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## **465.01 Introduction**

This chapter provides direction necessary for project teams to perform a Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352) Equity Analysis (also known as Disparate Impact Analysis), and other federal and state related applicable civil rights statutes and requirements during the environmental review process for transportation improvement projects.

In 2024, this manual separated the environmental justice requirements and analysis from Title VI requirements to clarify the role of each analysis. There may be some overlap between EJ and Title VI analyses; however, engaging in EJ analysis under Federal transportation planning and National Environmental Policy Act (NEPA) provisions will not necessarily satisfy Title VI requirements. Title VI is a non-discriminatory action that, unlike environmental justice requirements, does not have a specific scope of protected populations. Instead, it focuses on the equal distribution of benefits and burdens in the transportation decision-making process. This is why a Title VI Equity Analysis would not necessarily satisfy EJ requirements since Title VI does not include low-income or minority populations (Federal Highway Administration (FHWA) [Order 5610.2\(a\)](#)). An EJ analysis can include information from a Title VI analysis but should also rely on other analyses to make an EJ effects determination for a project. Refer to [Chapter 460](#) for more information regarding an EJ analysis.

Title VI compliance is required in all transportation actions and operates independently from EJ compliance. Title VI must be enforced and applied to all transportation projects, regardless of whether an EJ analysis is required or whether the project is receiving federal financial assistance.

## 465.01(1) Title VI Requirements

Title VI of the Civil Rights Act of 1964, and its implementing regulations, prohibit discrimination based on race, color, and national origin. Specifically, Title VI states: “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.” 23 C.F.R. 200.5(f) provides that unequal treatment “solely because of race, color, religion, sex, or national origin” is unlawful discrimination. A successful Title VI program assures the public that an agency’s services and resources will be allocated fairly, and any adverse effects of transportation will be shared equally. Title VI and the associated Code of Federal Regulations for Transportation prohibits the following specific discriminatory actions:

A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of person to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of persons to be afforded an opportunity to participate in any such program; may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, or national origin. (49 CFR, Subtitle A, Part 21.5 (b)). National origin protections under Title VI have been interpreted by the courts to include discrimination based on Limited English Proficiency (LEP). Pursuant to [Executive Order 13166](#) (2002) the United States Department of Transportation has established a requirement that WSDOT provide LEP individuals with meaningful access to its programs and services. The [Civil Rights Restoration Act of 1987](#) mandates that recipients of federal funds comply with civil rights laws in all programs and activities they provide, not only within the particular program or activity that received federal funding. This legislation clarified that Title VI and other nondiscrimination requirements were meant to apply broadly to all programs and activities of a recipient, irrespective of the funding source of a particular program or activity. (42 U.S.C. 2000d-4).

WSDOT’s responsibilities under these laws include, but are not limited to:

- Identifying and addressing, as appropriate, disparate impacts and disproportionately high and adverse effects associated with our projects, programs, and activities.
- Ensuring that we make every effort to provide benefits, services, and access equally to all groups. Access considerations include multimodal options for all groups relative to their needs, practices, and culture.
- Avoiding, or if not possible, minimizing the hardships associated with displacement of residents and businesses.
- Providing equal access to information and meaningful involvement in the decision-making process regardless of race, color, religion, sex, or national origin.
- Ensuring meaningful access to programs and activities by persons with LEP.
- Documenting our decision-making processes.
- Promoting the full and fair participation of all affected populations in transportation decision-making populations.

## 465.02 Applicable statutes, regulations, executive orders and agreements

The federal and state policies that guide the evaluation of Title VI for transportation projects, include:

