

Appendix Q
Title VI Work Plan
Pioneer Valley Planning Commission (PVPC)

1. OVERVIEW

These findings has been developed pursuant to the Massachusetts Department of Transportation (MassDOT) Office of Diversity and Civil Rights' (ODCR) assessment of Pioneer Valley Planning Commission's (PVPC) 2011 and 2012 annual Title VI reports. MassDOT, a direct recipient of federal financial assistance through MassDOT. While the focus of this document is on Title VI, we note the obligation of PVPC to include responsibility for all civil rights compliance, including for federal Affirmative Action and Equal Disadvantaged Business Enterprise programs, and for comparable state level requirements.

The Office of Diversity and Civil Rights (ODCR) is responsible for ensuring that MassDOT fulfills its Title VI and related Commonwealth civil rights obligations through effective management of MassDOT's Title VI/Nondiscrimination Programs. ODCR also ensures that MassDOT meets its obligations and commitments for equal opportunity and affirmative action in employment and contracting and within programs and activities. MassDOT's focus on diversity in its programs is based on the simple premise that its transportation services and workforce should mirror the diverse populations they serve.

Concurrent with MassDOT's own compliance efforts is oversight of subrecipients' Title VI activities. MassDOT has reviewed PVPC's Title VI reports for 2011 and 2012. In this document, MassDOT makes a series of observations and recommendations with regard to PVPC's Title VI activities that are designed to facilitate compliance.

2. AREAS FOR IMPROVEMENT

- Demonstrate commitment to nondiscrimination in organizational documents
- Notify the public of rights under Title VI and related nondiscrimination provisions
- Revise complaint processes and notices to accurately depict federal and state nondiscrimination provisions
- Ensure capacity to transact business with individuals with limited English proficiency
- Ensure adoption and implementation of principles of MassDOT Public Participation Plan, Language Access Plan, and Accessible Public Meeting Policy
- Document Title VI activities, such as outreach and implementation of Public Participation Plan and Language Access protocols
- Engage in training on Title VI principles on public participation and language access

- Target Outreach to entire community and all interested stakeholders
- Incorporate principles of title VI into project selection process/criteria

3. TITLE VI REPORT ASSESSMENT

This section discusses the findings of our assessment.

3.1 Organizational Aspects

- Included in PVPC's by-laws can be a description of the role that nondiscrimination, inclusivity, outreach, and the removal of barriers to participation play in MPO activities. Whether describing the process of selecting new MPO members or stating the guiding objectives of the organization, the commitment to nondiscrimination can be explicitly mentioned.

3.2 Title VI Notice to Beneficiaries

- The presence of a Title VI Notice to Beneficiaries on PVPC's website is a positive achievement. It is further recommended that a Title VI Notice to Beneficiaries is incorporated into Title VI complaint procedures/forms as well as notices of opportunities for public engagement such as public meeting announcements.
- PVPC should document all its methods of disseminating its Notice to Beneficiaries. The annual reporting cycle provides subrecipients with an opportunity to submit documentation to ODCR of the efforts articulated in their Title VI programs. While the focus of annual reporting may vary year-to-year, subrecipients should still take the opportunity to provide supporting documentation of Title VI related activities and initiatives when available. For example, if a Title VI Notice to Beneficiaries is posted within public meeting announcements, inclusion of such documents in annual Title VI reports helps demonstrate PVPC's compliance with nondiscrimination requirements.
- In its Title VI Notice to Beneficiaries, PVPC states "The Pioneer Valley Metropolitan Planning Organization (PVMPO) complies with Title VI of the Civil Rights Act of 1964 and related statutes and regulations in all programs and activities. PVMPO operates without regard to race, color, national origin, creed, income, gender, age, and disability." This statement mischaracterizes the obligations of the MPO and the protected categories.
- It should not be stated that the MPO "Operates without regard to" the protected categories, but rather the MPO conducts its programs, services, and activities in a nondiscriminatory manner.
- It should be noted that FTA recognizes only race, color, and national origin (including limited English proficiency) as Title VI – protected categories. FHWA also recognizes age, gender, and disability in its Title VI/Nondiscrimination programs. State law protections extend nondiscrimination protections to additional categories including ethnicity, sexual orientation, gender identity or expression, religion, creed, ancestry, veterans status (including Vietnam-era veterans), and background. PVPC can certainly utilize a single public notice, but the Title VI and

related federal nondiscrimination provisions, state nondiscrimination provisions, and other protected categories should be clearly delineated.

- Notifications to beneficiaries of their protection under Title VI should be translated into languages other than English, as need and consistent with the DOT Limited-English Proficiency (LEP) Guidance. Notifications to beneficiaries of their protection under Title VI are considered vital documents, and should make clear that beneficiaries may request a translation of the document and outline the procedure to do so.
- ODCR has developed a Title VI Notice to Beneficiaries that satisfies both FHWA and FTA Title VI Notice requirements. Further, MassDOT has translated the full Notice into the top 10 languages found in the Commonwealth. ODCR recommends that each MPO region adopt this Notice to Beneficiaries and disseminate along with the languages indicated in the Four-Factor Analysis of each region.

