

FAA Office of Civil Rights Pacific Conf:

Overview of Obligations for Ensuring Compliance with Title VI and Related Requirements in Airport Programs

Date: December 4, 2019



Federal Aviation
Administration

Office Of Civil Rights

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THROUGH DIVERSITY



Purpose and Learning Objectives

- **Objectives:**
 - Overview of requirements under Title VI and related protections
 - Environmental Justice
 - Limited English Proficiency (LEP)
 - Working with third parties
 - Contract and lease issues
 - Sub-recipient issues
 - Oversight
 - Best practices and common issues to be aware of to ensure airport compliance
 - Resources available to assist airports in achieving compliance

Airport Nondiscrimination Compliance Program

- Civil Rights Act of 1964
- Airport and Airway Improvement Act of 1982
- Education Amendments Act of 1972
- Age Discrimination Act of 1975



Title VI of the Civil Rights Act of 1964

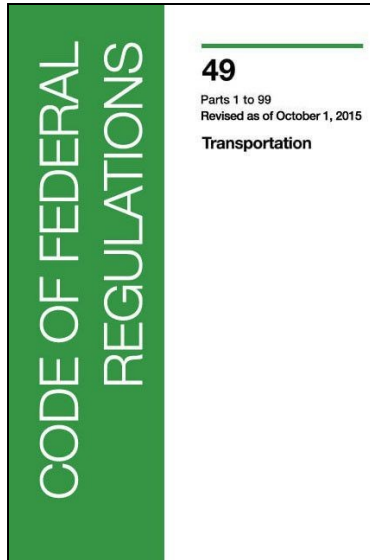
No persons in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal Financial assistance

Title VI Program Authorities

Authority	Citation
Title VI of the Civil Rights Act of 1964	42 USC § 2000d et seq
DOT Regulations Effectuating Title VI	49 CFR Part 21
DOJ Regulations Effectuating Title VI	28 CFR Part 42

Title VI Program Authorities, cont.

Part 21



“[49 CFR Part 21] applies to any program for which Federal financial assistance is authorized under a law administered by the Department [of Transportation] ...”

49 CFR Part 21

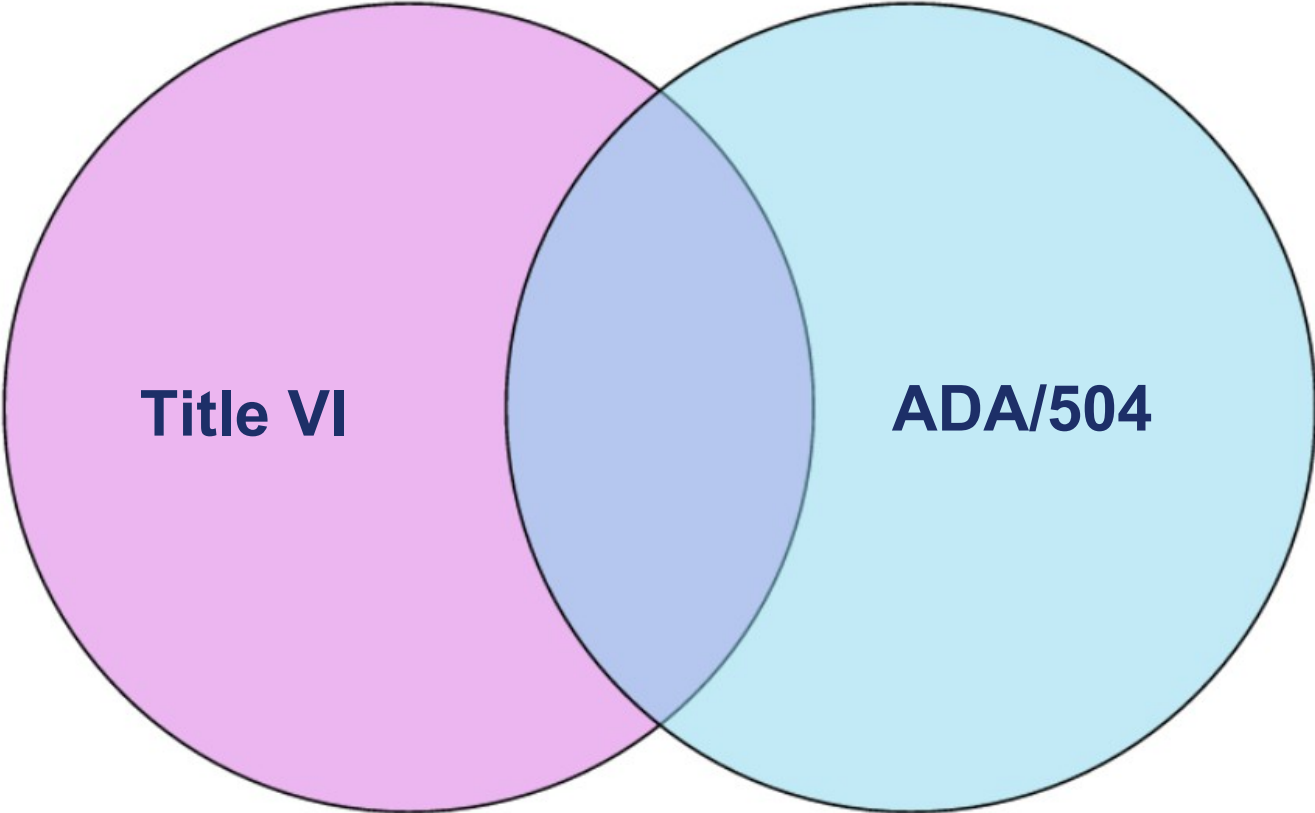
- **Prohibit both**
 - Disparate treatment and
 - Disparate impact
- **Part 21, Appendix C**

