**FEDERAL HIGHWAY ADMINISTRATION**

**OFFICE OF CIVIL RIGHTS**

**TITLE VI/NONDISCRIMINATION**

**COMPLIANCE REVIEW**

**WISCONSIN DEPARTMENT OF TRANSPORTATION**

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DATE OF ON-SITE: July 25-29, 2011

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**INTRODUCTION**

On Friday, April 8, 2011, the FHWA Office of Civil Rights received a written Complaint via e-mail and addressed to Mr. Lester Finkle, FHWA National Title VI/Nondiscrimination Program Manager (Attachment A). The Complaint alleged that the Wisconsin Department of Transportation (WisDOT) is not compliant with the Title VI/Nondiscrimination requirements and that the FHWA Division Office is not requiring WisDOT to be compliant with the Title VI/Nondiscrimination requirements. Specifically, that WisDOT has not satisfied the requirements of 23 CFR 200.9 (b) (4), (5), (7), (8), (10), (12), & (13). Additionally, the complaint alleges that WisDOT has not satisfied 49 CFR 21.5 (b) (2) & (3) and Executive Orders #12898 (Environmental Justice) and 13166 (Limited English Proficiency). In response to the Complaint, Mr. Finkle conducted a Title VI/Nondiscrimination Compliance Review of WisDOT.

It is important to note that three USDOT operating administrations (OAs) supported the Wisconsin Compliance Review by allowing a representative from each OA’s Office of Civil Rights to accompany Mr. Finkle as observers. The participants from the Modal Agencies are as follows: Mr. Kennie May (Office of Civil Rights Director, Federal Motor Carriers Safety Administration), Ms. Pattie Tom (Equal Employment Specialist, Federal Aviation Administration), and Mr. Leon Simpson (Equal Opportunity Specialist, National Highway Traffic Safety Administration). Additionally, Ms. Nikisha Pickett (Administrative & Special Programs Director, FHWA Office of Civil Rights) also participated as an observer and contributed to the daily de-brief. Their participation was greatly appreciated as Mr. Finkle was able to de-brief on a daily basis with them and more fully discuss the identification of possible areas of improvement. Even though Mr. Finkle conducted the interviews, the participants effectively functioned as a Team.

**METHOD**

There were two phases of the Compliance Review: Desk Audit & On-Site. 23 Code of Federal Regulations (CFR) 200.9 (b) (5) requires that a State Transportation Agency (STA) “*develop a program to conduct Title VI reviews of program areas*.” Federal Program Areas include the following: Planning and Research, Environment, Design, Rights-of-Way, Contract Administration, Construction, Maintenance, Safety, and Training. STAs’ implement these Program Areas through written and possibly unwritten processes. As the effective implementation of a Title VI/Nondiscrimination Program by an STA may only be accomplished through the processes of the Federal Program Areas, the Desk Audit phase identified what processes were in writing and allowed for a qualitative analysis of these processes. Further clarification of certain processes that were not in writing would be obtained during the On-Site phase that specifically focus on any unwritten or lack of processes. The On-Site phase consisted of interviews conducted with personnel from the STA and Sub-Recipients. The purpose of the personnel interviews is to identify from the top of the STA’s organization (the Commissioner or Secretary) on down to the Title VI/Nondiscrimination Liaisons each person’s understanding of Title VI/Nondiscrimination and to determine what each person understands regarding his/her role in the effective implementation of Title VI/Nondiscrimination (if any).

Due to the fact that this Compliance Review was conducted in response to a written Complaint against the STA, an additional element to this Compliance Review included an On-Site Interview session with the Complainants and a follow-up Listening session with representatives of Advocacy Groups. The Complainants’ Interview session functioned as both a Listening session and allowed Mr. Finkle to ask follow-up questions as appropriate. Additionally, Mr. Finkle interviewed FHWA Division Office representatives separate and apart from the other Interviews.

A component of the Compliance Review entailed Interviews with four Local Public Agencies/Metropolitan Planning Organizations. The purpose of conducting these Interviews was to ascertain the extent of the STA’s Sub-Recipient Monitoring Program. The two Local Public Agencies (LPAs) interviewed were the City Of Madison and the City Of Milwaukee. The two Metropolitan Planning Organizations (MPOs) were the Madison Area Transportation Planning Board and the Southeastern Wisconsin Regional Planning Council (SEWRPC).

**DESK AUDIT**

On June 14, 2011, Office of Civil Rights (HCR) Acting Associate Administrator James Cheatham issued a Memorandum to Wisconsin Division Administrator George Poirier indicating that a Title VI/Nondiscrimination Program Compliance Review based upon a written Complaint would be conducted. The Memorandum requested that WisDOT Federal Program Areas procedural documents (operations manuals) be provided prior to the On-Site to initiate the Desk Audit.

In addition to 23 CFR 200.9 (b) (5), 23 CFR 200.9 (b) (4) requires that an STA “*develop procedures for the collection of statistical data (race, color, religion, sex, and national origin) of participants in, and beneficiaries of State highway programs, i.e., relocatees, impacted citizens and affected communities.*” Please note that “*religion*” applies to Title VII of the Civil Rights Act of 1964 and not Title VI. Taken together, these requirements direct an STA to develop and implement data collection/data analysis and program areas reviews processes that have the effect of the STA conducting an on-going self-evaluation of the Federal Program Areas. To evaluate the effectiveness of an STA’s internal monitoring program (i.e., program that evaluates how each Federal Program Area is being implemented) and an STA’s Sub-Recipients’ monitoring program, FHWA’s HCR developed a Title VI/Nondiscrimination Compliance Review Program.

WisDOT operations manuals were provided to Mr. Finkle via e-mail (See Attachment D) and mail (CDs). Please note that the WisDOT Facilities Design Manual is a voluminous document and that there was no suggestion as to which Chapters are associated with Title VI/ Nondiscrimination requirements. After viewing the various documents and based upon the input from the On-Site Personnel Interviews, the Facilities Design Manual (FDM) was identified as the document with the greatest impact within WisDOT and WisDOT Recipients (FHWA Sub-Recipients). During the On-Site Interviews, only Chapter 6 (Public Involvement) and Chapter 21 (Environmental Documents, Reports, and Permits) were mentioned. Following the On-Site, Chapter 6 (Public Involvement), Chapter 25 (Socio-Economic Factors), Chapter 3 (Facilities Development Process), Chapter 5 (Agency Coordination), Chapter 8 (Consultant Services), Chapter 11 (Design), and Chapter 21 (Environmental Documents, Reports and Permits) were deemed to be relevant. In general, any references to Title VI related to Environmental Justice (EJ) impacts in the context of access to services and facilities. Additionally, there were numerous references/inferences to EJ impacts in the context of access to services and facilities throughout various Chapters.

WisDOT has a developed and well thought out Public Involvement approach (as detailed in Chapter 6 of the FDM). Project Managers are given eighteen tools/techniques to choose from in addition to having the latitude to develop other creative tools/techniques. The requirement that Project Managers develop a Communication Plan for each project offers the opportunity for a project-specific approach that is adapted to the unique characteristics associated with each project. Additionally, the FDM is recognized as the standard to be followed. This was echoed by the FHWA Division Office, WisDOT, and FHWA Sub-Recipient representatives interviewed. WisDOT is to be commended for these achievements.

Federal Code (23 USC 109 (h)) and Federal Regulation (23 CFR 450.218 (a) (2), 23 CFR 450.334 (a) (3), 23 CFR 710.501 (b) (4), 23 CFR 752.8 (c) (6), 23 CFR 771.105 (f), 49 CFR 24.8 (b)) require compliance with Title VI and additional Nondiscrimination-related statutes. Four Federal Program Areas (Planning, Environment, Design, Rights-of-Way) either conduct or participate in the conduct of Public Hearings and Public Meetings, which process is entitled Public Involvement or Public Participation. To be compliant with Title VI/Nondiscrimination requirements, how an STA notices, conducts, and addresses comments submitted must be inclusive with respect to the Title VI/Nondiscrimination populations (including low-income and Limited English Proficiency populations).

With regards to Public Involvement, WisDOT has not established a uniform connection between Chapter 6 (Public Involvement) and the other Public Involvement-related Chapters including Chapter 3 (Facilities Design Manual), Chapter 11 (Design), and Chapter 21 (Environmental Documents, Reports, and Permits). Either Chapter 6 is not referenced in the Chapters mentioned or the reference does not detail how Chapter 6 is implemented through the other Chapters. **Please note: Attachment A details observations and comments associated with the review of multiple FDM Chapters and the 2004 Title VI Plan**.