3.3 Title VI Complaint Procedures

- The Title VI Discrimination Complaint Procedure described in the annual report accurately mentions race, color, and national origin as Title VI-protected categories. However, the complaint procedure also delineates a non-Title VI protection (language). Title VI does not provide protection on the basis of language alone; Title VI protects people with limited English proficiency, who are defined as “persons for whom English is not their primary language who have a limited ability to read, write, speak, or understand English. Listing language may open the door to complaints which are not necessarily warranted under Title VI (i.e. those with generally low literacy skills). For this reason, language should not be singled out as a basis of discrimination on its own under Title VI. The FTA recognizes only race, color, and national origin (including limited English proficiency) as Title VI-protected categories. FHWA also recognizes age, gender, and disability under separate but related Title VI nondiscrimination provisions. State Law extends nondiscrimination protections to additional categories including ethnicity, sexual orientation, gender identity or expression, religion, creed, ancestry, veterans status (including Vietnam-era veterans), and background. PVPC may utilize a single complaint procedure for all instances of alleged discrimination, but the Title VI and related federal nondiscrimination provisions, state nondiscrimination provisions, and other protected categories should be clearly delineated.
- PVPC’s Title VI Discrimination Complaint Procedure requires that all complaints be submitted in writing. While such a stipulation is appropriate under FTA C 4702. 1A, PVPC’s complaint procedures must make clear the availability of assistance to complainants who are unable to produce and submit a written complaint on their own.
- Notices detailing Title VI complaint procedures and Title VI complaint forms should be translated into languages other than English, as needed and consistent with the DOT Limited-English Proficiency (LEP) Guidance. Title VI complaint procedures and Title VI complaint forms are considered vital documents, and PVPC should make clear that beneficiaries may request a translation of the document and outline the procedure to do so, in a statement that is translated into the languages indicated in PVPC’s LEP Four Factor Analysis.

- ODCR is working with FHWA and FTA to develop unified complaint procedures that can serve as template procedures for subrecipients, similar to the Notice to Beneficiaries.
- PVPC's procedure for the review and resolution of Title VI complaints does not reflect FHWA requirements. While FTA delegates the authority to recipients and subrecipients to conduct Title VI investigations and issue final determinations, FHWA does not. PVPC's Title VI Complaint Procedure should reflect a "check-in" stage with ODCR immediately following the receipt of a complaint. This will allow ODCR to contact the appropriate federal agency, if needed, in order to make a jurisdictional determination and assign the obligation to conduct an investigation and issue findings.
- PVPC states that its log of Title VI complaints is available for public review at their offices. This should not be the case, as publicizing Title VI complaints may act to deter potential complainants from filing a complaint, even if the log does not contain unique identifying information.
- PVPC should document its methods of disseminating Title VI complaint procedures and forms, and provide ODCR with a copy of its Title VI complaint log. The annual reporting cycle provides subrecipients with an opportunity to submit documentation to ODCR of the efforts articulated in their Title VI programs.

3.4 Language Access

- PVPC's LEP outreach activities are highly commendable. The documentation of each LEP meeting/event help demonstrate PVPC's commitment and attention to better serving LEP individuals within its region. PVPC should continue to attach similar documents to their annual Title VI submissions to MassDOT.
- While PVPC nicely integrates its findings from LEP outreach activities into its Four-Factor Analysis and language implementation plan, it seems that some material analyzed in the first factor may be better considered among the other three factors of the Four-Factor Analysis.
- In factor two of the Four-Factor Analysis, PVPC describes its contact with organizations and individuals representing the concerns of LEP persons. While this is helpful in providing service to LEP persons, the purpose of factor two of the Four-Factor Analysis is to determine the frequency of contact directly between the MPO and LEP persons. PVPC should fulfill this measure by documenting the number of translation requests it receives, the number of translations performed on its website, and the number of LEP individuals which attend MPO meetings and activities. PVPC should attempt to document and quantify interactions with LEP individuals by distributing surveys at meetings which request individuals to indicate the language spoken at home and level of English proficiency.

- PVPC identifies its LEP populations at an aggregate level across languages. The LEP populations within each eligible LEP language group should be identified, not just the sum and percentage of all LEP individuals across languages.
- If CMMPO decides to follow the “Safe-Harbor” approach to demonstrating compliance with language access obligations than while identification of LEP populations at the “community” level has the potential to be a positive undertaking, it is not in keeping with the requirements for determining the Safe Harbor threshold. As stated in the Safe Harbor Provision, the total population of persons eligible to be served or likely to be affected or encountered in the MPO region should be considered. PVPC should comply with the requirements by addressing the LEP populations which meet the Safe Harbor threshold at the region-wide level.
- PVPC should identify its “vital” documents and develop a plan for providing and disseminating them in languages other than English based on findings from the Four-Factor Analysis. PVPC may also want to create abbreviated versions (or abstracts) of larger documents which can then be translated upon request. This would allow PVPC to improve their language access while limiting the time and cost of translation services.
- PVPC should include translation features on its website. It is noted that the accuracy and effectiveness of these translation systems is not complete and should not be relied on as an exclusive means of providing language access to LEP individuals in the region. However, there is still no doubt that the provision of translation features on MPO websites reduces barriers for LEP persons to some extent. Included with the translation feature should be a disclaimer stating the limitations of the feature and directions to request additional language assistance if needed. This disclaimer should be translated into languages other than English, as needed and consistent with the DOT LEP Guidance
- MassDOT commends PVPC on its plan to develop a list of language translation volunteers. Such efforts can augment the organization’s ability to effectively respond to LEP needs at a reduced cost to the organization. ODCR recently conducted a survey of MassDOT staff to identify staffers with foreign language capabilities (written and spoken) and to gauge their willingness to provide language services in limited incidental situations. ODCR will make its own survey from available to all MPOs for this purpose, which PVPC may utilize to transform this initiative into an ongoing process.

3.5 Public Participation Plan

- PVPC Should provide documentation of the measures taken to ensure the participation of Title VI-protected classes during all facets of the planning process and monitor the effectiveness of its public involvement process. PVPC should also provide detailed descriptions of how such processes fostered an improved relationship with Title VI-protected populations.