City of Austin
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Public Comments Processing
Docket Number: FTA-2021-0014
Federal Transit Administration, Department of Transportation

Re: City of Austin comments regarding amendments to Circular 4702.1B, Title VI Requirements and Guidelines for Federal Transit administration recipients

Public Participation

1. The Title VI Circular currently requires recipients to submit and implement a public participation plan that includes an outreach plan to engage minority and limited English proficient (LEP) populations, as well as a summary of outreach efforts made since the last Title VI Program submission. In June 2021, U.S. DOT issued a revised Title VI Order Number DOT 1000.12C on the U.S. DOT Title VI Program (Order), which provides policy direction, practices, and standards to U.S. DOT Operating Administrations, including FTA, for establishing and maintaining an enforcement program that ensures Title VI compliance. The Order requires FTA to develop comprehensive community participation requirements (Community Participation Plan) that applicants and recipients must satisfy as a condition of receiving an award of Federal financial assistance. The goal of the Community Participation Plan is to "facilitate full compliance with Title VI by requiring meaningful public participation and engagement to ensure that applicants and recipients are adequately informed about how programs or activities will potentially impact affected communities, and to ensure that diverse views are heard and considered throughout all stages of the consultation, planning, and decision-making process." The Order provides 10 effective practices that ensure proactive public engagement: establishment of goals and objectives, identification of affected communities, focused outreach, meaningful education, diverse communications, comprehensive engagement, meaningful participation, accessibility, reported outcomes, and recordkeeping. **Which practices outlined in the Order should FTA incorporate in its guidance on promoting inclusive public participation? Are there additional effective practices FTA should consider?**

The City of Austin (the City) believes all 10 guidelines in the USDOT's June 2021 Order should be included in updated Public Participation Plan guidelines. However, the City recommends that those guidelines include evidence of meaningful participation. Currently, the requirements are only to list out all of the different and varying avenues for outreach, and there is no requirement to show accountability that those avenues actually resulted in increased or meaningful participation, or that the project meaningfully addressed the issues raised during outreach. The City recommends there be additional guidance on how agencies identify communities, including the scope of the projected impact of a project, and what data should be presented as evidence of meaningful participation.

The City of Austin is committed to compliance with the Americans with Disabilities Act.
Reasonable modifications and equal access to communications will be provided upon request.

2. **What effective public participation practices are transit agencies currently using? How is meaningful access to public participation activities provided to traditionally underserved communities? How is effectiveness defined and measured?**

Offering Availability of Virtual Participation Options

During the COVID19 pandemic, the City has had the opportunity to utilize virtual meeting options. The City believes that the ability to use virtual meetings has given many more residents the opportunity to attend public meetings than had in the past. This practice should be continued, in addition to in-person opportunities to participate. The information gathered at time of registration can be helpful for measuring attendance and demographics of attendees.

Use of "pop-ups" and other targeted tools when public participation does not represent affected communities

In cases where public meetings had a poor turnout, the City has utilized "pop-ups" at the targeted location to gather information and opinions from transit users that are actively using the services and facilities. Demographic information gathered from the public meetings and pop-ups can indicate if a representative sample of the affected communities were reached.

Targeted and Increased Community Engagement

The City uses community engagement practices that prioritize those most directly impacted. This means having knowledge of the culture and history of these communities. We practice community engagement that looks more like a loop than a one-way communication. This involves critically listening to impacted communities before developing plans and incorporating that guidance and leadership to co-create solutions. This is very different from more traditional outreach methods that are one way communication from the institution to the community.

Another common practice is providing incentives, such as monetary benefits like gift cards or stipends, for those community members who otherwise could not participate in community engagement and are most directly impacted. We have also provided access to technology and to interpreters as needed.

The City also collects disaggregated demographic data to understand who participated in the engagement. Effectiveness is not always measured by how many people participated but rather by which residents participated and how willing the institution was to listen and to cocreate with community. Therefore the City determines whether engagement was effective by asking ourselves whether we developed any new relationships, who was not at the table or reached through our engagement, and what we learned in the process. The City believes that asking the right questions, actively listening, and following up on community input is of utmost importance when developing plans.