It is understood through the Interviews that there are any number of Transportation Administrative Manual documents (TAMs) that have a Title VI/Nondiscrimination Program connection (#9 & #18 were mentioned). As these documents are only available via WisDOT Intranet, it is not possible to verify the applicability of any of the TAMs. More importantly, as these documents appear to be Federal Program Areas policy/process related documents, it is important that the directions communicated in all relevant TAMs be incorporated into the FDM and any other applicable Federal Program Areas operations manuals.

At the time this Review was conducted, WisDOT’s Title VI/Nondiscrimination Plan was dated December of 2004. In the interim, WisDOT submitted an updated Title VI/Nondiscrimination Plan and the Wisconsin FHWA Division Office approved the updated Plan via letter dated February 10, 2012. Please note that the following comments are based upon a review of the December of 2004 Plan. WisDOT is responsible for ensuring that all comments related to the December of 2004 Plan are addressed in the February of 2012 Plan.

While the Secretary’s Title VI Policy Statement identifies the *Civil Rights and Compliance Programs Manager* as the WisDOT Title VI Coordinator, the Policy Statement does not indicate that the WisDOT Secretary is ultimately responsible for effective Title VI/Nondiscrimination implementation and does not indicate whether the Secretary has delegated authority and responsibility to the Division Administrators responsible for Title VI/Nondiscrimination Federal Program Areas to effectively implement Title VI/Nondiscrimination requirements. The Policy Statement does reference *Program Area Designees*; however, there were no Designees present during the Personnel Interviews or these individuals did not identify themselves as Program Area Designees. The Bureau Of Equity & Environmental Services (BEES) has the responsibility for the Title VI/Nondiscrimination Program; however, this office has been discontinued and it is not apparent as to how WisDOT will be implementing Title VI/Nondiscrimination requirements. Additionally, the WisDOT Title VI/Nondiscrimination Coordinator and the Director (OBOC) have both been on the job for less than four months as of July of 2011 (See Attachment A regarding Notes from the review of this Plan).

Review of other operations manuals has identified additional questions/comments. Title VI-related Nondiscrimination boilerplate language was found in the template for Consultant Agreements; however, the language is intermixed with WisDOT Affirmative Action, DBE Program, and Form FHWA-1273 language and has been adapted from the Appendix A of the USDOT Standard Title VI Assurance. Please note that the Title VI Assurance insert (Appendix A) is to be included in all Consultant Agreements and Construction Contracts. The review did not identify a requirement for the Title VI/Nondiscrimination Assurance insert (Appendix A) to be included in all Construction Contracts. A process to identify if persons to be relocated due to a project are lawfully present in the United States (eligibility requirement for Rights-of-Way Relocation Benefits) was not discovered during the review (as required by 49 CFR 24.208). The review was not able to determine how WisDOT ensures that Research funds disbursed to Colleges/Universities are accomplished in a Title VI/Nondiscrimination compliant manner (including providing opportunities for Minorities In Higher Education (MIHE) institutions to compete for Research funds). Additionally, the review was not able to determine if the Maintenance Process to maintain WisDOT-controlled infrastructure is Title VI/Nondiscrimination compliant. The process WisDOT follows to prioritize when stretches of roadway are repaved, when refuse is picked up along the roadways, when grass is mowed and trees are trimmed along the roadway, needs to be implemented in a non-discriminatory manner. Also, how WisDOT receives and addresses contacts from the Public indicating that any number of Maintenance activities have not occurred at a specific location needs to be non-discriminatory.

**ON-SITE**

The On-Site portion of the Compliance Review was conducted between Monday, July 25th and Friday, July 29th. A Listening Session was held with the Complainant on Monday afternoon. Interviews were conducted at WisDOT Headquarters on Tuesday and Thursday afternoon. Interviews were conducted at the four Sub-Recipients on Wednesday and at the FHWA Division Office on Thursday morning. The Interviews at the Division Office were conducted in response to the Complaint alleging a lack of Division Office monitoring and enforcement of Title VI/Nondiscrimination Program implementation by WisDOT. A summary of the responses from the Interviews is as follows:

**WisDOT Interviews:**

* Secretary Gottlieb stated that he is ultimately responsible for the effective implementation of Title VI/Nondiscrimination requirements by WisDOT and that he has delegated responsibility to the WisDOT Division Administrators for the implementation through the Federal Program Areas under their jurisdiction;
* General Counsel Thiel expressed confidently that due to his many years of experience, the Interviews will reveal that everything is in order;
* Division Administrators interviewed as groups consistently and passionately spoke of a WisDOT “*culture*” that emphasizes diversity of WisDOT employees through Equal Employment Opportunities and promotes business opportunities for DBE-certified and Small Businesses;
* When asked “*What does Title VI/Nondiscrimination mean to you*”, one WisDOT representative mentioned the “*flavor of Title VI*”;
* The Bureau Managers interviewed in the group gatherings reiterated these points;
* When asked how a Title VI/Nondiscrimination issue is identified and resolved, responses consistently described the process as impromptu meetings held bi-weekly or monthly at which issues of any description (including Title VI/Nondiscrimination issues) are introduced and addressed; there are no Meeting Agendas and Meeting Minutes maintained to document the outcomes of these meetings;
* If Title VI/Nondiscrimination Program Area Designees were present in the Interviews, they did not identify themselves as such;
* When asked regarding Local Public Agencies receiving FHWA funds through WisDOT, the consistent response (as described by the Interviewer) may be summarized as WisDOT employees perform steps A through Y of a FHWA-funded project and then at step Z, WisDOT hands the FHWA-funded improvement to the Local Public Agency that accepts the improvement and maintains the improvement into perpetuity;
* When asked where Public Involvement-related processes may be found, the answer was Chapter 6 of the WisDOT Facilities Design Manual (FDM). This document was consistently referred to as the “Bible”;
* When asked if WisDOT has process that ensures the Title VI/Nondiscrimination Assurance insert (Appendix A of the USDOT document) is included in all Consultant Agreements and Construction Contracts, the answer was that WisDOT requires the Form FHWA-1273 to be included in all Agreements/Contracts;
* Interviewees mentioned numerous Transportation Administrative Manual (TAM) documents that relate to Title VI/Nondiscrimination requirements; however, the TAM is only available on the WisDOT Intranet and the Interviewer was not provided with copies of the relevant TAM document;
* When asked about recent Title VI/Nondiscrimination Training, responses varied from no training to either web-based training or training provided by FTA within the last two to three years;
* Both the Title VI/Nondiscrimination Coordinator and the Civil Rights Director have been on the job for approximately three to four months and there were numerous Interviewees that indicated they were new and that WisDOT has experienced a major reorganization this year;
* In response to questions relating to WisDOT Title VI/Nondiscrimination internal data collection/analysis/reporting, process reviews, and training, the WisDOT Title VI/Nondiscrimination Coordinator indicated that he is either presently developing or will develop processes for these areas in the future.

**Sub-Recipients:** The intent of these Interviews was to identify what each Sub-Recipient understands about Title VI/Nondiscrimination responsibilities and what monitoring activities (if any) are conducted by WisDOT on an annual basis.

* City of Madison – The Title VI/Nondiscrimination Coordinator function is divided between an individual and another Unit of the City. The City of Madison has passed an Ordinance that defines Title VI as a sub-set of Title VII. When asked if WisDOT performs steps A through Y and then the City receives the completed project, City representatives indicated that the City will perform the work from the Environmental phase through to Advertising and then WisDOT completes the rest of the steps for the City. There are also occasions where the City will handle a project from start to finish. The City is well acquainted with WisDOT’s FDM and uses it as their “Bible”. Except for the FDM, the City does not have any other Title VI/Nondiscrimination-related processes. When asked “*What does Title VI/Nondiscrimination mean to you*”, a City representative mentioned the “*Spirit of Title VI*”. Additionally, City representatives consistently related Title VI/Nondiscrimination to Equal Employment Opportunity (Affirmative Action), and DBE/Small Business opportunities. When asked whether the City includes the Title VI/Nondiscrimination Assurance insert (Appendix A of the USDOT document) in all Agreements/Contracts, the City representatives consistently indicated that they insert the Form FHWA-1273 in all Agreements/Contracts. The City’s Affirmative Action Department reviews and approves the City’s Title VI/Nondiscrimination Plan. City representatives are not aware of any Title VI/Nondiscrimination reporting requirements from WisDOT. Title VI/Nondiscrimination training has not been provided to any City representatives;
* Madison Area Transportation Planning Board – The Planning Board has been made a Department of the City that reports to the Mayor. The Planning Board has a Language Assistance Plan and a section of the Unified Planning Work Program that is entitled “*Title VI Initiatives*”. The section is focused on EJ and in the case of access to transit services has added elderly and disabled;
* Southeastern Wisconsin Regional Planning Commission – The Executive Director has not delegated Title VI/Nondiscrimination authority to anyone, although there are four MPO representatives that share Title VI/Nondiscrimination responsibilities. The following documents were provided: *Public Participation Plan For Transportation Planning Conducted By The Southeastern Wisconsin Regional Planning Commission* (Staff Memorandum & Brochure), *Meeting The Regional Planning Information Needs Of Southeastern Wisconsin Residents Having Limited English Proficiency* (Staff Memorandum), *Inclusive Public Participation*, *Assessment Of The Impacts Of The Regional Transportation Improvement Program On Minority And Low-Income Populations In Southeastern Wisconsin* (Appendix G), *Evaluation Of The Impacts Of The Recommended Year 2035 Regional Transportation System Plan On Minority And Low-Income Populations In Southeastern Wisconsin* (Appendix H), *Demographic Profile Of Southeastern Wisconsin Region With Respect To Minority And Low-Income Populations* (Exhibit K). Title VI/Nondiscrimination requirements are viewed as primarily Equal Employment Opportunities (Affirmative Action) and secondarily DBE/Small Business opportunities. SEWRPC submitted a Survey to WisDOT in 2010;
* City Of Milwaukee – The City does not appear to have one person responsible for Title VI/Nondiscrimination. Title VI/Nondiscrimination requirements are viewed as primarily Equal Employment Opportunities (Affirmative Action) and secondarily DBE/Small Business opportunities. In addition to the City either performing project work from start to finish and performing project work from Environment to Advertising, it also acts as a Sub-Contractor/Sub-Consultant to WisDOT at times.

