



Moving Public Transportation  
Into the Future

## FTA Title VI Requirements

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## Session Content



1. Historical Overview



2. Requirements Under Title VI



3. Components of a Title VI Plan



4. Common Compliance Findings

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## HISTORICAL OVERVIEW

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### Historical Perspective

- Before the Civil Rights Act, Public Transit Was Highly Segregated
- Signs Directed Passengers to the "Correct" Section of the Bus, and to Separate Lavatories and Water Fountains



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### Historical Perspective

- This Prompted Protests Against Segregation in Public Transit and Other Areas of Daily Life
- Rosa Parks



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## Historical Perspective

- In *Brown v. Board of Education*, the Supreme Court Unanimously Ruled Segregation in Public Schools was Unconstitutional
- Ended "Separate but Equal"



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## Historical Perspective

- In Response, Congress Passed the Civil Rights Act of 1964 (Pub. L. 88-352)
- Arguably the Most Significant Legislation of the 20th Century
- Signed July 2, 1964



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## Historical Perspective

- The Civil Rights Act of 1964 Consisted of Twelve Titles That Covered a Range of Activities and Places
- Title VI Outlawed Discrimination on the Basis of Race, Color, or National Origin

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## Historical Perspective

- ◆ **Applicability of Title VI**
  - Title VI Prohibited Discrimination in Connection with Programs and Activities Receiving Federal Financial Assistance
  - Broad, Institution-Wide Application
  - Encompasses All Programs and Activities of the Covered Entity
- ◆ **This Presentation is Designed to Address Transit Services**
  - Does Not Relieve the Obligation of the Entity to Comply with Other Title VI Requirements

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## Historical Perspective

- ◆ **Basic Principle of Title VI:**
  - No Person in the United States Shall, on the Ground of **Race, Color, or National Origin**, Be Excluded From Participation In, be Denied the Benefits of, or be Subjected to Discrimination Under Any Program or Activity Receiving Federal Financial Assistance

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## Principles Under Title VI

- ◆ Level and Quality of Public Transportation Service Is Provided in a Nondiscriminatory Manner
- ◆ Promote Full and Fair Participation in Public Transportation Decision-Making Without Regard to Race, Color, or National Origin
- ◆ Ensure Meaningful Access To Transit-Related Programs and Activities By Persons With Limited English Proficiency

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## Discrimination Prohibited

- Code of Federal Regulations: Title 49, Section 21.5(b) A recipient under any federal program may not:
  - Deny an individual a benefit
  - Provide different benefits
  - Subject an individual to segregation or separate treatment
  - Restrict individual enjoyment or privilege enjoyed by others
  - Base qualifications on different sets of criteria
  - Deny participation of service

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## What Does Title VI Not Cover?

- Discrimination Based On:
  - Religion or Sex in the Workplace (Title VII/EEEO)
  - Disability (ADA)
  - Age (Age Discrimination Act of 1975; Age Discrimination in Employment Act of 1967)

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Section 2

## REQUIREMENTS UNDER TITLE VI

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## Civil Rights Act Requirements

- All Federal Agencies Responsible Under the Civil Rights Act Must Promulgate Rules Implementing the Act
- Governing Documents
  - 49 CFR part 21 – DOT Civil Rights
  - FTA Circular 4702.1B

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## Civil Rights Act Requirements

- Under the Rules Promulgated by FTA:
  - All Direct and Primary Recipients Must Document Compliance by Submitting a Title VI Program to the Regional FTA Office Every Three Years
  - NHDOT is the Direct/Primary Recipient of FTA Funds

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## Civil Rights Act Requirements

- Subrecipient Responsibilities
  - "Stand in the Shoes"
  - Subrecipients Must Submit Title VI Programs to the Primary Recipient From Whom They Receive Funding
  - Subrecipients Assist the Primary Recipient in Its Compliance Efforts
  - Primary Recipient Determines Schedule

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## Civil Rights Act Requirements

- What About Agencies That Receive Grants Directly From FTA, Not NHDOT?
  - Primary Recipients Submit Their Title VI Programs Directly to FTA on a Schedule That is Prescribed by FTA
- My Agency Received Funding From Both FTA and NHDOT?
  - FTA is Responsible for Oversight
  - But, Send Plan to Both

