



Jodi Cochran, CPA, CIA, CGMA, CRMA
County Internal Auditor

Office of County Internal Audit

Public Services Building
2051 Kaen Road, Suite 460 | Oregon City, OR 97045

Date: August 31, 2023
To: Gary Schmidt, County Administrator
Copy: Clackamas County Board of Commissioners
Clackamas County Internal Audit Oversight Committee
From: Jodi Cochran, County Internal Auditor
Subject: Civil Rights – Title VI Public Notification and Complaint Management

Results Summary

The Office of County Internal Audit designed an assessment of the county's compliance with the public notifications and complaint process requirements of Title VI of the Civil Rights Act of 1964. The objective of this engagement was to provide residents and public officials an independent, high-level maturity assessment of the county's efforts to ensure compliance in those areas. Through transparent evaluation, county residents, public officials and stakeholders are provided objective assurance the county is complying with federal regulations and continues to be eligible for federal funding.

The county has not fully implemented its Civil Rights Title VI Plan¹, as published on the county's internet site, and lacks countywide civil rights compliance data. Focusing on the federal requirements within Title VI of the Civil Rights Act of 1964 to notify the public of the county's nondiscrimination policy and to manage complaints received, we found that the current resources and processes within the county do not ensure:

- Easy, countywide public awareness and access to the county's civil rights complaint process, or
- Effective countywide complaint management.

Three recommendations are made for more robust Title VI compliance efforts. We recommend the county:

- ✓ Review and update the county's 2017 Title VI Plan.
- ✓ Implement key governance elements of the county's Title VI Plan.
 - Clearly identify and provide easy public access to the Title VI Officer and department liaisons.

¹ [Clackamas County Civil Rights Title VI Plan, Updated 01.09.2017](#)

- Develop and enhance countywide public notification standards.
- Clearly identify and provide easy public access to the civil rights complaint process.
- Consistently collect and report countywide civil rights complaint data.
- ✓ Develop a plan to fully implement, sustain and monitor the county’s Title VI Plan countywide.

Detailed recommendations are presented in the attached recommendations table.

Background

There are a number of federal laws addressing civil rights and prohibiting various types of discrimination. While not an exhaustive list, the county’s 2017 Civil Rights Title VI Plan identifies 11 federal nondiscrimination statutes² and seven federal nondiscrimination executive orders³, as well as two selected Oregon Revised Statutes⁴, which impact county operations and service delivery.

The Civil Rights Act of 1964 is among the most prominent federal authority. To be eligible for federal funding, the county must meet the requirements of this law and others relating to nondiscrimination and nondiscriminatory use of federal funds.

The Civil Rights Act of 1964 was signed into law to prohibit discrimination on the basis of race, color, religion, sex, or national origin in public spaces and facilities, and prohibited employment discrimination. Title VI, as part of the Civil Rights Act of 1964, “prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance”⁵. The term “program or activity” is broadly defined by the United States Code. To implement Title VI, virtually every executive agency that grants federal financial assistance has promulgated Title VI compliance regulations.⁶ The county is potentially subject to various nondiscrimination compliance regulations, some countywide while others are more isolated to a specific program. The

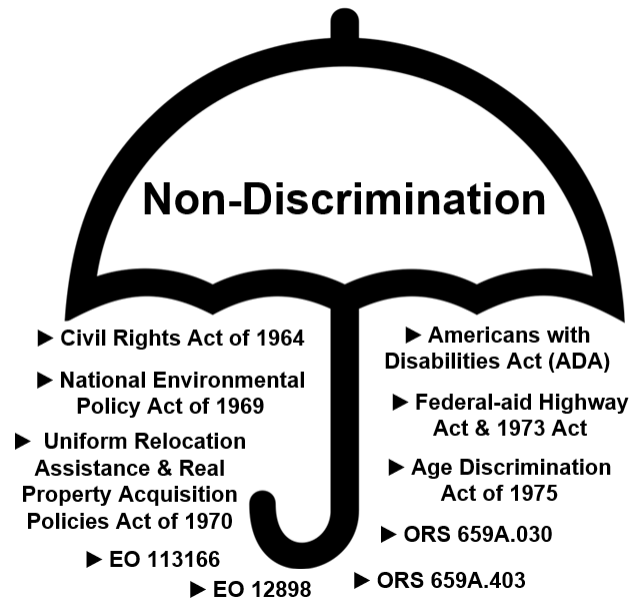


Figure 1 Relationship between Title VI and other civil rights laws – not a complete population of laws; Figure designed by the Office of County Internal Audit based on Federal Highway Administration original image.