**OBSERVATIONS**

Based upon the data compiled during the Desk Audit and On-Site phases, the following Observations are provided:

* Title VI/Nondiscrimination requirements are interpreted through Title VII (State Internal EEO/Affirmative Action) and DBE Program requirements – Consistently, Interviewees at the FHWA Division Office, WisDOT, and Sub-Recipients expressed an understanding of Title VI/Nondiscrimination requirements as diversity in WisDOT employment, diversity in contractors/consultants work forces, and DBE/Small Business opportunities. While these areas are important, they do not constitute Title VI/Nondiscrimination requirements and are addressed through other Statute/Regulations;
* Necessary Updates/Revisions to the Title VI/Nondiscrimination Plan **[PLEASE NOTE THAT DURING THE DRAFTING OF THIS REPORT, WISDOT HAS DEVELOPED AND THE DIVISION OFFICE HAS APPROVED A TITLE VI/NONDISCRIMINATION PLAN THAT WISDOT PROPOSES TO ADDRESS THE DEFICIENCIES LISTED IN THIS REPORT. THE DIVISION OFFICE WILL MONITOR THE IMPLEMENTATION OF THE TITLE VI/NONDISCRIMINATION PLAN BY WISDOT. EVEN THOUGH THE COMMENTS CONTAINED IN THIS BULLET WILL REMAIN IN THIS REPORT AS A RECORD OF THE REVIEW CONDUCTED OF THE 2004 TITLE VI PLAN, WISDOT WILL BE HELD TO THE COMMITMENTS AS DETAILED IN THE 2012 PLAN.]** – The detailed notes regarding the review of the Plan are included in Appendix A of this document. The following is a summary of the major areas:
* Delegation of Authority/Responsibility does not effectively define the roles and responsibilities of Recipient/Sub-Recipient representatives – While Title VI/Nondiscrimination Policy Statements exist, these Statements do not identify the next level down in the Agency to which the CEO is delegating authority/responsibility for the effective implementation of Title VI/Nondiscrimination requirements. While it is important to identify a Title VI/Nondiscrimination Coordinator, it is just as crucial to communicate to the next level of the Agency what expectations are assigned to these Managers. Then, these Managers will need to delegate further in writing to Federal Program Areas Unit Managers, who will then in writing identify Federal Program Areas Liaisons. The Liaisons will then be responsible for the routine Title VI/Nondiscrimination-related responsibilities within each Federal Program Area and to actively coordinate with the Title VI/Nondiscrimination Coordinator;
* Internal WisDOT Title VI/Nondiscrimination Evaluation and Reporting System – At present, while it appears that efforts are presently being initiated to develop a system, the system does not presently exist. The Evaluation System needs to communicate a multi-year (3-5 years) Process Review approach. Each Federal Program Area will identify those processes that impact the Public and will develop a Review Approach to evaluate the impact of these processes on the Public, especially the Title VI/Nondiscrimination populations (including EJ and LEP populations). For example, Rights-of-Way may review Appraisals the 1st year, Negotiations the 2nd year, Relocation (including Appeals) the 3rd year, Property Management the 4th year, and possibly Consultant Selection in the 5th year. Data Collection/Data Analysis will be an integral part of this Process Review approach and the results of these Reviews will need to be reported internally up to the Division Administrators and to the Title VI/Nondiscrimination Coordinator;
* Monitoring of Sub-Recipients’ Programs does not appear to be developed – To effectively monitor Sub-Recipients, WisDOT must be able to communicate Title VI/Nondiscrimination requirements expectations to Sub-Recipients and expect periodic reports to be submitted to WisDOT by the Sub-Recipients. Additionally, the distinction between a Sub-Recipient versus a Beneficiary appears to be confused. If WisDOT performs the steps from the Environmental phase through to Construction and then hands over the FHWA-funded improvement to the Local Public Agency to operate and maintain, the Local Public Agency is considered to be a Sub-Recipient. The expectation of the monitoring WisDOT will perform of these Sub-Recipients is minimal, but there is still an expectation that WisDOT will perform certain monitoring activities. For those Local Public Agencies that perform any amount or all of the project steps, the monitoring expectation will be greater.
* Title VI/Nondiscrimination Training Program (Internal & External) – WisDOT does not have a Title VI/Nondiscrimination Training Program for WisDOT personnel as well as for Sub-Recipients presently developed and implemented;
* Inconsistencies between Chapters of the FDM – Regarding Public Involvement, there are inconsistencies identified in Appendix A of this document that need to be addressed. Additionally, a process needs to be developed whereby WisDOT evaluates periodically the effectiveness of the Public Involvement/Participation Process. Because the WisDOT Project Managers are given complete latitude to develop and implement Communication Plans, WisDOT needs to evaluate periodically how the Project Managers are developing and implementing the Communication Plans and the effectiveness of these Plans;
* Need to expand all references to EJ impacts to include Title VI/Nondiscrimination populations and LEP populations – The notes in Appendix A of this document identify the references to EJ impacts throughout the FDM Chapters reviewed. It is important to ensure that these references are not only limited to EJ considerations and the ability for EJ populations to access services and facilities.

**DEFICIENCIES AND RECOMMENDED ACTION**

* Define Title VI/Nondiscrimination requirements separate and apart from the State Internal EEO and DBE Programs in all applicable written documents (23 CFR Part 200);
* Implement the Division Office approved (February of 2012) Title VI/Nondiscrimination Plan. This will include all corrective actions included in the Title VI/Nondiscrimination Plan that WisDOT has developed and committed to implementing by specific due dates (23 CFR Part 200);
* Resolve the inconsistencies identified **in bold** in Attachment A of this document (pages #13-18) regarding Public Involvement between the various Chapters of the FDM (23 USC 109(h));
* Expand the EJ references and related processes identified in Appendix E of this document to include Title VI/Nondiscrimination populations (race, color, national origin, sex, age, and disability) as well as EJ and LEP populations (23 CFR Part 200);
* The FHWA Division Office should monitor (and provide technical assistance as needed) how WisDOT implements the Corrective Action Plan and the WisDOT Title VI/ Nondiscrimination Plan (dated February 10, 2012) to address the Deficiencies identified in this section (FHWA Order M 1100.1A, Chg. 27 PART II, CH. 11).

**FINDING OF DEFICIENCY STATUS**

As per 23 CFR 200.11 (c), WisDOT is being placed in a Deficiency Status and will be afforded up to 90 days from the receipt of the deficiency letter (including this Report) to voluntarily correct the deficiencies. If WisDOT fails or refuses to voluntarily comply with requirements within the time frame allotted, the Division Administrator shall submit to the Office of Civil Rights a recommendation that WisDOT be found in noncompliance.

**MONITORING OF PROGRESS BY DIVISION OFFICE**

The Division Office is responsible for monitoring the corrective actions taken by WisDOT to address the Deficiencies and implement the Recommended Action. WisDOT will take necessary corrective action to address the Deficiencies documented in this Report and, in addition, will provide a specific timetable for the implementation of all tasks necessary to fully implement the Title VI/Nondiscrimination Plan. WisDOT will submit monthly progress reports to the Division Office and the Division Office will independently verify progress made. The Division Office will forward the monthly Reports to the FHWA National Title VI/ Nondiscrimination Program Manager with a summary indicating how WisDOT is progressing towards implementing corrective actions. At the end of the 90 day period, a determination will be made based upon WisDOT’s actions in response to this Report as to whether WisDOT is any longer in Deficiency Status.

