



## National Highway Traffic Safety Administration

[Docket No. NHTSA-2023-0061]

### Request for Comment: NHTSA's Nondiscrimination Compliance Program

**AGENCY:** National Highway Traffic Safety Administration, Department of Transportation.

**ACTION:** Request for comment on NHTSA's Nondiscrimination Compliance Program.

**SUMMARY:** The National Highway Traffic Safety Administration (NHTSA) is issuing Nondiscrimination Compliance Guidelines for NHTSA Financial Assistance Recipients (Nondiscrimination Guidelines). Federal financial assistance recipients (recipients) must comply with applicable Federal civil rights statutes and regulations, including Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Title IX of the Education Amendments Act of 1972, and their implementing regulations. Collectively, these laws prohibit discrimination based on race, color, national origin (including limited English proficiency), disability, age, and sex in federally funded programs or activities. NHTSA's Nondiscrimination Guidelines will provide guidance for recipients on how to comply with their Federal civil rights obligations. NHTSA is seeking input and comments from all traffic safety stakeholders and the public to inform the development of NHTSA's Nondiscrimination Guidelines, including methods for collecting civil rights data.

**DATES:** Comments should be submitted no later than [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments to the docket number identified in the heading of this document by any of the following methods:

- **Federal eRulemaking Portal:** Go to <https://www.regulations.gov>. Follow the online instructions for submitting comments.
- **Mail: Docket Management Facility:** U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

- Hand Delivery or Courier: 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12-140, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- Fax: 202-493-2251.

**Instructions:** All submissions must include the agency name and Docket No. NHTSA-2023-0061. All comments received will be posted without change, including any personal information provided. For access to the docket to read background documents or comments received, go to <https://www.regulations.gov> and search for Docket No. NHTSA-2023-0061.

**Privacy Act:** Anyone is able to search the electronic form for all comments received into USDOT's dockets by entering the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an organization, association, business, or other entity). You may review the U.S. Department of Transportation's (USDOT) complete Privacy Act Statement in the Federal Register published on April 11, 2000 (65 FR 19477) or visit <https://www.transportation.gov/privacy>.

**Docket:** For access to the docket to read background documents or comments received, go to <https://www.regulations.gov> or the street address listed above. Follow the online instructions for accessing the dockets via internet.

**FOR FURTHER INFORMATION CONTACT:** For more information, contact Heather Moss, Division Chief, Title VI Compliance, Office of Civil Rights, National Highway Traffic Safety Administration, Telephone number: (202) 366-0972. You may also contact NHTSA's Office of Civil Rights at [NHTSACivilRights@dot.gov](mailto:NHTSACivilRights@dot.gov).

**SUPPLEMENTARY INFORMATION:**

We continue to face an urgent and preventable traffic fatality crisis on our Nation's roadways. The National Highway Traffic Safety Administration (NHTSA) and our partners are working to deliver accountable, efficient, and data-driven highway safety programs to save lives and reverse this deadly national trend. NHTSA's grants and cooperative agreements are key to achieving our collective long-term goal of zero roadway fatalities nationwide.

As a condition of receiving Federal financial assistance (FFA), recipients must comply with applicable provisions of laws and policies prohibiting discrimination, including:<sup>1</sup>

- Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. 2000d *et seq.*, which prohibits discrimination based on race, color, or national origin (including limited English proficiency);<sup>2</sup>
- Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. 794 *et seq.*, which prohibits discrimination based on disability;<sup>3</sup>
- Age Discrimination Act of 1975 (Age Discrimination Act), 42 U.S.C. 6101 *et seq.*, which prohibits discrimination based on age; and
- Title IX of the Education Amendments Act of 1972 (Title IX), 20 U.S.C. 1681 *et seq.*, which prohibits discrimination based on sex in education programs or activities.

FFA includes grants and loans of Federal funds; the grant or donation of Federal property and interests in property; the detail of Federal personnel; the sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property; and any Federal agreement, arrangement, or other contract that has as one of its purposes the provision of assistance. *See e.g.*, 49 CFR 21.3.

NHTSA's Office of Civil Rights (NCR) ensures that NHTSA and its recipients comply with these Federal civil rights laws that prohibit discrimination in federally funded programs or activities. NCR's administrative enforcement authority includes Title VI, Section 504, Age Discrimination Act, and Title IX. To fulfil its mandate, NCR conducts external complaint investigations and compliance reviews, provides technical assistance to internal and external

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<sup>1</sup> NHTSA has also incorporated public participation and engagement requirements into its Uniform Procedures for State Highway Safety Grant Programs. 23 CFR Part 1300. Pursuant to the Infrastructure Investment and Jobs Act, NHTSA requires that NHTSA-funded State highway safety programs result from meaningful public participation and engagement from affected communities, particularly those most significantly impacted by traffic crashes resulting in injuries and fatalities. *See* 23 U.S.C. 402(b)(1)(B); *see also id.*

<sup>2</sup> DOT 1000.12C (effective June 11, 2021) also provides policy guidance to USDOT Departmental Offices and Operating Administrations for establishing and maintaining Title VI compliance programs.