² Title VI of the 1964 Civil Rights Act; Age Discrimination Act of 1975; Uniform Relocation Assistance & Real Property Acquisition Policies Act of 1970; Federal-aid Highway Act; 1973 Federal-aid Highway Act; Civil Rights Restoration Act of 1987; Uniform Relocation Act Amendments of 1987; Americans with Disabilities Act; Civil Rights Act of 1991; Title VIII of the 1968 Civil Rights Act; National Environmental Policy Act of 1969

³ Executive Orders 12250, 12259, 12292, 12898, 13160, 13166, 13175

⁴ ORS 659A.030, ORS 659A.403

⁵ U.S. Department of Justice Civil Rights Division [Title VI of the Civil Rights Act of 1964](#)

⁶ Federal Register, Notice by the Justice Department, [8/16/2000](#)

county's Title VI Plan states, "All programs of Clackamas County are subject to [the] policy regardless of funding source."

The United States Department of the Treasury has established implementing regulations that prohibit recipients of federal financial assistance from the Department of the Treasury from denying benefits or services, or otherwise discriminate on the basis of race, color, national origin (including limited English proficiency), disability, age, or sex (including sexual orientation and gender identity). When receiving federal funds from, or made available through, the Treasury, the county is required to provide written assurances of compliance with civil rights requirements.

The United States Department of the Treasury's "Assurances of Compliance with Civil Rights Requirements" document defines 10 assurances which "apply to all of the operations of the Recipient's program(s) and activity(ies), so long as any portion of the Recipient's program(s) or activity(ies) is federally assisted..." Assurance number eight states:

"Recipient shall maintain a complaint log and inform the Department of the Treasury of any complaints of discrimination on the grounds of race, color, or national origin, and limited English proficiency covered by Title VI of the Civil Rights Act of 1964 and implementing regulations and provide, upon request, a list of all such reviews or proceedings based on the complaint, pending or completed, including outcome. Recipient also must inform the Department of the Treasury if Recipient has received no complaints under Title VI."

The Department of the Treasury conducts compliance reviews of its recipients to verify compliance with civil rights regulatory requirements. If voluntary compliance cannot be achieved, the Department can defer action on an application for federal funding assistance, issue a cautionary letter, deny funding, or refer the matter to the Department of Justice for other action as authorized by law.⁷

Between July 1, 2021, and June 30, 2022, the county expended nearly \$139 million in federally awarded funds and passed over \$14 million onto subrecipients. This amount will increase over the next few years as county expenditures relating to COVID-19 federally funded response, relief and recovery activities continue. The American Rescue Plan Act (ARPA) federal assistance received by the county in 2021 and 2022 represents only a portion of the COVID-19 federal awards received and anticipated. According to the audited Schedule of Expenditures of Federal Awards for the fiscal year ended June 30, 2022, the county had spent only a fraction of the \$81.1 million ARPA assistance received by the county. The United States Department of the Treasury administers funds allocated by the American Rescue Plan Act.

⁷ US Department of the Treasury Civil Rights Toolkit, May 2022

Scope

The previous image, *Figure 1*, demonstrates how nondiscrimination laws, regulations, policies and programs create a broad umbrella. However, only a limited number of nondiscrimination laws and regulations were included and many more exist which the county may be subject to. This engagement focused on an auditable subset of these elements. While narrowly focused, observations and recommendations generated during this engagement support the county’s ability to meet the nondiscrimination regulatory and operational expectations, as a whole.

