

TITLE VI COMPLIANCE REVIEW
OF THE
Hawaii Department of Transportation (HDOT)
Honolulu, Hawaii

Final Report

November 2010

Prepared For

**U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL TRANSIT ADMINISTRATION
OFFICE OF CIVIL RIGHTS**

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I. GENERAL INFORMATION

Grant Recipient: Hawaii Department of Transportation (HDOT)

City/State: Honolulu, Hawaii

Grantee Number: 1623

Executive Official: Mr. Brennon T. Morioka, Ph.D, P.E.
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Site Visit Dates: February 16 – 19, 2010

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II. JURISDICTION AND AUTHORITIES

The Federal Transit Administration (FTA) Office of Civil Rights is authorized by the Secretary of Transportation to conduct civil rights compliance reviews. The Hawaii Department of Transportation (HDOT) is a recipient of FTA funding assistance and is therefore subject to the Title VI compliance conditions associated with the use of these funds pursuant to the following:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. Section 2000d).
- Federal Transit Laws, as amended (49 U.S.C. Chapter 53 et seq.).
- Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601, et seq.).
- Department of Justice regulation, 28 CFR part 42, Subpart F, “Coordination of Enforcement of Nondiscrimination in Federally-Assisted Programs” (December 1, 1976, unless otherwise noted).
- DOT regulation, 49 CFR part 21, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964” (June 18, 1970, unless otherwise noted).
- DOT Order 5610.2, “U.S. DOT Order on Environmental Justice to Address Environmental Justice in Minority Populations and Low-Income Populations,” (April 15, 1997).
- DOT Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficient Persons, (December 14, 2005).
- FTA Circular 4702.1A, “Title VI and Title VI-Dependent Guidelines For Federal Transit Administration Recipients”, May 17, 2007.

III. PURPOSE AND OBJECTIVES

Purpose

The Federal Transit Administration (FTA) Office of Civil Rights periodically conducts discretionary reviews of grant recipients and subrecipients to determine whether they are honoring their commitments, as represented by certification, to comply with the requirements of 49 U.S.C. 5332. In keeping with its regulations and guidelines, FTA determined that a Compliance Review of HDOT's Title VI Program was necessary.

The Office of Civil Rights authorized The DMP Group, LLC to conduct the Title VI Compliance Review of HDOT. The primary purpose of this Compliance Review was to determine the extent to which HDOT has met its General Reporting and Program-Specific Requirements and Guidelines, in accordance with FTA Circular 4702.1A, "Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Recipients". Members of the Compliance Review team also discussed with HDOT the requirements of the DOT Guidance on Special Language Services to Limited English Proficient (LEP) Beneficiaries that is contained in Circular 4702.1A. The Compliance Review had a further purpose to provide technical assistance and to make recommendations regarding corrective actions, as deemed necessary and appropriate. The Compliance Review was not an investigation to determine the merit of any specific discrimination complaints filed against HDOT.

Objectives

The objectives of FTA's Title VI Program, as set forth in FTA Circular 4702.1A, "Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Recipients," are:

- Ensure that the level and quality of transportation service is provided without regard to race, color, or national origin;
- Identify and address, as appropriate, disproportionately high and adverse human health and environmental effects, including social and economic effects of programs and activities on minority populations and low-income populations;
- Promote the full and fair participation of all affected populations in transportation decision making;
- Prevent the denial, reduction, or delay in benefits related to programs and activities that benefit minority populations or low-income populations;
- Ensure meaningful access to programs and activities by persons with limited English proficiency.

The objectives of Executive Order 13166 and the "DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries" are for FTA grantees to take reasonable steps to ensure "meaningful" access to transit services and programs for limited English proficient (LEP) persons.

IV. BACKGROUND INFORMATION

The State of Hawaii Department of Transportation (HDOT) was formed shortly after Hawaii became a state in 1959. HDOT has three modal Divisions (Airports, Harbors, and Highways) and a Support Services or Administration Division. HDOT currently provides, operates, and maintains eleven commercial service airports; four general aviation airports; nine commercial harbors; and 2,450 lane miles of highway. HDOT has transportation facilities and infrastructure on all of the six major islands. The Support Services Division consists of the following eight offices:

- 1) Statewide Transportation Planning Office (STP);
- 2) Office of Civil Rights (OCR);
- 3) Office of Special Compliance Programs (DIR-CZ);
- 4) Personnel Office (PER);
- 5) Contracts Office (CON);
- 6) Computer Systems and Services Office (CSS);
- 7) Business Management Office (BUS); and
- 8) Planning, Programming, and Budgeting Office (PPB).

The STP Office coordinates HDOT's multi-modal transportation planning programs. In coordination with HDOT's Airport, Harbors, and Highways Planning Offices, the Oahu Metropolitan Planning Organization (OMPO), the city/county planning departments, the U.S. DOT Federal Highway Administration (FHWA), and the Federal Transit Administration (FTA), the STP Office develops and maintains the statewide transportation planning

process. The STP Office ensures that these plans are comprehensive, integrated, and publicly accountable. The STP Office also administers the Federal Transit Administration (FTA) assistance program.

The Governor of Hawaii designated HDOT as the agency responsible for administering the FTA Section 5309, 5310, 5311, 5316, and 5317 programs. A staff of three within the STP Office administers the FTA programs. The program manager has overall responsibility for the FTA programs, including planning grants. One staff member administers the Section 5309 and 5311 programs and the other staff member administers the Section 5310, 5316 and 5317 programs. In the Office of Civil Rights (OCR), there is a Title VI Coordinator for all HDOT programs, including FTA.

HDOT funds 35 Section 5310 subrecipients operating 94 vehicles and three Section 5311 subrecipients, the counties of Hawaii, Maui, and Kauai. All three Section 5311 subrecipients operate fixed route service. HDOT monitors its subrecipients mainly through annual site visits. Currently, HDOT is processing its first applications for Section 5316 and 5317 assistance.

HDOT passes Section 5309 assistance to its Section 5311 subrecipients for vehicle procurements and facility construction projects, which have included construction of an operations and maintenance facility on Kauai, design for the expansion of a bus storage yard on Kauai, and the construction of bus shelters on Maui and Hawaii.

HDOT passes Section 5309 assistance to the State of Hawaii Department of Land and Natural Resources (DLNR) for ferry terminal improvements on the islands of Maui, Lanai, and Molokai. Private ferry operators provide the service. To date, DLNR has rehabilitated the ferry terminal in Lahaina on Maui and rehabilitated the harbor in Manele on Lanai. The rehabilitation of the small boat harbor in Maalaea, Maui and terminal and site improvements at Kaunakakai, Molokai are in design. A grant application is pending for construction of these projects.

HDOT has passed Section 5309 funds to the Department of the Navy for the construction of ferry vessels that will be operated by US Park Service and used to ferry passengers to the U.S.S. Arizona Memorial.

The following is a list of HDOT Subrecipients:

Section 5303

Metropolitan Planning Grants

State of Hawaii

Oahu Metropolitan Planning Organization

Section 5304

Statewide Planning Grants

State of Hawaii

Department of Transportation Statewide Transportation Planning Office

Section 5309

New Starts and Alaska-Hawaii Ferry Grants

State of Hawaii

Department of Land and Natural Resources

Section 5309

Bus and Bus Facility Program Grants

County of Hawaii, Mass Transit Agency

Maui County Department of Transportation

County of Kauai Transportation Agency Office of Community Assistance

Section 5311

Transportation Grants

County of Hawaii, Mass Transit Agency

Maui County Department of Transportation

County of Kauai Transportation Agency Office of Community Assistance

Section 5316

Job Access And Reverse Commute (JARC) Grants

County of Hawaii, Mass Transit Agency

Section 5317

New Freedom Grants

County of Kauai Transportation Agency Office of Community Assistance

Section 5310

Elderly And Persons With Disabilities Grants

Hawaii County

Brantley Center, Inc.