<sup>3</sup> States must also comply with the Americans with Disabilities Act of 1990 (ADA) in all services, programs, and activities regardless of whether they receive Federal funds. 42 U.S.C 12131 *et seq.*

stakeholders, conducts nationwide trainings, and represents NHTSA on internal and external workgroups and initiatives to advance Federal civil rights policy priorities.

Through this request for comment (RFC), NHTSA seeks input to inform the development of Nondiscrimination Compliance Guidelines for NHTSA Financial Assistance Recipients (Nondiscrimination Guidelines). NHTSA's Nondiscrimination Guidelines will provide guidance for recipients on how to comply with their Federal civil rights obligations. NHTSA is publishing this RFC to engage a broad cross-section of stakeholders and the public. After considering and incorporating comments and information received from this solicitation, NHTSA intends to publish draft Nondiscrimination Guidelines for comment before publishing final guidance.

NHTSA requests responsive comments and feedback from all interested parties. When responding, please specify if you are responding on behalf of an applicant, recipient, traffic safety organization, or other stakeholder, and identify the type of applicable funding (*e.g.*, highway safety program grant, research-based cooperative agreement), if known.

#### I. Pre-Award Data Collection Requirements for Primary and Direct Recipients

The U.S. Department of Justice's (USDOJ) Title VI Coordination regulations apply to all FFA-awarding agencies. 28 CFR 42. These regulations direct Federal agencies to publish guidelines describing the nature of Title VI coverage, methods of enforcement, examples of prohibited practices, and requirements for data collection. *See* 28 CFR 42.404(a). These regulations also require that, “[p]rior to approval of [FFA], the [F]ederal agency shall make written determination as to whether the applicant is in compliance with [T]itle VI . . . . The basis for such a determination . . . , shall be submission of an assurance of compliance and a review of the data submitted by the applicant.” *Id.* § 42.407.

Section 42.406(d) of USDOJ's Title VI Coordination regulations lists the types of data that, “to the extent necessary and appropriate for determining compliance with [T]itle VI,” applicants should submit to and be reviewed by Federal agencies prior to granting funds. In addition to submitting an assurance that it will compile and maintain records as required, an applicant

should provide: (1) notice of civil rights lawsuits and complaints filed against it; (2) a description of FFA applications that it has pending in other agencies and of other FFA being provided; (3) a description of recent civil rights compliance reviews; and (4) a statement as to whether the applicant has been found in noncompliance with any relevant civil rights requirements. *See id.* USDOT's Title VI implementing regulations also require recipients to "keep such records and submit to the Secretary timely, complete, and accurate compliance reports at such times, and in such form and containing such information, as the Secretary may determine to be necessary to enable [the Secretary] to ascertain whether the recipient has complied or is complying with this [rule]." 49 CFR 21.9(b). NHTSA's Nondiscrimination Guidelines will facilitate NHTSA's pre-award data collection in accordance with these requirements.<sup>4</sup>

NHTSA will require recipients to provide pre-award Federal civil rights compliance data once every three years. If a recipient's FFA term does not run a full three years, such a recipient will be obligated to provide pre-award compliance data again if they receive a subsequent award more than three years after the prior award.

NHTSA requests comments and responses to the following specific categories of information that NHTSA will collect prior to awarding FFA. In providing comments and responses, please address the following for each category of information to be collected: (i) the processes and procedures required of staff who are preparing applications to obtain the information; (ii) the anticipated staffing, burden hours, and timeline required to obtain, analyze, and provide the information; (iii) best methods for relaying the information (e.g., fillable form, report template); and (iv) ways for NHTSA to enhance the quality, usefulness, and clarity of the information collected.

1. List of all pending civil rights lawsuits and administrative complaints (including basis and status) filed under Federal law against the applicant/recipient that allege

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<sup>4</sup> *See id.*; *see also* 49 CFR 25.605; 49 CFR 27.121(b); 45 CFR 90.42(a).

discrimination based on race, color, national origin (including limited English proficiency), disability, age, or sex during the last three years;