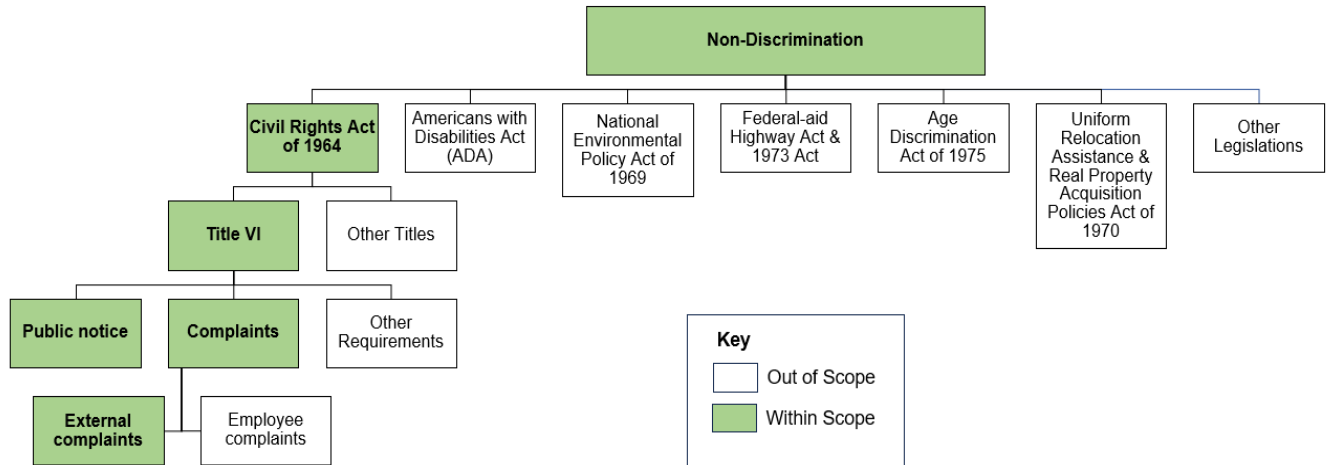


Figure 2 Nondiscrimination elements within the scope of the Office of County Internal Audit Civil Rights Compliance assurance engagement; Figure designed by the Office of County Internal Audit

The original scope of this engagement was designed to assess the county’s civil rights compliance program maturity level with respect to the county’s public notice and complaint processes. Three engagement questions were posed:

- Are the county principles of nondiscrimination and its civil rights complaint process accessible and recognizable by county residents and other stakeholders?
- Does the county’s civil rights complaint process ensure effective complaint management?
- Do the current nondiscrimination principles and complaint processes ensure equitable access to services or service delivery?

The assessment activities attempted to evaluate:

- ✓ Public notices made available during the period of January 2022 through fieldwork (June 2023), and
- ✓ Title VI of the Civil Rights Act of 1964 complaints received by the county during the period of January 2018 through January 2023.

The engagement did not attempt to address or validate the specific resolutions of individual complaints received.

Prior and existing activities were considered in scoping this engagement. An internal audit was conducted in 2018 that assessed the county's Human Resources complaint investigation processes. Current county efforts are assessing and developing the county's ability to provide services to clients with limited English proficiency. Thus, in answering the three engagement questions, the engagement also did not:

- ✓ Address Equal Employment Opportunity complaints or internal civil rights complaint procedures.
- ✓ Review the effectiveness of the county's approach to providing services to clients with limited English proficiency.

The scope and methodology of this engagement was refined during our fieldwork due to the limited implementation of the county's Title VI Plan and the lack of data demonstrating the county's compliance with this Plan. Our recommendations reflect a need for the county to take the actions previously identified in its 2017 Title VI Plan. Additionally, due to the significant COVID-19 federal assistance received by the county from the United States Department of the Treasury, the primary criteria applied as part of this revised scope was the Department of the Treasury's Title VI implementation regulations – including, the Department's "Assurances of Compliance with Civil Rights Requirements" document.

Communication Protocols

As the County Administrator, you are receiving this management letter and are responsible for any formal response to the engagement results. The Board of County Commissioners is copied on this document. In accordance with professional auditing standards, the Clackamas County Internal Audit Oversight Committee will also receive a copy of the management letter.