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Section 3

## COMPONENTS OF A TITLE VI PROGRAM



## Who Needs a Program

- Program Required:
  - Direct Recipients
  - Subrecipients
  - Lower Tier Subrecipients
- No Program Required:
  - Contractors
  - But, They Must Implement the Recipient's Plan

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## Circular Overview

- **Applicability and Complexity of Program Submission Based on Entity/Mode**

Entity/Mode	Compliance Requirements
Chapter I	All Recipients/Subrecipients
Chapter II	All Recipients/Subrecipients
Chapter III	All Recipients/Subrecipients
Chapter III	Fixed Route Operators +18 Hours, 200,000 Population
Chapter V	State DOTs
Chapter VI	Metropolitan Planning Organizations (MPOs)

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## Circular Overview

- **Applicable Provisions to Most Subrecipients**
  - First Three Chapters
- **Demand Response Providers**
  - First Three Chapters
  - Chapters I, II - Information
  - Chapter III - Basic Plan Contents for ALL Entities

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## Circular Overview

- **Chapter IV: Requirements for Fixed Route Transit Providers**
  - Applies if:
    - In a UZA of 200,000 or More, and
    - 50 or More Buses in Peak Service
  - Note: This Note includes Both Federal AND Non-Federally Funded Buses

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## Program Elements

- Program Elements
  - Title VI Notice to the Public
  - Complaint Procedures
  - Complaint Form
  - List of Investigations, Lawsuits, and Complaints
  - Public Participation Plan
  - Language Assistance Plan
  - Information Regarding Siting of Fixed Facilities
  - Table Depicting Racial Composition of Membership of Non-Elected Boards/Committees

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## Board Approval

- There are several areas where you will need Board approval:
  - The Title VI Program of all recipients and sub-recipients
  - Certain elements within the Title VI Program must be approved (if a UGA or SO or more buses in Peak service):
    - Service standards (for all transit providers)
    - Major service change policy, separate impact policy and disproportionate burden policy
    - Results of any service and fare equity analyses
    - Results of service monitoring

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## Notice to the Public

- Must Notify Beneficiaries of Protections Under Title VI
  - Beneficiaries = Public
  - Notice Must be on Website and in Public Areas of Agency's Office(s), Including the Reception Desk, Meeting Rooms Etc.
  - Notice Should Also be Posted at Stations or Stops and/or on Transit Vehicles
  - Where the Notice Will Be Posted Should Be Described in the Title VI Plan

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## Notice to the Public

- **Must Notify Beneficiaries of Protections Under Title VI**
  - Notice Must State that the Entity Complies With Title VI
  - Notice Must Include Basic Statement of Protections (See Next Slide)

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## Notice to the Public

- **Notice Content**
  - Statement That the Agency Operates Programs Without Regard to Race, Color, or National Origin
  - Procedures the Public Should Follow to Request Additional Information on the Recipient's Title VI Obligations
  - Procedures to File a Title VI Discrimination Complaint Against the Recipient

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## Notice to the Public

- **Content: Where Do Agencies Find Notice Content?**
  - Model Template in Circular (Appendix B)
  - Model Template Provided by NHDOT
  - Note: Do Not Expand on Categories

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Sample Title VI Notification to the Public  
Appendix B of the Contract Exhibit

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## Notice to the Public

### • Dissemination

- Document Translation
  - The Notice Informs the Public Of the Recipient's Title VI Obligations and is a "Vital Document"
  - Must Be Translated Into Languages Other Than English
- What Languages?
  - Translate Consistent With LEP "Four Factor" Analysis Outcome and Your Language Assistance Plan

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## Vital Documents

### • What Must Be Translated?

- Vital Documents
  - Consent Forms
  - Complaint Forms
  - Intake or Application Documents
  - Written Notices of Rights
  - Notices of Denials, Losses, or Decreases in Benefits or Services
  - Notices Advising LEP Persons of Language Assistance Services

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## A Note on Google Translate

