

**Appendix 08-E:
Samples of MassDOT Title VI
Compliance Work Plans for
Metropolitan Planning
Organizations and Regional
Transit Authorities**

TITLE VI WORK PLAN NORTHERN MIDDLESEX MPO (NMMPO)

1 OVERVIEW

This Work Plan has been developed pursuant to the Massachusetts Department of Transportation (MassDOT) Office of Diversity and Civil Rights' (ODCR) assessment of Northern Middlesex Metropolitan Planning Organization's (NMMPO) 2011 and 2012 annual Title VI reports. MassDOT, a direct recipient of federal financial assistance, maintains an oversight obligation for NMMPO, a subrecipient of federal financial assistance through MassDOT. While the focus of this document is on Title VI, we note the obligation of NMMPO to include responsibility for all civil rights compliance, including for federal Affirmative Action and Equal Employment Opportunity, the Americans with Disabilities Act and the 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 NMMPO's Title VI reports for 2011 and 2012. In this document, MassDOT makes a series of recommendations with regard to NMMPO'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 NMMPO's by-laws should 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 should be explicitly mentioned.

3.2 Title VI Notice to Beneficiaries

- While MassDOT acknowledges that NMMPO posts a Title VI Notice to Beneficiaries on its website, it is not broadcast in a manner which is adequately visible and accessible to the public. In order to improve visibility of the Title VI Notice, MassDOT recommends that NMMPO display it or a link to it prominently on the website homepage. Doing so will further convey that NMMPO embraces the principles of Title VI.
- In addition to the website, it is further recommended that a Title VI Notice be incorporated into Title VI complaint procedures/forms as well as notices of opportunities for public engagement such as public meeting announcements.
- NMMPO should document all its methods used to disseminate its notice to beneficiaries of their protection under Title VI. 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 NMMPO's compliance with nondiscrimination requirements.

- 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 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 non-Title VI protections (language, age, family status, religion, retaliation, sex, disability, other). 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 and 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 in its Title VI/Nondiscrimination programs. 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. NMMPO may utilize a single complaint procedure and form 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.
- NMMPO's complaint process describes a protection of low-income populations under Title VI. While low-income populations are, and should remain, a key component of NMMPO's Environmental Justice program, a protection of low-income populations is not warranted specifically under Title VI.

- NMMPO'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, NMMPO'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 NMMPO should make clear that beneficiaries may request a translation of the document, free of cost, and outline the procedure to do so.
- ODCR will be working with subrecipients through a series of Title VI workshops and individual meetings to develop universal templates for Title VI complaint procedures and Title VI complaint forms. Once drafted, these templates will satisfy the Title VI requirements put forth by FTA and FHWA, and will be made available for adoption by all subrecipients. Furthermore, ODCR will produce translated copies of the templates as determined through MassDOT's LEP Four-Factor Analysis.
- NMMPO'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. NMMPO'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.
- NMMPO 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.
- As part of NMMPO's complaint resolution process, it is instructed that the Chair of the NMMPO will advise the members of the NMMPO of receipt of the complaint and outline the specific allegations that are alleged to have occurred. MassDOT wishes to discuss this mandate in order to fully understand the nature of this requirement and to consider whether the practice has any implications for individuals who bring or might bring complaints.

3.4 Language Access

- The Title VI report provided by NMMPO mentions that the organization was on schedule to adopt a Language Assistance Plan in March 2012. Currently, MassDOT has no indication of the outcome of this effort such as meeting minutes, work plans, or the LAP document itself.
- NMMPO 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. NMMPO may also want to create abbreviated versions (or abstracts) of larger documents which can then be translated upon request. This would allow NMMPO to improve their language access while limiting the time and cost of translation services.
- Inclusion of translation features on the NMMPO website is a step in the positive direction. Please note 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. Website translation counts should be delineated by each language group in order to provide insight to frequency of contact for the LEP Four-Factor Analysis, and reported to MassDOT during each annual Title VI reporting cycle.
- NMMPO 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 their level of English proficiency.
- NMMPO should continually assess the availability of in-house language resources that 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 form available to all MPOs for this purpose, which NMMPO may utilize to transform this initiative into an ongoing process.

3.5 Public Participation Plan

- NMMPO 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. NMMPO should also provide detailed descriptions of how such processes fostered an improved relationship with Title VI-protected

populations. NMMPO makes reference to conducting an “ongoing consultation process with low-income and minority residents;” it is unclear to MassDOT what this entails, and NMMPO should provide information concerning the specific elements of this process.

