

## **FHWA Questions and Answers on Environmental Justice and Title VI**

In 1994, President Clinton issued Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations. The Executive Order focused attention on Title VI by providing that "each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations." In support of Executive Order 12898, the United States Department of Transportation (DOT) issued an Order on Environmental Justice (DOT Order 5610.2) in 1997, followed by a Federal Highway Administration (FHWA) Order on Environmental Justice (FHWA Order 6640.23) in 1998.

Over the years, U.S. DOT and FHWA have encouraged a proactive approach to the implementation of Title VI, aimed at preventing discrimination in its programs, policies, and activities. This proactive approach can reduce conflicts and also reinforce compliance with other related requirements; such as, the National Environmental Policy Act (NEPA) of 1969, 23 U.S.C. 109(h) (which addresses social and economic impacts), and public involvement in statewide and metropolitan planning and project development. By being proactive, Federal, State, local, and tribal agencies can better serve all of the public, who rely on transportation systems and services to enhance their quality of life.

To foster greater awareness of Environmental Justice and Title VI considerations in transportation activities, the following Questions and Answers address inquiries received and are based on the content of recent technical assistance provided by the Department.

### **1. What are the fundamental concepts of Environmental Justice?**

There are three fundamental Environmental Justice principles:

- To avoid, minimize, or mitigate disproportionately high and adverse human health or environmental effects, including social and economic effects, on minority populations and low-income populations.
- To ensure the full and fair participation by all potentially affected communities in the transportation decision-making process.
- To prevent the denial of, reduction in, or significant delay in the receipt of benefits by minority populations and low-income populations.

### **2. Is Environmental Justice a new requirement?**

No. The recipients of Federal-aid have been required to submit assurances of compliance with, and the U.S. DOT must ensure nondiscrimination under, Title VI of the Civil Rights Act of 1964 and many other laws, regulations, and policies. In 1997, the Department issued its U.S. DOT Order to Address Environmental Justice in Minority Populations and Low-Income Populations to summarize and expand upon the requirements of Executive Order 12898 on Environmental Justice.

### **3. What is the legal basis for addressing the concerns of low-income populations?**

The Department's planning regulations (23 C.F.R. 450) require metropolitan planning organizations (MPOs) and States to "seek out and consider the needs of those traditionally underserved by existing transportation systems, including, but not limited to, low-income and minority households."

As required by NEPA and 23 U.S.C. 109(h), impacts on all communities including low-income communities must be routinely identified and addressed.

#### **4. What is the Title VI of the Civil Rights Act of 1964?**

Title VI declares it to be the policy of the United States that discrimination on the ground of race, color, or national origin shall not occur in connection with programs and activities receiving Federal financial assistance, and authorizes and directs the involved Federal departments and agencies to take action to carry out this policy. Title VI prohibits discrimination: whether --intentional or where the unintended effect is unduly burdensome.

#### **5. What is the relationship between the U.S. DOT Order on Environmental Justice and Title VI?**

The U.S. DOT Order clarifies and reinforces Title VI responsibilities as well as addresses effects on low-income populations. The goal of the U.S. DOT Order is to ensure that programs, policies, and other activities do not have a disproportionately high and adverse effect on minority or low-income populations. This goal is to be achieved, in part, by implementing both Title VI and NEPA during the development and implementation of transportation activities.

#### **6. What types of activities require Title VI and Environmental Justice considerations?**

Title VI and environmental justice apply to all U.S. DOT programs, policies, and activities, including, but not limited to: contracting, system planning, project development, implementation, operation, monitoring, and maintenance.

#### **7. How early can issues which give rise to Title VI/ Environmental Justice concerns be addressed?**

At the start of the planning process, planners must determine whether Environmental Justice issues exist and use data and other information to: (1) determine benefits to and potential negative impacts on minority populations and low-income populations from proposed investments or actions; (2) quantify expected effects (total, positive and negative) and disproportionately high and adverse effects on minority populations and low-income populations; and (3) determine the appropriate course of action, whether avoidance, minimization, or mitigation. If issues are not addressed at the planning stage, they may arise during project development, or later when they could be more difficult to mitigate and delay project decisions.