Coordinated Services for the Elderly

County of Hawaii, Mass Transit Agency

Hawaii County Economic Opportunity Council

Hawaii Centers for Independent Living Hilo

Hawaii Island Adult Care

Kona Association for Retarded Citizens (ARC of Kona)

Kona Adult Day Center, Inc.

The ARC of Hilo

Kauai County

Hawaii Centers for Independent Living Kauai

Kauai Economic Opportunity, Inc.

Wilcox Memorial Hospital

The ARC of
County of Kauai Transportation Agency, Office of Community Assistance

Maui County
Aloha House, Inc.
Hale Makua - Wailuku
Ka Lima O Maui J. Walter Cameron Center
Kaunoa Senior Services
Maui Economic Opportunity Inc.
The ARC of Maui Cameron Center

Oahu County
Catholic Charities Hawaii
Easter Seals of Hawaii
Goodwill Industries
Hawaii Centers for Independent Living Oahu
Kaiser Consolidated Services Center at Dole Cannery
Kokua Kalihi Valley Comprehensive Family Services
Lanakila Pacific
Mental Health Kokua
Moiiliili Community Center
Opportunities for the Retarded, Inc.(ORI Anuenue Hale)
Rehab Hospital of the Pacific
Special Education Center of Hawaii
The Arc in Hawaii
Waianae Coast Comprehensive Health Center
Windward Senior Day Care

HDOT's service area is very diverse, with White residents representing 24.3 percent of the total population. Asians are the largest minority group at 41.6 percent. Hispanics follow at 21.4 percent and Native Hawaiians/Pacific Islanders represent 9.4 percent of the total population.

Table 1 – Demographics of the HDOT Service Area

Racial/ Ethnic Breakdown of the City of Honolulu and Hawaii’s Five County areas

Source: 2000 U.S. Census

Racial/ Ethnic Group	City of Honolulu		Honolulu County		Kalawao County		Maui County	
	Num.	%	Num.	%	Num.	%	Num.	%
White	73,093	19.7	186,484	21.3	38	25.9	43,421	33.9
Black	6,038	1.6	20,619	2.4	0	0.0	509	0.4
American Indian and Alaska Native	689	0.2	2,178	0.2	0	0.0	479	0.4
Asian	207,588	55.9	403,371	46.0	25	17.0	39,728	31.0
Hawaiian/Pacific Islander	25,457	6.8	77,680	8.9	71	48.3	13,730	10.7
Other Race	3,318	0.9	11,200	1.3	4	2.7	1,743	1.4
Two or More	55,474	14.9	174,624	19.9	9	6.1	28,484	22.2
Hispanic Origin ¹	16,229	4.4	58,729	6.7	6	4.1	10,050	7.8
Total Population	371,657	100%	876,156	100%	147	100%	128,094	100%

Low Income	42,706	11.8	83,937	9.9	59	40.1	13,252	10.5
Limited English	93,895	25.3	168,246	19.2	30	20.4	21,171	16.5

Racial/ Ethnic Group	Kauai County		Hawaii County		Total State of Hawaii	
	Num.	%	Num.	%	Num.	%
White	17,255	29.5	46,904	31.5	294,102	24.3
Black	177	0.3	698	0.5	22,003	1.8
American Indian and Alaska Native	212	0.4	666	0.4	3,535	0.3
Asian	21,042	36.0	39,702	26.7	503,868	41.6
Hawaiian/Pacific Islander	5,334	9.1	16,724	11.2	113,539	9.4
Other Race	505	0.9	1,695	1.1	15,147	1.3
Two or More	13,938	23.8	42,288	28.4	259,343	21.4
Hispanic Origin ¹	4,803	8.2	14,111	9.5	87,699	21.4
Total Population	58,463	100%	148,677	100%	1,211,537	100%

Low Income	6,085	10.5	22,821	15.7	126,154	10.7
Limited English	7,574	13.0	15,208	10.2	212,229	17.5

¹ Per the 2000 Census, people of Hispanic origin can be, and in most cases are, counted in two or more race categories.

V. SCOPE AND METHODOLOGY

Scope

The Title VI Compliance Review of HDOT examined the following requirements as specified in FTA Circular 4702.1A:

1. General Reporting Requirements and Guidelines - all applicants, recipients and subrecipients shall maintain and submit the following:
 - a. Annual Title VI Certification and Assurance;
 - b. Title VI Complaint Procedures;
 - c. Record of Title VI Investigations, Complaints, and Lawsuits;
 - d. Language Access to LEP Persons;
 - e. Notice to Beneficiaries of Protection under Title VI;
 - f. Submit Title VI Program;
 - g. Environmental Justice Analysis of Construction Projects; and
 - h. Inclusive Public Participation.

2. Program-Specific Requirements and Guidelines for State DOTs and Other Administering Agencies - State DOTs and Other Administering Agencies, administering Elderly Individuals and Individuals with Disabilities, Rural and Small Urban Area, Job Access and Reverse Commute (JARC), and New Freedom funding programs, as well as designated recipients in large urbanized areas for JARC and New Freedom, shall also submit the following:

- a. A copy of procedures to certify that the statewide planning Process is in compliance with Title VI;
- b. A description of the procedures the agency uses to pass through FTA financial assistance in a non-discriminatory manner;
- c. A description of the procedures the agency uses to provide assistance to potential subrecipients in a non-discriminatory manner;
- d. A description of how the agency monitors its subrecipients for compliance with Title VI and the results of the monitoring.

Methodology

Initial interviews were conducted with the FTA Headquarters Civil Rights staff and the FTA Region IX Civil Rights Officer to discuss specific Title VI issues and concerns regarding HDOT. An agenda letter covering the Review was sent to HDOT advising it of the site visit and indicating additional information that would be needed and issues that would be discussed. The Title VI Review team focused on the compliance areas that are contained in FTA Title VI Circular 4702.1A that became effective on May 13, 2007. These compliance areas are: (1) General Reporting Requirements and Guidelines; and (2) Program-Specific Requirements and Guidelines for State Departments of Transportation and Other Administering Agencies. The General Reporting Requirements and Guidelines now include implementation of the Environmental Justice (EJ) and Limited English Proficiency (LEP) Executive Orders.

HDOT was requested to provide the following information regarding the Title VI Requirements of FTA Circular 4702.1A:

- HDOT's most recent State Management Plan(s) for FTA-funded Section 5310, 5311, 5316, and 5317 programs.
- List of all HDOT subrecipients by FTA program area, e.g., FTA Section 5309, 5310, 5311, 5316, and 5317 subrecipients.
- A map or chart of the distribution of FTA Section 5309, 5310, 5311, 5316, and 5317 funding throughout the State. The areas covered by each subrecipient and the dollars awarded in the past three years should be noted, as well as the number of vehicles, where appropriate. The map or chart should also identify areas where minority and low-income populations exceed the statewide averages.
- A demographic profile of the State that includes the identification of the locations of socioeconomic groups, including low-income and minority populations, as covered by Title VI and the Executive Order on Environmental Justice.
- HDOT Organization Chart for the Department and for the unit responsible for administration of FTA grant programs.
- Sample copies of current funding agreements/contracts between HDOT and its FTA-funded subrecipients, including Section 5309, 5310, 5311, 5316, and 5317 subrecipients.
- Any studies or surveys conducted by HDOT, its consultants or other interested parties (colleges or universities, community groups, etc.) regarding ridership, service levels and amenities, passenger satisfaction, passenger demographics or fare issues for its rural public transit service and regarding transit planning and service provided by FTA Section 5309, 5310, 5311, 5316, and 5317 subrecipients, during the past three years.