**ATTACHMENTS**

* **Attachment A: Notes Relating To Desk Audit – Page #13**
* **Attachment B: Title VI/Nondiscrimination Federal Program Elements – Page #25**

**ATTACHMENT A**

**Facilities Design Manual**

Chapter 6, *Public Involvement*:

* Section 6-1-5.2.2 (Page #3) -- Cites the EJ Executive Order, but does not cite Title VI of the Civil Rights of 1964 and additional Nondiscrimination Statutes/Authorities;
* Section 6-1-10 (Page #4) -- Identifies Project Managers as being responsible for developing a Communication Plan including any appropriate Public Involvement Techniques with the assistance of a Region Communications Manager (RCM) as deemed appropriate by the Project Manager. Wording used in this section in reference to the Project Managers includes “should incorporate techniques”, “consider foreign language or non-mainstream media and techniques”, “strive for flexibility and informality”, “encouraged to be creative with selecting or devising techniques”, and “following techniques are suggested”. **How does WisDOT ensure that all Project Managers are utilizing the Public Involvement Techniques consistently and appropriately?** Also, the use of the word “*citizen*” in item 7 at the bottom of the page is inappropriate. The word “*citizen*” while used in the Federal-aid Highway Act of 1973 is not accurate when used to define the applicability of Title VI and the other Nondiscrimination requirements. **Replacing the word “*citizen*” with the word “*public*” will accurately define participation**;
* Section 6-5-1.2 (Page #1) -- States that “*Public Involvement must be implemented in accordance with this chapter on all projects administered by WisDOT, including those federally funded projects which are developed by local units of government or their consultants. Thus for projects that are the responsibility of a consultant or local unit of government, the Public Involvement Plan is their responsibility as well*.” **How does WisDOT monitor the development of Public Involvement Plans by the Local Public Agencies**?;
* Section 6-10-1.1 (Page #1) – Details situations requiring a Public Hearing or requiring the offering of additional Public Hearing opportunities;
* Section 6-10-3 (Page #2) – Defines types of Public Hearings;
* Section 6-10-10.1.1 (Page #5) – Entitled “*Notice of Opportunity to Request a Public Hearing*”. If one or more requests are received, the Region determines whether the number of requests is significant or demonstrates a substantial interest/concern. The Region recommends determination to the Chief of the Design Services Section, who then consults with the Director of the Bureau of Environment, and then provides their concurrence. If the Design Services Section Chief concurs that no Public Hearing will be held, the Region notifies each Requestor personally or through certified mail. Requestors are also notified that their comments are still welcome. **What measures are utilized to determine if the justification provided by the Public is sufficient to warrant the holding of a Public Hearing? Also, how is the Title VI/Nondiscrimination Coordinator involved (if at all) in the process**?;
* Section 6-10-1.3 (Page #6) – Notice of Public Hearing.

Chapter 3, *Facilities Development Process*:

* Section 3-1-3.1 (Page #1) – Defines State Force Account agreements and Local Force Account agreements. The work is funded with Federal or State funds. Some components of the project may be let utilizing WisDOT process, may be entirely locally funded, and Local Unit forces may construct some components of the project. **How does WisDOT communicate Title VI/Nondiscrimination requirements and monitor implementation by Sub-Recipients**?;
* Section 3-1-3.2 (Page #2) – Project Oversight Requirements for Components of Project Listed in State/Municipal Agreement;
* Section 3-1-3.3 (Page #2) – Development Oversight.

Chapter 5, *Agency Coordination*:

* Section 5-1-15 (Page #2) – The Scoping Process is used “*to identify significant issues to be addressed during environmental analyses very early in the process*.” **How does this language coordinate with the language in Chapter 6**?

Chapter 8, *Consultant Services*: On Page #30 of the Title VI Plan, the 5th paragraph indicates that all engineering agreements will contain non-discrimination clauses. After reviewing Chapter 8, a summary of the non-discrimination clauses contained in the Construction Engineering Services Contract, the Three-Party Design Contract, and the Two-Party Design Contract is as follows:

* G. Nondiscrimination In Employment – This is the title for the Nondiscrimination section. It is Title VII (State Internal EEO) focused;
* Clauses (1) and (2) are State of Wisconsin Affirmative Action-related;
* Clause (3) references the DBE Program regulation (49 CFR Part 26);
* Clauses (4) through (8) are adapted language from the USDOT Title VI Assurance Agreement Insert (Appendix A);
* H. Federal Requirements For Disadvantaged Business Program – DBE Program;
* Equal Employment Opportunity through R. Prevailing Wage Rates – These sections appear to be excerpted from the Form FHWA-1273. **Please Note: While the Form FHWA-1273 is required to be inserted in all Construction Contracts and Sub-Contracts regardless of tier, it is not required to be inserted in Consultant Agreements. The Title VI/Nondiscrimination Assurance (Appendix A) insert is required to be inserted in all Consultant Agreements and Construction Contracts.**

Additionally, there is no evidence that the Title VI/Nondiscrimination Assurance paragraph that is required to be included in all solicitations for bids and requests for proposals is required to be and is being included. **Procedures need to be developed to accomplish this requirement.**

Chapter 11, *Design*:

* Section 11-1-1.2 (Page #1) – Chapter 11 is applicable to all highways and streets being designed by or for WisDOT;
* Section 11-3-1 (Page #1) – Community Sensitive Design: Does not reference Chapter 6;
* Section 11-3-1.5.1 (Page #2) – The 2nd paragraph states that “*a public/agency participation thought process must be developed for all projects, while a formal public/agency participation plan is needed for large complex projects*.” However, Chapter 6 (Page #4) appears to require a Communication Plan for all projects and Chapter 21 introduces the requirement of a Coordination Plan for all EISs. **How may these varied statements be resolved**?;
* Section 11-3-1.5.2 (Page #2) – **Is the WisDOT Title VI/Nondiscrimination Coordinator considered to be a part of the Interdisciplinary Project Development Approach**?;
* Section 11-3-1.5.3 (Page #2) – **How does a Project Manager determine when all coordination and facilitation is completed and it is time to make a decision**?

Chapter 21, *Environmental Documents, Reports and Permits*:

