

# Civil Rights and Environmental Justice in Public Transportation: Proposed FTA Actions to Ensure Compliance

## Executive Summary

Low-income and minority communities across the United States continue to struggle for a fair share of the benefits of hundreds of billions of dollars in transportation spending. The federal government has taken some important steps to hold recipients of federal funds accountable for civil rights compliance, but much more remains to be done.

Transportation connects communities to opportunity across our metropolitan regions. If low-income and minority communities share fairly in the benefits of regional transportation spending, they can begin to overcome the cumulative impacts of years of exclusion from critical resources and opportunities. However, across the United States, local transit services, which low-income and minority populations rely upon, have suffered repeated cuts even as transportation mega-projects are built and expanded. Thus, the critical civil rights issue in transportation today is whether such costly expansion projects occur at the expense of basic transit service in low-income and minority communities.

Federal civil rights law provides strong protections to vulnerable populations. Title VI of the Civil Rights Act of 1964 and its regulations prohibit recipients of federal funds from discriminating on the basis of race, color or national origin. Executive Order 12898 on Environmental Justice requires agencies to *identify and address* adverse impacts of their actions that disproportionately affect low-income and minority populations, whether by imposing on those populations an unfair share of the burdens, or denying them a fair share of the benefits. FTA's Title VI and EJ Circular offers guidance to transit systems and metropolitan planning organizations (MPOs) on these requirements. In particular, it specifies that transit providers and MPOs must conduct an "equity analysis" to determine the potentially discriminatory effects of policy changes on vulnerable populations, and must take steps to avoid or mitigate the disparities they identify. The failure of Bay Area Rapid Transit (BART) to conduct an equity analysis of a new rail project recently resulted in its loss of \$70 million in federal stimulus funds.

This guidance should be strengthened in several key respects. We propose that the FTA update the Circular to realize the full protections promised by Title VI and the Executive Order in the following ways:

<u>Issue</u>	<u>Proposed Changes</u>
<b>"Scoping" of Equity Analysis</b> – The analyses designed by MPOs and transit providers often fail to identify or measure the issues and impacts that actually affect protected populations, thereby overlooking significant disparities.	→ MPOs and transit providers must include in their public participation an up-front "scoping" process to identify the issues and impacts of concern to the protected populations and then design the methodology of its equity analyses to address the identified issues and impacts.

**Equity Analysis Methodology** – Potentially disparate impacts are not consistently measured by comparing the impacts on protected populations with the impacts on other transit riders.

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Clarify the legal framework to gauge disproportionate impacts in an equity analysis, which includes (a) identifying the relevant potential adverse impacts through a “scoping” process, (b) identifying the relevant protected and non-protected populations, and (c) comparing the impacts of the proposed action on the protected populations with the impacts on the non-protected population.

**Accounting for Fare Impacts on Socially Vulnerable Riders** – Transit providers have been allowed to conduct equity analyses for fare increases without accounting for the greater social vulnerability of low-income riders and riders of color. This leads to methodologies that, by design, will never show a discriminatory impact.

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Require fare equity analyses to take into account the far greater adverse impacts that a fare increase of a given amount may have on socially-vulnerable populations than on others.

**Reasonable “Major Service Change” Thresholds** – The Circular requires transit providers to evaluate “major service changes” for discriminatory impacts. However, the Circular also grants transit providers the discretion to define “major service changes,” resulting in unreasonably high thresholds that circumvent the requirement.

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Require transit providers to conduct equity analyses for major service reductions, including incremental and cumulative service changes, which are reasonable in relation to the impacts on vulnerable populations and in relation to historic service change levels.

**Adverse Impacts of Expansion on Existing System Preservation** – The expansion of transit options for riders less likely to be minority and low-income, such as rail, often diverts funds away from preserving the existing transit services that vulnerable populations rely on for transportation.

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Require MPOs and transit providers to identify and address inequities that result when major capital expansion projects benefit riders of one transit provider at the expense of service cuts and other adverse impacts affecting low-income and minority riders elsewhere.

**Ensuring Subrecipient Compliance** – The Circular requires recipients of federal funds to monitor the Title VI compliance of their subrecipients, but narrowly defines “subrecipient” as an entity that receives funds as a “pass through” from a recipient.

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Clarify that “subrecipients” include the “direct recipient” of FTA formula funds, and that the “designated recipients” of those funds are obligated to monitor their “direct recipients” to ensure Title VI compliance regardless of entering into a Supplemental Agreement. Provide specific guidance to MPOs on their duty to ensure that the metropolitan transportation planning process complies with Title VI.