- Summary of HDOT's current efforts to seek out and consider the viewpoints of minority, low-income, and LEP populations in the course of conducting public outreach and involvement activities.
- A copy of HDOT's four factor analysis of the needs of persons with Limited English Proficiency.
- A copy of HDOT's plan for providing language assistance for persons with Limited English Proficiency that is based on the USDOT LEP Guidance
- HDOT's procedures for investigating and tracking Title VI complaints and documentation that the procedures for filing complaints are available to members of the public upon request.
- A list of any investigations, lawsuits, or complaints naming HDOT that alleges discrimination on the basis of race, color, or national origin during the past three years. This list must include:
 - the date the investigation, lawsuit, or complaint was filed;
 - a summary of the allegation(s);
 - the status of the investigation, lawsuit, or complaint; and
 - actions taken by HDOT in response to the investigation, lawsuit, or complaint.
- Copy of HDOT's Notice to Beneficiaries of Protections Under Title VI
- Description of efforts made by HDOT to apprise members of the public of the protections against discrimination afforded to them by Title VI.
- Copies of any environmental justice assessments conducted for construction projects during the past three years and, if needed, a description of the program or other measures used or planned to mitigate any identified adverse impact on the minority or low-income

communities, including FTA Section 5309, 5310, 5311, 5316, and 5317 subrecipients.

- HDOT's statewide transportation planning process that identifies the needs of low-income and minority populations.
 - HDOT's analytical process that identifies the benefits and burdens of the State's transportation system investments for different socioeconomic groups, identifying imbalances, and responding to the analyses produced.
 - A copy of the procedures used for certifying that the statewide planning process complies with Title VI.
 - A description of how HDOT develops its competitive selection process or annual program of projects for Section 5310, 5311, 5316, and 5317 programs submitted to FTA as part of its grant applications. This description should emphasize the method used to ensure the equitable distribution of funds to subrecipients that serve predominantly minority and low-income populations, including Native American tribes, where present.
 - A description of HDOT's criteria for selecting transit providers to participate in any FTA grant program.
 - A record of requests for Section 5310, 5311, 5316, 5317 funding. The record should identify those applicants that would use grant program funds to provide assistance to predominantly minority and low-income populations. The record should also indicate whether those applicants were accepted or rejected for funding.
- a) A description of how HDOT monitors its Section 5309, 5310, 5311, 5316, and 5317 subrecipients for compliance with Title VI and a summary of the results of this monitoring, including:

- The process for ensuring that all subrecipients are complying with the General Reporting Requirements of FTA Circular 4702.1A.
- The process for subrecipients who provide transportation services to verify that their level and quality of service is provided on an equitable basis, including the development of system-wide service standards and verification that service provided to predominantly minority and low-income communities meets these standards.
- A description of HDOT's procedures to assist potential subrecipients in applying for Section 5310, 5311, 5316, and 5317 funding, including any efforts to assist applicants that would serve predominantly minority and low-income populations.
- A description of the assistance HDOT provides to subrecipients, upon their request, to help them comply with the FTA Title VI General Reporting Requirements. The following are examples of information that may be provided to subrecipients:
 - Sample notices to the public informing beneficiaries of their rights under Title VI and procedures on how to file a Title VI complaint.
 - Sample procedures for tracking and investigating Title VI complaints filed with a subrecipient.
 - Demographic information on the race, income, and English proficiency of residents served by the subrecipient.

HDOT assembled most of the documents prior to the site visit and provided them to the Compliance Review team for advance review. A detailed schedule for the four-day site visit was developed.

The site visit to HDOT occurred February 16 – 19, 2010. The individuals participating in the Review are listed in Section VIII of this Report. An Entrance Conference was conducted at the beginning of the Compliance Review with HDOT senior management staff, the FTA Region IX Regional Civil Rights Officer, and the contractor Review team. The Review team showed the participants a U.S. Justice Department Title VI film during the Entrance Conference. Also, during the Entrance Conference, the Review team explained the goals of the Review and the needed cooperation of staff members. A detailed schedule for conducting the on-site visit was discussed.

Following the Entrance Conference, the Title VI Compliance Review team met with staff from the HDOT Office of Civil Rights responsible for Title VI Compliance and with staff from the HDOT STP Office. During this meeting, discussions focused on a detailed examination of documents submitted in advance of the site visit and documents provided at the site visit by the HDOT.

The Review team then met with HDOT staff to discuss how HDOT incorporates FTA Title VI requirements into its FTA funded programs. During the site visit, the Review team visited a Section 5311 subrecipient, the Maui County Department of Transportation, to ascertain the extent to which Title VI was being incorporated into the HDOT subrecipient activities. At the end of the site visit, an Exit Conference was held with HDOT staff, the FTA Region IX Regional Civil Rights Officer, and the contractor Review team. At the Exit Conference, initial findings and corrective actions were discussed with HDOT.

Community Interviews

Several community representatives in Hawaii were interviewed. They consisted of community leaders and representatives of minority organizations and businesses, and recipients of HDOT funding. All of the community representatives indicated that HDOT had maintained a consistent presence in their communities in various ways. Most of the representatives had not received or had no awareness of HDOT Title VI posters notifying the public of their protections under Title VI of the Civil Rights Act. Most of them were not aware who HDOT's Title VI Officer was, but most felt confident in their ability to file a complaint if they had an issue or problem. None of the representatives reported having seen translators available at community meetings where there may have been individuals with limited English proficiency. One individual acknowledged having seen literature provided by HDOT presented in another language.

None of the representatives expressed a concern regarding HDOT, their relationship with HDOT, or the service to their communities. Several of the representatives were of the opinion that Hawaii had such a high concentration of minorities that it would be hard to differentiate between the services provided to minority communities and non-minority communities. Furthermore, they have not observed any difference in the quality of service provided by HDOT.

VI. FINDINGS AND RECOMMENDATIONS

The Title VI Compliance Review focused on HDOT's compliance with the General Reporting Requirements and Guidelines and the Program-Specific Requirements and Guidelines. This section describes the requirements and findings at the time of the Compliance Review site visit. In summary, no deficiencies were identified in five of the twelve areas reviewed. Deficiencies were identified in the following Title VI requirement areas:

- *Inclusive Public Participation*
- *Language Access to LEP Persons*
- *Notice to Beneficiaries of Protection Under Title VI*
- *Environmental Justice Analysis of Construction Projects*
- *Submit Title VI Program*
- *Statewide Planning Activities*
- *Program Administration*

Following the site visit, HDOT took corrective actions to close the deficiencies in the following areas:

- *Inclusive Public Participation*
- *Notice to Beneficiaries of Protection Under Title VI*
- *Environmental Justice Analysis of Construction Projects*
- *Submit Title VI Program*
- *Program Administration*

Deficiencies remain in the following areas:

- *Language Access to LEP Persons*
- *Statewide Planning Activities*

FINDINGS OF THE GENERAL REPORTING REQUIREMENTS AND GUIDELINES

1. Inclusive Public Participation

Guidance: *FTA recipients should seek out and consider the viewpoints of minority, low-income, and LEP populations in the course of conducting public outreach and involvement activities. An agency's public participation strategy shall offer early and continuous opportunities for the public to be involved in the identification of social, economic, and environmental impacts of proposed transportation decisions.*

Findings: During this Title VI Compliance Review of HDOT, deficiencies were found regarding HDOT's compliance with FTA guidance for Inclusive Public Participation. Prior to the site visit, HDOT provided its *Guide for Public Involvement Planning (Guideline)* dated October 28, 2003. The Guideline was intended to help the public learn about the land transportation planning process and to encourage public participation in the planning process. The Guideline was an extensive document that enumerated various aspects of HDOT's public involvement process. The intent of the Hawaii DOT's *Guide for Public Involvement Planning* was to:

- Increase public awareness and understanding of the transportation planning process in Hawaii;
- Encourage broad citizen participation in the development of Hawaii DOT's transportation plans and programs, including citizens who have traditionally been underserved and underrepresented, such as minority and low-income populations;
- Stimulate a broad-based interest in Hawaii DOT's planning activities;
- Improve communication between the public and the Hawaii DOT; and

- Foster greater opportunities for the public to participate in the transportation planning decision-making process by maximizing opportunities for the public to collaborate with the Hawaii DOT and transportation-related agencies in Hawaii's four counties.