* Section 21-1-1.1 (Page #1) – The Director of Bureau of Equity & Environmental Services (BEES) is the ORIGINATOR of Chapter 21;
* Section 21-5-1 (Page #1) – When a proposed project does not appear to fit the four listed categories, “*further consultation with the Bureau of Equity & Environmental Services (BEES) is encouraged before an action decision is made*.” **This language needs to be updated to reflect the elimination of BEES. Also, #4 at the bottom of the Page references EJ, but there is no reference for Title VI/Nondiscrimination requirements**;
* Section 21-10-10.1.1 (Page #2) – The *State Notice of Intent to Prepare an EIS* shall include the intent of Title VI & EJ (#5): “*(i.e., “Federal law prohibits discrimination on the basis of race, color, age, sex, or country of national origin in the implementation of this action. It is also Federal and State policy that no group of people bears the negative consequences of this action in a disproportionately high and adverse manner without adequate mitigation”)*. **This language needs to be expanded to include all Title VI/Nondiscrimination populations (race, color, national origin, sex, age, or disability);**
* Section 21-10-10.1.2 (Page #2) – The *Federal Notice of Intent to Prepare an EIS* requires the inclusion of the same language quoted in the preceding bullet;
* Section 21-10-13.1 (Page #3) – *Coordination Plans* are “*developed early in the environmental review process after project initiation through collaboration between the joint lead agencies, typically FHWA and WisDOT. The coordination plan is initiated by WisDOT and provided to FHWA for review and concurrence before the scoping process begins*.” Exhibit 13.1 (Page #4) – Sample *Coordination Plan for Agency and Public Involvement*. The purposes of the Coordination Plan “*are to facilitate and document the lead agencies’ structured interaction with the public and other agencies, including Indian tribal governments, and to inform the public and other agencies of how the coordination will be accomplished*.” (Page #3) **There is no indication of how the Coordination Plan and the Chapter 6 (Public Involvement) requirement for a Communication Plan work together. This language needs to be coordinated with the language in Chapter 6**;
* Section 21-10-15 (Page #4) – Scoping Process;
* Section 21-10-20.1 (Page #5) – Members of the Public, including EJ populations “*potentially affected by or expressing an interest in the proposed action shall be given the opportunity to review Environmental Impact Statements (EIS’s) and Environmental Assessments (EA’s). Environmental Reports (ER’s) are also available for public examination (refer to FDM 21-10-25).*” **This language needs to be coordinated with the language in Chapter 6. Additionally, the reference to EJ populations needs to be expanded to Title VI/Nondiscrimination populations**;
* Section 21-10-25.1 (Page #6) – *Notice of Availability of Document and Notice of Public Hearing*: “*Distribution to identified community outreach organizations such as religious organizations, schools, public libraries, neighborhood houses, minority business associations, etc. (see FDM 21-15-1) is highly recommended for both EIS’s and EA’s. The Bureau of Environment (BOE) is compiling a list of such organizations on a county-by-county basis. The Notice of Availability in the local newspapers and other appropriate media shall advise the public where the document is available for review, how copies may be obtained, and to whom comments should be sent. The full participation of all publics, including minority populations and low-income populations should be encouraged to avoid any perception of discrimination in the decision-making process*.” Additionally, “*regardless of whether a public hearing is conducted, the Notice of Availability of an environmental document must be published in the area newspaper. It should also be distributed to as many community outreach organizations as possible, announcing the availability of a DEIS, a Final EIS (FEIS), an EA, or a Supplemental EIS. Attachment 25.1 contains an example of a Notice of Availability and Public Hearing*.” **This language needs to be coordinated with the language in Chapter 6. Also, the references to minority and low-income populations (EJ) need to be expanded to Title VI/Nondiscrimination populations. Additionally, has the Bureau of Environment completed the compilation of organizations on a county-by-county basis**?;
* Section 21-10-25.2 (Page #6) – A public hearing is required for a DEIS. Additionally, “*the requirements for a public hearing on an EA may be satisfied by either conducting the hearing or publishing two notices of opportunity for a public hearing and holding one if substantial requests are received*.” *Refer to FDM 6-10-1 through FDM 6-10-20* (State requirements for public hearings). **This language needs to be coordinated with the language in Chapter 6**;
* Section 21-10-30.1 (Page #7) – Statement of intent of Title VI & EJ for RODs for State Funded Projects;
* Section 21-10-35.3 (Page #8) – Final Environmental Impact Statement Reevaluation-Federal;
* Section 21-10-40 (Page #9) – Supplemental Environmental Impact Statement;
* Section 21-15-1.2 (Page #1) – This section indicates that EJ is a required element of an EA; however, due to the absence of referencing Title VI/Nondiscrimination requirements, it appears that Title VI/Nondiscrimination is not a required element. **Public Involvement is also indicated as a required element; however, there is no reference in Chapter 21, Section 15 to Chapter 6 and how Chapter 6 ties into the Public Involvement requirement for the development of EISs. Additionally, there is a reference to BEES in the 1st paragraph**;
* Section 21-15-1.2.3 (Page #2) -- # 5 in the list of suggested items for the Summary is “*Highlights of the public involvement process*”; **however, there is no mention of the Public Involvement Plan and the Coordination Plan for the project**;
* Section 21-15-1.2.6 (Page #4) – The 2nd paragraph indicates that a decision regarding all alternatives under consideration in the Draft EIS “*will be made only after a reasonable public outreach effort has been completed, and the public hearing results and public comments have been evaluated*.” **However, there is no mention of the Communication Plan (Chapter 6) and the Coordination Plan for the project**;
* Section 21-15-1.2.6 (Page #4) – **The 3rd paragraph references only EJ impacts**;
* Section 21-15-1.2.7 (Page #4) -- **# 5 references only EJ impacts**;
* Section 21-15-1.2.8 (Page #5) – **The 1st paragraph references only EJ impacts**;
* Section 21-15-1.2.8 (Page #5) – The 4th paragraph states that “*results of scoping meetings, public involvement and information meetings, interviews and comments received will be used in analyzing potential impacts*.” **How is this accomplished**?;
* Section 21-15-1.2.8 (Page #5) – **# 4 and the next to last paragraph only reference EJ impacts (See EJ Factor Sheet)**;
* Section 21-15-1.2.8.2 (Page #6) – **The 1st paragraph only references EJ impacts**;
* Section 21-15-1.2.8.3 (Page #6) – **The 2nd paragraph only references EJ impacts**;
* Section 21-15-1.2.8.5 (Page #7) – **The 3rd paragraph only references EJ impacts**;
* Section 21-15-1.2.8.6 (Page #7) – **The last paragraph only references EJ impacts**;
* Section 21-15-1.2.8.11 (Page #9) – **The 1st paragraph only references EJ impacts**;
* Section 21-15-1.2.8.12 (Page #9) – **The 2nd paragraph only references EJ impacts**;
* Section 21-15-1.2.8.15 (Pages #9 & 10) – **All data references are to EJ impacts**;
* Section 21-15-1.2.8.16 (Page #10) – **The 1st paragraph only references EJ impacts**;
* Section 21-15-1.2.8.17 (Page #10) – **The 2nd paragraph only references EJ impacts**;
* Section 21-15-1.2.8.19 (Page #11) – **This part only references EJ**;
* Section 21-15-1.2.9 (Page #11) – **This part only relates to EJ**;
* Section 21-15-1.2.10 (Page #12) – **How does this part relate to the Communication Plan (Chapter 6) and the Coordination Plan**?;
* Section 21-15-1.3 (Page #13) – In the 3rd paragraph, it states that “*limited or minor comments are often a reflection of low controversy as well as good, early coordination and public involvement. As a result, this regulation is an additional incentive to perform these early involvement activities*.” **Is there empirical data to support this statement**?;
* Section 21-15-5.1 (Page #14) – This section indicates that EJ is a required element of an EA; however, due to the absence of referencing Title VI/Nondiscrimination requirements, it appears that Title VI/Nondiscrimination is not a required element. **Public Involvement is also indicated as a required element; however, there is no reference in Chapter 21, Section 15 to Chapter 6 and how Chapter 6 ties into the Public Involvement requirement for the development of EAs. Additionally, a reference to BEES is made in the 1st paragraph**;
* Section 21-15-5.2 (Page #15) – The 5th paragraph states that “*the status of agency and public involvement efforts must also be addressed. If agency or public involvement reveals that there is controversy about the project, the discussion should focus on its degree*.” **Is the degree of controversy more important than the substance of the controversy**? **How is the substance of the controversy identified and addressed**?
* Section 21-15-5.2 (Page #15) – **The 9th paragraph only references EJ impacts**;
* Section 21-15-5.3 (Page #16) – Reference to the Director of BEES in the 2nd paragraph. **How will this be revised to reflect the elimination of BEES**?;
* Section 21-15-10 (Page #17) – **To determine whether “*an appropriate level of public involvement to solicit input from all affected publics*” has occurred, what metric is used? How do the Communication Plan (Chapter 6) and Coordination Plan factor in**?

Chapter 25, *Socio-Economic Factors*:

* Section 25-5-5.1 (Page #2) – **How are Title VI/Nondiscrimination impacts identified and analyzed under this part**?;
* Section 25-5-5.2 (Page #2) -- **How are Title VI/Nondiscrimination impacts identified and analyzed under this part**?;
* Section 25-5-5.2.1 (Page #2 & #3) -- **How are Title VI/Nondiscrimination impacts identified and analyzed under this part**? Additionally, EJ impacts (including elderly and handicapped) are referenced in the context of access to facilities and services;
* Section 25-5-5.2.3 (Page #3) – **Has the Office of Rights-of-Way reviewed and commented on this part**? Property Valuation is accomplished through the use of Approaches To Value (Sales Comparison, Cost, and Income) and the comparison of Before & After values in the case of the acquisition of an entire property. While the final values may not be exact, the values are based upon market data and the Office of Rights-of-Way has the ability to reflect any items not able to be considered through the Uniform Standards Of Professional Appraisal Practice (USPAP) when determining the Offer Of Just Compensation;
* Section 25-5-5.2.7 (Page #4) – In the 5th paragraph, the only reference to Title VI in this Chapter is in the context of EJ impacts (including elderly and handicapped) to access to facilities and services;
* Section 25-5-10.2.4 (Page #6) – Analysis of “*Construction Related Employment*”;
* Section 25-5-10.3 (Page #6) – Analysis of “*Permanent Employment*”;
* Section 25-5-10.4 (Page #7) – Analysis of “*Regional Multipliers*”;
* Section 25-5-10.5 (Page #7) – Analysis of “*Tax Revenues*”;
* Section 25-5-10.6 (Page #9) – Analysis of “*Retail Sales*”;
* Section 25-5-25 (Page #27) – EJ considerations are listed (including elderly and handicapped) in the context of impacts to access to facilities and services;
* Section 25-5-25.1 (Page #27) – EJ considerations are listed (including elderly and handicapped) in the context of impacts to access to facilities and services.