### 465.02(1) Federal

- Civil Rights Restoration Act of 1987 (Pub. L. 100-259)
- [Section 504](#) of the Rehabilitation Act of 1973 (Pub. L. 93-112)
- Section 162 (a) of the Federal-Aid Highway Act of 1973 (Pub. L. 93-87)
- Age Discrimination Act of 1975 (Pub. L. 94-135)
- National Environmental Policy Act of 1969 (Pub. L. 91-190)
- [Title 23 CFR Part 200](#) - Title VI Program and Related Statutes—Implementation and Review
- [Title 28 CFR Sec. 42.104\(b\)](#) - Implementation of Title VI- Discrimination Prohibited
- [Title 49 CFR Part 21.5\(b\)\(2\)](#) - Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964. Presidential Executive Orders (EO) related to Title VI:
  - [Executive Order 12898](#) issued February 11, 1994 - Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.
  - [Executive Order 13985](#) issued January 20, 2021 - Advancing Racial Equity and Support for Underserved Communities Through the Federal Government.
  - [Executive Order 14096](#) issued dated April 21, 2023 - Revitalizing Our Nation’s Commitment to Environmental Justice for All.
  - [Executive Order 13166](#) - Improving Access to Services for Persons with LEP
- Department of Transportation (DOT) [Order 5610.2\(a\)](#) issued May 2, 2012.

### 465.02(2) State

- Governor’s Executive Order [93-07](#) *Affirming Commitment to Diversity and Equity in the Service Delivery and the Communities of the State* (1993).
- Secretary’s Executive Order [E 1087](#) Title VI Policy. March 5, 2021.
- WSDOT’s Secretary Executive Order 1119.00, July 16, 2021.

## 465.03 Considerations during project development

### 465.03(1) Planning

Title VI compliance is integral to the transportation planning process, as it requires planners to ensure that no person is excluded from participation or subjected to discrimination based on race, color, or national origin. The transportation planning phase is closely related to a Title VI Equity Analysis, which involves examining how different population groups are affected by transportation plans and ensuring that all communities, benefit equally from transportation projects. This includes engaging with these communities early and throughout the planning process to gather input and address any potential disparities. Title VI federal regulations do not specifically dictate when to start performing a Title VI analysis during transportation improvement projects; however, Title VI enforcement and non-discriminatory practices are required to be followed at all stages of transportation actions, including planning.

Planning teams should contact their Region/Mode Title VI Liaison, WSDOT's Office of Equity and Civil Rights (OECR) Title VI Team, and/or FHWA's Civil Rights Program Manager for directions on how to address Title VI in a planning study phase. Additionally, planning teams should check to see if a planning study has been done in their project area, and if so, refer to any Title VI compliance information documented in that study from the project area. Title VI compliance information may include but are not limited to:

- What other planning projects have been conducted in the area in the last 10 years that may have had an associated demographic analysis?
- Have there been complaints about outreach related to past projects?
- Were Title VI and EJ considerations specifically incorporated in past efforts?
- Previous identified LEP populations or other languages within the area,
- Previous requested translations from the area,
- Previous data collected during community engagement activities,
- Any Title VI complaints received from the area,
- Any previous or current identified disparate impacts or adverse effects,
- Any previous displacement of residents and demographic data.

The demographic profiles during a Title VI Equity Analysis vary throughout the state and by the specific populations identified, for special considerations during a planning process, depending on the nature of the project and the size, location, and special characteristics of the study area. To ensure transportation improvement projects meet Title VI compliance, it is essential to consider several key elements that address equity and prevent discrimination throughout the process. Some of these key elements include but are not limited to:

- **Define population:** Identifying the demographic groups potentially affected by the action helps focus the analysis on the relevant populations and ensures that all relevant data are considered.
- **Data collection:** Collecting data on the demographic composition of the population affected by transportation projects, including race, color, national origin, income, age, and language proficiency.
- **Impact assessment:** Analyze how different population groups will be affected by the proposed transportation project and evaluate how disproportionate negative impacts affect populations based on their race, color, national origin, income, age, sex, and language proficiency.
- **Mitigation strategies:** Develop strategies to mitigate any identified adverse effects on these populations. This could include changes to the project design or additional supportive measures.
- **Public involvement:** Start community engagement early in the planning process to gather input from affected populations.
- **Outreach strategies:** Use diverse and inclusive outreach strategies to ensure participation from all community segments, including those who are traditionally underserved or hard to reach.
- **Collaboration:** Work with other agencies and offices, such as FHWA and WSDOT's OECR, to ensure alignment with federal and state Title VI requirements.

## **465.03(2) Scoping**

Activities in this phase are centered on statistical data collection, informal information meetings, and discussions with local residents who know the area, are familiar with past planning efforts and outcomes, and who may work with potentially affected communities from the project, or transportation actions. Additionally, steps in this phase provide a preliminary picture of the potential impacts of proposed projects on different populations and their demographics.