Environmental Justice is an important part of the planning process and must be considered in all phases of planning. This includes all public-involvement plans and activities, the development of Regional Transportation Plans (RTP's), Transportation Improvement Programs (TIP's), Statewide Transportation Improvement Programs (STIP's), and work programs (such as the Unified Planning Work Programs (UPWP's)). A truly integrated and effective planning process actively considers and promotes environmental justice within projects and groups of projects, across the total plan, and in policy decisions.

#### **8. Must Title VI and Environmental Justice be considered ONLY on projects requiring an Environmental Impact Statement (EIS)?**

No. Title VI and Environmental Justice applies to all planning and project development programs, policies and activities. In project development, environmental justice should be considered in all decisions whether they are processed with an Environmental Impact Statements (EIS's), Environmental Assessments (EA's), Categorical Exclusions (CE's), or Records of Decision (ROD's). Potential impacts to the human environment should drive the processing option decision as much as potential impacts to the natural environment. Impacts to both the natural and human environment are to be given comparable consideration throughout transportation decision making.

At the scoping stage in the NEPA process, which provides early identification of public and agency issues, there should be adequate consideration of Title VI and environmental justice. Minority and low-income populations should be identified as early as possible and their concerns should be examined and addressed, preferably in planning.

Because the nondiscrimination requirements of Title VI extend to all programs and activities of State DOTs and their respective sub-recipients and contractors, the concepts of Environmental Justice apply to all State projects, including those which do not involve Federal-aid funds, whether Advance Construction, Design Build, or not.

Communities are constantly changing, so evaluation of human impacts must be given continuous attention throughout planning, project development, implementation, operation, and maintenance. Mitigation of any sort can cause negative as well as positive impacts. Be aware of who is being impacted and how.

### **9. Do all impacts have to be evaluated for Title VI and Environmental Justice, or just health and environmental impacts?**

All reasonably foreseeable adverse social, economic, and environmental effects on minority populations and low-income populations must be identified and addressed. As defined in the Appendix of the DOT Order, adverse effects include, but are not limited to:

- Bodily impairment, infirmity, illness, or death.
- Air, noise, and water pollution and soil contamination.
- Destruction or disruption of man-made or natural resources.
- Destruction or diminution of aesthetic values.
- Destruction or disruption of community cohesion or a community's economic vitality.
- Destruction or disruption of the availability of public and private facilities and services.
- Vibration.
- Adverse employment effects.
- Displacement of persons, businesses, farms, or nonprofit organizations.
- Increased traffic congestion, isolation, exclusion, or separation of minority or low-income individuals within a given community or from the broader community.
- The denial of, reduction in, or significant delay in the receipt of, benefits of DOT programs, policies, or activities.

### **10. Who is considered to be a "Minority" for purposes of Title VI and Environmental Justice?**

The U.S. DOT Order (5610.2) on Environmental Justice defines "Minority" in the Definitions section of the Appendix, and provides clear definitions of the four (4) minority groups addressed by the Executive Order. These groups are:

- Black (a person having origins in any of the black racial groups of Africa).
- Hispanic (a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race).
- Asian American (a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands).
- American Indian and Alaskan Native (a person having origins in any of the original people of North America and who maintains cultural identification through tribal affiliation or community recognition).
- Native Hawaiian or Other Pacific Islander - a person having origins in any of the original peoples of Hawaii , Guam, Samoa, or other Pacific Islands

(Note: OMB, in its Bulletin No. 00-02, "Guidance on Aggregation and Allocation of Data on Race for Use in Civil Rights Monitoring and Enforcement," issued March 9, 2000, provided guidance on the way Federal agencies collect and use aggregate data on race and added this category to the previous standard delineations of race/ethnicity.)