Supporting the County's focus on building public trust through good government and of the Office of County Internal Audit's focus on cultivating a culture of cooperation and continuous improvement, this management letter may be published on the Clackamas County Office of County Internal Audit webpage. All formally submitted management responses to the recommendations made will be included with any published management letter.

Next Steps

You are encouraged to take the recommended actions. Recommendations resulting from management letters are not automatically considered during routine County Internal Audit monitoring and reporting activities. If you would like the Office of County Internal Audit to assist with monitoring your intended responses, please provide formal written responses to the recommendations by September 30, 2023. Each response should indicate whether you agree or disagree with the recommendation. Additionally, if in agreement, each response should indicate:

- ✓ What action will be / has been taken.
- ✓ Who will be / was responsible for implementation.
- ✓ When will / was the action completed.

On an annual basis, if not more frequently, the Office of County Internal Audit reviews and provides assessments of management's progress toward stated goals and implementation of recommended actions. The 2023 County Internal Audit monitoring activities are scheduled to start in November 2023.

I am happy to address questions regarding this engagement process and results.

The Office of County Internal Audit appreciates the opportunity to support our county teams through independent assurance and advisory services. Proactively identifying steps to streamline processes, strengthen controls, and mitigate risks significantly enhances our ability to achieve our objectives. Through transparent evaluation, county residents, public officials and stakeholders are provided objective assurance the county is complying with federal regulations and continues to be eligible for federal funding.

Together, we demonstrate our Clackamas SPIRIT, build trust through good government, and strive for a collaborative county culture committed to continuous improvement.

ATTACHMENT A: RECOMMENDATIONS FOR IMPROVEMENT

CIVIL RIGHTS PROGRAM – RECOMMENDATIONS FOR IMPROVEMENT			
Item #	Recommendation	Observations	Management Response – To be completed by management
1	Review and update the county’s Title VI Plan. Clearly establish position authority for plan implementation and management.	<p>The county's Title VI Plan is more than 6.5 years old, last updated in January 2017. Demonstrated implementation of the county's Title VI Plan is limited.</p> <p>The Plan objectives and governance structures may no longer be adequate; reflective of changes in federal, state and local nondiscrimination regulations; or representative of the county's Title VI compliance approach. This increases the risk that the county may lose state and federal funding.</p> <p>While the Plan states the "administration of the Clackamas County's Civil Rights Title VI Program of this plan is housed with the County's Title VI Officer," a team - "a collaboration of County Administration, County Legal Counsel and Finance" - is assigned the authority to conduct three key prescribed activities:</p> <ol style="list-style-type: none"> 1. "Approve updates to the County Title VI Plan as needed and/or required." 2. "Ensure coordination of Accomplishment Reports." 3. "Review and ensure resolution of Title VI Complaints received by the County." <p>Clear position authority and responsibility will enhance accountability.</p>	<p>Please answer the following questions:</p> <p>Does management agree or disagree with the recommendation?</p> <p>If management agrees:</p> <p>What action will be taken to address the recommendation and resolve the condition?</p> <p>Who will be responsible for taking this action?</p> <p>When will the action be complete?</p>

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2	Implement key governance elements of the county’s Title VI Compliance Plan.		
2a	Coordinate with every department director and elected official to identify and maintain a registry of the department contact and Title VI liaison for each department or elected office.	<p>The county’s Title VI Compliance Plan, last updated in January 2017, establishes a governance structure which assigns responsibilities for ensuring compliance with Title VI. The defined roles and responsibilities include a Title VI Officer and department liaisons.</p> <p>The county's Title VI Plan's Policy Statement indicates all county programs are subject to the policy regardless of funding source.</p> <p>No registry of department liaisons could be located for review.</p> <p>Contact information for a department liaison within every county department or office is not readily available.</p> <p>Consistently meeting the expectation of the county’s Title VI Compliance Plan is unlikely without consistent and available resources to train and coordinate with.</p>	<p>Please answer the following questions:</p> <p>Does management agree or disagree with the recommendation?</p> <p>If management agrees:</p> <p>What action will be taken to address the recommendation and resolve the condition?</p> <p>Who will be responsible for taking this action?</p> <p>When will the action be complete?</p>