Knowing the demographics of the communities that will potentially be impacted by the project or transportation actions is essential for effectively conducting a Title VI Equity Analysis and avoiding Title VI discrimination caused by disproportionate impacts. Therefore, in order to avoid potential Title VI discriminations, it is necessary to understand the specific types of discriminatory actions that are prohibited. For the purpose of this manual and to conduct a Title VI Equity Analysis during transportation improvement projects, this chapter will only focus on Title VI discriminations that fall under the following two legal categories, which are described in more detail below: disparate treatment and disparate impact.

### **Disparate Treatment**

In the context of transportation improvement projects, disparate treatment can manifest in various forms, such as biased decision-making, exclusionary practices, or unequal application of policies and procedures. Organizations can better identify and address instances of disparate treatment, ensuring compliance with Title VI and promoting equitable transportation planning and implementation. by considering the following elements:

- Patterns or practices that suggest a discriminatory intent even if there is no direct proof.
- Reviewing past incidents and practices to identify patterns of discrimination.
- Statistics showing patterns of discriminatory effects.
- Comparing the treatment of individuals or groups with similar circumstances but different protected characteristics to identify disparities.
- Assessing whether policies and procedures are applied consistently across all groups.
- Evaluating whether the actions or policies have resulted in significantly different outcomes for same or different population groups.
- Identify if any single group is disproportionately impacted or analyze whether certain groups bear a disproportionate burden compared to others.
- A negative impact threshold is often set (e.g., a 15% increase in burden or reduction in benefits), beyond which measures must be taken to mitigate adverse impacts
- Sequence of events leading to the decision, compared to other decisions on comparable matters.

## Disparate Impact

In the context of transportation improvement projects, disparate impact refers to policies or practices that, while seemingly neutral, cause an adverse effect or disproportionately affect a group more severely than other groups based on their race, color, national origin, and LEP populations. Unlike disparate treatment, which involves intentional discrimination, disparate impact focuses on the consequences of policies and practices that unintentionally lead to unequal outcomes. To avoid a disparate impact, a Title VI analysis needs to be performed, which involves pairing two key elements: demographics and the impact or benefit of the project. For example:

- Decennial Census (race, color, and national origin) and Noise Impacted Residences by race, color and national origin.
- American Community Survey (ACS) from U.S. Census Bureau to identify LEP communities and number of languages Vital Documents need to be translated.
- Relocation Demographic Surveys (race, color, national origin and LEP from displaced or relocated residents or business owners) and Relocation Financial Data (costs and economic impacts, household incomes from relocated owners, etc.).
- Public Meetings demographics (race, color, national origin and LEP) and Overall, Area Population (race, color, national origin and LEP).

Following the examination of disparate impact and disparate treatment, a Title VI Equity Analysis will ensure that services, benefits, and impacts are distributed fairly across all populations, proactively identifying, and mitigating any inequities affecting protected communities during transportation improvement projects.

This analysis helps identify and mitigate any unintentional negative effects that policies or practices may have on communities. The following questions are designed to guide project teams through this process, enabling them to uncover potential disparities and develop strategies to address them effectively. Project teams can better ensure that their projects do not disproportionately burden vulnerable populations and that benefits are equitably distributed by systematically addressing the following questions:

- To which populations (race, color, etc.) does this action apply or affect?
- Does it have a disproportionate or adverse impact (based on race, color, etc.)?
- How is the impact determined?
- Which population would you say is the most disproportionately affected?
- Is a historically overburdened community present?
- Was the challenged policy necessary to meeting a goal that was legitimate, important, and integral to the [recipient's] institutional mission?
- Does the justification bear a manifest demonstrable relationship to the challenged policy or practice?
- Could the same goals be achieved through different policies or practices that would have a less adverse impact on the affected communities?