Service and Fare Equity Analyses

3. The Title VI Circular currently requires transit providers that operate 50 or more fixed route vehicles in peak service and are located in an Urbanized Area (UZA) of 200,000 or more in population to prepare and submit service and fare equity (SAFE) analyses as described in Chapter IV. These SAFE analyses are conducted prior to implementing service or fare changes, but they are submitted to FTA as part of a recipient's Title VI program once every three years. Due to this gap in time, FTA may not become aware of major service changes or fare changes and the related equity analyses until years after the changes have been made and the analyses conducted. **Should FTA require a SAFE analysis be posted on a recipient's website or submitted to FTA prior to**

the service or fare change being enacted, in addition to submission with the recipient's Title VI program? If so, how soon after an analysis is conducted or before a change is approved or implemented should FTA require posting or submission?

Yes, a SAFE Analysis should be undertaken and shared prior to changes taking place to ensure accountability to the citizens a transit agency serves and to document input received and modifications that were made, if any, in response to that input.

The City further believes the FTA should require public postings of the disparate impact analysis within a short time frame after the analysis is conducted and prior to implementation of service changes, to increase transparency in the process, invite discussion and greater education.

To avoid confusion and the public perception that there is no methodology to a change in service or fare, the FTA should set a value or limit on burden thresholds. For example, the FTA could set a percentage that provides a maximum limit on burden thresholds or affected populations.

In addition, the FTA should update its guidance on data points used for all equity analysis to connect more directly to current conditions and community needs. Including access data in the equity analysis is vital to ensuring that the needs of communities are being met, and also to provide a clearer framework for how agencies identify and make decisions. These data points should include access to jobs, school, child care, healthcare, social services, healthy food options and other essential services.

4. For major service change, disparate impact, and disproportionate burden thresholds, the Title VI Circular does not set values or limits. Regarding major service change thresholds, the Circular states, "The threshold for analysis shall not be set so high so as to never require an analysis; rather, agencies shall select a threshold most likely to yield a meaningful result in light of the transit provider's system characteristics." **Should FTA set a value or limit on major service change, disparate impact, or disproportionate burden thresholds? If so, what should that value or limit be—or what factors should be evaluated?**

Yes. The City of Austin believes that a national standard would prevent communities from changing or increasing the threshold and negatively impacting transit users.

The City recommends setting a "no higher than" threshold of 2%, or a similar percentage. We further recommend creating incentives for achieving the lowest possible threshold of 0% or negative.

5. The Title VI Circular explains existing public participation requirements for development of major service change policies, disparate impact policies, and disproportionate burden policies. **Should FTA address public participation where a transit provider finds a potential disparate impact or disproportionate burden, specifically with regard to analysis of modifications to avoid, minimize, or mitigate potential disparate impacts?**

Yes. FTA concerns should be expressed to the transit operator and operators should be required to respond to FTA prior to service changes being implemented.

6. The Title VI Circular provides two data analysis options for conducting a service equity analysis: Using population data or using ridership data. **Should FTA provide additional options for conducting a service or fare equity analysis? If so, what alternatives should FTA consider?**

Yes. The City recommends the following alternatives:

- Total time of trip,
- Number of transfers that have to be made,
- Average commute times for ZIP code with higher concentration of underserved populations.

The City further believes that fare differences should not be allowed such that it only supports the notion of "choice" riders, meaning riders that have a choice in the ways they commute. This action can easily result in inequity of service for riders and communities of color.

7. The Title VI Circular provides that service equity is measured based on access to public transit service. **Is this measure sufficient to ensure equity, or should it be measured by destinations, such as how many jobs riders can access from a particular stop within a specified time, or how long it takes to get to grocery stores, medical facilities, and other critical destinations, or by some other measure?**

No, access to public transit service is not sufficient, and the list above should be amended as well. With any of these measures listed in the question, it could be easy to overlook changes to the underlying local service network that may be a lifeline to those with limited mobility options. There may be fewer people affected when intermediate stops are eliminated than when a higher frequency service goes in with longer stop spacing, but those intermediate stops may be lifeline stops for certain riders.

8. The Title VI Circular provides that temporary service changes (12 months or less) and temporary fare reductions (6 months or less) do not respectively require service and fare equity analyses. **Should FTA reconsider these timeframes? Should FTA require some analysis during temporary changes to consider the equity impacts of the temporary changes?**

We believe the temporary fare reduction policy is adequate.

The FTA should, however, eliminate the loophole that allows for transit agencies to do a wholesale service change and call it "temporary" with the full intent to never revert to the previous service. Six months or more after changes have been implemented, agencies then go through a formal service change process and by that time public interest had died down. As a result of this loophole, they can formalize these changes without real public input or scrutiny. There is a difference in a true emergency reason to change service temporarily and the loophole discussed.