According to the Guideline, *“To respond to community considerations which may vary from planning project to planning project, the HDOT may establish a Citizen Advisory Committee for a project depending on the scope of the particular project. In some instances, a semi-permanent Citizen Advisory Committee may be formed to ensure continuity over a project's duration.”*

The Guideline indicated that:

Hawaii DOT will seek to identify and include representatives from minority and disadvantaged groups, particularly for those projects directly impacting said groups.

Hawaii DOT shall provide the public an opportunity to review and comment on the draft STIP prior to the approval of the final STIP.

The Guideline included the following Appendices:

- Appendix A: Hawaii DOT Vision of Transportation in the 21st Century
- Appendix B: Strategies and Activities to Enhance Public Involvement
- Appendix C: Mailing List for Environmental Justice/Title VI Issues

Additionally, HDOT provided a Public Involvement Policy document dated May 2009. The policy document was directed at the implementation of activities that solicited inclusive involvement. The policy document encouraged partnerships between HDOT and the communities affected by its projects.

The FTA Circular states that the public participation strategy of agencies such as HDOT:

...shall offer early and continuous opportunities for the public to be involved in the identification of social, economic, and environmental impacts of proposed transportation decisions.

The FTA Circular 4702.1A, IV.9(a) identifies the following Effective Practices for Fulfilling the Inclusive Public Participation Requirement, including:

- 1) Coordinating with individuals, institutions, or organizations and implementing community-based public involvement strategies to reach out to members in the affected minority and/or low-income communities.*
- 2) Providing opportunities for public participation through means other than written communication, such as personal interviews or use of audio or video recording devices to capture oral comments.*
- 3) Using locations, facilities, and meeting times that are convenient and accessible to low-income and minority communities.*
- 4) Using different meeting sizes or formats, or varying the type and number of news media used to announce public participation opportunities, so that communications are tailored to the particular community or population.*
- 5) Implementing DOT's policy guidance concerning recipients' responsibilities to LEP persons to overcome barriers to public participation.*

While HDOT provided policy and guidance documents regarding public involvement, none of its public involvement activities were directed toward FTA programs and projects. Prior to and during the site visit, HDOT did not provide

any documentation that it had sought out and considered the viewpoints of minority, low-income, and LEP populations in the course of conducting public outreach and involvement for its FTA funded program as described in the Circular. There was no documentation of flyers, notices, meetings, or any type of communications with the minority, low-income, and LEP population.

HDOT was unable to document that its public participation process satisfied the requirements of the FTA Circular that:

FTA recipients should seek out and consider the viewpoints of minority, low-income, and LEP populations in the course of conducting public outreach and involvement activities.

Following the site visit, HDOT provided information on specific public involvement strategies that it was employing to reach out to its minority, low-income, and LEP populations. These public involvement activities were associated with the update of the Hawaii Statewide Transportation Plan (HSTP) and with the development of the Statewide Transportation Improvement Program (STIP) 2011-2014. HDOT indicated that:

A component of the extensive public involvement effort includes interview surveys the intention is to learn from community leaders what the State transportation strategies should encompass. Specific targeted outreach to EJ minority and low -income communities will be conducted through the survey interviews with non -profit service providers, and community leaders knowledgeable about the transportation (including public transportation and transit) needs of the EJ community.

In addition, HDOT indicated that:

Public transportation and transit EJ outreach include sending the meeting notice to individuals and organizations including Native Hawaiian Civic

Clubs, 5310 subrecipients, various Chambers of Commerce (Japanese, Korean, Chinese, Native Hawaiian Chambers of Commerce), Homeless Service Providers, providers for the economically disadvantaged including the Maui Economic Opportunity, Inc., the Kauai Economic Opportunity, Inc., the Hawaii County Economic Opportunity Council.

The deficiencies in this area are now closed.

2. Language Access to LEP Persons

Requirement: *FTA recipients shall take responsible steps to ensure meaningful access to the benefits, services, information, and other important portions of its programs and activities for individuals who are Limited English Proficient (LEP).*

Findings: During this Title VI Compliance Review of HDOT, deficiencies were found regarding HDOT's compliance with FTA requirements for Language Access to LEP persons. Prior to the site visit, HDOT provided a document entitled *HDOT Four Factor LEP Needs Assessment*. HDOT also provided a document entitled *State of Hawaii Department of Transportation Language Access Plan*, most recently updated on August 18, 2009.

A review of HDOT's LEP documents against the *DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficient Persons*, (December 14, 2005) identified the following:

Elements Required for LEP Assessment (Per FTA C. 4702.1A, IV, 4. a. and DOT Policy Guidance)		
	Included in HDOT's Documents?	Notes/Comments
Part A – Four-Factor Assessment		
1. Demography –The number or proportion of LEP persons eligible to be served or likely to be encountered	Yes	Analysis gives proportion of LEP persons relative to the total county populations
2. Frequency of Contact - the frequency with which LEP individuals come in contact with the program and/or activities	No	HDOT subrecipient frequency of contact information being developed; one method is by surveying drivers.
3. Importance - the nature and importance of the program, activity, or service to people's lives;	No	Lack of analysis of services used by LEP and lack of input from community and LEP persons.
4. Resources - the resources available and costs	No	No associated costs given.

HDOT was able to show that it had appropriate Demographic data for the Four Factor Analysis. In its submittal prior to the site visit, HDOT's LEP documents showed statewide LEP data by county for the City and County of Honolulu and Hawaii, Maui, Kauai, and Kalawao Counties. They used 2006 American Community Survey data to determine the percentages of homes that spoke a language other than English.

HDOT's Title VI Specialist had recently met with Hawaii, Maui, and Kauai counties to further develop the LEP plan, including discussions on how to determine the frequency of contact. The methodology to be employed was to survey drivers on the frequency of contact with LEP individuals. The frequency of contact information was still to be collected.

HDOT noted that access to transportation for jobs, doctor visits, buying groceries was important. However, there was no analysis to support the nature and importance to riders and which particular services were important to them.

HDOT provided an extensive listing of interpretation services in its document submittal, however, the information was from various state resources and, though it was available to HDOT, its use by either HDOT or its FTA subrecipients was not indicated.

HDOT provided a Language Access Plan (LAP), however, without an adequate four factor analysis, the LAP had shortcomings.

Corrective Actions and Schedules: Within 90 days, HDOT must submit to the FTA Equal Opportunity Specialist in FTA's Headquarters Office of Civil Rights a Language Access Plan that meets the requirements of *DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficient Persons*, (December 14, 2005).

