

New York
Department of Transportation
Title VI Program



June 15, 2017

Submitted to:
Federal Transit Administration (FTA) – Electronically in TrAMS

Submitted by:
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Introduction

The New York State Department of Transportation (the Department) submits this triennial Title VI Program in accordance with FTA Circular 4702.1B, dated October 1, 2012 (the "Circular"). The period covered by this report is August 2017 through July 2020. Submittal of this report ensures the Department conducts its Title VI Program in compliance with federal regulations. The Department incorporates Environmental Justice principles described in the USDOT (Order 5610.2a), "Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 77 FR 27534, May 10, 2012). Also incorporated is Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficient ("LEP") Persons (70 FR 74087, December 14, 2005) as embodied in Executive Order 13166. NYS DOT Title VI provisions include, but are not limited to, prohibiting discrimination on the grounds of race, color, sex, age, national origin, religion, disabling condition, or being included within minority populations and/or low-income populations. It also prohibits exclusion from participation, denial of benefits to, or others subject to discrimination under any program or activity administered by NYS DOT. This Title VI Program follows the requirements of the Circular (Chapter III & Chapter V) to prepare and submit a Title VI Program.

NYS DOT Overview

NYS DOT is the state agency charged principally with overseeing the development, planning, and execution of transportation policy for the State of New York (See the Departmental Organization chart – Attachment A-1). As part of its charge, the Department builds and maintains the roadway and bridge infrastructure in New York State and oversees the development and planning of all transportation modes including rail, air and transit.

As the State transportation agency, the Department is responsible for building and maintaining the State highways and bridges. By law, the Department inspects locally owned bridges, but the Department is not responsible for the construction or maintenance of roads and bridges owned by municipalities (village, town, county), the New York State Thruway, or under the jurisdiction of other authorities, such as Metropolitan Transportation Authority and the New York State Bridge Authority.

The Governor of the State of New York has designated the Department as the agency charged with administering programs funded by the Federal Transit Administration (FTA). Within the Office of Integrated Modal Services of the Policy and Planning Division, the Public Transportation Bureau (PTB) administers several Federal and State programs for mass transit and public transportation in New York State, including the programs funded by the FTA. (See Policy and Planning Division Organization Chart – Attachment A-2). In addition to PTB, the Statewide Planning Bureau administers the FTA 5303 program; the Office of Modal Safety & Security Rail Safety Bureau administers the FTA 5329 program; Regional Transit Coordinators, from each of the Department's eleven regions, serve as resources at the local level for transit agencies within each DOT region and the Office of Civil Rights assists with the Civil Rights requirements.

The Department does not own or operate transit facilities in New York State. Five Transportation Authorities in the State serve the major metropolitan areas. In some metropolitan areas and in the remaining areas, local municipalities either directly operate transit or administer a program with a third party operator. The list of current Designated Recipients for FTA funding is provided in Attachment A. (See Designated Recipient Listing by Area Served – Attachment A-5). The Department does contract directly with nine different intercity operators to provide services in the rural areas of the State. Not-for-profit organizations across the State participate in the Enhanced Mobility of Seniors and Individuals with Disabilities (FTA Section 5310), traditionally a program to purchase vehicles with 80% federal participation. Under MAP-21 & continuing with the FAST Act, the 5310 program has been enhanced with New Freedom Funding from SAFTEA-LU and with additional eligible activities. The Department, in cooperation with agencies across the State, performs all the specification development and procurement process for these vehicles through a NYS Office of General Services (OGS) adult Bus Contract. PTB is also responsible for the Non Urbanized Area Formula (FTA Section 5311), Transit Statewide planning (FTA Section 5304), and the expired SAFETEA-LU programs Job Access and Reverse Commute (FTA Section 5316) and New Freedom (FTA Section 5317).