**Title VI/Nondiscrimination Plan**

* The Title VI Plan is dated December 2004. WisDOT is drafting an updated Title VI Plan that will be submitted to the FHWA Division Office. **The following Sections are absent from the Plan**: External Monitoring Program (Monitoring Of Sub-Recipients), Training Program (Internal for WisDOT employees and External for Sub-Recipients), Internal Monitoring Program (includes Data Collection/Data Analysis and Reporting), Process To Identify And Resolve Title VI/Nondiscrimination Issues, EJ Plan/Process, LEP Plan/Process, Link To Chapter 6 (Public Involvement) of the FDM;
* Both the Title VI/Nondiscrimination Coordinator and the Director-OBOC are new to their respective positions;
* The Bureau of Equity & Environmental Services has been discontinued;
* Page #3: The Preface needs to be updated. The FHWA uses neither the Federal-aid Highway Program Manual nor the Federal-aid Policy Guide. FHWA references the specific regulation as applicable. The Federal-Aid Highway Act of 1973 (23 United States Code § 324) is the appropriate statutory reference for the prohibition of discrimination based upon sex. Section 504 Of The Rehabilitation Act Of 1973 is also a statutory reference for the prohibition of discrimination based upon disability. Additionally, while FAA may accept a FHWA-approved Title VI/Nondiscrimination Plan, FTA may not and may request a separate Title VI Plan;
* Page #4: The Policy Statement needs to be more explicit regarding the WisDOT Secretary being ultimately responsible and delegating the day-to-day authority and responsibility for the effective implementation of Title VI/Nondiscrimination requirements to the Division Administrators that have Federal Program Areas under their jurisdiction. Division Administrators need to be directed to further delegate in writing day-to-day implementation authority/responsibility to the Bureau Managers, who will then identify Title VI/Nondiscrimination Federal Program Area Liaisons. The Policy Statement needs to more specifically define the authority and responsibility of the WisDOT Title VI/Nondiscrimination Coordinator and whether the Coordinator has periodic access to the Secretary so as to communicate any trends/patterns that may need the Secretary’s support to address. Also, the Policy Statement needs to be signed and dated;
* Page #5: The Title VI Policy may be further expanded to identify how WisDOT effectively implements Title VI/Nondiscrimination requirements (i.e., 3-5 Year Schedule Of Process Reviews, Data Collection/Data Analysis, Monitoring Of Sub-Recipients, etc.);
* Page #5: Title VI Designations And Functions – Monitoring of the Disadvantaged Business Enterprises (DBE) Program is more appropriately performed by the DBE Liaison Officer and anyone else responsible for any aspect of the DBE Program. Additional Federal Program Areas include Environment, Maintenance, Safety, Contracts/Contract Administration, Research and Training. Civil Rights and Compliance Programs does need to be identified as a Federal Program Area;
* Page #5: Organization And Staffing Of The Civil Rights Office – This section will need to be updated;
* Page #6: Mr. Demetri Fisher was identified as the Title VI/Nondiscrimination Coordinator; is there also a Title VI/Nondiscrimination Specialist? If there is only one Title VI/Nondiscrimination Coordinator (and not a Specialist), then the responsibilities will need to be revised. Also, with respect to the authority of the Title VI/Nondiscrimination Coordinator, does the Coordinator have the authority to meet with WisDOT Bureau Managers and Division Administrators as appropriate to assist in the identification and resolution of a Title VI/Nondiscrimination deficiency and to notify the Secretary as appropriate when an issue is not able to be resolved?;
* Page #6: Will the Title VI/Nondiscrimination Coordinator and/or Specialist be performing Process Reviews and Data Collection/Analysis of and for the Federal Program Areas or will the Coordinator/Specialist be facilitating these efforts? Regarding the processing of Title VI/Nondiscrimination complaints, if the complaint is against WisDOT, the complaint needs to be forwarded to the Investigations & Adjudications Unit (HCR-40) in the FHWA Office of Civil Rights for processing as a complaint. Also, regarding the Monitoring of Sub-Recipients, does WisDOT require any periodic Title VI/Nondiscrimination reporting, does WisDOT provide any periodic training, does WisDOT require a Plan or specific procedures from Sub-Recipients regarding complaint disposition, data collection/analysis, process reviews, etc.? ;
* Page #7: Please describe the “*systematic interdisciplinary approach*”. Also, will the applicable FDM Chapters be updated to include how and when the WisDOT Title VI/Nondiscrimination Coordinator is involved in various stages of project development? Additionally, since WisDOT does not have a written Planning Operations Manual, how will the Coordinator be involved in the various stages of Planning?;
* Pages #9 & #10: Organization Charts will need to be updated;
* Page #12: Title VI/Nondiscrimination Program Areas – This is an important section as it details how Title VI and the other Nondiscrimination requirements impact the Federal Program Areas;
* Page #13: Planning – It will be difficult for anyone to perform Process Reviews and Data Collection/Analysis efforts because Planning does not have a written Operations Manual. How will Planning perform these functions and how will the Title VI/Nondiscrimination Coordinator facilitate these efforts? Does WisDOT Statewide Planning follow Chapter 6 (Public Involvement) of the FDM when noticing and holding Public Meetings during the development of the Statewide Transportation Improvement Program (STIP), Long-Range Transportation Plan, and Public Involvement/Public Participation Plan? If not, what Public Involvement process does Planning utilize? Also, this section may be updated to include the identification of and ensure the participation of Title VI/Nondiscrimination populations (i.e., race, color, national origin, sex, age, and disability) as well as EJ and Limited-English Proficiency populations. In the 3rd paragraph, what is the WisDOT Civil Rights Committee, how does the Committee interact with Planning, and how does the Title VI/Nondiscrimination Coordinator interact with the Committee and Planning? In the 4th paragraph, this is State Internal Equal Employment Opportunity (Title VII) related and is not appropriately included in this document. In the 5th paragraph, “creed” is not included in Title VI and the over-arching Title VI/Nondiscrimination Program has included sex, age, and disability in addition to the race, color and national origin of Title VI;
* Page #14: Statewide Planning, 1st paragraph -- American Community Survey data is available annually at [www.census.gov/acs/www/](http://www.census.gov/acs/www/) . In the 2nd paragraph (last sentence), how do the Advisory Committees function, what is their composition, does the Title VI/Nondiscrimination Coordinator have any interaction with the Committees? In the 3rd paragraph, the reference is to access to services and facilities; how are the overall impacts to Title VI/Nondiscrimination populations evaluated and addressed? Also, what is the *State Transportation Policy Plan* and does the WisDOT Title VI/Nondiscrimination Coordinator have any input into the development of the Policy Plan?;
* Page #14: Urban Transportation Planning – In the 1st paragraph, the term “*citizen*” while used in the Federal-aid Highway Act of 1973 is not accurate when used to define the applicability of Title VI and the other Nondiscrimination requirements. Replacing the word “citizen” with the word “public” will accurately define participation. Also, with respect to Unified Planning Work Programs (UPWPs), Transportation Improvement Programs (TIPs), Long-Range Transportation Plans, and Public Participation Plans, what coordination (if any) is accomplished with WisDOT’s Title VI/Nondiscrimination Coordinator to solicit review input for any of these documents? Also, how is the Title VI/Nondiscrimination Coordinator involved in the Transportation Maintenance Areas (TMAs) Self-Certification Reviews? Additionally, how do MPOs/TMAs determine Community Based Organization representation on Locally-Oriented Policy Bodies and how does WisDOT determine if Title VI/Nondiscrimination populations issues are being heard and addressed?;
* Page #15: Are these techniques and mechanisms consistent with the techniques listed in Chapter 6 of the FDM? Regarding the 6th bullet at the top of the page, what is a “*surveillance program*”? Regarding the 2nd bullet at the bottom of the page, please replace the word “*citizen*” with the word “*public*”.
* Page #16: How is the *State Transportation Policy Plan* developed and does the WisDOT Title VI/Nondiscrimination Coordinator provide any input as the Policy Plan is being developed? Regarding the Federal Highway Program Manual (FHPM), WisDOT may have adopted the Review approach as defined in the FHPM. However, FHWA no longer uses the FHPM and therefore, the reference to the FHPM is no longer relevant. Please update the items in B at the bottom of the page. Concerning the retention of consultants to perform assignments, the Consultant Selection Process must be Title VI/Nondiscrimination compliant and must not discriminate based upon race, color, national origin, sex, age, or disability. If WisDOT has a consultant pre-qualification list, the process to develop and maintain the list must be Title VI/Nondiscrimination compliant. The Public Involvement/Participation process must be Title VI/Nondiscrimination compliant. Please replace the word “*citizen*” with the word “*public*”. How does WisDOT ensure that the Title VI/Nondiscrimination Assurance Paragraph is inserted into all solicitations for bids/requests for proposals? How does WisDOT ensure that the Title VI/Nondiscrimination Assurance Insert (Appendix A) is included in all Construction Contracts and Consultant Agreements?;
* Page #17: Regarding the Federal Highway Program Manual (FHPM), WisDOT may have adopted the Review approach as defined in the FHPM. However, FHWA no longer uses the FHPM and therefore, the reference to the FHPM is no longer relevant. Under B (Metropolitan Planning Organization Compliance), the 1st bullet applies to Affirmative Action (Title VII), the 2nd bullet needs to conform to the WisDOT Complaint Disposition Process (i.e., WisDOT may investigate a Title VI/Nondiscrimination-related complaint against the MPO and forward the Report to the Investigations & Adjudications Unit (HCR-40) in the FHWA Office of Civil Rights for processing as a complaint or may immediately upon receipt from the MPO forward to FHWA Office of Civil Rights. In the 3rd bullet, please replace the word “citizen” with the word “public”. Under C (Consultant Contracts), the retention of consultants to perform assignments, the Consultant Selection Process must be Title VI/Nondiscrimination compliant and must not discriminate based upon race, color, national origin, sex, age, or disability. If WisDOT has a consultant pre-qualification list, the process to develop and maintain the list must be Title VI/Nondiscrimination compliant. Under D (Transportation Study Procedures), the two bullets at the bottom of the page regarding the collection and analysis of data need to indicate that Title VI/Nondiscrimination populations data (including EJ and LEP populations) will be collected and considered through various techniques and procedures;
* Page #18: The two bullets at the top of the page need to be re-worded to compare the impact of a planned system/route upon both Title VI/Nondiscrimination populations and non-Title VI/Nondiscrimination populations as well as consider short-range improvement programs to address the needs of Title VI/Nondiscrimination populations. Under E (Urban Transportation Planning), please replace the word “citizen” with the word “public” and in the 2nd bullet, replace the word “minorities” with the phrase “Title VI/Nondiscrimination populations”;
* Page #19: Right-Of-Way – Rights-of-Way has an Operations Manual. This section needs to be coordinated with the Rights-of-Way Operations Manual. Title VI/ Nondiscrimination requirements impact the following Rights-of-Way functions: Property Valuation (Appraisals), Negotiations, Relocation (including Appeals), Property Management, Consultant Selection (Fee Appraisers, Fee Negotiators, Fee Title Searchers, Fee Property Managers), Identification of Persons not lawfully present in the United States (Illegal Aliens Act of 1997). Also, why would the Wisconsin Department of Workforce Development have the final authority to resolve any Civil Rights (Title VI/Nondiscrimination-related?) complaints? Regarding the Title VIII of the Civil Rights Act of 1968, the Federal agency of Housing & Urban Development (HUD) has jurisdiction regarding Title VIII complaints. Throughout this section (Right-Of-Way), all references to “minority” need to be replaced with the reference to “Title VI/Nondiscrimination populations”. It appears that a process to identify persons not lawfully present in the United States needs to be developed and implemented. The process may be as simple as using the Bureau Of Immigration & Naturalization’s I-9 Form to establish a list of acceptable forms of identification and each WisDOT Agent will ask each Relocatee to produce any of the acceptable forms of identification. If the Relocatee does so, note the file and offer any Relocation benefits the person is eligible to receive; if not, note the file and the Relocatee may Appeal the determination;
* Page #23: Under III (Civil Rights Reviews) and in the 2nd paragraph, what is the purpose of the WisDOT Title VI Advisory Committee and how does it function with the WisDOT Title VI/Nondiscrimination Coordinator?;
* Page #25: The 1st paragraph on this page references communicating Relocation services to persons “with language difficulties”. Has WisDOT developed a Limited English Proficiency process and/or Language Access Plan? If so, what is this process and/or Plan?;
* Page #26: Regarding the Federal Highway Program Manual (FHPM), WisDOT may have adopted the Review approach as defined in the FHPM. However, FHWA no longer uses the FHPM and therefore, the reference to the FHPM is no longer relevant. Regarding the bullet at the bottom of the page, is this consistent with the WisDOT Complaint Disposition Process?;
* Pages #27 & 28: Replace all references to “minority” and “female” with “Title VI/Nondiscrimination populations”;
* Page #29: Under III (Consultant Services), the information provided here is either Title VII-related (State Internal EEO) or DBE Program-related and is not relevant to Title VI/Nondiscrimination;
* Page #30: The 5th paragraph indicates that all engineering agreements will contain non-discrimination clauses. After reviewing Chapter 8 (Consultant Services) of the FDM, a summary of the non-discrimination clauses contained in the Construction Engineering Services Contract, the Three-Party Design Contract, and the Two-Party Design Contract is as follows:
* G. Nondiscrimination In Employment – This is the title for the Nondiscrimination section. It is Title VII (State Internal EEO) focused;
* Clauses (1) and (2) are State of Wisconsin Affirmative Action-related;
* Clause (3) references the DBE Program regulation (49 CFR Part 26);
* Clauses (4) through (8) are adapted language from the USDOT Title VI Assurance Agreement Insert (Appendix A);
* H. Federal Requirements For Disadvantaged Business Program – DBE Program;
* Equal Employment Opportunity through R. Prevailing Wage Rates – These sections appear to be excerpted from the Form FHWA-1273. **Please Note: While the Form FHWA-1273 is required to be inserted in all Construction Contracts and Sub-Contracts regardless of tier, it is not required to be inserted in Consultant Agreements. The Title VI/Nondiscrimination Assurance insert is required to be inserted in all Consultant Agreements and Construction Contracts.**