### **11. What is considered "Low-Income" for purposes of Environmental Justice?**

The FHWA Order defines "low-income" as "a person whose household income is at or below the Department of Health and Human Services poverty guidelines." The Department of Health and Human Services (HHS) poverty guidelines are used as eligibility criteria for the Community Services Block Grant Program and a number of other Federal programs. However, a State or locality may adopt a higher threshold for low-income as long as the higher threshold is not selectively implemented and is inclusive of all persons at or below the HHS poverty guidelines.

The most current HHS poverty guidelines can be found at HHS's website:

<http://aspe.os.dhhs.gov/poverty/poverty.htm>.

## **12. Can the determinations and discussions of minority and low-income be combined?**

The two terms "minority" and "low-income" should not presumptively be combined. There are minority populations of all income levels; and low-income populations may be minority, non-minority, or a mix in a given area. As the definition of minority indicates, even minority populations can be of several categories. When such distinctions exist, appropriate assessment, discussion, and consideration should be provided using appropriate and accurate descriptors. Within documentation, an Environmental Justice discussion may appear either with discussion of other demographic information (other protected-group and general area information), assessment, and consideration, or as a separate discussion. As in any public document, specific information about any one individual or any very small group should not appear in the document to protect privacy; however, backup data should appear in the files. Descriptions in such documents should be statistical, group, or location-based.

## **13. Should discussions about populations, such as the elderly, children, or the disabled be included when addressing Environmental Justice and Title VI?**

Yes. Within the framework provided by Executive Order 12898 on Environmental Justice, the U.S. DOT Order (5610.2) addresses only minority populations and low-income populations, and does not provide for separate consideration of elderly, children, disabled, and other populations. However, concentrations of the elderly, children, disabled, and other populations protected by Title VI and related nondiscrimination statutes in a specific area or any low-income group ought to be discussed. If they are described as low-income or minority, the basis for this should be documented.

For community impact assessment, concentrations of the elderly, children, the disabled, or similar population groups (i.e., female head of household) could also experience adverse impacts as the result of an action. All impacts on sectors of the community, including minority and low-income populations as well as impacts on the community as a whole, should be routinely investigated, analyzed, mitigated, and considered during decision making, similar to investigations of impacts on minority populations and low-income populations. All NEPA processing documentation should address all impacts (to the human and natural environments), and describe any mitigating protections or benefits that would be provided by Federal or State law, or as part of the action. In particular, the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101 et seq.), prohibits discrimination on the basis of age in programs receiving Federal financial assistance while handicapped persons are protected by Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794 and 49 C.F.R. Part 27.7).

## **14. How can minority populations be determined for a given area?**

U.S. Census data has specific definitions of minority groups and can be useful for determining minority populations. Census data is available at the census tract, census block, and block group level. Explanation of how these classifications are defined can be found in U.S. Census publications on social, economic, and housing characteristics, under "Area Classifications," and at <http://www.census.gov/geo/www/tiger/glossary.html>. The U.S. Census data also includes economic census data and TIGER (Topologically Integrated Geographic Encoding and Referencing) files, which are a digital database that can be used with mapping or Geographic Information System (GIS) software to show geographic distribution of populations and other census data. The types of data sets and resources available from the U.S. Census Bureau are summarized on their website at <http://www.census.gov>.

Other data can supplement U.S. Census data, if it has a sound basis and gives an accurate assessment of income levels. In some instances, population characteristics can be derived from information available from MPOs, councils of government, and city or county agencies. Other local sources of information include State and local tax and financing agencies, economic and job development agencies, social service agencies, local health organizations, school districts, local public agencies, and community action agencies. Whatever is used for income, the source and basis of the information and what it represents should be identified. It is recommended that each situation be evaluated in context.

However, State and local data sets may prove more useful for developing up-to-date profiles of minority populations. Analysts should be resourceful in seeking out supplemental sources of information. Some of this information,

however, may vary widely in quality, level of specificity, and format. Therefore, it is important when collecting information that analysts recognize when data was collected, the data sources used, and data reliability. The FHWA's 1996 publication, *Community Impact Assessment: A Quick Reference for Transportation*, identifies potential sources of information that can be used to develop community profiles. The guide is available by calling FHWA Headquarters at (202) 366-0106.