The Department has approximately 8,400 employees who work in eleven Regions and the Main Office in Albany. The Department's annual capital construction budget has averaged almost \$1.7 billion for the past 3 years. The Department administers the FTA State programs and now with the Fast Act is responsible for over \$46 million a year. The State also has a Statewide Mass Transportation Operating assistance program (STOA) that provides operating assistance to the Public Transportation program in the State. The 2017-18 State Budget provided over \$5 billion dollars in transit aid from a variety of dedicated taxes and general funds.

NYS DOT's Organizational Approach to Title VI

As a recipient of federal transportation funds, the Department promulgates Title VI of the Civil Rights Act of 1964, as amended, in all of its business operations and practices as required in 49 CFR Part 21. The Department incorporates in its business operations considerations expressed in the Order on Environmental Justice (Order 5610.2), and Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficient ("LEP") Persons (70 FR 74087, December 14, 2005) as embodied in Executive Order 13166.

Title VI of the Civil Rights Act of 1964 requires that, *"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."* NYS DOT's Title VI Program ensures that services, programs, and activities are offered, conducted, and administered fairly, without regard to race, color, national origin, sex, age, or disability of the participants or beneficiaries of federally funded programs, services, or activities (see NYS DOT Commissioner Assurance – Attachment B-2).

The Department's Office of Civil Rights (OCR) is charged by the Commissioner to oversee the continued development and implementation of the Department's external non-discrimination practices in its programs and activities.. (See OCR Organization Chart – Attachment A-3). The Office of Civil Rights

oversees the development and implementation of its Title VI program; including Americans with Disabilities Act (ADA), Environmental Justice (EJ) and Limited English Proficiency (LEP). The Office of Civil Rights and Public Transportation Bureau collaboratively work to ensure delivery of the Title VI program in accordance with FTA requirements. The OCR directly oversees the Department's Title VI program through its Title VI Unit. The Title VI unit is comprised of three full-time NYSDOT staffers who collectively possess over fifty (50) years of professional Civil Rights related experience. The OCR is based in the Main Office located in Albany, New York. The OCR is responsible for reviewing and monitoring the Department's Civil Rights program throughout New York State.

In addition to the members of the Title VI Unit, the Department further supports its Title VI program with assistance of Main Office and Regional Title VI Coordinators ("Title VI Coordinators") who are authorized to advance Title VI practices in the Main Office program areas as well as in each of the eleven Regional Offices. The OCR established these positions in 2010 (see Title VI Coordinators Description of Duties – Attachment A-4). The Regional Title VI Coordinators are resources for the Regional Transit Coordinators who assist PTB in managing and supporting the work of regional and local transit systems (summarized in the Overview of NYSDOT).

The OCR relies on the PTB in the Main office and Regional Civil Rights staff (Regional Compliance Specialists, Regional Title VI Coordinators) to ensure the Department is effectively promulgating its Civil Rights and Title VI programs to all pertinent stakeholders. To help advance the promulgation of its Civil Rights program, OCR, in 2009, instituted monthly Civil Rights teleconferences for the Department's Regional Compliance Specialists and monthly Title VI teleconferences for all Title VI Coordinators. The monthly teleconferences increase the Department Title VI personnel's understanding of Title VI, ADA, EJ and LEP practices and encourage shared best practices among the Department's staff and stakeholders throughout New York State.

The work of the Title VI Unit is overseen and directed by the Department's Director of the Office of Civil Rights (DOCR). The DOCR has a direct and independent reporting relationship to the Commissioner. The Department administers its Title VI Program in compliance with all statutes, regulations, and Executive Orders per 49 CFR 1.45 and Sections 21.13, 21.15, and 21.17.

NYSDOT Title VI Policy Statement of Non-Discrimination

The Department maintains a Civil Rights Policy Statement to assure NYSDOT's compliance with Title VI of the Civil Rights Act of 1964 (Attachment B-1). The NYSDOT Commissioner reaffirmed the Non-Discrimination Policy Statement (Attachment B-2). In addition, the Department's Legal Division and appropriate staff sign off on the annual FTA Certifications and Assurances as a means to update the Department's activities to ensure that all Federal regulations are adhered to and updated on an annual basis (Attachment B-3).