- NMMPO has failed to provide a summary of the MPO's public outreach and involvement activities over the last Title VI reporting cycle. The summary should include documentation of the number of public meetings that NMMPO has conducted in this annual cycle and sample notices used to announce public engagement opportunities which concurrently inform members of the public of their Title VI rights. Furthermore, NMMPO should also provide MassDOT with documentation of the participation of Title VI populations in its public outreach and involvement activities. Such data could be collected by distributing surveys that request individuals to self-identify.
- NMMPO should describe how meeting locations and formats encourage or facilitate participation by Title VI-protected classes. Furthermore, NMMPO should describe how traditionally underserved media sources are appropriately in all notification processes for public meetings or public review of agency documents. MassDOT notes NMMPO's use of media outlets to notify the public of MPO activities in languages other than English. NMMPO should report on the success of this methodology, and continue to assess similar avenues of tailored outreach.
- NMMPO's Public Participation Plan should address the language-assistance needs of members of the public that may arise during outreach events. This would require actions such as developing protocols for individuals to make language service requests and training staff to proactively assess language needs in advance of outreach events. NMMPO should also utilize public comment forms at public meetings, translated into languages other than English as needed and consistent with the DOT Limited-English-Proficiency (LEP) Guidance. ODCR is developing a template public comment form which will be translated and made available for reference to all MPOs.
- NMMPO should continue its work on the outreach database expansion project initiated by ODCR through the Transportation Managers Group. ODCR provided all MPO regions with comprehensive lists of currently registered not-for-profit organizations throughout the Commonwealth. At the time of this writing, the MPO regions have been filtering through those lists for a number of months to identify individuals and organizations that should be included in their outreach distribution lists. The results of this effort should be catalogued and reported to MassDOT in upcoming Title VI annual reports.

- While NMMPO makes reference to providing accessibility accommodations at public meeting locations, it is unclear whether NMMPO has a structured approach in order to do so. As part of its Public Participation Plan, MassDOT has drafted an Accessible Meeting Policy which is available for reference to all MPOs.

3.6 Project Selection

- The material provided by NMMPO offers little insight into how Title VI is considered in the project selection process. The project evaluation criteria should make Title VI considerations clear. If the currently-utilized scoring mechanism inadequately addresses Title VI, the MPO regions, ODCR, and MassDOT's Office of Transportation Planning should engage in a study of the project evaluation criteria and revise as needed.
- The analytical processes used by NMMPO to determine the benefits and burdens of proposed projects on Title VI populations should be similarly articulated and updated where appropriate. The results of these analyses, both on the project level and in the aggregate, should be catalogued and reported to MassDOT as part of the annual Title VI reporting obligations.

3.7 Contracting Opportunities

- Resources like the Supplier Diversity Office (SDO) should be engaged to diversify the pool of available consultants and contractors for NMMPO work. When engaging SDO, NMMPO should relay the nature of the work to be performed by consultants and contractors for the organization. This should include information regarding job categories, disciplines, and licensing requirements, if any. With that information, SDO is able to conduct a local, regional, and statewide analysis of DBE and W/MBE certified firms that are in a position to contract with NMMPO. Furthermore, SDO is able to identify firms that could be trained, licensed, and certified, as necessary, allowing them to compete for NMMPO contracts. This initiative can help diversify the pool of contractors and potential contractors available to NMMPO. Such efforts should be documented and reported to MassDOT as part of annual Title VI activities.

DRAFT-FOR DISCUSSION PURPOSES ONLY
TITLE VI COMPLIANCE WORK PLAN
NANTUCKET REGIONAL TRANSIT AUTHORITY (NRTA)

Potential Risk factors:

- *Ensure capacity to transact business with Limited English Proficient individuals*
- *Training on Title VI principles on Public Participation and Language Access*
- *Ensure adoption and implementation of MassDOT Public Participation Plan, Language Access Plan and Accessible Public Meeting Policy principles to guide public outreach activities*
- *Documentation of implementation of Public Participation and Language Access protocols*
- *Timeframes for complaint filings are not consistent with FTA or MassDOT requirements, and Title VI protected classes are over inclusive with reference to state level protected classes.*
- *Complaint resolution process confuses filing date for initial complaint with process for seeking appeal through the FTA.*
- *Effective dissemination of notice of rights to members of the public.*
- *Data gathering and analysis, such as effectiveness of outreach methodologies.*