3. **Title VI Complaint Procedures**

Requirement: *FTA recipients shall develop procedures for investigating and tracking Title VI complaints filed against them and make their procedures for filing a complaint available to members of the public upon request.*

Findings: During this Title VI Compliance Review of HDOT, no deficiencies were found regarding HDOT's compliance with FTA requirements for Title VI Complaint Procedures. At the time of the site visit, HDOT had a procedure for

investigating and tracking Title VI complaints and had a Title VI complaint procedure that was available to members of the public and that was distributed to its subrecipients.

The Review team confirmed that HDOT's website did contain links to the Title VI Program (visit <http://hawaii.gov/dot/administration/ocr/title6>). The Title VI Complaint Form was available on the website. The Title VI Complaint Procedure, taken from the website, is shown below:

Title VI Complaint Procedures

These procedures cover any program or activity administered by the Hawaii Department of Transportation (HDOT).

Any person who believes that he or she, individually, as a member of any specific class, or in connection with any disadvantaged business enterprise (DBE), has been subjected to discrimination on the basis of race, color, national origin, or sex, protected categories under Title VI of the Civil Rights Act of 1964, and other related statutes, may file a Title VI complaint with the HDOT's Office of Civil Rights. A complaint may also be filed by a representative on behalf of such a person. They should be directed to:

*Office of Civil Rights
Hawaii State Department of Transportation
869 Punchbowl Street, Room 112
Honolulu, Hawaii 96813*

The law prohibits intimidation or retaliation of a person who files a complaint.

In order to have the complaint considered under this procedure, the complainant must file the complaint no later than 180 days after:

- 1. The date of the alleged act of discrimination; or*
- 2. Where there has been a continuing course of conduct, the date on which that conduct was discontinued.*

These procedures do not deny or limit the right of a complainant to file a formal complaint with the U.S. Department of Transportation (U.S. DOT). Every effort will be made to resolve complaints at the lowest possible level as quickly as possible.

Procedure

- 1. Complaints submitted to the OCR must be in writing, signed, and dated by the complainant or their authorized representative. The complaint must contain the complainant's name and address (or specify another means of contacting them) and must describe the allegations in sufficient detail to allow for a determination whether the appropriate agency has jurisdiction over the complaint, the complaint was filed in a timely manner, and that the complaint has apparent merit.*
- 2. If the complaint provides incomplete information, the complainant will be requested to complete the HDOT's discrimination complaint form. Failure to complete the form may result in OCR dropping the complaint for failure to prosecute.*
- 3. Upon receipt of the signed complaint form, the Civil Rights Manager or their designee will log-in the complaint, determine the basis of the complaint, authority/jurisdiction, and who should conduct the investigation.*
- 4. Title VI complaints will be assigned to a member of the OCR staff or other designated HDOT staff who is trained in conducting such investigations.*
- 5. The first step in conducting the investigation will be the preparation of an investigation plan, identifying following elements:*
 - a. Basis of complaint;*
 - b. Issues to be addressed;*
 - c. Information needed to answer the questions posed (what actually happened, who was involved, past practices, etc.);*
 - d. Sources from which the information will be obtained (witnesses, written documents, etc.);*
 - e. How the information will be obtained (telephone interviews, travel to other offices, review of records, etc.); and*
 - f. Projected timeline for completion.*
- 6. Within ten (10) working days of receiving the complaint, the complainant will be notified in writing by the OCR regarding who will be conducting the investigation and the anticipated timeline for completion.*

7. *One of the first steps in the investigation will be to meet with the complainant to clarify the issues and obtain additional information.*
8. *The Branch or District Manager where the complaint occurred will be notified of the complaint.*
9. *The respondent (party named in the complaint) will be notified of the complaint and the status of the investigation.*
10. *There is no informal complaint process under Title VI. All complaints are treated as formal complaints whether they are investigated by HDOT or forwarded to U.S. DOT for processing.*
11. *Proceed with the steps outlined in the investigation plan (interview witnesses, obtain written documentation, etc.).*
12. *After completing the investigation, information will be evaluated and a written report prepared. The report shall contain the following elements:*
 - a. *Description of the allegation;*
 - b. *Summary of the investigation;*
 - c. *Relevant facts (findings);*
 - d. *Supporting documents attached, when appropriate*
13. *The written investigation report will be submitted to the Civil Rights Manager within 90 days of the time the complaint was received. If circumstances require additional time, a status report will be submitted and a request for extension of time will be forwarded to the Office of the Secretary of Transportation (OST) for approval.*
14. *A copy of the report shall be sent to the Attorney General's Office for their information and file.*
15. *The investigator will meet with the Civil Rights Manager and/or their designee to discuss the findings and what further action may be appropriate.*
16. *The Civil Rights Manager and/or investigator will meet with the Director. The HDOT's Director shall make the final decision.*
17. *The complainant and appropriate managers will be notified in writing of the results of the investigation.*
18. *If the HDOT's decision is adverse to the complainant, the complainant shall be notified that they have appeal rights under Title VI to the U.S. DOT.*
19. *Copies of all Title VI complaints and investigative reports will be sent to the affected agency of the U.S. DOT within 60 days of receipt of the complaint*

Since the current HDOT Title VI complaint procedures were developed for FHWA purposes, HDOT was advised to modify the procedures to reflect applicability to the FTA program. HDOT had given its Section 5311 subrecipients copies of the complaint procedures to assist in the development of their own complaint procedures.

Maui County, Hawaii County, and HDOT had complaint procedures. Kauai County was in process of developing its complaint procedures.

4. **Record of Title VI Investigations, Complaints, and Lawsuits**

Requirement: *FTA recipients shall prepare and maintain a list of any active investigations conducted by entities other than FTA, lawsuits, or complaints naming the recipients that allege discrimination on the basis of race, color, or national origin. This list shall include the date that the investigation, lawsuit, or complaint was filed; a summary of the allegation(s); the status of the investigation, lawsuit, or complaint; and actions taken by the recipient in response to the investigation, lawsuit, or complaint.*

Findings: During this Title VI Compliance Review of HDOT, no deficiencies were found regarding HDOT's compliance with FTA requirements for Record of Title VI Investigations, Complaints, and Lawsuits. Prior to the site visit, HDOT indicated that there were currently no active Title VI investigations, lawsuits or complaints filed against HDOT.

5. **Notice to Beneficiaries of Protection Under Title VI**

Requirement: *FTA recipients shall provide information to the public regarding their Title VI obligations and apprise members of the public of the protections*

against discrimination afforded to them by Title VI. Recipients shall disseminate this information to the public through measures that can include but shall not be limited to a posting on its Web site.

Findings: During this Title VI Compliance Review of HDOT, deficiencies were found regarding HDOT's compliance with FTA requirements for Notice to Beneficiaries of Protection under Title VI. Prior to the site visit, HDOT submitted its brochure *YOU and HDOT: Your Rights Under Title VI of the Civil Rights Act of 1964*, which included its Complaint Procedure and Title VI Policy statement. HDOT's Title VI Program Policy, Title VI Complaint Form and Title VI Policy Statement were also included on its website. HDOT's Title VI Policy Statement follows:

TITLE VI POLICY

It is HDOT policy for all recipients of Federal funds, including HDOT divisions, Metropolitan Planning Organizations (MPO's), and subrecipients to ensure that they are in compliance with Title VI of the Civil Rights Act of 1964 and all related statutes, regulations, and directives in all programs and activities. No person in the United States shall, on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any HDOT program, policy, or activity.

In the policy brochure, HDOT had a listing of entities that were the Authority for compliance and enforcement, however, it did not mention as an authority FTA Circular 4702.1A guidelines. As noted below, the Policy Statement brochure

did not describe how members of the public could obtain additional information on HDOT’s Title VI obligations.