Title VI Program Authorities, cont.

Part 21

Requirement	What it means
Compliance Reports and Data Collection	Recipients should be maintaining records and collecting data that shows compliance with Title VI
Employment Opportunities at Airport	Equal employment opportunity with airport, tenants
Outreach to the minority business community	Advise the local minority business community of opportunities at the airport

Overlapping and Similar Requirements for ADA/504 and Title VI Programs



ADA/504 and Title VI Administrative Obligations

Requirement	Title VI	ADA/504
Airport-appointed coordinator for compliance issues and complaints	Suggested	<u>Required</u>
Airport retains records of complaints	Suggested	<u>Required</u>
Publicize airport process for investigating and responding to complaints	Suggested	<u>Required</u>
Airport process for transmitting complaints received to FAA	<u>Required</u>	Not Required
Conspicuously display nondiscrimination poster *	<u>Required</u>	<u>Required</u>
Onsite Materials –applicable regulations are publicly available (49 CFR Part 21)	<u>Required</u>	Not Required
Airport process to receive and address accommodations/modification requests	Suggested**	<u>Required</u>
Conduct periodic self-evaluations of programs and activities	Suggested**	<u>Required</u>

* See following slide

** Effectively required for LEP issues

ADA/Sec. 504 & Title VI Admin. Obligations (cont.)

- **Notice of Nondiscrimination**
 - Provide notice (DOJ ADA regulations).
 - Notice includes coordinator information (DOT Sec. 504 & Title VI regulations).

Unlawful Discrimination

It is unlawful for airport operators and their lessees, tenants, concessionaires and contractors to discriminate against any person because of race, color, national origin, sex, creed, or disability in public services and employment opportunities. Allegations of discrimination should be promptly reported to the Airport Manager or:

Federal Aviation Administration
Office of Civil Rights, ACR-1
800 Independence Avenue, S.W.
Washington, D.C. 20591

Federal regulations on unlawful discrimination are available for review in the Airport Manager's Office.

Coordinator:
Phone:
Address:


Discriminación ilegal

Se prohíbe a los operadores de aeropuertos y a sus arrendatarios, inquilinos, concesionarios y contratistas discriminar contra cualquier persona por motivo de raza, color, nacionalidad de origen, sexo, creencias religiosas, impedimento físico o discapacidad en lo que respecta a servicios públicos y oportunidades de empleo. Las alegaciones de discriminación deberán ser dirigidas inmediatamente al Administrador del Aeropuerto o a:

Federal Aviation Administration
Office of Civil Rights, ACR-1
800 Independence Avenue, S.W.
Washington, D.C. 20591

Los reglamentos sobre discriminación ilegal están a la disposición de los interesados para su examen en la oficina del Administrador del Aeropuerto.