Regarding the Federal Highway Program Manual (FHPM), WisDOT may have adopted the Review approach as defined in the FHPM. However, FHWA no longer uses the FHPM and therefore, the reference to the FHPM is no longer relevant. Regarding the bullet at the bottom of the page, is this consistent with the WisDOT Complaint Disposition Process? Replace all references to “minority” and “female” with “Title VI/Nondiscrimination populations”. Also, there is no mention of evaluating how Design is conducting Public Involvement;

* Page #31: Under I. Pertinent Program Sub Areas, please add a bullet for the Title VI/Nondiscrimination Assurance insert (Appendix A). Under II. Introduction in the 2nd paragraph, please note that EEO and Labor training provisions are Title VII-related requirements. Additionally, the reference to DBE is related to the DBE Program and the requirements of 49 CFR Part 26. While the preceding are requirements, they are not Title VI/Nondiscrimination-related requirements. Review questions may be developed to evaluate the bullets under I. Pertinent Program Sub Areas and added to this section;
* Pages #35 to top of #39: This section is not Title VI/Nondiscrimination-related and therefore, is not needed in the Title VI/Nondiscrimination Plan;
* Page #39: Title VI/Nondiscrimination Complaint Investigation Process – This section needs to describe the process for Complaints against Sub-Recipients as well as Complaints against WisDOT. While WisDOT may evaluate any Complaint according to WisDOT policies and procedures, the Complaint must be forwarded to FHWA Office of Civil Rights (Investigations & Adjudications Unit) for processing. For Complaints against Sub-Recipients, WisDOT may investigate the Complaint first and then send the Report and Package to FHWA Office of Civil Rights and may choose to send the Complaint directly to FHWA Office of Civil Rights. Additionally, the FHWA External Complaint Processing Handbook has been updated, which may affect the information contained on Pages #40 through #46;
* Pages #47 & 48: Title VI Work Plan – FFY 05 – Has there been any follow-up to this Work Plan, especially in light of the fact that WisDOT has recently experienced a reorganization and the Civil Rights Director and Title VI/Nondiscrimination Coordinator are new to their positions;
* Pages #49 through #51: Need to be updated;
* Pages #52 through #56: This portion of the Title VI Accomplishment Report for FFY 2004 focuses on employment and DBE Program initiatives; therefore, while the information is relevant to other Program Areas, it is not relevant to the Title VI/Nondiscrimination Plan Annual Update Report;
* Pages #57 through #59 (Top of Page): Does WisDOT have a Limited English Proficiency Plan (Language Access Plan)? If not, does WisDOT have a set of procedures that approximates a Plan? It would be effective to add a section to both the Title VI/Nondiscrimination Plan and Chapter 6 (Public Involvement) addressing LEP. If WisDOT has not performed the Four-Factor Analysis, it will need to do so;
* Pages #59 through #64: While Tribal Issues are not considered to be automatically Title VI/Nondiscrimination-related, WisDOT may continue to report on Tribal Issues as a part of the Title VI/Nondiscrimination Annual Update Report;
* Pages #65 through #73: The Assurances document is unsigned.