Sub-recipients of the Department are instructed to develop their own Title VI Policy Statement or to adopt the Department's if they do not currently have one of their own. Certification of the adherence to the Title VI Program and other Federal requirements are certified annually through the sub-recipient's

signing the annual FTA Certifications and Assurances and through applications for funding and other reporting mechanisms.

NYS DOT Notice to the Public of Title VI obligations and Complaint Procedures

The Department notifies the public of its Title VI obligations through its website (www.dot.ny.gov/main/business-center/civil-rights/title-vi-ej) and has a standard process for investigating all complaints. The Department maintains a Title VI Complaint Procedure to ensure that no person in the State of New York be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program administered by the Department. Complaints must be directed in writing, signed by the person(s) or their representative and must include the complainant(s) name, address and telephone number to:

Title VI Coordinator
Office of Civil Rights
New York State Department of Transportation
50 Wolf Road, 6th Floor
Albany, NY 12232
Phone: (518) 457-1129 Fax: (518) 485-5517
Email: OCR-TitleVI@dot.ny.gov

Allegations of discrimination received by mail, fax or email will be acknowledged. All complaints processed by the Department are conducted within the time frames outlined in 23 CFR 200.9(b)(3) and reported in compliance with 49 CFR Section 21.9(b), Attachment C-1: NYS DOT Discrimination Complaint Procedure details the full procedures for filing a complaint and for investigating complaints. This can also be found on the Department's Title VI website (www.dot.ny.gov/main/business-center/civil-rights/title-vi-ej) and Attachment C-2: NYS DOT Discrimination Complaint Form.

Record of Title VI investigations, complaints, or lawsuits

Over the course of the reporting period since the Department's previous submission of a Title VI Program to the FTA (2014), the Department had no Title VI investigations, complaints or lawsuits filed with the Department or naming the Department that allege discrimination. The Title VI Unit continues to work with PTB to expand training and development of Title VI Regional Coordinators to include PTB and Statewide Planning staff, transit sub-recipients, and all other appropriate stakeholders to support Title VI in accordance with Federal regulations.

NYS DOT Limited English Proficiency (LEP) Language Assistance Plan

The Department's LEP Plan is contained in this report as Attachment D-1. Per FTA requirements, this attachment contains the Department's four factor analysis and language assistance plan, including description of how the four factors are addressed (page 13 of Attachment D-1 and refer to Attachment D-4 NYS DOT's LEP Approach to the Four Factor Analysis.), where data was obtained, and results of this

data collection. Since the last approved program, OCR has led an internal initiative to create working collaborations with internal Program Areas to ensure the Department’s approach to advancing Title VI aligns with federal regulations. Attachment D-1 represents a collaborative effort among various Department program areas, including the Engineering and Planning Divisions. The Department will continue working to develop its plans and procedures and continually provide its staff, sub-recipients and all other required stakeholders appropriate training and development to effectively promulgate LEP.

Based on the US DOJ LEP guidance NYSDOT used the four-factor analysis to identify the top five most commonly identified LEP languages for a statewide overview from the 39 Census Language Groups identified by the Census Data meeting or exceeding one or more of the LEP thresholds:

- 1,000 individuals in the area speaks a language other than English
- 5% or more of the population speaks a language other than English

In doing so, New York State has 2,355,164 LEP residents statewide (Attachment D-2). The top five (5) most commonly identified LEP languages in New York State are:

Language	Number of Residents	% of Total LEP Population
Spanish or Spanish Creole	1,187,585 residents	50.4%
Chinese	289,309 residents	12.3%
Russian	136,192 residents	5.8%
Italian	77,036 residents	3.3%
Other Indic languages	63,300 residents	2.7%

LEP numbers for NYSDOT regional breakdown of most commonly identified languages from the 39 Census Language Groups Summary Narrative and Statistics tables used by the Department can also be found under Attachment D-2, and a full copy of the Department’s most recent LEP Guide can be found under Attachment D-3.