Coordinador:
Teléfono:
Dirección:



U.S. Department of Transportation
Federal Aviation Administration

HC 10788

Program Authorities Beyond Title VI and Part 21

Authority	Citation
Airport and Airway Improvement Act of 1982, Section 520	49 USC § 47123
Executive Order 13166 and DOT guidance (LEP)	Federal Register: 70 FR 74087
Executive Order 12898 and DOT guidance (DOT Order 5610.2(a)) (EJ)	Federal Register: 77 FR 27534
Title IX of the Education Amendments Act of 1972	20 USC § 1681
Age Discrimination Act of 1975	42 USC § 6101

Airport and Airway Improvement Act of 1982, Sec. 520 49 U.S.C. § 47123 (a)

The Secretary of Transportation shall take affirmative action to ensure that an individual is not excluded because of race, creed, color, national origin, or sex from participating in an activity carried out with money received under a grant under this subchapter. The Secretary shall prescribe regulations necessary to carry out this section. The regulations shall be similar to those in effect under title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.). This section is in addition to title VI of the Act

Title IX of the Education Amendments Act of 1972

- Protected basis:
 - Sex
- Applies to education programs and related activities
- DOT Implementing regulations at 49 CFR 25
 - Enacted in 2000
 - Designated employee for coordination of compliance efforts
 - Procedures for student and employee complaints
 - Self-evaluations, followed by remedial steps

Age Discrimination Act of 1975

- Protected basis:
 - Age
- Different from the Age Discrimination in Employment Act of 1967 (≥ 40)
- No DOT regulations, but Title VI regulations create analogous obligations to race, color, and national origin protections

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Limited English Proficiency (LEP)

Four-Factor Analysis – 1st Factor

Number/proportion of LEP persons in a recipient's area

- The greater number or proportion of LEP individuals in the service area, the more likely language services will be needed

Limited English Proficiency (LEP), cont.

Four-Factor Analysis – 2nd Factor

Frequency of contact between LEP individuals and the recipient's services

- The more frequent the contact between the services and the LEP population, the more likely the need for enhanced language services

Limited English Proficiency (LEP), cont.

Four-Factor Analysis – 3rd Factor

Importance of the service provided by the recipient

- The more important the activity or service or the greater consequences of the contact to the LEP individuals, the more likely language services are needed
- In essence, if a delay or denial of access to a particular service could have serious health or life threatening implications it is probably “important”

Limited English Proficiency (LEP), cont.

Four-Factor Analysis – 4th Factor

Resources available to the recipient and costs

- A recipient's level of resources and the costs imposed may have an impact on the nature of steps it should take in providing meaningful access for LEP individuals

Limited English Proficiency (LEP), cont.

What makes a good LEP Plan?

- Adequately supported
- Realistic
- Periodically evaluated and revised, if necessary
- In writing (electronically and/or hard copy)
- Communicated

Who uses the LEP Plan?

- Airport sponsor employees, tenants, and contractors

FAA may review the plan during complaint investigations or compliance reviews.

Limited English Proficiency (LEP), cont.

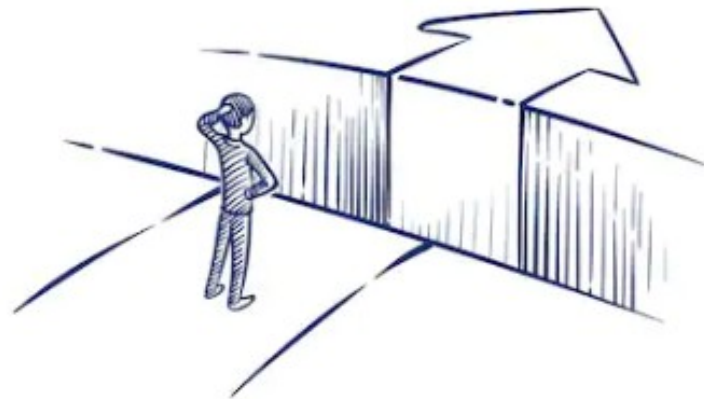
An effective LEP Plan should include, at a minimum, the following elements:

1. Identification of LEP persons
2. Language assistance measures
3. Training staff
4. Notification to LEP persons
5. Monitoring and updating the LEP Plan

LEP Plan Outline

1. Identification of LEP persons

- Use information obtained from the first two factors of the four-factor analysis
- Identify what barriers to communications currently exist



LEP Plan Outline cont.

2. Language assistance measures

- Outline how language assistance will be provided:
 - General measures (e.g., translation, interpretation, notices)
 - Specific measures (i.e., specific to different languages)
 - Universal symbols and pictograms, where appropriate
- Ensure that your staff knows:
 - The types of language services available
 - How to obtain those services
 - How to respond to LEP callers
 - How to respond to written communications from LEP persons
 - How to respond to LEP persons who have in-person contact with your staff

LEP Plan Outline cont.

3. Training staff, tenants, and contractors

- All should understand the sponsor's obligations to provide meaningful access for LEP persons
- Types of training (e.g., new employee, refresher, staff interpreters)
- Training should address:
 - Sponsor's LEP policies and procedures (LEP Plan)
 - I Speak cards and language services
 - How to work effectively with in-person and telephone interpreters
 - Designated LEP contacts

LEP Plan Outline cont.