- How will the benefits of the project be distributed among different population groups?
- Are the benefits of the transportation improvement project equitably distributed, or do they disproportionately favor certain groups?
- Have the affected communities been adequately consulted and involved in the decision-making process?
- Is there any history of controversial projects in the area? Examples include projects that involved residential or business displacement, mitigated environmental impacts, conflicts with property rights, and other disputed elements.
- Were efforts made to ensure meaningful participation from all affected communities, especially those that are typically underrepresented?
- What are the cumulative impacts of the project when combined with other existing or planned projects in the area?
- What are the short-term and long-term impacts of the project?
- How will the benefits of the project be distributed among different population groups?
- What feedback has been received from the community on potential mitigation strategies?
- Are there adjustments we can make to ensure all groups receive equal benefits from this project?
- How can we improve access for groups disproportionately impacted?
- Are there additional or alternative engagement methods that could improve participation and input from these groups?
- Are there alternative approaches or project modifications that could reduce negative impacts on affected communities?
- How will we track the effectiveness of mitigation measures for impacted communities?

For further information on Title VI, refer to the [Title VI/Limited English Proficiency](#) webpage or contact [WSDOT's Title VI team](#).

### **465.03(3) Design**

Conduct community engagement when appropriate for the project following agency [Community Engagement Plan](#) and the *Design Manual* [Section 210.04](#) Public Involvement. Revisit the Title VI Equity Analysis if the project elements change that could impact the community including detour routes.

### **465.03(4) Construction**

Track and implement commitments made per Title VI.

### **465.03(5) Maintenance and Operations**

Track commitments made per Title VI.

## 465.04 Analysis and documentation requirements

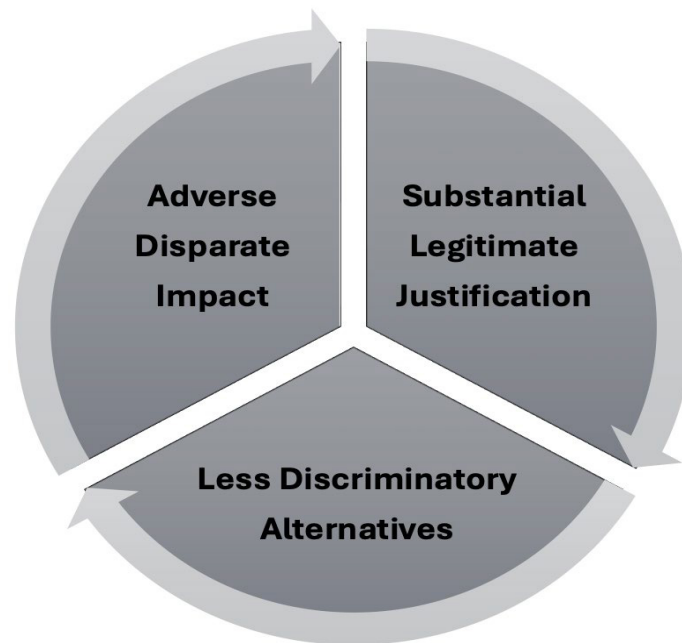
This section describes analysis and documentation requirements based on regulatory requirements. Determine the level of detail based on complexity/size of project, expected severity of impacts, and potential public controversy.

### 465.04(1) *Analysis and documentation for NEPA*

Project teams must utilize demographic data and conduct community outreach to conduct their Title VI analysis. It is essential that they refer to the [Title VI/Limited English Proficiency](#) webpage for relevant resources. The demographic profile should identify all populations by race, color, national origin, and include low-income populations. Additionally, the demographics should provide information on the percentage of the population with LEP.

Environmental Impact Statements should include a Title VI disparate impact analysis. This analysis assesses whether the project is likely to disproportionately affect certain groups by comparing the least impacted group to the most impacted group within the study area. If the project team, in consultation with the federal NEPA lead, determines there will be a “disparate impact,” they must either select a “less-discriminatory alternative” or provide a “substantial legitimate justification.” This process of analysis is depicted below in Exhibit 465-1.

Exhibit 465-1



### 465.04(2) *Analysis and documentation for SEPA (No federal nexus)*

Our agency policy is to consider Title VI in project development and delivery. The State Environmental Policy Act (SEPA) does not contain requirements for conducting a Title VI analysis, however, the SEPA checklist can be used to help determine whether a proposal’s impacts are likely to be significant.