Overview

This Work Plan has been developed pursuant to the MassDOT Office for Diversity and Civil Rights' (ODCR) assessment of Nantucket Regional Transit Authority's 2012 Title VI report which was submitted to the ODCR. This review flows from MassDOT's primary responsibility for oversight of NRTA as a direct recipient of funds through MassDOT. Concurrent with MassDOT seeking Title VI reports from NRTA and other subrecipients of federal financial assistance through MassDOT, we have developed a more refined Title VI Program for FTA funded programs, services and activities, including detailed Public Participation and Language Assistance Plans. While the focus of this document is on Title VI, we note the obligation of NRTA to take responsibility for all civil rights compliance, including for federal Affirmative Action and Equal Employment Opportunity, the Americans with Disabilities Act and the 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 on 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 efforts to conduct assessments that are vital to ensure the agency's oversight of subrecipients subject to Title VI compliance, in February 2013, MassDOT reviewed NRTA's Title VI reports. In this document, ODCR makes a series of recommendations with

regard to NRTA's Title VI activities designed to help ensure compliance with federal mandates. These recommendations articulate needs and outline responsibilities for NRTA to undertake in the Work Plan that is attached hereto.

From our assessment, we noted the following:

Language Access

- We acknowledge NRTA's focus on groups speaking Spanish for translation and language assistance, however there should be data to document this conclusion, given that there is now 2010 Census related data that is available for review and analysis. MassDOT further notes that while NRTA identifies this population as having few limited English proficient individuals on the island apart from those who speak Spanish, there is no clear documentation to confirm this assertion, which again could come from Census data. The Census data referenced by NRTA only seems to track the people who speak English less than very well, but does not identify those who are limited English proficient. As such, it appears that there is either no limited English population, or one that is masked by the data as structured. The same is true for the category of Indo-European languages that NRTA has also identified in its report, and that total group number is larger than the total of Spanish speakers.

We note that the NRTA's reliance on volunteers to support language translation is cost-effective and commendable, although there is a need to analyze and establish the extent to which these services provide the level of effective communication required under Title VI. There is also the possibility of privacy considerations that NRTA should consider in connection with using volunteer translators in the context of such transactions as conducting discussions with individuals who seek paratransit services, where disabling conditions are the subject of the discussion or where the information provided by an individual might be sensitive or in conflict with the interest of an organization providing translation assistance. The types of volunteer services that NRTA utilizes may suffice for limited and incidental transactions, but there may be occasions when more complex dealings would require a detached and certified translator, and NRTA's language assistance strategy does not address this possibility.

- It is noteworthy that the population on Nantucket likely expands significantly in the summer, but there does not appear to be a plan to address language assistance during this period. Essentially, there is no indication of protocols for staff or managers to follow in support of individuals who are visiting the island and are limited English proficient. Moreover, to determine the need for translated materials or interpreter assistance, NRTA should consider a survey effort to identify the needs of limited English proficient visitors. NRTA should undertake a survey and provide information to support the next steps it contemplates undertaking to provide language supports to summer visitors.
- It would be helpful for NRTA to provide more specific information as to the actual documents that have been translated in its future Title VI Report. It would also be helpful

for NRTA to learn from the principles under MassDOT's Language Access Plan to support its work in this area.

- It is unclear what the NRTA's protocol is for providing notice in languages other than English in its public meeting invitations.
- It should be noted that the Google Translate tool is helpful for basic translations, but that for more complex materials, it cannot be guaranteed that an exact translation is provided.

Public Participation Plan

- It would be helpful to have some specifics on the number of public meetings that NRTA has conducted on an annual basis, including sample notices, information concerning the participation of Title VI populations.
- There is significant reliance on word of mouth and internal NRTA postings to support meeting notices. There is a reference to NRTA using the media, but there is no supporting documentation to show that any of these approaches have been used.
- It is unclear what NRTA means by its reference to working with LEP populations to implement DOT policy guidance. This approach can and should be more structured if it is intended to accomplish particular objectives.
- There are references to accessibility considerations including meeting locations, recording and the use of PowerPoint presentations. It must be noted that the provision of accommodations at meetings requires notice and an opportunity for individuals to request accommodation, but it is not clear from this report if NRTA provides such an opportunity or has a structured approach to providing accommodation. As part of its Public Participation Plan, MassDOT has drafted an Accessible Public Meeting policy NRTA could use to establish stronger protocols and understanding in this area.

Complaint Procedures

Under the FTA's Title VI Circular and approach taken to implement the law, the protected classes that recipients are responsible for targeting include race, color and national origin. The NRTA Report adds a number of state level protected classes in its list of nondiscrimination that are not eligible for Title VI protection. Given the potential confusion this could cause the public, apart from the inaccuracy of the statement, MassDOT recommends that NRTA follow the approach that MassDOT has taken in distinguishing Title VI and state level protected nondiscrimination classes. The VTA also requires that all complaints be in writing, but does not reference the ability to take complaints orally or to otherwise help members of the public to file complaints, which is important given the possibility that a person subject to Title VI protection could be unable to write.