4. Notification to LEP persons

- Publicize that language services are available and free
- Provide notice in LEP persons' primary languages
- Some ways of accomplishing this objective include:
 - Posting signs
 - Stating in brochures, booklets, etc., in appropriate languages, that language services are available
 - Community-based organizations sharing the information
 - Using a telephone voicemail menu in the most common languages encountered

LEP Plan Outline cont.

5. Monitoring and updating the LEP Plan

- Have a process for determining whether new documents, programs, services, and activities need to be made accessible for LEP persons
- Periodically reevaluate your plan for changes in demographics and language assistance needs
- Seek feedback on your plan from the surrounding community and flying public

Environmental Justice (EJ)

- **Executive Order 12898** requires all Federal agencies to identify and address disproportionately high and adverse health or environmental effects of its programs, policies, and activities on minority and low-income populations
- **DOT Order 5610.2A** requires Operating Administrations to fully consider environmental justice principles throughout planning and decision-making processes in the development of programs, policies, and activities that address or affect infrastructure planning and decision-making; social, economic, or environmental matters; public health; and public involvement

Environmental Justice (EJ), cont.

EJ Protected Communities

- **Minority** – a person or group of people that are a member of the following population groups: American Indian or Alaskan Native; Asian or Pacific Islander; Black, not of Hispanic origin; or Hispanic
- **Low-income** – a person whose median household income is at or below the Health and Human Services poverty guidelines
- **Minority/Low-income population** – minority/low-income persons who live in geographic proximity to one another or, if circumstances warrant, geographically dispersed/transient persons

Environmental Justice (EJ), cont.

EJ Concepts

- EJ concerns are triggered by human health or environment effects, including interrelated social and economic effects:
 - Displacement (e.g., of people and businesses) is the most likely significant EJ issue at and around airports
 - Noise and air quality are the most likely environmental issues
- Where possible, avoid impacts
- Mitigation measures may include property acquisition, sound insulation of homes and schools, or compensation through the purchase of navigation easements

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Sub-recipients vs. Contracted Parties

Sub-recipient	Contractor / Lessee / Tenant
Signs an assurance	Signs a contract / agreement
Implements a program	In business to make a profit
Develops a Title VI Program of its own	Responsible for complying with the Title VI Program of recipient contracted with
Passes on Title VI obligations to sub-recipients and contractors	Passes on Title VI obligations to subcontractors / sublessees / subtenants
May not absolve self of Title VI obligations by hiring a contractor to perform or deliver assistance to beneficiaries	May not absolve self of Title VI obligations by hiring a subcontractor, etc. to perform or deliver assistance to beneficiaries
Monitors sub-recipients and contractors	Monitors subcontractors, etc.

Contract Obligations

Requirements passed on to contractors, tenants, and licensees:

- Airport is responsible for ensuring compliance
- All leases and contracts must require compliance

Requirement	Title VI	ADA/504
Nondiscrimination clause*	<u>Required</u>	<u>Required</u>
Reverter and cancellation clauses*	<u>Required</u>	<u>Required</u>
Reference all directly applicable statutes and regulations*	<u>Required</u>	Suggested
Incorporate detailed policies and procedures to verify compliance	Suggested	Suggested
Forward discrimination complaints to airport	<u>Required</u>	<u>Required</u>
Agreement for boarding assistance and equipment	Suggested	<u>Required</u>

* See required FAA Required Contract Provisions for AIP and Obligated Sponsors at https://www.faa.gov/airports/aip/procurement/federal_contract_provisions/

Sub-recipient Obligations

*[Recipients] will provide for such methods of administration for the program as are found by the Secretary to give reasonable guarantee that it, other recipients, **sub-recipients**, sub-grantees...and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the acts, the regulations, and this assurance*
(Assurance 30, Provision F)

Sub-recipient Obligations

*(b) **Compliance reports**...In the case in which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this part. In general recipients should have available for the Secretary racial and ethnic data showing the extent to which members of minority groups are beneficiaries of programs receiving Federal financial assistance.*

(49 CFR §21.9)

Oversight for Tenants, Contractors, Sub-recipients

General Obligations

1. Compliance with Regulations
2. Nondiscrimination
3. Solicitations for Contracts / Subcontracts, including Procurements of Materials and Equipment
4. Information and Reports
5. Sanctions for Noncompliance
6. Incorporation of Provisions

Oversight for Tenants, Contractors, Sub-recipients

Title VI Coordinator

- Oversee entire Title VI Program
- Routinely monitor
- Provide technical assistance
- Recommend and/or administer sanctions for noncompliance

The Recipient will impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:

- a. withholding payments to the contractor under the contract until the contractor complies; and/or*
- b. cancelling, terminating, or suspending a contract, in whole or in part.*

(A6.4.1, Provision #5)

Case Scenarios - #1

Your airport receives a call from a traveler alleging she was inappropriately touched by a Roadrunner Airline's employee in Lobby 5. She has not filed a complaint with Roadrunner. How would you handle the complaint to the airport?

