



## **Board Policy No. 518**

### **Title VI and Environmental Justice Service Review and Compliance Report Policy**

**ADOPTED:** 6/16/2004

**RECENT AMENDMENT:** 12/13/2017

**SEE ALSO:** 110, 545

**SUBJECT CATEGORY:** 500 – PLANNING & SERVICE DEVELOPMENT

**SUBSECTION:** ENVIRONMENTAL/SOCIAL JUSTICE AND TITLE VI COMPLIANCE

**CONTROL DEPARTMENT:** COMPLIANCE & DIVERSITY

#### **I. PURPOSE**

The Federal Transit Administration (FTA) is responsible for ensuring that its funding recipients fully comply with Title VI of the Civil Rights Act of 1964 in their planning and implementation processes. Pursuant to Title 49 (U.S.C. Chapter 53), as amended, AC Transit is the designated recipient of funds under FTA (sections 5307 and 5309).

Further federal guidance, provided by Executive Order 12898 and FTA Environmental Justice Circular 4703.1, highlights the District's responsibility to ensure that environmental justice is incorporated into the District's mission of connecting our communities with safe, reliable, sustainable service for the greater East Bay. Additional federal guidance provided by Executive Order 13166 amplifies the Civil Rights Act mandate by providing that persons with limited English proficiency should have meaningful access to programs and activities receiving federal funds.

The FTA circular C4702.1B, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients," provides guidance and instructions necessary to comply with these laws and executive orders. This policy sets forth activities the District undertakes, as a designated recipient of federal funds, to comply with that guidance.

#### **II. PERSONS AFFECTED**

Title VI staff have primary responsibility for documenting the District's compliance with FTA requirements. Staff working on any project that may affect the populations protected by the aforementioned civil rights and environmental justice laws and regulations must comply with this policy when applicable.

#### **III. DEFINITIONS**

**"Title VI"** means the section of the Civil Rights Act of 1964 which protects people from discrimination based on race, color, or national origin in programs or activities that receive federal financial assistance.

**"Environmental Justice"** as described by Executive Order 12898 and further illuminated by FTA guidance means the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income in plans, projects, and activities that receive federal funding.

**"Limited English Proficient Person" (or "LEP")** means a person who speaks, reads, or understands English less than very well; persons with LEP are covered by Title VI under the protection against discrimination on the basis of national origin.

**“Safe Harbor Languages”** means languages that are spoken by persons with LEP in numbers large enough to trigger the FTA’s requirement to provide language assistance; under FTA guidance a safe harbor language is one spoken by 1,000 individuals or 5% of the AC Transit service area population, whichever is less.

#### IV. POLICY

##### A. Title VI Program Update

1. Every three years, the District shall complete a Title VI Program update in accordance with FTA guidelines. This triennial update assesses compliance on a number of issues for the District, its subrecipients, and contractors, as specified in the FTA Title VI Circular.

##### B. Title VI Service And Fare Equity Analysis

1. AC Transit must ensure that there is Title VI consideration whenever there is a change in fares or service that could impact minority or low-income communities. In particular, AC Transit must describe major changes relating to hours or days of operation, headways or fares, etc., and provide an analysis of the effect that any such changes may have on minority and low-income communities.
2. AC Transit will conduct a fare equity analysis for all fare change proposals regardless of the amount of increase or decrease, with the following exceptions:
  - “Spare the air days” or other instances when a municipality or transit agency has declared that all passengers ride free;
  - Temporary reductions that are mitigating measures for other actions; or
  - Promotional or temporary fare reductions that last six months or less.
3. The District will conduct a Title VI service equity analysis whenever there is a major service change, as defined below. The District will also conduct a service equity analysis for changes which, when considered cumulatively over a three year period, meet the major service change threshold. In addition, the Board may request additional service equity analyses for the consideration of changes as it deems appropriate. For major service changes, the Title VI service equity analysis will assess the quantity and quality of service provided and populations affected.
4. All service and fare equity analyses shall be presented to the Board of Directors for approval and included in the Title VI Triennial update.

##### C. Policies Governing Equity Analyses

1. Major Service Change Policy

- a. A Title VI analysis shall occur whenever there is a significant change to service provision. Service changes covered by this policy are those indicated as “Major Adjustments of Transit Service” under Board Policy 110 (“Public Hearings Processes for the Board of Directors”). A major service change is generally one that constitutes a significant aggregate change in route miles or hours, and could include system wide route restructuring, changes in frequency, or adding and deleting service. For such major service changes, the Title VI service equity analysis will assess the quantity and quality of service provided and populations affected.
- b. One exception listed in Policy 110 – restoration of service which had been eliminated due to budget constraints – is not a permissible exception for Title VI purposes. Staff will continue to conduct service equity analyses for restoration of services, if such proposed change otherwise fits the definition of a major service change.

