



Board Policy No. 518

Title VI and Environmental Justice Service Review and Compliance Report Policy

ADOPTED: 6/16/2004

RECENT AMENDMENT: 1/27/21

SEE ALSO: 110, 545

SUBJECT CATEGORY: 500 – PLANNING & SERVICE

DEVELOPMENT

SUBSECTION: ENVIRONMENTAL/SOCIAL JUSTICE AND TITLE VI
COMPLIANCE

CONTROL DEPARTMENT: CIVIL RIGHTS & COMPLIANCE

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 Proficiency” (or “LEP”) means the condition where a person 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.

“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 a reduction in frequencies.

IV. POLICY

A. Assurances

1. 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 of 1964.
2. A notification of Title VI Rights will be placed on-board buses, in public customer service offices and public meeting rooms (such as the AC Transit Board Room), on the AC Transit website, and at Transit Centers and Park-and-Ride lots owned, operated, or maintained by AC Transit. The notice includes the various ways a person can get more information on the District’s civil rights programs and the procedures to file a complaint, including website, phone, TDD/TTY, and U.S. postal service contact information. The notice is provided in English, Spanish, and Chinese; in addition, it includes a statement of the availability of free language assistance in Safe Harbor languages as identified in the most recently updated AC Transit Title VI Program.
3. AC Transit is committed to promoting inclusive public engagement, informing riders and residents about changes in service or fares, and providing opportunities to participate in meaningful decision-making about plans and projects that may affect riders or residents’ lives or livelihoods, without regard to race, color, national origin, English proficiency, or income status.
4. AC Transit is committed to providing meaningful access to programs and activities by persons with limited English proficiency. The steps the District intends to take to meet this commitment are outlined in the Language Assistance Plan element of the AC Transit Title VI Program.

B. Title VI Program Update

Questions concerning interpretation of this Policy are to be referred to the General Counsel.

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.

C. 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 people of color 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 people of color 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.

The Title VI fare equity analysis will assess the proposed fare change by evaluating the amount of impact and the populations affected.

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. The Title VI service equity analysis will assess the quantity and quality of service provided and populations affected; the analysis will measure service in terms of current AC Transit standards for frequency, span of service, and/or distance to bus routes.
4. All service and fare equity analyses shall be presented to the Board of Directors for approval and included in the Title VI Program triennial update.

D. Policies Governing Equity Analyses

1. Major Service Change Policy. As noted above, a Title VI service equity analysis shall occur for major service changes, including:
 - a. A new transit route; or
 - b. Any aggregate change of ten (10) percent or more of the number of transit revenue miles or hours system-wide; or
 - c. Any aggregate change of twenty (20) percent or more of the number of transit revenue miles or hours in one of the four planning areas of the District (West Contra

- Costa County, North Alameda County, Central Alameda County, South Alameda County); or
- d. Any aggregate change of twenty-five (25) percent or more of the number of transit revenue vehicle miles or hours of a route computed on a daily basis for the day of the week for which the change is proposed.
 - e. EXCEPTIONS: Exceptions to the major service change policy include:
 - i. A reassignment of route numbers resulting from combining existing routes, which results in the creation of a new route “number.”
 - ii. Standard seasonal variations, unless the variation, as compared to operations during the previous season, falls within the major service change definition above.
 - iii. Emergency service changes, including changes in routes or service frequencies which may be necessitated due to a major catastrophe or emergency which severely impairs public health or safety, changes in access to public streets, or the ability of District equipment to travel on public streets. Emergency service changes may be implemented immediately without a Title VI service equity analysis provided that a finding identifying the circumstances under which the change is being taken is made by the General Manager.
 - iv. The introduction or discontinuance of service which will be or has been in effect for less than twelve months.
 - v. Changes to service on a route with fewer than ten (10) total trips in a typical service day.
 - vi. Discontinuance of District-operated service that is replaced by a different mode or operator, providing a service with the same or better headways, fare, transfer options, span of service, and stops served.

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 people of color populations compared to impacts borne by non-people of color populations. 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 the proportion of

people of color populations or riders adversely affected by the proposals is 15% (or more) than the proportions of non-people of color populations or riders adversely affected, such changes will be considered to have a disparate impact.

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 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 people of color 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.

E. 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.

F. Title VI Complaint Process

1. The FTA circular requires AC Transit to identify methods for notifying the public of their rights to file a Title VI 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, and 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. Notification of Complaint Procedures and Communication with Claimant
 - a. Information about AC Transit complaint procedures is included in the notification to the public about Title VI rights; the information is posted publicly as noted above and included on the AC Transit public website.
 - b. 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. Receipt of Complaint
 - a. Title VI complaints may be received in several ways:
 - i. Mail - The notice provides a U.S. postal address for submitting a Title VI claim.
 - ii. 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.
 - iii. Individuals may also make a complaint by phone.
4. 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. Departments that are responsible for the resolution of the claim 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.

5. Investigating Title VI claims

- a. Staff shall use FTA guidance to review and investigate the complaint. 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 timeframe for completing the review.
- b. If it is found that there is or has been a Title VI violation, 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 establish a Title VI violation, Title VI staff will send a letter to the claimant with their findings.

6. 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 addressed by the Title VI staff and/or other staff reviewing the claim. The General Manager will notify the claimant of the 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.

7. 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.

G. Subrecipient Monitoring and Assistance

1. AC Transit recognizes the need to monitor subrecipients' compliance with Title VI. This includes notifying the subrecipient of its obligation to comply with Title VI, providing assistance to the subrecipient in the development and implementation of its 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.

H. Data Collection and Reporting

1. In accordance with the FTA's requirement to collect and report data to ensure Title VI-protected populations are beneficiaries of programs receiving federal financial assistance, AC Transit will collect data about its ridership no less often than every five (5) years. This information may be collected at the time that other surveys, such as customer satisfaction surveys, are routinely performed. The survey will collect information about riders' race, income, language spoken and English proficiency, travel patterns, and fare usage.
2. AC Transit will create service area population maps. Such maps will include geographic information about the District service area, U.S. Census race, ethnicity, and income data as available after each decennial census, and other locally available data about transit facilities or transit trip generators.

I. Determination of Site or Location of Facilities

1. When acquiring a site for or constructing a transit facility, AC Transit will follow FTA guidance to ensure non-discrimination in any such projects.
2. AC Transit will adhere to the following guiding principles:
 - a. AC Transit will not make selections related to determining the site or location of facilities with the purpose or effect of discriminating against persons on the grounds of race, color, or national origin; and

- b. AC Transit will not determine the locations of projects requiring land acquisition and the displacement of persons from their residences and businesses on the basis of race, color, or national origin.
- 3. To conduct a facility equity analysis, AC Transit will:
 - a. Complete the analysis during the planning stage, before the selection of the preferred site;
 - b. Compare the equity impacts of various alternatives and give attention to other facilities with similar impacts in the area to determine if any cumulative adverse impacts might result; and
 - c. Engage in outreach to persons and communities potentially impacted by the siting of facilities and take their input into consideration in the planning of such projects.

V. AUTHORITY

A. Board Authority

The Board may request additional equity analyses for the consideration of changes as it deems appropriate. The Board of Directors has the authority to amend the policy as it deems appropriate or otherwise as required or permitted by law.

B. General Manager's Authority

The Board of Directors authorizes the General Manager to implement this Policy.