2. List of all civil rights lawsuits and administrative complaint investigations decided against the applicant/recipient within the last three years that alleged discrimination under Federal law based on race, color, national origin (including limited English proficiency), disability, age, or sex and provide a copy or copies of applicable decision(s) and describe all corrective action(s) taken;
3. List of all Federal civil rights compliance reviews of the applicant/recipient conducted by any Federal agency within the last three years, enclose copy or copies of the review(s) and any decision(s), order(s), or agreement(s) based on the review(s), and describe any corrective action(s) taken.
4. Description of FFA applications pending in other Federal agencies and of other current FFA provided;
5. Demographic information on the population served by the federally funded program or activity;
6. Description of the applicant's/recipient's discrimination complaint process;
7. Statement affirming that staff has been designated to coordinate and carry out the responsibilities for compliance with Federal civil rights laws, and the name, title (e.g., Title VI Coordinator, ADA Coordinator), description of responsibilities, and contact information for such staff;
8. Whether the applicant/recipient provides initial and continuing public notice of its nondiscrimination policy statement and, if so, whether (a) the methods of notice accommodate individuals with visual and/or hearing disabilities, (b) the notice is posted in a prominent place on the applicant's/recipient's website, in the offices or facilities or, for educational programs and activities, in appropriate periodicals and other written communications; and (c) the notice identifies a designated civil rights coordinator;

9. Whether the applicant/recipient has a written policy/procedure for individuals with disabilities to request reasonable accommodations to access benefits and services;
10. Whether the applicant/recipient has a written policy/procedure for providing meaningful access to benefits and services for persons with limited English proficiency; and
11. Whether applicant/recipient has a plan to ensure Federal civil rights compliance in subrecipient programs, if any, including subrecipient compliance reviews.

## II. Compliance Reviews

NHTSA must also conduct periodic compliance reviews of its recipients. *See* 49 CFR 21.11(a); 49 CFR 25.605; 49 CFR 27.123(a); *see also* 45 CFR 90.42(a). Post-award reviews are conducted as desk audits and/or on-site visits. Because the review may cover all or a portion of the recipient's compliance with specific Federal civil rights laws, the scope of a review is defined on a case-by-case basis. NHTSA may summarize the results of the review in a draft compliance report, which will include findings of no deficiency (no corrective action necessary), findings of deficiency (corrective action required), and advisory comments, as appropriate. If findings of deficiency remain in the final compliance report, the recipient will be required to take corrective action, develop a timeline for compliance, and report its progress.

NHTSA requests comments and responses to the following questions:

1. What factors should NHTSA consider in developing a compliance timeline for a finding of deficiency?
2. Is there a minimum time period for which NHTSA should monitor a recipient after a finding of deficiency?
3. How frequently should NHTSA require progress reports from a recipient who is undertaking corrective action following a finding of deficiency.

## III. Implementation and Additional Considerations

1. What promising practices are NHTSA recipients—larger and smaller recipients, and national organizations—using to:
  - a. Engage traditionally underserved communities, and how is the effectiveness assessed?
  - b. Review policies and practices to ensure that programs and activities do not result in disparate impacts based on race, color, national origin (including limited English proficiency), disability, age, or sex?
  - c. Ensure that individuals and communities with limited English proficiency have meaningful access to the recipient's programs and activities?
  - d. Ensure effective communication with individuals with communication-related disabilities (e.g., visual, auditory)?
  - e. Ensure that facilities are free from physical barriers to access for individuals with disabilities?
  - f. Ensure that subrecipients comply with Federal civil rights laws?
2. What factors should NHTSA consider when tailoring compliance information, requirements, and guidelines to each recipient type (e.g., type of funding, award size)?
3. Should NHTSA require and collect any additional pre-award Federal civil rights compliance information not discussed above or included in applicable funding notices prior to awarding FFA? If so, what is that information and how should NHTSA collect it?
4. What considerations and benchmarks (e.g., formula grant application deadlines, budgetary phases) should NHTSA incorporate into the implementation timeline for its Nondiscrimination Guidelines?
5. What specific subject matter technical assistance and trainings would help to ensure that recipients fulfill their Federal civil rights obligations?
6. What additional supports (e.g., webinars, internet-accessible information on NHTSA's webpage, subject-specific resource lists, factsheets, checklists, templates, sample notices

and forms, illustrative analysis) will assist applicants and recipients in fulfilling the requirements of NHTSA's proposed Nondiscrimination Guidelines?

The information collection described in this RFC is necessary to successfully maintain a robust and meaningful civil rights compliance program. NHTSA welcomes any additional feedback related to Federal civil rights compliance and NHTSA's forthcoming Nondiscrimination Guidelines, including topics not specifically referenced above. NHTSA invites comments regarding the time burden and costs of proposed data collections.

All interested parties are encouraged to respond to this RFC. Submissions are strictly voluntary. Individuals or entities responding to this RFC should state their role as well as knowledge of and experience with Federal civil rights compliance and community engagement. NHTSA may request additional clarifying information from any or all respondents. If a respondent does not wish to be contacted by NHTSA for additional information, it should include a corresponding statement to that effect in the response. All information submitted should be unclassified and should not contain proprietary information. Although NHTSA will review and consider all responses to this RFC, NHTSA will not officially respond to the information received.

Comments may be submitted and viewed at Docket No. NHTSA-2023-0061 at

<https://www.regulations.gov>.

Issued in Washington, D.C.

Regina Morgan,

Director, NHTSA Office of Civil Rights.

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