Elements Required in Title VI Notice to Beneficiaries (Per FTA Circular 4702.1A Chapter IV Section 5.a)	Included in HDOT Policy Statement?
A statement that the agency operates programs without regard to race, color, and national origin	Yes
A description of the procedures that members of the public should follow in order to request additional information on the recipient’s nondiscrimination obligations	No
A description of the procedures that members of the public should follow in order to file a discrimination complaint against the recipient.	Yes

At the time of the Compliance Review site visit, the Policy had not been disseminated to the public. HDOT indicated that it had discussions with its subrecipients after the 2008 State Management Review (SMR) to determine where to put the notice other than the website, but no final determination was made at the time of the site visit.

Following the site visit, HDOT provided a revised Notice to Beneficiaries that contained all the required elements. HDOT indicated that it was disseminating the Notice to Beneficiaries to its counties at the next quarterly meeting.

The deficiencies in this area are now closed.

6. Annual Title VI Certification and Assurance

Requirement: *FTA recipients shall submit its annual Title VI certification and assurance as part of its Annual Certifications and Assurances submission to FTA (in the FTA web based Transportation Electronic Award Management (TEAM) grants management system.*

Findings: During this Title VI Compliance Review of HDOT, no deficiencies were found regarding HDOT's compliance with FTA requirements for Annual Title VI Certification and Assurance. The FTA Civil Rights Assurance is incorporated in the Annual Certifications and Assurances submitted annually to FTA through the Transportation Electronic Award and Management (TEAM) system. HDOT executed its FY 2010 Annual Certifications and Assurances in TEAM on November 25, 2009. HDOT checked as applicable, *01 Assurances Required For Each Applicant*. This is the category where the nondiscrimination assurance is located. It was noted that the hard copy file of the Annual Certifications and Assurances was dated November 12, 2009.

7. **Environmental Justice Analysis of Construction Projects**

Guidance: *FTA recipients should integrate an environmental justice analysis into its National Environmental Policy Act (NEPA) documentation of construction projects. (Recipients are not required to conduct environmental justice analyses of projects where NEPA documentation is not required.). In preparing documentation for a categorical exclusion (CE), recipients can meet this requirement by completing and submitting FTA's standard CE checklist, which includes a section on community disruption and environmental justice.*

Findings: During this Title VI Compliance Review of HDOT, deficiencies were found regarding HDOT's compliance with FTA guidance for Environmental Justice (EJ) Analyses of Construction Projects. HDOT did not provide documentation that it had been integrating environmental justice analyses in its FTA-funded construction projects.

Prior to the site visit, HDOT provided Environmental Assessment (EA) documents for two FTA-funded Section 5309 projects: the EA for the Lahaina

Small Boat Harbor Comfort Station Improvements and the EA for the Manele Small Boat Harbor Ferry System Improvements. Analyses for both of these projects were completed in 2006, prior to the period of study of this Compliance Review. While both of these Analyses were completed prior to the issuance of FTA Circular 4702.1A, it is important to note that the EA that was performed did not meet the requirements for Title VI. There was no consideration of the minority and low income population in the areas; and no discussion in the EA about adverse affects on minority and low income populations, as recommended by FTA.

Prior to the site visit, in response to the request for copies of any environmental justice assessments conducted for construction projects during the past three years, HDOT indicated the following in its submittal to the Review team:

All three County Transit Agencies; Kauai, Hawaii, Maui were asked this question and answered in the negative. Bus stop construction, improvement, transit center construction, base yard improvements, construction within the last three years did not require a NEPA or Hawaii EIS law environmental document.

The Review team identified a construction project reported in TEAM that did not contain the appropriate construction analysis as required by the Circular. Kauai County constructed a new bus storage and maintenance facility using 5309 funds. HDOT requested a Categorical Exclusion (CE) under 23 CFR 771.117 (d)(8), however, there was no documentation that the FTA's standard CE checklist was completed or submitted.

HDOT was advised that the current requirements for an EJ analysis have been revised with the issuance of FTA Circular 4702.1A. These requirements are noted below:

Elements Required in Environmental Justice Analysis of Construction Projects (Per FTA Circular 4702.1A Chapter IV, 8a-f)	
a.	A description of the low-income and minority population within the study area affected by the project, and a discussion of the method used to identify this population
b.	A discussion of all adverse effects of the project both during and after construction that would affect the identified minority and low-income population.
c.	A discussion of all positive effects that would affect the identified minority and low-income population, such as an improvement in transit service, mobility, or accessibility.
d.	A description of all mitigation and environmental enhancement actions incorporated into the project to address the adverse effects, including, but not limited to, any special features of the relocation program that go beyond the requirements of the Uniform Relocation Act and address adverse community effects such as separation or cohesion issues; and the replacement of the community resources destroyed by the project.
e.	A discussion of the remaining effects, if any, and why further mitigation is not proposed.
f.	For projects that traverse predominantly minority and low-income and predominantly non-minority and non-low-income areas, a comparison of mitigation and environmental enhancement actions that affect predominantly low-income and minority areas with mitigation implemented in predominantly non-minority or non-low-income areas.

Following the site visit, HDOT developed and disseminated to its counties guidance on how to comply with the requirement to conduct environmental justice analyses for its FTA-funded construction projects. The HDOT Office of Civil Rights conducted a workshop for HDOT department staff, consultants, and subrecipients on the EJ requirements.

The deficiencies in this area are now closed.

8. Submit Title VI Program

Requirement: *FTA recipients serving large urbanized areas are required to document their compliance with the general reporting requirements by*

submitting a Title VI Program to FTA’s Regional Civil Rights Officer once every three years.

Findings: During this Title VI Compliance Review of HDOT, deficiencies were found regarding HDOT’s compliance with FTA requirements to Submit Title VI Program. HDOT submitted a *Title VI Civil Program Plan*, dated January 18, 2009. Upon review of the document, it was determined the Title VI Program submittal did not contain all the elements required by the Circular. At the site visit, HDOT management confirmed that the Title VI Program that was submitted to FTA was the FHWA Program Plan. The following table contains the elements required for a Title VI Program submittal and whether they were contained in the HDOT Title VI Program submittal:

ELEMENTS REQUIRED FOR TITLE VI PROGRAM	
GENERAL REQUIREMENTS (Per FTA C. 4702.1A, IV, 7. a. (1) – (5))	In HDOT Title VI Program Submittal?
<ul style="list-style-type: none"> • A summary of public outreach and involvement activities undertaken since the last submission and a description of steps taken to ensure that minority and low-income people had meaningful access to these activities. 	No
<ul style="list-style-type: none"> • A copy of the agency’s plan for providing language assistance for persons with limited English proficiency that was based on the DOT LEP Guidance or a copy of the agency’s alternative framework for providing language assistance. 	No
<ul style="list-style-type: none"> • A copy of the agency procedures for tracking and investigating Title VI complaints. 	No
<ul style="list-style-type: none"> • A list of any Title VI investigations, complaints, or lawsuits filed with the agency since the time of the last submission. This list should include only those investigations, complaints, or lawsuits that pertain to the agency submitting the report, not necessarily the larger agency or department of which the entity is a part. 	No
<ul style="list-style-type: none"> • A copy of the agency’s notice to the public that it complies with Title VI and instructions to the public on how to file a discrimination complaint. 	Yes
PROGRAM SPECIFIC REQUIREMENTS (Per FTA C. 4702.1A, VI, 5. a. (1) – (4))	
(1) A copy of the procedures used for certifying that the statewide planning process complies with Title VI.	No
(2) A description of the procedures the agency uses to pass-through FTA financial assistance in a non-discriminatory manner.	No
(3) A description of the procedures the agency uses to provide assistance to potential subrecipients applying for funding in a non-discriminatory manner.	No
(4) A description of how the agency monitors its subrecipients for compliance with Title VI and a summary of the results of this monitoring.	No

As noted above, Title VI Program was missing most of the required elements.