Facility Equity Analyses

9. The Title VI Circular, with regard to the determination of site or location of facilities, requires a Title VI facility equity analysis, in which a recipient must analyze the proposed location of certain facilities to ensure there is no disparate impact in the siting decision. FTA provides limited guidance in the Circular on this topic but does require a comparison of equity impacts of various siting alternatives and an analysis before the selection of the preferred site. **Should FTA provide additional guidance on facility equity analyses, including public participation, disparate impact thresholds, cumulative effects, or timeframes? Would stakeholders find it helpful if**

FTA published a sample facility equity analysis, similar to the sample SAFE analyses, in the Appendix to the Circular?

The City believes there is a disconnect between Title VI review and a robust environmental justice review under NEPA. Additional guidance is needed, as well as a reconsideration of how and why certain facilities require Title VI, and others require NEPA. It would be beneficial for the FTA to provide more guidance on how to conduct the analysis, and a sample would be helpful to ensure compliance. Further, the project sponsor should fully disclose sites that were considered for facilities and what sites were chosen or rejected as part of a project, including the impacts of the communities where those sites are located.

10. These facility equity analyses are conducted prior to site selection, but they are submitted to FTA as part of a recipient's Title VI program once every three years. Due to this gap in time, FTA may not become aware of facility siting and related equity analyses until years after they have been constructed or conducted. **Should FTA require a facility equity analysis be posted on a recipient's website or submitted to FTA prior to site selection, in addition to submission with the recipient's Title VI program? If so, how soon after an analysis is conducted or before a change is approved or implemented should FTA require posting or submission?**

Yes, posting a facility equity analysis should be required as soon as possible after it's conducted, and at least 1 year before construction starts.

Implementation of Rider Conduct Policies

11. The Title VI Circular currently makes no mention of equitable implementation of rider conduct policies, such as prohibitions on smoking, littering, loitering, eating on vehicles, evading fares, or playing music loudly. **Given the potential for disparate impacts on the basis of race, color, or national origin in the implementation of these policies, which is prohibited by DOT Title VI regulations, FTA is considering how to address these topics. To ensure compliance with Title VI, how should FTA address the equitable implementation of rider conduct policies?**

With the assumption that transit agency police are enforcing these policies, they should be responsible for reporting demographic data around enforcement. Disproportionate impact of enforcement reports should be published for community review including incidents and demographic data.

The FTA should ensure there is clarity on the roles and responsibilities of transit operators, transit police, and the City's police force in enforcing rider conduct policies.

There also needs to be a better understanding of the relationship between enforcement and people experiencing homelessness. The City believes that data around this relationship should be tracked as part of enforcement reporting.

Additional Title VI Circular Feedback

12. **Should FTA consider incorporating guidance and instructions into the Title VI Circular on topics or policy matters not discussed in the questions above or not currently covered in the Circular? If so, what are those topics or policy matters? What commendable practices should FTA consider including? FTA welcomes any additional feedback on the Title VI Circular, including topics not listed in the questions above.**

The City recommends that submittals, metrics, and standards should be standardized by FTA to ensure each transit agency is truly measuring the disparate impacts on their potentially affected populations. Because of the variability in methods and data chosen, it may be possible to hide true impacts to residents with the current methodologies allowed.

Further, the Title VI Circular needs to provide stronger and more accurate definitions regarding equity. There is currently a disconnect between the concept of equity as it is used in social justice circles and as it is used for disparate impact analysis. Equity in Title VI is inherently focused on equality and ensuring that low-income and communities of color are not shouldering inordinate levels of burden for changes to service or development of new lines, or other changes. However, the current analysis does not allow for, nor give, guidance to how agencies need to consider that any burden on a low-income or minority community will be inordinately greater. There is a disconnect between achieving equity goals, which will The City believes that this disconnect requires that the FTA reconsider the allocation of resources to ensure the prioritization of communities that Title VI was designed and intended to protect.

Lastly, there should also be greater communication and coordination between Operating Agencies (OAs). For example, any state or local government that receives federal funding from multiple OAs is required to follow the guidance of those OAs. However, OAs sometimes have different guidance or different requirements. Implementing a more streamlined approach would provide less confusion for local government's requirements that need to be followed in order to receive federal funding.