The NRTA is also providing a window of 60 days for complaint filings, rather than the 180 required by law. The NRTA should identify MassDOT as an alternate agency for the filing of complaints, as well as the FTA. Also, the NRTA approach has a provision for presenting

findings to the Advisory Board, which potentially complicates its process by making all complaint matters public, regardless of outcome. This approach could have the potential to cause some complainants to refuse to come forward from fear that their identities and concerns will become matters of public scrutiny. The alternative to file with FTA should be articulated in the same section where there is an explanation of the requirements for filings with NRTA.

Work Plan

The Work Plan items outlined below reflect a first effort to establish objectives that will result in stronger Title VI compliance efforts within NRTA in the areas of public participation and language assistance toward people with limited English proficiency. It is anticipated that notwithstanding ODCR's assessment activities and the actions that will be taken under this work plan, that based on FTA's prospective review of MassDOT's Title VI compliance and oversight efforts, additional work items may be incorporated into this Work Plan. ODCR is able to provide any needed technical assistance to ensure that the action steps outlines herein are supported and effectively carried out.

Title VI Development Work Plan – NRTA			
Title VI Capacity Building	Recommendation	Action needed	Time frame
Improve language access to members of the public with limited English proficiency by utilizing available staff resources	NRTA should survey its staff and managers to determine availability of in-house foreign language capacity (beyond Portuguese), both oral and written, and identify staff member willingness to assist individuals with limited English proficiency in basic transactions	A survey should be developed in collaboration with ODCR, distributed and analyzed to determine agency capacity to provide language assistance and where lacking strategize alternative methods for providing language assistance	
Train staff on Title VI principles and applicability to organizational activities affecting the public in public participation and language assistance	ODCR will develop training modules in collaboration with its Training unit and NRTA, and conduct the recommended training for appropriate NRTA personnel	Training to be received by NRTA staff and managers on Title VI principles related public participation and language assistance	
NRTA should adopt and be trained in the	ODCR to provide final PPP and LAP for NRTA	PPP and LAP to be provided by ODCR;	

principles of MassDOT's Public Participation and Language Assistance Plans (PPP and LAP), to ensure the public components of its programs, services and activities conform to Title VI policies and procedures	leadership to review; NRTA to identify staff and managers requiring training with ODCR; training provided by ODCR, Training and/or Public Affairs on relevant NRTA activities subject to Title VI public participation requirements	staff requiring training to be identified; training curriculum to be developed and implemented	
NRTA should review and revise its approach to the identification of Title VI protected categories versus protections afforded by state anti-bias provisions and modify its nondiscrimination statement accordingly.	ODCR should provide NRTA leadership with clarification on Notice of Nondiscrimination for review and will provide such training and assistance as will support the modification of notice language.	Notice of nondiscrimination to be modified by NRTA, with support as needed.	
Notify the public of their rights under Title VI.	NRTA's Title VI activities should include the development and dissemination of a Notice to Beneficiaries which is periodically updated and redistributed.	NRTA should establish a cycle for reviewing its Notice to Beneficiaries, modify the document as needed, and develop and follow a dissemination strategy that includes electronic and physical means; special attention should be given to ensure that mention of procedure is consistent throughout all related documents; MassDOT's Notice to Beneficiaries can be utilized as a template.	
Document outreach activities to facilitate analysis of their effectiveness.	Core elements of Title VI compliance include conducting outreach in a manner that reaches as wide a spectrum of	NRTA should document its outreach efforts and the frequency and nature of language services	

	available communities and individuals as practicable and ensuring meaningful access to those with limited English proficiency; documenting such efforts allows subrecipients to demonstrate compliance with these objectives as well as analyze them to assess their effectiveness.	provided; an analysis of this data can then suggest needed changes to be more effective at these efforts or identify efforts that can be reasonably scaled back due to underutilization; also continually strive to develop previously unexplored avenues of outreach and language assistance.	
NRTA should modify its complaint procedures to allow for a filing within 180 days of an incident. NRTA should add MassDOT as a party with whom complaints may be filed and review	ODCR should provide NRTA leadership with clarification on complaint filing time frames requirements and other procedural considerations. ODCR will provide such training and assistance as will support the modification of notice language.	Complaint filing requirements and other procedural elements to be modified by NRTA, with support, as needed.	