Following the site visit, HDOT provided a document *entitled State of Hawaii Department of Transportation Title VI Program Report to the FTA (FTA 4702.1A IV.7)* that contained the required elements for a Title VI Program submittal to FTA.

The deficiencies in this area are now closed.

FINDINGS OF THE PROGRAM-SPECIFIC REQUIREMENTS AND GUIDELINES FOR STATE DEPARTMENTS OF TRANSPORTATION OR OTHER ADMINISTERING AGENCIES

This section covers program-specific requirements and guidelines for State DOTs and Other Administering Agencies, administering Elderly Individuals and Individuals with Disabilities, Rural and Small Urban Area, Job Access and Reverse Commute (JARC), and New Freedom funding programs, as well as designated recipients in large urbanized areas for JARC and New Freedom.

9. Statewide Planning Activities

Requirement: *State DOTs should have an analytic basis in place for certifying their compliance with Title VI. Examples of this analysis can include, a demographic profile of the State that includes identification of the locations of socioeconomic groups, including low-income and minority populations as covered by the Executive Order on Environmental Justice and Title VI, a statewide transportation planning process that identifies the needs of low-income and minority populations or An analytical process that identifies the benefits and burdens of the State's transportation system investments for*

different socioeconomic groups, identifying imbalances, and responding to the analyses produced.

Findings: During this Title VI Compliance Review of HDOT, deficiencies were found regarding the FTA requirements for Statewide Planning Activities. The following table contains guidance for conducting Statewide Planning Activities and whether HDOT followed the guidance:

GUIDANCE ON CONDUCTING STATEWIDE PLANNING (Per FTA C. 4702.1A, VI, 1. a. – c.)	In HDOT Submittal?
<ul style="list-style-type: none"> • A demographic profile of the State that includes identification of the locations of socioeconomic groups, including low-income and minority populations as covered by the Executive Order on Environmental Justice and Title VI. 	Yes
<ul style="list-style-type: none"> • A statewide transportation planning process that identifies the needs of low-income and minority populations. 	No
<ul style="list-style-type: none"> • An analytical process that identifies the benefits and burdens of the State’s transportation system investments for different socioeconomic groups, identifying imbalances, and responding to the analyses produced. 	No

During the Review, HDOT did not provide any documentation that it had an analytical basis in place for certifying compliance with Title VI. There was:

- No identification of the transportation needs of low-income and minority populations.
- No process that identifies benefits and burdens of the State’s transportation system investments for different socioeconomic groups.

Corrective Actions and Schedules: Within 90 days, HDOT must submit to the FTA Equal Opportunity Specialist in FTA’s Headquarters Office of Civil Rights documentation that it has an analytical basis in place for certifying compliance of its FTA-funded programs with Title VI.

10. Program Administration

Requirement: *State DOT recipients should document that they pass through Federal Transit Administration (FTA) funds under the Transportation for Elderly Individuals and Individuals with Disabilities, Rural and Small Urban Area Formula Funding, JARC, and New Freedom grant programs without regard to race, color, or national origin and that minority populations are not being denied the benefits of or excluded from participation in these programs.*

Findings: During this Title VI Compliance Review of HDOT, deficiencies were found regarding HDOT’s compliance with FTA requirements for Program Administration. There was no documentation that HDOT had performed the program administration activities, such as documenting equitable distribution, a record of requests for funding, or assisting potential subrecipients who might serve minority and low-income populations, as described in the Circular. During the Review, HDOT provided a document entitled *State of Hawaii State Management Plan For the Administration of Federal Transit Grants 49 U.S.C. Sections (§) 5310, 5311, 5316 and 5317*, dated May 15, 2009, that described HDOT’s process for passing through FTA funds. The following table contains Circular requirements for Program Administration and whether HDOT followed the requirements, either in the *State Management Plan* or any other document:

GUIDANCE ON PROGRAM ADMINISTRATION (Per FTA C. 4702.1A, VI, 2. a. (1) – (5))	In HDOT Process?
<ul style="list-style-type: none"> A description of how the agency develops its competitive selection process or annual program of projects submitted to FTA as part of its grant applications. This description should emphasize the method used to ensure the equitable distribution of funds to subrecipients that serve predominantly minority and low-income populations, including Native American tribes, where present. 	No
<ul style="list-style-type: none"> A description of the agency’s criteria for selecting transit providers to participate in any FTA grant program. 	Yes, in SMP
<ul style="list-style-type: none"> A record of requests for Elderly Individuals and Individuals with Disabilities, Rural and Small Urban Area Formula Funding, JARC, and New Freedom funding. The record should identify those applicants that would use grant program funds to provide assistance to predominantly minority and low-income populations. The record should also indicate whether those applicants were accepted or rejected for funding. 	No

<ul style="list-style-type: none"> • A description of the agency’s procedures to assist potential subrecipients in applying for Elderly Individuals and Individuals with Disabilities, Rural and Small Urban Area Formula Funding, JARC, and New Freedom funding, including any efforts to assist applicants that would serve predominantly minority and low-income populations. 	No
<ul style="list-style-type: none"> • State DOTs or other administering agencies may classify applicants as providing service to predominantly minority and low-income populations if the proportion of minority and low-income people in the applicant’s service area exceeds the statewide average minority and low-income population. 	No

During the Review, it was determined that HDOT requested the following information in its Section 5310 application:

IC. General Information

Services of Organization – Other Programs (Identify programs your organization provides that do not serve Elderly and Disabled individuals. May include low income or welfare.)

IIA. Transportation Information

Ethnic Groups and Gender Served By Your Organization's Transportation Services:
 Indicate the number of individuals served per month (indicate number of persons.)

- | | |
|------------------------------|-----------------------------|
| [10] White | [1] Vietnamese |
| [5] Hawaiian/Part Hawaiian | [] Samoan |
| [5] Chinese | [1] Hispanic |
| [11] Japanese | [1] African American |
| [8] Filipino | [] American Indian/Alaskan |
| [] Korean | [4] [Mixed] |
| | [3] Unknown |
| <u>Gender</u> | |
| [27] Male | [22] Female |

HDOT did not request the ethnicity information in any of its other applications. HDOT did request income information in its Section 5316 application. HDOT did not utilize the ethnicity information it requested above as part of its selection process nor did it utilize the information to ensure that minority and low-income populations were not being denied the benefits of or excluded from participation in FTA-funded programs as described in the Circular.

Following the site visit, HDOT provided procedures for documenting the equitable distribution of funds to agencies that provided assistance to minority and low-income communities. It provided forms that it will be using in subsequent applications and the form that would be the “record of requests” as required by the Circular.

The deficiencies in this area are now closed.