- Can We Use Google Translate?
  - FTA Focuses on "Mechanical Translation"
  - Permissible for Non-Vital Documents
  - Must Confirm That Translated Vital Documents Accurately Convey Rights

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## Complaint Procedures

- All Covered Entities Must Develop Procedures For Investigating and Tracking Title VI Complaints
- The Procedures For Filing a Complaint Must Be Made Available to the Public
  - Complaints Must be Filed Within 180 Days of the Alleged Discrimination

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## Complaint Procedures

- Recipients Must Also Develop a Title VI Complaint Form
- The Form and the Procedure For Filing a Complaint Shall Be Available On The Recipient's Website
- Complaint Form and Procedure are Vital Documents and Must be Translated Per LAF

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## Complaint Procedures

- Note: In order to comply with due process requirements, you must grant a right to appeal to a complainant who is dissatisfied with the outcome of a complaint investigation.
  - The appeal must be to your agency
  - Although you can (and should) advise the public of their ability to file a complaint with the FTA Office of Civil Rights, this is merely a separate avenue to file a complaint, not an appeal.

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## Complaint Procedures

- Segregate This Complaint Process From General Customer Service Complaints
  - There is a difference between "My driver was rude" and "My driver was rude because of my race"
- NHDOT is Obligated to Report Title VI Complaints of Subrecipients to FTA
- Need to Record, Track, and Report Any Complaints

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## Best Practice

- Subrecipients May Adopt the Title VI Complaint Investigation, Tracking Procedures, and Complaint Form Developed By the Primary Recipient
  - But Note That These Must Be Included in the Subrecipient's Title VI Plan

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## Complaint Procedures

- The Recipient must develop complaint procedures
- Must Track a Complaint if it Alleges Discrimination on the Basis of Race, Color, or National Origin.

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## Tracking Complaints

- For Each Complaint, Track the Following:
  - The Date That The Investigation, Lawsuit, or Complaint Was Filed
  - A Summary of the Allegation(s)
  - The Status of the Investigation, Lawsuit, or Complaint
  - Actions Taken By The Recipient In Response to the Complaint or Final Findings Related to the Investigation, Lawsuit, or Complaint

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## Tracking Complaints

- Potential Complaint Red Flags:
  - An Agency Has No Complaints
  - An Agency Has Complaints and the Resolution For All Complaints is "Unsubstantiated".

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## **Inclusive Public Participation**

- The Recipient Must Develop a Public Participation Plan to Obtain Public Input on Transit Decisions
- The Title VI PPP Must Explicitly Describe
  - Proactive Strategies
  - Procedures
  - Desired Outcomes

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## **Inclusive Public Participation**

- Should Offer "Early and Continuous" Opportunities For the Public, Including Minority and LEP Populations, To Be Involved in Decision-Making Process

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## **Inclusive Public Participation**

- How, When, and How Often Specific Public Participation Activities Take Place Should Be Based on Demographic Analysis of the Populations Affected, the Decisions or Services Under Consideration, and the Resources Available

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## Inclusive Public Participation

- Hold meetings at times and locations that meet community's needs
- Use varied meeting formats
- Collaborate with local organizations to plan and advertise meetings
- Use traditional and social media to promote meetings:
  - TV and radio public service announcements (PSAs)
  - Facebook, Twitter, podcasts, blogs, etc.
  - Bus advertising

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## Meaningful Access to LEP

- The Title VI Plan Must Provide Meaningful Access to LEP Persons
  - The Recipient "Shall Take Reasonable Steps to Ensure Meaningful Access to Benefits, Services, Information, and Other Important Portions of Their Programs and Activities for Individuals Who Are Limited-English Proficient (LEP)".