**ATTACHMENT B**

**TITLE VI/NONDISCRIMINATION FEDERAL PROGRAM ELEMENTS**

**Planning**

* Statewide Planning: Public Involvement procedures – These procedures will detail how the State Transportation Agency (STA) identifies and ensures participation of all Title VI/Nondiscrimination populations (including Environmental Justice and Limited English Proficiency populations) in the development of the Statewide Transportation Improvement Program (STIP) and STIP Amendments, Long-Range Statewide Transportation Plan, and the Public Involvement Plan/Process. The procedures will define how Public Meetings are noticed and conducted and how comments from members of the Public are addressed. Additionally, the STA will detail how it monitors Metropolitan Planning Organizations (MPOs) and Transportation Management Areas (TMAs) to ensure compliance with Title VI/Nondiscrimination requirements. This may, at a minimum, be accomplished through the Metropolitan Planning Agreement. Also, the TMA Certification Process will address Title VI/Nondiscrimination requirements. Finally, the STA is responsible for periodically evaluating these procedures to determine if the processes and how they are being implemented are Title VI/Nondiscrimination compliant;
* Metropolitan Planning: Public Participation Plan – This Plan will detail how the MPO identifies and ensures participation of all Title VI/Nondiscrimination populations (including Environmental Justice and Limited English Proficiency populations) in the development of the Transportation Improvement Program (TIP) and TIP Amendments, Unified Planning Work Programs (UPWPs), Long-Range Transportation Plan, and the Public Participation Plan. The procedures will define how Public Meetings are noticed and conducted and how comments from members of the Public are addressed. Additionally, at a minimum, the Metropolitan Planning Agreement will detail the MPO’s Title VI/Nondiscrimination responsibilities. Finally, the MPO is responsible for periodically evaluating these procedures to determine if the processes and how they are being implemented are Title VI/Nondiscrimination compliant.

**Environment**

* Consultant Selection Process for development of Environmental Impact Statements (EISs) and Environmental Assessments (EAs);
* Public Involvement procedures – These procedures will detail how the STA identifies and ensures participation of all Title VI/Nondiscrimination populations (including Environmental Justice and Limited English Proficiency populations) in the development of draft and final EISs, EAs, and Categorical Exclusions. The procedures will define how Public Hearings and Public Meetings are noticed and conducted and how comments from members of the Public are addressed;
* At a minimum, identification of Title VI/Nondiscrimination populations needs to occur during the Scoping phase of an EIS/EA and the Request For Proposal (RFP) needs to include the task of collecting socio-economic statistical data sufficient for analysis (by Rights-Of-Way and Civil Rights) to determine impacts (if any) to Title VI/Nondiscrimination populations. These analyses need to be included in all Draft and Final EISs/EAs;
* The STA is responsible for periodically evaluating these procedures to determine if the processes and how they are being implemented are Title VI/Nondiscrimination compliant;
* STA Monitoring Of Sub-Recipients – The STA needs to have process that details how the STA monitors all Local Public Agencies (LPAs) that receive Federal funds and implement the Environment Program. If this monitoring does not occur under Environment, then the monitoring function needs to be identified elsewhere within the STA.

**Design**

* Consultant Selection Process for development of project plans;
* Public Involvement procedures -- These procedures will detail how the STA identifies and ensures participation of all Title VI/Nondiscrimination populations (including Environmental Justice and Limited English Proficiency populations) in the development of project plans. The procedures will define how Public Meetings are noticed and conducted and how comments from members of the Public are addressed;
* The STA is responsible for periodically evaluating these procedures to determine if the processes and how they are being implemented are Title VI/Nondiscrimination compliant;
* STA Monitoring Of Sub-Recipients – The STA needs to have process that details how the STA monitors all Local Public Agencies (LPAs) that receive Federal funds and implement the Design Program. If this monitoring does not occur under Design, then the monitoring function needs to be identified elsewhere within the STA.

**Rights-of-Way**

* Fee Appraiser, Fee Negotiator, Fee Title Searching, Fee Property Management Selection Process;
* Process to identify Persons Not Lawfully Present In The United States (not eligible for Relocation Benefits due to Illegal Aliens Act of 1997);
* Property Valuation Process (includes Appraisal and Review Appraisal processes), including providing opportunity to Property Owner to accompany Appraiser during property inspection;
* Negotiation Process (Bona Fide Negotiations) – Includes the written offers, consideration of counteroffers, etc.;
* Relocation Process – Includes the development of Relocation Housing Payments, Mortgage Differential Payments, Appeals Process, etc.;
* Property Management Process – Defines how the STA prioritizes the physical maintenance of residential structures still occupied by the former owners;
* The STA is responsible for periodically evaluating these procedures to determine if the processes and how they are being implemented are Title VI/Nondiscrimination compliant;
* STA Monitoring Of Sub-Recipients – The STA needs to have process that details how the STA monitors all Local Public Agencies (LPAs) that receive Federal funds and implement the Rights-of-Way Program. If this monitoring does not occur under Rights-of-Way, then the monitoring function needs to be identified elsewhere within the STA.

**Contracts/Contract Administration**

* Process to ensure that the Title VI/Nondiscrimination Assurance paragraph is inserted into all Solicitations For Bids and Requests For Proposals;
* Process to ensure that the Title VI/Nondiscrimination Assurance Insert is inserted into all consultant agreements;
* Process to periodically review the implementation of the actual process to ensure the paragraph and Insert is actually being inserted into all contracts and consultant agreements;
* STA Monitoring Of Sub-Recipients – The STA needs to have process that details how the STA monitors all Local Public Agencies (LPAs) that receive Federal funds and advertise/award Federally-funded contracts. If this monitoring does not occur under Contracts/Contract Administration, then the monitoring function needs to be identified elsewhere within the STA.

**Construction**

* Process to ensure that the Title VI/Nondiscrimination Assurance insert is inserted into all prime contracts and to ensure that all prime contractors include the insert in all sub-contracts regardless of tier;
* Process to periodically review the implementation of the actual process to ensure the Title VI/Nondiscrimination Assurance is actually being inserted into all contracts;
* STA Monitoring Of Sub-Recipients – The STA needs to have process that details how the STA monitors all Local Public Agencies (LPAs) that receive Federal funds and advertise/award Federally-funded contracts. If this monitoring does not occur under Construction, then the monitoring function needs to be identified elsewhere within the STA.

**Maintenance**

* Process to ensure that the development and implementation of the Maintenance Program is compliant with Title VI/Nondiscrimination requirements;
* Process to periodically review the implementation of the actual process to ensure the Maintenance Program is being implemented in a non-discriminatory manner;
* STA Monitoring Of Sub-Recipients – The STA needs to have process that details how the STA monitors all Local Public Agencies (LPAs) that receive Federal funds and advertise/award Federally-funded contracts. If this monitoring does not occur under Maintenance, then the monitoring function needs to be identified elsewhere within the STA.

**Safety**

* Process to develop the Highway Safety Improvement Program (HSIP);
* Public Involvement procedures -- These procedures will detail how the STA identifies and ensures participation of all Title VI/Nondiscrimination populations (including Environmental Justice and Limited English Proficiency populations) in the development of Safety environmental documentation and project plans. The procedures will define how Public Hearings/Public Meetings are noticed and conducted and how comments from members of the Public are addressed. If Safety projects are developed following the same processes as defined for Environment and Design, these procedures may be referenced;
* The STA is responsible for periodically evaluating these procedures to determine if the processes and how they are being implemented are Title VI/Nondiscrimination compliant;
* STA Monitoring Of Sub-Recipients – The STA needs to have process that details how the STA monitors all Local Public Agencies (LPAs) that receive Federal funds and implement the Safety Program. If this monitoring does not occur under Safety, then the monitoring function needs to be identified elsewhere within the STA.

**Research**

* Solicitation & Award Process of Research funds to Colleges/Universities – Not only must the process be implemented in a non-discriminatory manner, the process must also identify and ensure that Minorities In Higher Education institutions (including Hispanic Serving Institutions and Tribal Serving Institutions) are afforded opportunities to compete for the award of Research funds;
* Process to periodically review the implementation of the actual process to determine if the processes and how they are being implemented are Title VI/Nondiscrimination compliant;
* STA Monitoring Of Sub-Recipients – The STA needs to have process that details how the STA monitors all Local Public Agencies (LPAs) that receive Federal funds and advertise/award Federally-funded contracts. If this monitoring does not occur under Research, then the monitoring function needs to be identified elsewhere within the STA.

**Training**

* Process to ensure that STA-provided training to STA employees is provided in a Title VI/Nondiscrimination compliant manner;
* Process to periodically review the implementation of the actual process to determine if the processes and how they are being implemented are Title VI/Nondiscrimination compliant;
* STA Monitoring Of Sub-Recipients – The STA needs to have process that details how the STA monitors all Local Public Agencies (LPAs) that receive Federal funds and provide training to Sub-Recipient employees. If this monitoring does not occur under Training, then the monitoring function needs to be identified elsewhere within the STA.