In order to further comply with the requirements of Title VI, the PTB adopted a Language Assistance Plan for FTA administered programs (see Attachment E). The Language Assistance Plan includes the document translation of a one (1) page public notification of availability of translation services, made available in six (6) different languages (other than English), and includes the Department’s Notification of Protections under Title VI. These documents will be included in the Department’s next application cycle for sub-recipients. The three (3) key elements of this Language Assistance Plan are:

- Document translation of a *Public Notification of Availability of Language Assistance Services* into the six top statewide languages based on the four-factor analysis (Spanish, Chinese(Mandarin), Russian, Italian, Hindi and Korean) for FTA administered programs that is posted on the Department’s PTB web site pages, included within application materials (FTA financial assistance programs), and included within public announcements (including Press Releases issued by the Department) for the availability of FTA federal funds.
- *Public Notification of Availability of Language Assistance Services* that includes the Notification of Protections under Title VI (Attachment E).
- Utilization of an NYS Office of General Services (OGS) Translating and Interpreting Service contract pursuant to requests submitted from the *Public Notification of Availability of Language Assistance*

Services for FTA administered programs for translating documents upon request and providing interpreting services for public meetings upon request.

Public Notice of Availability of Language Assistance Services

A copy of the *Public Notification of Availability of Language Assistance Services*, which includes the Department's Notification of Protections against discrimination afforded to the public under Title VI, can be found under Attachment E.

Summary of Public Participation/Outreach Plan efforts & Equity in Distributing Federal Funds

As a State Agency administering Enhanced Mobility for Seniors and Individuals with Disabilities (FTA Section 5310), and Non Urbanized Area Formula (FTA Section 5311) federal financial assistance programs, NYSDOT conducts public outreach through a variety of efforts, including but not limited to:

- Direct mailings
- Targeted e-mails
- Maximizing accessibility and availability of solicitation documents for FTA federal financial assistance - posting on the NYSDOT website
- Announcement of the Availability of Federal Funds posting in the New York State Register & NYS Grants Gateway Portal
- Press releases issued by the NYS Governor and/or NYSDOT Commissioner
- General grant information newsletters
- Conference presentations
- Regional round table discussions
- Application preparation assistance workshops

In accordance with the updated **FTA Circular 4702.1B**, NYSDOT will consider and encourage other effective outreach practices as appropriate (depending on the nature and scope of projects), including but not limited to:

- Scheduling meetings at times and locations that are convenient and accessible for Title VI populations.
- Employing different meeting sizes and formats.
- Coordinating with community- and faith-based organizations, educational institutions, and other organizations to implement public engagement strategies that reach out specifically to members of affected Title VI populations.
- Considering radio, television, or newspaper ads on stations and in publications that serve Title VI populations. Outreach to Title VI populations could also include audio programming available on podcasts.

- Providing opportunities for public participation through means other than written communication, such as personal interviews or use of audio or video recording devices to capture oral comments.

“Recipients have wide latitude to determine how, when, and how often specific public participation activities should take place, and which specific measures are most appropriate. Recipients should make these determinations based on a demographic analysis of the population(s) affected, the type of plan, program, and/or service under consideration, and the resources available. Efforts to involve minority and LEP populations in public participation activities can include both comprehensive measures, such as placing public notices at all transit stations, stops, and vehicles, as well as targeted measures to address linguistic, institutional, cultural, economic, historical, or other barriers that may prevent minority and LEP persons from effectively participating in a recipient’s decision-making process. “