## 465.05 External engagement

Title VI of the Civil Rights Act of 1964 requires WSDOT “to promote nondiscrimination” to the “greatest extent allowed by the law”. This includes equal access to information and an equal opportunity to participate in the decision-making process. WSDOT tracks its performance with this requirement and submits an annual report to FHWA documenting efforts to engage all persons, regardless of color, race, gender, age, income, disability, or national origin. See the WSDOT [Community Engagement Plan](#) webpage for considerations to make during your outreach.

Project teams should develop outreach and engagement strategies to reach all of the populations affected by their project. Tailor outreach techniques to reach a variety of populations based on demographic data (race, color, national origin and LEP) collected in your study area. Document what you did and how public input affected the project design. Guidance for how to write a public involvement plan is available from the WSDOT Communications Office and is available to WSDOT employees. Refer to our [Community Engagement Plan](#) for engagement best practices. Also, consult with [Promising Practices for Meaningful Public Involvement in Transportation Decision-Making](#).

WSDOT policy requires staff to follow the [Model Comprehensive Tribal Consultation Process](#) when working with tribal governments. Contact the [WSDOT Tribal Liaison Office](#) for assistance. Refer to Chapters [400](#), [456](#) and [530](#) for more direction on engaging with tribal communities.

## 465.06 Internal roles and responsibilities

### 465.06(1) *Project Engineer*

Scopes the appropriate level of community engagement by working with the Region/Mode Title VI Liaison and their Communications office to ensure potential impacts are identified early in project development. Government to government consultation with the affected tribes must be incorporated into the project’s delivery process.

The [WSDOT LEP Plan](#) requires project engineers to:

- Make every effort to provide services, either through translation or interpreter, prior to scheduled meetings, such as public hearings, or project meetings.
- Pay for the translation of vital documents and interpreter services including summary newsletters, brochures, public notices for meetings and summary documents for open houses or environmental hearings. Interpreter services should be provided upon request for open houses and hearings.

### 465.06(2) *Environmental Coordinator / Consultant*

Meets with technical leads and uses information gathered during community engagement to conduct the Title VI Equity Analysis, as needed.

### 465.06(3) *WSDOT HQ Environmental Services Office*

ESO serves as a connection between projects and OECR, see below.

### **465.06(4) Office of Equity and Civil Rights**

As part of its responsibility for enforcing Title VI of the Civil Rights Act of 1964, OECR is responsible for providing policy, procedures, and technical assistance related to Title VI. Region/Mode Title VI Liaisons who serve as a resource to project teams can help make connections with communities.

### **465.06(5) Communicator**

Help scope and support community engagement activities related to a project and help provide language services, interpretation or translation, based on the languages determined in the LEP analysis.

## **465.07 Applicable permits and approval process**

There are no permits or signatory approvals associated with compliance with federal Title VI requirements. However, federal and state permits and approvals require satisfactory documentation of tribal coordination and compliance with civil rights laws.

## **465.08 Mitigation**

The Secretary's Executive Order ([E 1087.01](#)) contains clear policy direction regarding Title VI compliance.

## **465.09 Abbreviations and acronyms**

ACS	American Community Survey
CEP	Community Engagement Plan
CFR	Code of Federal Regulations
FHWA	Federal Highway Administration
LEP	Limited English Proficiency
NEPA	National Environmental Policy Act
OECR	Office of Equity and Civil Rights
SEPA	State Environmental Policy Act
Title VI	Title VI of the Civil Rights Act of 1964
WSDOT	Washington State Department of Transportation

## **465.10 Glossary**

These definitions apply in the context of Title VI analysis. Some terms may have other meanings in a different context.

**Disparate impact** – Occurs when a neutral policy, practice or action disproportionately affects a protected group, regardless of intent.

**Disparate treatment** – Occurs when individuals or groups are intentionally treated differently based on their race, color, or national origin.

**Limited English Proficient** – Individuals who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English. These individuals may be entitled to language assistance with respect to a particular type of service, benefit, or encounter. Federal laws particularly applicable to language access include Title VI of the Civil Rights Act of 1964, and the Title VI regulations, prohibiting discrimination based on national origin, and Executive Order 13166 issued in 2000.