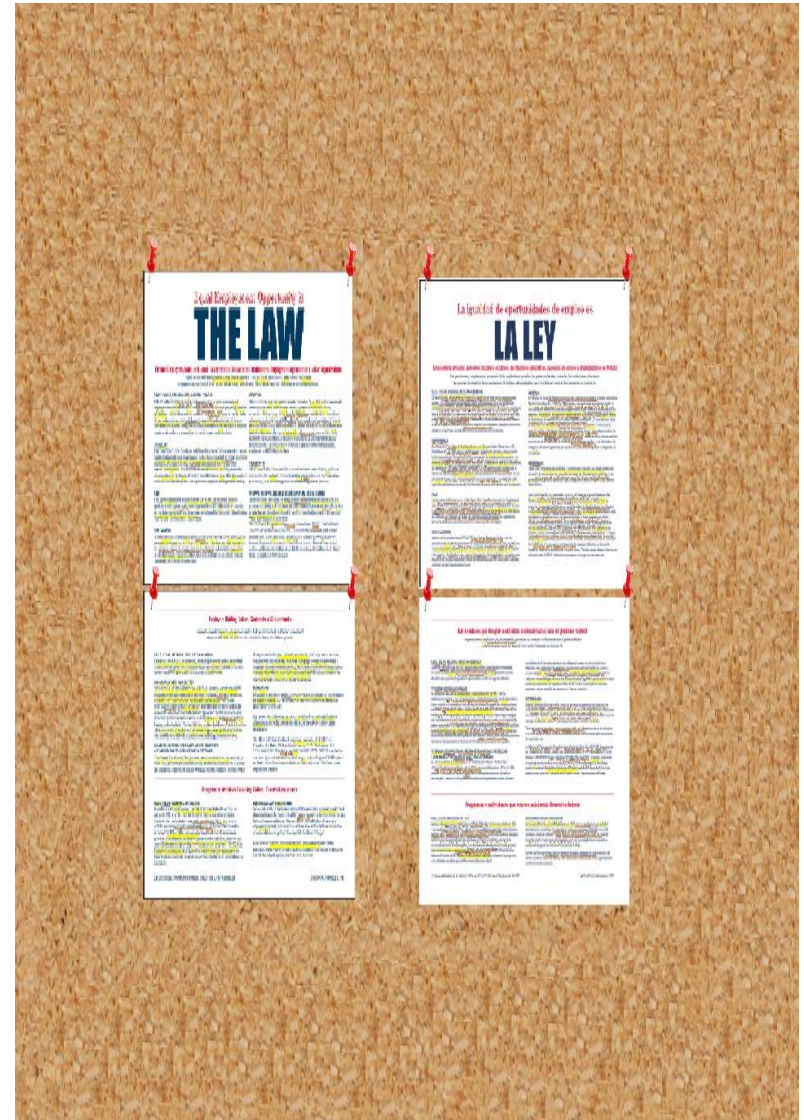
INDOT Title VI Compliance Review

- **During a compliance review INDOT reviews the following activities:**
 - Content and distribution of public notices
 - Facility and program access
 - Civil rights training
 - Data collection and analysis
 - Complaint procedures
 - Reporting procedures
 - Title VI monitoring



Steps to Ensure Title VI Compliance

- **Content and distribution of public notices:**
 - Publicly displayed
 - Disseminated at meetings
 - Available in alternative formats as needed



■ **Facility and program access:**

- Maintain non-segregated facilities
- Ensure equal access for persons with Limited English Proficiency
- Conduct systematic and direct recruitment of minorities and women



- **Civil rights training:**

- Attend Title VI training
- Develop an effective staff training program
- Provide regular and comprehensive training



■ **Title VI monitoring**

- Appoint a person responsible for overseeing and coordinating Title VI activities and reports
- Conduct internal compliance reviews
- Develop an enforcement program



Deficiency vs. Noncompliance

■ **Deficiency:**

- Period when notified of a deficiency and given an opportunity to comply but not currently in compliance (23 CFR 200.5(e))

■ **Noncompliance:**

- Recipient has not met the prescribed requirements and has failed to show a good faith effort in implementing all of the Title VI requirements (23 CFR 200.5(i))



Consequences of Noncompliance

- Withholding of payments on the contract until the subrecipient complies, and
- Cancellation, termination or suspension of the contract in whole or in part, or
- Other authorized action including using provisions under state and local law (e.g. referral to INDOT Prequalification Committee or the U.S. Dept. of Justice)



■ **Contractor/consultant duties under the ADA/504**

- Check entity transition or access plan
- Ensure new and alteration projects provide the minimum required accessibility under the ADAAG
- Before accepting the contract review the proposal for facility accessibility obligations that must be built and determine who is responsible
- Obtain ADA training



- Provide temporary safe ADA compliant pedestrian passage ways around a construction site during all phases of construction
- Review proposals for work zone accessibility requirements and include the associated costs in the project estimate



ADA and Work Zones

- **When planning for the work zone, consider:**
 - The type of work being done
 - Amount of time involved
 - Location
 - Road type
 - Traffic volume
 - Pedestrian demand



Inaccessible Public Right of Way