These public outreach efforts present an equal opportunity for all prospective applicants/potential sub-recipients of FTA federal financial assistance. To enhance this process the OCR and PTB will coordinate on the *Public Notification of Availability of Language Assistance Services* document to continue to ensure equal access to technical assistance from the Department throughout the year. In the past, each program would compile the list of eligible applicants and send notification to them through mail, email, the website and the contract reporter. As part of this plan, PTB will work with OCR to expand the inclusive public participation to ensure access for low-income and minority populations is also conducted, and accomplished through community based organizations whose addresses are on NYSDOT’s Office of Civil Rights mailing list, and are targeted as part of the outreach process of the PTB for FTA Programs. Technical assistance is also provided at an annual transit industry conferences and regional meetings. Topics of importance to attendees have included Disability Awareness, Coordination, Procurement, Civil Rights and Regional Maintenance.

It is the goal of the Department to fully allocate the FTA federal funding apportionments that are allocated to the State, and the process described above ensures equity (and is non-discriminatory) in the public outreach process and in the method of distributing funds. For certain FTA Programs, this method of distributing funds includes project selection that is accomplished through a competitive solicitation of proposals and evaluation of applications for funding, evaluated by committee, and funded based upon the committee evaluation outcome.

In addition, public participation is facilitated through required outreach extended by the Department to prospective applicants/potential sub-recipients of FTA federal financial assistance in the form of the publication of a general notice informing the public of prospective applicant’s intent to apply for funding and to invite participation in the project, if applicable.

Further, public involvement is mandated for every project that is considered for FTA federal funding in that these projects must be derived from a Locally Developed, Coordinated Public Transit Human Services Transportation Plan (“Coordinated Transportation Plan”) that includes the targeted populations of the programs, including elderly individuals, individuals with disabilities and low income populations. In New York State, the plans are developed by MPOs wherever one exists. In areas without an MPO, the plan is created at the county level, either by the county planning office, public transportation office, or another lead agency. These Coordinated Transportation Plans include participation by members of the

public. Prospective sub-recipients of the Department must include documentation with their application submission for FTA federal financial assistance that proposals for grant funding have been included in the development of a Coordinated Transportation Plan.

The Department's planning process and public participation, including Title VI, is certified as part of the Statewide Transportation Improvement Program (STIP) submittal.¹ The Department has a public participation procedure and a rural consultative process. This certification acknowledges the Metropolitan planning processes under section 134 as each MPO self-certifies or has recently undergone a Federal Certification review. A copy of the Department's Certification that the statewide planning process for the STIP development complies with Title VI can be found under Attachment F. The list of an approved program of projects for which the Department is applying for federal financial assistance under an FTA grants requires public notification for FHWA/FTA compliance and federal approval. The NYS STIP/TIP public participation requirements are in compliance with the requirements of 23 U.S.C. 134 and Section 5303 and 5313 of the Federal Transit Act.

Summary of NYSDOT Sub-Recipient Title VI monitoring

The Department meets the general requirements and program specific requirements for Title VI through the Title VI Standard Assurance certifying compliance with the Federal Certifications and Assurances for FTA Assistance each year for grant applications submitted to the FTA, and also by passing down these requirements to each sub-recipient. Applicants for FTA federal financial assistance must agree to the same Federal Certifications and Assurances for FTA Assistance with grant solicitations filed with the Department.

The Department's ongoing process to monitor sub-recipient compliance with Title VI includes a risk assessment process to determine the need for full on-site review versus a "remote" visit and review of documents and policies. The review of applications (which include a Title VI certification), and continued compliance through sub-recipient certification included as part of regular reporting requirements mandated by the Department of sub-recipients are used as part of the risk assessment. NYSDOT has also hired a contractor in January 2017 to conduct compliance site visits across all FTA administered programs to improve the timing, recording and follow-up of the site visits.