No matter the source, analysts should use the most up-to-date data available, understand the basic assumptions used in each compilation, and recognize the purposes for which data were originally collected.

#### **15. How large must the minority or low-income population be to consider Environmental Justice?**

Disproportionately high and adverse effects, not size, are the bases for Environmental Justice. A very small minority or low-income population in the project, study, or planning area does not eliminate the possibility of a disproportionately high and adverse effect on these populations. What is needed is to show the comparative effects on these populations in relation to either non-minority or higher income populations, as appropriate.

Some people wrongly suggest that if minority or low-income populations are small ("statistically insignificant"), this means there is no environmental justice consideration. While the minority or low-income population in an area may be small, this does not eliminate the possibility of a disproportionately high and adverse effect of a proposed action. Environmental Justice determinations are made based on **effects**, not population size. It is important to consider the **comparative impact** of an action among different population groups.

#### **16. Must there be a neighborhood or community of minority, or low-income groups in order for there to be a Title VI and Environmental Justice effect?**

No. The Executive Order 12898 on Environmental Justice and the DOT Order (5610.2) on Environmental Justice refer exclusively to "populations," while the White House distribution memo refers to both "communities" and "populations." The DOT Order defines each "population" as: (1) any readily identifiable group of minority persons or low-income persons who live in geographic proximity; or (2) geographically dispersed persons, such as migrant workers or Native Americans. Therefore, depending on the context and circumstances, a proposed action could cause a disproportionately high and adverse effect on a population even in cases where there are no clearly delineated neighborhoods or communities.

Neighborhood and community boundaries and impacts, however, should be considered in planning, programming, and project development activities, whether there are minority or low-income populations involved or not. Most importantly, the public should always be involved in defining "neighborhood" and "community" through the public-involvement process, since the identification or definition of neighborhood and community boundaries can be subjective.

#### **17. How should Environmental Justice be addressed in the planning process?**

Environmental justice must be considered in all phases of planning. Although Environmental Justice concerns are frequently raised during project development, Title VI applies equally to the plans, programs, and activities of planning.

On October 7, 1999, FHWA and FTA issued a memorandum to their respective field administrative offices clarifying Title VI requirements in metropolitan and statewide planning. The memorandum identifies a series of actions that can be taken to support Title VI compliance and Environmental Justice goals, improve planning performance, and minimize the potential for subsequent corrective action and complaint.

Specifically, the memorandum provides technical assistance for three key areas of planning: (1) provides questions and concerns to raise during annual self-certification of compliance with Title VI, metropolitan planning certification reviews in Transportation Management Areas (TMAs), and statewide planning findings; (2) provides questions and

concerns to raise while reviewing public-involvement efforts regarding the engagement of minority populations and low-income populations; and (3) encourages Unified Planning Work Programs, and State Planning and Research to begin developing or enhancing technical capability for assessing impact distributions among populations.

FHWA and FTA have developed an assistance planning workbook that builds on the October 7, 1999, memorandum and is designed to assist their field offices with addressing Environmental Justice and Title VI. In addition, the two agencies are jointly developing technical assistance tools to help their field offices, State DOTs, MPOs, and local and tribal agencies to integrate Environmental Justice considerations and Title VI requirements into transportation planning processes.

### **18. How should Environmental Justice be addressed in the NEPA process?**

Environmental Justice should be considered and addressed in all NEPA decision making and appropriately documented in Environmental Impact Statements, Environmental Assessments, Categorical Exclusions, or Records of Decision.