## 2. Disparate Impact Policy

- a. As defined by the FTA Circular:

*Disparate impact refers to a facially neutral policy or practice that disproportionately affects members of a group identified by race, color, or national origin, where the recipient's policy or practice lacks a substantial legitimate justification and where there exists one or more alternatives that would serve the same legitimate objectives but with less disproportionate effect on the basis of race, color, or national origin [...] The policy shall establish a threshold for determining when adverse effects of fare/service changes are borne disproportionately by minority populations.*

- b. The measure of disparate impact involves a comparison of impacts borne by minority populations compared to impacts borne by non-minority populations. For a major service equity analysis, the District will measure service in terms of current AC Transit standards for frequency, span of service, and/or distance to bus routes. Title VI equity analyses will compare existing service or fares to proposed changes, and calculate the absolute change as well as the percent change. When minority populations or riders as a whole will experience a 15% (or more) greater adverse effect than that borne by the non-minority populations or riders, such changes will be considered to have a disparate impact. An adverse effect is defined as a geographical or time-based reduction in service which includes but is not limited to: elimination of a route, short turning a route, rerouting an existing route, or an increase in headways.

## 3. Disproportionate Burden Policy

- a. As defined by the FTA Circular:  
*Disproportionate burden refers to a facially neutral policy or practice that disproportionately affects low-income populations more than non-low-income populations. A finding of disproportionate burden requires the recipient to evaluate alternatives and mitigate where practicable.*
- b. Low-income populations are not a protected class under Title VI. However, recognizing the inherent overlap of environmental justice principles in this area, and because it is important to evaluate the impacts of service and fare changes on passengers who are transit-dependent, FTA requires transit providers to evaluate proposed service and fare changes to determine whether low-income populations will bear a disproportionate burden of the changes.
- c. AC Transit will conduct Title VI equity analyses by comparing existing service or fares to proposed changes, and calculating the absolute change as well as the percent change. When the proportion of low-income populations or riders as a whole adversely affected by the proposals is 15% (or more) than the proportion of non-low-income populations or riders adversely affected, such changes will be considered to have a disproportionate burden.

#### 4. Mitigation of Impacts

- a. If the District finds that the service or fare proposals result in disparate impacts on minority communities, the District must identify alternatives to the proposal that could serve the same legitimate objective with less disparate impact. If a less discriminatory alternative does not exist and AC Transit has substantial legitimate justification that cannot otherwise be accomplished, AC Transit shall identify measures to mitigate the negative impacts of the changes.
- b. If the District finds that the service or fare proposals result in disproportionate burdens on low-income communities, the District shall identify alternatives available to affected low-income riders and take steps to avoid, minimize, or mitigate impacts where practicable.

#### D. Transit Service Monitoring

1. AC Transit is required to monitor the performance of its system relative to system-wide service standards and service policies to identify possible inequitable impacts on protected populations. AC Transit staff will assess the performance of each route according to definitions in Board Policy 545, "Service Standards and Design Policy," and methods described in the FTA Circular, and report to the Board of Directors not less often than every three years to ensure all elements of the service are being equitably provided.

2. For cases in which the service exceeds or fails to meet the standard or policy, the District shall analyze why the discrepancies exist, and take steps to reduce the potential effects. If staff determines that prior decisions have resulted in a disparate impact on the basis of race, color, or national origin, the District shall take corrective action to remedy the disparities to the greatest extent possible, and report these efforts in the Title VI program update.

#### **E. Title VI Complaint Process**

1. The FTA circular requires AC Transit to identify methods for notifying the public of their rights under Title VI, including their rights to file a complaint, and the District's methods of responding to such complaints. The District shall take any Title VI violation complaint seriously and act quickly to identify, resolve, or remediate any identified issue. Additionally, as part of the District's goal to incorporate environmental justice into its mission and ongoing activities, although low-income populations are not a protected class under Title VI, the District intends to receive complaints related to low-income status through the Title VI complaint process.

2. Communication with Claimant

- a. It is AC Transit's intent to communicate with the claimant throughout the Title VI complaint review process, regardless of the outcome of the investigation.