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2b	<p>Clearly post and maintain contact information for the Title VI Officer and the department Title VI liaisons on the county’s Civil Rights internet site.</p>	<p>A review of the public websites for 22 county departments and offices indicated one department, Transportation and Development, identified the department civil rights coordinator (liaison) and provided contact information. None of the department websites reviewed explicitly provided the county Title VI Officer contact information or a link to the county’s Title VI Plan.</p> <p>While all county webpages have a footer shortcut, “Civil Rights, Equity and Workforce Character,” a public user must follow four consecutive links to gain access to the county’s Title VI Plan document. The Title VI Officer’s contact information is on page 3 of the pdf document. There is no contact information for individual department liaisons within the county’s Title VI Plan.</p> <p>While difficult to locate, the response time to an inquiry sent to the provided Title VI Officer contact email address was commendable. The Equity and Inclusion Office received the test email and responded within less than one hour.</p> <p>Without easily accessible contact information, the public’s ability to notify the county of a civil rights complaint and the county’s ability to respond are impaired.</p>	<p>Please answer the following questions:</p> <p>Does management agree or disagree with the recommendation?</p> <p>If management agrees:</p> <p>What action will be taken to address the recommendation and resolve the condition?</p> <p>Who will be responsible for taking this action?</p> <p>When will the action be complete?</p>

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2c	Provide overview training of the key roles and responsibilities, as stated in the county’s Title VI Plan, to all Title VI liaisons.	<p>Site-visits of public-facing county departments demonstrated a general lack of familiarity with the county’s or department’s civil rights complaint process.</p> <p>The Plan states, "The County will undertake the following activities...Conducting or facilitating training programs on Title VI issues and regulations for County employees and ensuring Title VI training is provided for contractors and subrecipients."</p> <p>Without identified and adequately trained internal resources, the county’s ability to ensure adequate public notification of the county’s federal obligations and complaint processes is limited. Additionally, the county’s ability to provide consistent and effective complaint intake and management is weakened.</p>	<p>Please answer the following questions:</p> <p>Does management agree or disagree with the recommendation?</p> <p>If management agrees:</p> <p>What action will be taken to address the recommendation and resolve the condition?</p> <p>Who will be responsible for taking this action?</p> <p>When will the action be complete?</p>
2d	Establish, and implement countywide, minimum public notice standards to support departments and ensure adequate public notification of the county’s federal obligations and complaint processes, including posting of written	<p>A review of the public websites for 22 county departments and offices indicated one division of one department, Transportation and Development’s Code Enforcement, included a nondiscrimination statement or a reference to the county’s nondiscrimination policy statement on its public meeting notices or agendas.</p>	<p>Please answer the following questions:</p> <p>Does management agree or disagree with the recommendation?</p> <p>If management agrees:</p>

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	<p>notices in county public facilities and on websites.</p>	<p>Informal site-visits of public spaces throughout county facilities noted no public signage with reference to the county’s nondiscrimination policy or how to file a Title VI complaint.</p> <p>No evidence the county's Title VI Policy Statement being published annually in newspapers or informational brochures could be located for review.</p> <p>Without implementation of minimum communication standards, defining criteria and roles, the county’s ability to ensure consistent and adequate public notification of the county’s federal obligations and complaint processes, and its support of individual departments, is limited.</p> <p>The county’s Title VI Compliance Plan states, “The county will use nondiscrimination notices to notify the public of the protections provided by Title VI and related statutes.” “Title VI nondiscrimination notices should be included in all applicable Department or project documents and public meeting materials.”</p> <p>Appendix 5: Sample Nondiscrimination Notices of the county’s Title VI Compliance Plan provides sample verbiage for general public and email notices.</p>	<p>What action will be taken to address the recommendation and resolve the condition?</p> <p>Who will be responsible for taking this action?</p> <p>When will the action be complete?</p>