11. Providing Assistance to Subrecipients

Requirement: *FTA recommends that agencies assist their subrecipients in complying with the general reporting requirements in Chapter IV. The State DOT or other administrating agency should provide assistance at the request of a subrecipient or as deemed necessary and appropriate.*

Findings: During this Title VI Compliance Review of HDOT, no deficiencies were found regarding HDOT’s compliance with FTA guidance for Providing Assistance to Subrecipients. The following table contains guidance for Providing Assistance to Subrecipients and whether HDOT followed the guidance:

GUIDANCE ON PROVIDING ASSISTANCE TO SUBRECIPIENTS (Per FTA C. 4702.1A, VI, 4. a. – c.)	HDOT
<ul style="list-style-type: none"> • Sample notices to the public informing beneficiaries of their rights under Title VI and procedures on how to file a Title VI complaint. 	Yes
<ul style="list-style-type: none"> • Sample procedures for tracking and investigating Title VI complaints filed with a subrecipient. 	Yes
<ul style="list-style-type: none"> • Demographic information on the race, income, and English proficiency of residents served by the subrecipient. (This information will assist the subrecipient in assessing the level and quality of service it provides to communities within its service area and in assessing the need for language assistance.) 	Yes

In the documents provided to the Review team prior to the site visit, HDOT included the following information under the section labeled “HDOT Assistance to Subrecipients” as follows:

Subrecipients were given the following: sample notices to the public informing beneficiaries of their rights under Title VI and procedures on how to file a Title VI complaint; sample procedures for tracking and investigating Title VI complaints filed with a subrecipient; and demographic information on the race, income, and English proficiency of residents served by the subrecipient.

During the site visit, the Title VI Specialist confirmed that HDOT was also providing additional assistance to subrecipients. Meetings were held to discuss Title VI issues, sample notices were given to subrecipients, subrecipients were tracking and reporting complaints, and there was sufficient demographic data provided about the minority and LEP populations in the service area.

12. Monitoring Subrecipients

Requirement: *State DOTs or other State administering agencies should monitor their subrecipients for compliance with Title VI.*

Findings: During this Title VI Compliance Review of HDOT, no deficiencies were found regarding HDOT’s compliance with FTA requirements for

Monitoring Subrecipients. The following table contains guidance for Monitoring Subrecipients and whether HDOT followed the guidance:

GUIDANCE ON PROVIDING ASSISTANCE TO SUBRECIPIENTS (Per FTA C. 4702.1A, VI, 3. a. – b.)	HDOT
<ul style="list-style-type: none"> The agency should document its process for ensuring that all subrecipients are complying with the general reporting requirements of this circular. 	Yes
<ul style="list-style-type: none"> At the request of FTA, in response to a complaint of discrimination, or as otherwise deemed necessary by the State DOT or administering agency, the agency should request that subrecipients who provide transportation services verify that their level and quality of service is provided on an equitable basis. Recipients should ask subrecipients to develop system-wide service standards and verify that service provided to predominantly minority and low-income communities meets these standards. 	Yes

HDOT made site visits to its subrecipients in 2009 and 2010. Prior to the site visit, subrecipients were given a Title VI checklist to complete. At the site visit, HDOT staff reviewed the checklist and asked the subrecipients a number of questions related to the level and quality of service provided to end-users. The output of the subrecipient site visits was presented to this Review team in a document entitled *Description of Subrecipient Monitoring*. The monitoring that was currently being performed was sufficient to meet the requirements of the Circular. HDOT indicated that it would expand the procedures in future annual site visits to all its subrecipients.

VII. SUMMARY OF FINDINGS AND CORRECTIVE ACTIONS

Title VI Requirements For Transit Providers	Findings	Description of Deficiencies	Corrective Action(s)	Response Days/Date	Date Closed
GENERAL REPORTING REQUIREMENTS – FTA C. 4702.1A. IV, 1-9					
1. Inclusive Public Participation	D	Inadequate documentation of inclusive public participation	HDOT must submit to the FTA Equal Opportunity Specialist in FTA’s Headquarters Office of Civil Rights documentation that it has procedures in place to fulfill the inclusive public participation requirements as described in FTA Circular 4702.1A for itself and its subrecipients.	90 Days	April 5, 2010
2. Language Access to LEP Persons	D	Lacking four-factor assessment and complete language assistance plan for LEP persons	HDOT must submit to the FTA Equal Opportunity Specialist in FTA’s Headquarters Office of Civil Rights a Language Access Plan that meets the requirements of <i>DOT Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficient Persons, (December 14, 2005)</i> .	90 Days	
3. Title VI Complaint Procedures	ND				
4. Record of Title VI Investigations, Complaints, and	ND				

Title VI Requirements For Transit Providers	Findings	Description of Deficiencies	Corrective Action(s)	Response Days/Date	Date Closed
Lawsuits					
5. Notice to Beneficiaries of Protection Under Title VI	D	Title VI Notification Deficiencies	<p>HDOT must submit to the FTA Equal Opportunity Specialist in FTA’s Headquarters Office of Civil Rights an updated notice to beneficiaries that describes how members of the public could obtain additional information on HDOT’s Title VI obligations. HDOT must provide documentation that it has distributed the revised notice to the public in a manner other than its website. HDOT must document that its subrecipients have distributed an updated notice to beneficiaries that describes how members of the public could obtain additional information on HDOT’s Title VI obligations.</p>	90 Days	April 5, 2010
6. Annual Title VI Certification and Assurance	ND				
7. Environmental Justice Analysis of Construction Projects	D		<p>HDOT must submit to the FTA Equal Opportunity Specialist in FTA’s Headquarters Office of Civil Rights documentation that it</p>	90 Days	April 5, 2010

Title VI Requirements For Transit Providers	Findings	Description of Deficiencies	Corrective Action(s)	Response Days/Date	Date Closed
			has established procedures to assure that all future EJ analyses address the requirements outlined in FTA Circular 4702.1A.		
8. Submit Title VI Program	D	Lack detailed Title VI Program under FTA Circular 4702.1A	HDOT must submit to the FTA Equal Opportunity Specialist in FTA's Headquarters Office of Civil Rights a Title VI Program developed according to FTA Circular 4702.1A under the General Reporting Requirements and Guidelines and Program-Specific Requirements and Guidelines for State DOTs and Other Administering Agencies.	90 Days	April 5, 2010
PROGRAM SPECIFIC REQUIREMENTS – FTA C.4702.1A VI, 1-4					
9. Statewide Planning Activities	D	Lack statewide planning activities	HDOT must submit to the FTA Equal Opportunity Specialist in FTA's Headquarters Office of Civil Rights documentation that it has an analytical basis in place for certifying compliance of its FTA-funded programs with Title VI.	90 Days	
10. Program Administration	D	Lack program administration	HDOT must submit to the FTA Equal Opportunity Specialist in FTA's Headquarters Office	90 Days	April 5, 2010

Title VI Requirements For Transit Providers	Findings	Description of Deficiencies	Corrective Action(s)	Response Days/Date	Date Closed
			of Civil Rights documentation that it has procedures in place to fulfill the Circular requirements for Program Administration.		
11. Providing Assistance to Subrecipients	ND				
12. Monitoring Subrecipients	ND				

Findings at the time of the site visit: ND = No Deficiencies; D = Deficiency; NA = Not Applicable; NR = Not Reviewed; AC = Advisory Comment

VIII. ATTENDEES

NAME	ORGANIZATION/TITLE	PHONE NUMBER	E-MAIL ADDRESS
GRANTEE – Hawaii Department of Transportation (HDOT)			
Brennon T. Morioka, PhD, PE	Director, Department of Transportation	(808) 587-2150	brennon.morioka@hawaii.gov
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OTHER – County of Maui Department of Transportation (Maui DOT)			
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Federal Transit Administration – FTA			
Derrin J. Jourdan (via telephone)	Civil Rights Officer, FTA Region IX	(415) 744-2729	derrin.jourdan@dot.gov
REVIEW TEAM – The DMP Group, LLC			
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Bridgett Gagné	Reviewer	(202) 726-2630	bridgett.gagne@thedmpgroup.com
Khalique Davis	Reviewer	(412) 952-9007	khalique.davis@thedmpgroup.com