3. Posting of Notification of Title VI Rights and Complaint Procedures

- a. The following notice will be placed on-board buses, in public ticket offices and public meeting rooms (such as the AC Transit Board Room), and on the AC Transit website:

AC Transit is committed to ensuring that no person is excluded from participation in, or denied the benefits of, its services on the basis of race, color, or national origin as protected by Title VI of the Civil Rights Act. For more information on AC Transit's civil rights programs and the procedures to file a complaint, please contact us: [actransit.org/CivilRights](https://actransit.org/CivilRights) (510) 891-5470; TDD/TTY 711; AC Transit Customer Relations, 1600 Franklin Street, Oakland CA 94612.

- b. The notice will be provided in English, Spanish, and Chinese. In addition, it will include a statement of the availability of free language assistance in safe harbor languages as identified in the most recently updated AC Transit Program.
- c. The notice will also be placed at Transit Centers and Park-and-Rides owned, operated, or maintained by AC Transit.

#### 4. Receipt of Complaint

- a. The complaint form is available in English, Spanish, and Chinese. The notification provides several ways that Title VI complaints are received:
  - Mail - The notice provides a postal address for submitting a Title VI claim.
  - Electronically - Individuals can email Title VI compliance staff directly or they may register a Title VI complaint using an online form on the AC Transit customer feedback and civil rights webpages, which forward the item to the Title VI compliance staff.
  - Individuals may also make a complaint by phone.

#### 5. Review of Complaint

- a. A complaint must be filed within 180 calendar days of the date the claimant believes the discrimination occurred. Upon receipt of a complaint, Title VI staff review the issue to determine if it raises a Title VI concern (i.e. relates to the exclusion from participation in, or denial of benefits of, services on the basis of race, color, national origin, or low-income status). All Title VI Complaint files are kept for a minimum of 10 years.
- b. If the claim is not related to Title VI, but to other issues, Title VI staff forward the complaint to the appropriate department for resolution and sends a letter to the claimant explaining the process, providing a copy to the Legal Department for its files. Departments that are responsible for the resolution of the claim are responsible to investigate the issue and respond to the claimant.
- c. Upon determining that the claim raises a Title VI issue, a Title VI investigation will be undertaken. Title VI staff will send a letter to the individual to notify the claimant that AC Transit will conduct an investigation of the claim, copying the Legal Department for its files and assistance.

#### 6. Investigating Title VI claims

- a. Staff shall review the complaint to determine if it raises any Title VI issues, using Federal Transit Administration guidance. Staff shall complete their review no later than 60 calendar days after the date AC Transit received the complaint. If more time is required, Title VI staff shall notify the claimant of the estimated time-frame for completing the review.
- b. If it is found that there is or has been a violation of Title VI, staff will identify immediate remediation for consideration by the General Manager and/or Board of Directors. AC Transit will send a letter to the claimant stating the outcome of the investigation. If a violation exists the claimant will be advised of any remediation

action that is being proposed or undertaken. Additionally, staff may recommend improvements to AC Transit's processes relative to Title VI and environmental justice, as appropriate. Conversely, if the claim is invalid, erroneous, or does not represent a Title VI violation, Title VI staff will send a letter to the claimant with their findings.

7. Request for Reconsideration

- a. If the claimant disagrees with the response, they may request reconsideration by submitting the request in writing to the General Manager within 10 calendar days after receipt of the response. The request for reconsideration shall be sufficiently detailed to contain any items the claimant feels were not fully understood by the Title VI coordinator and/or other staff reviewing the claim. The General Manager will notify the claimant of their decision either to accept or reject the request for reconsideration within 10 calendar days. In cases where the General Manager agrees to reconsider, the matter shall be returned to Title VI staff to re-evaluate.

8. Submission of Complaint to the Federal Transit Administration

- a. Claimant may also file a complaint directly with the Federal Transit Administration at FTA Office of Civil Rights, Attention: Title VI Program Coordinator, 1200 New Jersey Ave., SE, Washington, DC 20590, within 180 days of the alleged discrimination.

**F. Subrecipient Monitoring and Assistance**

1. AC Transit recognizes the need to monitor subrecipients' compliance with Title VI. This includes notifying the subrecipient of their obligation to comply with Title VI, providing assistance to the subrecipient in the development and implementation of their compliance plan, and regularly monitoring the subrecipient's compliance.
2. Staff will follow the instructions and timelines provided in the Grants department subrecipient management policies and procedures throughout the tenure of the subrecipient's relationship with AC Transit.