Case Scenarios - #2

Acme Corp. is a first-time subcontractor on your airport's big construction project. Acme does not have Title VI contract clauses in its contracts with the prime contractor, Coyote Construction. However, their contract does include oft-used subcontract language from FHWA's Title VI contract clauses.

What are the problems and how would you correct them?
How should the airport ensure that it catches this type of issue?

Case Scenarios - #3

Fricassee's is a small airport restaurant specializing in French food. Daffy, the manager, requires employees to speak French. You receive many complaints about Fricassee's. Local leaders have also complained that the airport restaurants do not represent the community. You decide to address both issues by terminating their lease and advertising the new lease opportunity to local restaurants, within 5 miles of the airport, only.

What are the problems and how would you correct them?

Case Scenarios - #4

Yosemite's flight school is a long time tenant at your airport. Yosemite's owner (Sam), believes that only young men should be pilots, which he mentions frequently on social media. Sam does not want to cause any problems, so he does not have any official policies, and he occasionally accepts women students. He has a clause in his lease with the airport, which was written in 1965, that says he will abide by Title VI.

What are the problems and how would you correct them?

Case Scenarios - #5

Hazel is the station manager for Witch Airlines. All Witch flights from your airport are direct to Walla Walla, where the official language is Portuguese. Hazel knows that she has to display the FAA-required nondiscrimination notice in the Witch gate area. However, she assumes most customers will not be able to understand it, so she creates a fun video with cartoon characters reading the information from the notice, in Portuguese.

What are the problems and how would you correct them?

Case Scenarios - #6

Elmer is writing a LEP Plan for your airport. Elmer reviewed the latest U.S. census data, based on the 2010 census. He notices that 60 percent of the local population are Spanish language speakers. Luckily, Bugs, Elmer's best employee, speaks fluent Spanish. Elmer is also a huge Wagner fan, so he includes German-language telephone interpretation services in the plan.

What are the problems and how would you correct them?

Case Scenarios - #7

Your airport received a state grant for residential noise mitigations. Marvin is the project manager, and needs to decide how to spend the grant money. Two nearby communities, Martian Town and Pismo Beach Estates, are equally affected by airport noise, but Martian Town is a low income community. Marvin decides to give out noise mitigation improvement reimbursements, on a first-come-first-served basis. An advertisement is posted on the airport website. Only residents of Martian Town and Pismo Beach are eligible.

What are the problems and how would you correct them?

Title VI, LEP, EJ Websites

Description	Website Link
49 CFR Part 21	www.ecfr.gov for 49 CFR 21
FAA Order 1400.11 (Appendix 4)	http://www.faa.gov/documentLibrary/media/Order/FAA_1400_11.pdf
FAA Title VI Brochure	http://www.faa.gov/about/office_org/headquarters_offices/acr/com_civ_support/non_disc_pr/media/Title_VI_Brochure.pdf
Lists Information on LEP	http://www.lep.gov
DOT Order 5610.2a on EJ	https://www.fhwa.dot.gov/environment/environmental_justice/ej_at_dot/orders/order_56102a/index.cfm
EJSCREEN	https://www.epa.gov/ejscreen

FAA Title VI Program Staff

Team Email: 9-ACR-TitleVI@faa.gov

Name	Address	Contact
Airport Nondiscrimination Compliance Program Team		
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<p>Shantray Dickens <i>Specialist for FAA Central, Great Lakes, Northwest Mountain, and Southwest Regions</i></p>	<p>FAA Office of Civil Rights 800 Independence Avenue, S.W. Washington, DC 20591</p>	<p>202-267-9122 Shantray.Dickens@faa.gov</p>
<p>Cherry Smith <i>Specialist for FAA Eastern, New England, and Southern Regions</i></p>	<p>FAA Eastern Regional Office Office of Civil Rights, Room 217 159-30 Rockaway Blvd. Jamaica, NY 11434</p>	<p>718-553-3299 Cherry.Smith@faa.gov</p>

Questions