The Executive Order and the accompanying Presidential Memorandum call for specific actions to be directed in NEPA-related activities. They include:

- Analyzing environmental effects, including human health, economic, and social effects on minority populations and low-income populations when such analysis is required by NEPA;
- Ensuring that mitigation measures outlined or analyzed in EA's, EIS's, and ROD's, whenever feasible, address disproportionately high and adverse environmental effects or proposed actions on minority populations and low-income populations;
- Providing opportunities for community input in the FHWA NEPA process, including identifying potential effects and mitigation measures in consultation with affected communities and improving accessibility to public meetings, official documents, and notices to affected communities; and
- In reviewing other agencies' proposed actions under Section 309 of the Clean Air Act, EPA must ensure that the agencies have fully analyzed environmental effects on minority communities and low-income communities, including human health, social, and economic effects.

The FHWA will issue additional assistance on how to address environmental justice in the NEPA process in a forthcoming publication.

### **19. What role does Public Involvement play in the consideration of Environmental Justice?**

Public involvement is an integral part of transportation planning and project development decision making. The DOT Order (5610.2) on Environmental Justice directs the Department to provide minority populations and low-income populations greater access to information on, and opportunities for public participation in matters that may impact human health and the environment. TEA-21 also emphasizes the meaningful involvement by all the public in transportation decision making.

Effective public involvement in the planning process and the project-development process can alert State and local agencies about environmental justice concerns so that they do not result in surprises during the project-development stage. Continuous interaction between community members and transportation professionals is critical to successfully identify and resolve potential Environmental Justice concerns.

State, regional, local, and tribal agencies should all have public-involvement procedures established that provide for consideration of Environmental Justice. These procedures should provide an inclusive, representative, and equal opportunity for two-way communication resulting in appropriate action that reflects this public involvement. Environmental Justice should be considered in all aspects of planning and project decision making, including the design of both the public-involvement plan and the proposed facility.

## **20. What role does community impact assessment play in Environmental Justice?**

The DOT Order (5610.2) on Environmental Justice asks whether a proposed action or plan causes disproportionately high and adverse effects on minority populations and low-income populations, and whether these populations are denied benefits. A framework of analysis that can determine how a proposed action or plan could differentially impact different populations is required. Community impact assessment can provide this framework.

Like public involvement, community impact assessment is an integral part of planning and project development. Community impact assessment is a process to evaluate the effects of a transportation action on a community and its quality of life. Its information should be used to mold the plan and its projects, and provide documentation of the current and anticipated social and economic environment of a geographic area with and without the proposed action. The assessment process is comprised of the following steps: (1) define the project, study, and planning area; (2) develop a community profile; (3) analyze impacts; (4) identify solutions; (5) use public involvement; and (6) document findings. These steps are elaborated on in FHWA's *Community Impact Assessment: A Quick Reference for Transportation*, and its companion document, *Community Impact Mitigation: Case Studies*, published in 1998.

## **21. What technical assistance or resources are available on Environmental Justice?**

FHWA's website at [www.fhwa.dot.gov/environment/ej2.htm](http://www.fhwa.dot.gov/environment/ej2.htm) provides a summary of the DOT Order and the FHWA Order, as well as a list of available technical assistance, resources, and contacts on Environmental Justice and Title VI. The "Overview of Transportation and Environmental Justice" brochure has been developed and provides a cogent summary of Environmental Justice, in a single, easy-to-read format. The brochure explains what Environmental Justice is and discusses how transportation partners including the public can support and integrate Environmental Justice and Title VI in transportation decision making. Upcoming products to be developed include case studies and effective practices and will appear on this site.

## **22. Is FHWA going to dictate to the State DOTs how to distribute its transportation funds in order to comply with Environmental Justice?**

No. Environmental Justice is intended to ensure that the process of transportation planning is consistent with the provisions of Title VI of the Civil Rights Act. Environmental Justice focuses on enhanced public involvement and an analysis of the distribution of benefits and impacts. Consistent with the U.S. DOT Order on Environmental Justice, disproportionately high and adverse impacts should be mitigated where possible, if not totally avoided. Beyond this mitigation requirement, there is no presumed distribution of resources to sustain compliance with the Environmental Justice provisions. The intent is to ensure that no person is denied benefits based on race, color, or national origin.