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2e	Enhance the complaint management processes to include a standardized complaint form and a standardized complaint log.	<p>No countywide complaint log could be located for review.</p> <p>A complete and accurate countywide complaint log would serve as documentary evidence should the Department of the Treasury, or other agencies, request the county to verify compliance with Title VI.</p> <p>Incomplete or inaccurate complaint data limits the county’s ability to respond to and analyze countywide complaint activity or its performance in addressing Title VI complaints.</p> <p>Appendix 6: Title VI Complaint Procedure and Form of the county’s Title VI Compliance Plan addresses filing, processing, dismissing, investigating and tracking, and appealing a Title VI complaint. The Plan establishes “clear procedures for filing, investigating, and successfully resolving complaints on a timely basis and at the lowest level possible.” While both are referenced in the Plan, no standard tracking procedure is established nor is a standard complaint form provided.</p> <p>The United States Department of the Treasury’s “Assurances of Compliance with Civil Rights Requirements” document, required to receive the</p>	<p>Please answer the following questions:</p> <p>Does management agree or disagree with the recommendation?</p> <p>If management agrees:</p> <p>What action will be taken to address the recommendation and resolve the condition?</p> <p>Who will be responsible for taking this action?</p> <p>When will the action be complete?</p>

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		<p>Treasury’s federal assistance distributions, defines 10 assurances. Assurance #8 states:</p> <p style="padding-left: 40px;">“Recipient shall maintain a complaint log and inform the Department of the Treasury of any complaints of discrimination on the grounds of race, color, or national origin, and limited English proficiency covered by Title VI of the Civil Rights Act of 1964 and implementing regulations and provide, upon request, a list of all such reviews or proceedings based on the complaint, pending or completed, including outcome. Recipient also must inform the Department of the Treasury if Recipient has received no complaints under Title VI.”</p>	
2f	<p>Coordinate annual reporting of department and countywide compliance with the county’s Title VI Plan, including, among other data points, confirming liaison contact information and training, adequacy of public notices, and submittal of complaint log.</p>	<p>No department Accomplishment Reports, or annual department reports of Title VI compliance activities, could be located for review.</p> <p>A complete and accurate annual reporting of department compliance activity would serve as documentary evidence should the Department of the Treasury, or other agencies, request the county verify compliance with Title VI.</p> <p>The county may lose state and federal funding.</p>	<p>Please answer the following questions:</p> <p>Does management agree or disagree with the recommendation?</p> <p>If management agrees:</p> <p>What action will be taken to address the</p>

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		<p>Incomplete or inaccurate compliance activity data limits the county’s ability to respond to and analyze countywide Title VI compliance.</p> <p>The county's Title VI Plan states the county is responsible for the "coordinating Accomplishment Reports as required by federal agencies and desired by the county." Additionally, the Plan states: "To comply with Title VI, departments are responsible for submitting an annual review to the Governance Team of department compliance including complaint, environmental justice, LEP, and public involvement activities."</p> <p>The Governance Team "ensures coordination of Accomplishment Reports."</p> <p>No records or evidence of official Governance Team activity (meetings, document reviews, decisions) could be located for review.</p>	<p>recommendation and resolve the condition?</p> <p>Who will be responsible for taking this action?</p> <p>When will the action be complete?</p>
3	Develop a strategic plan, including milestones and timelines, to fully implement, sustain and monitor the Title VI Plan countywide - specifically addressing public notices, staff training and reporting.	<p>The county's 2017 Title VI Plan defines "Implementation and Next Steps." Three of the activities, specifically related to the engagement scope (public notices, staff training, and reporting), have not been fully implemented.</p> <p>✓ "Inform the public about the rights provided in this Title VI Plan. Post nondiscrimination</p>	<p>Please answer the following questions:</p> <p>Does management agree or disagree with the recommendation?</p> <p>If management agrees:</p>

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		<p>policy and notices prominently so the public has adequate information about the civil rights protections. Disseminate information about civil rights complaint process.</p> <ul style="list-style-type: none"> ✓ Train county staff on the requirements and expectations of this Title VI Plan. ✓ Develop a system of reporting to meet federal and any other reporting requirements." <p>Without intentional effort and accountability measures, the county's Title VI Plan will not be fully implemented or adequately serve the county in meeting its legal requirements and overall civil rights goals.</p> <p>The county may lose state and federal funding.</p>	<p>What action will be taken to address the recommendation and resolve the condition?</p> <p>Who will be responsible for taking this action?</p> <p>When will the action be complete?</p>