As part of the oversight responsibilities for NYSDOT with respect to FTA funded projects, PTB, working with OCR, developed and hosted a webinar regarding sub-recipient responsibilities and requirements for Title VI. In addition, the PTB website has been updated to include this webinar, other useful links for Title VI information and forms to document the outreach and results from sub-recipients efforts to be as inclusive as possible in reaching out to communities of concern in their service area. This page is updated as information changes and can be found at <https://www.dot.ny.gov/divisions/policy-and-strategy/public-transportation/civilrights/title-vi-technical-assistance-guidance> .

¹ <https://www.dot.ny.gov/programs/stip>

When there are findings from NYSDOT's or the oversight consultant's review of sub-recipients, either through the remote initial assessment or the on-site review, the findings are required to be resolved by the sub-recipients to close any findings of noncompliance. This information will be recorded in our expanded Site Visit information tracking system (BlackCat). Any required compliance reports are forwarded to the Department's Office of Civil Rights for inclusion in the Department's report to USDOT. Through ongoing reporting, monitoring and site visits, findings of a lack of compliance with Federal and State requirements are identified and an action plan is developed with the Sub-recipient to address the findings in 30, 60 or 90 days depending on the severity of the finding.

Statement on Analysis of Construction Projects

Over the course of the reporting period since the Department's previous submission of a Title VI Program to the FTA, the Department has not completed a construction project requiring an environmental assessment (EA) or environmental impact statement (EIS). The Department maintains a list of all transit construction projects and will summarize them, if necessary, in this report every three years (see Attachment G). In addition, in compliance with the guidance provided under FTA C 4702.1B, the Department will integrate the following components into any EA and/or EIS documents it is required to prepare:

- a. A description of the low-income and minority population within the study area affected by the project, and a discussion of the method used to identify this population (e.g., analysis of Census data, minority business directories, direct observation, or a public involvement process).
- b. A discussion of all adverse effects of the project both during and after construction that would affect the identified minority and low-income population.
- c. A discussion of all positive effects that would affect the identified minority and low-income population, such as an improvement in transit service, mobility, or accessibility.
- d. A description of all mitigation and environmental enhancement actions incorporated into the project to address the adverse effects, including, but not limited to, any special features of the relocation program that go beyond the requirements of the Uniform Relocation Act and address adverse community effects such as separation or cohesion issues; and the replacement of the community resources destroyed by the project.
- e. A discussion of the remaining effects, if any, and why further mitigation is not proposed.
- f. For projects that traverse predominantly minority and low-income and predominantly non-minority and non-low-income areas, a comparison of mitigation and environmental enhancement actions that affect predominantly low-income and minority areas with mitigation implemented in predominantly non-minority or non-low-income areas. Recipients and sub-recipients that determine there is no basis for such a comparison should describe why that is so.

ATTACHMENTS LISTING

Attachment A

Attachment A-1: NYSDOT Departmental Organization Chart

Attachment A-2: NYSDOT Policy & Planning Division Organization Chart

Attachment A-3: NYSDOT Office of Civil Rights & Responsible Program Areas Organization Chart

Attachment A-4: NYSDOT Title VI Coordinators Description of Duties

Attachment A-5: Current FTA Designated Recipients by Area Served

Attachment B

Attachment B-1: NYSDOT Title VI Policy Statement Nondiscrimination Public Notice

Attachment B-2: NYSDOT Commissioner Assurance

Attachment B-3: FTA Certifications and Assurances (submitted by NYSDOT)

Attachment C

Attachment C-1: NYSDOT Discrimination Complaint Procedure

Attachment C-2: NYSDOT Discrimination Complaint form

Attachment D

Attachment D-1: NYSDOT LEP Plan

Attachment D-2: NYSDOT LEP Statewide and Regional Summary Statistics & Tables for NYS

Attachment D-3: NYSDOT LEP Guide

Attachment D-4: NYSDOT's LEP Approach to the Four Factor Analysis

Attachment E – NYSDOT Public Notification of Availability of Language Assistance Services

Attachment F – NY Statewide Transportation Planning Process Certification

Attachment G – NYSDOT Listing of Transit Construction Projects