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## Meaningful Access to LEP

- This Element of the Title VI Plan Has Two Main Components
  - Four Factor Analysis
  - Development of Language Assistance Program (LAP)
- This May Be the Most Challenging Aspect of Title VI Program Development

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## Meaningful Access to LEP

- Four Factor Analysis
  - To Ensure Meaningful Access to Programs and Activities, the Recipient Must Use the Information Obtained Via the Four Factor Analysis to Determine the Specific Language Services That Are Appropriate to Provide

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## Meaningful Access to LEP

- Four Factor Analysis
  - The Number of LEP Persons in Service Area
  - The Frequency With Which LEP Persons Come Into Contact With the Program
  - Degree of Importance of the Program
  - Resources Available For LEP Outreach vs. Costs of LEP Outreach

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## Meaningful Access to LEP

- How do you know which LEP groups are in your service area?
  - American Community Survey  
<https://data.census.gov/tables?q=C36001&tid=ACSR011Y2021.C16001>
  - Make sure that you identify languages where populations speak English less than "very well."
- Use the most recent demographic data available

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## Language Assistance Plan

- After Performing the Four Factor Analysis, Create the LAP. At a minimum, the LAP must contain:
  - The Results of the Four Factor Analysis
  - Description of How Language Assistance Services Will be Provided, by Language
  - How LEP Persons Are Notified of the Availability of Language Assistance

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## Language Assistance Plan

- LAP Contents (Cont.)
  - How the Recipient Monitors, Evaluates and Updates the Language Assistance Plan
  - How the Recipient Trains Employees to Provide Timely Language Assistance to LEP Populations

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## Safe Harbor

- The Safe Harbor Provision Stipulates That, if a Recipient Provides Written Translation of Vital Documents For Each Eligible LEP Language Group That Constitutes Five Percent (5%) Or 1,000 Persons in its Service Area...
- ... Such Action Will be Considered Strong Evidence of Compliance

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### **Advisory Committees - Minority Participation**

- Must Identify Transit Related Planning and Advisory Boards Whose Membership is Selected by the Agency
- Must Provide a Table Depicting Racial Breakdown of Membership
- Must Describe Efforts Made to Encourage Participation of Minorities on Such Committees

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### **Advisory Committees - Minority Participation**

- Note: These are only boards whose memberships are selected by the agency (i.e. not elected boards or committees).
- It does not include an agency's governing board... only transit advisory boards
- When providing the racial breakdown, be specific

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### **Local Adoption**

- The Title VI Plan Must Be Approved by the Recipient's Board of Directors or Appropriate Governing Entity or Official(s) Responsible For Policy Decisions Prior to Submission to NHDOT

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## Subrecipient Assistance and Monitoring

- Each subrecipient develops its own Program but may use some elements of primary recipient's Title VI Program
- Contractors must implement recipient's Program

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## Subrecipient Assistance and Monitoring

- Primary recipients (i.e. NHDOT) should assist subrecipients by providing:
  - Sample public notices, Title VI complaint procedures, and the recipient's Title VI complaint form
  - Sample procedures for tracking and investigating Title VI complaints filed with a subrecipient
  - Demographic information of residents served by the sub-recipient
  - Any other recipient-generated or obtained data

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## Fixed Route Requirements

Requirement	Fixed Route Transit Providers that do not provide fixed route	Fixed Providers with or without fixed route services (e.g. bus, trolley, streetcar, etc.)
Set system-wide standards and policies	Required	Required
Collect and report data	Not required	Required <ul style="list-style-type: none"> <li>• Demographic and service profile maps and charts</li> <li>• Survey data regarding customer demographic and travel patterns</li> </ul>
Evaluate service and fare equity changes	Not required	Required
Monitor transit service	Not required	Required

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## Fixed Route Requirements

- Set System-Wide Service Standards:
  - This requirement applies to all fixed route providers of public transportation service
  - All fixed route transit providers shall set service standards and policies for each specific fixed route mode of service they provide
  - Standards and policies must address how service is distributed across the transit system

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## Fixed Route Requirements

- Set System-Wide Service Standards:
- Effective practices to fulfill the service standard requirement
  - Vehicle load for each mode
  - Vehicle headway for each mode
  - On-time performance for each mode
  - Service availability for each mode
  - Distribution of transit amenities for each mode
  - Vehicle assignment for each mode

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## Fixed Route Requirements

- For Those Entities Above the Title M Threshold:
  - Collect Demographic Data
  - Evaluate Major Service and Fare Changes
  - Monitor Transit Service

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## COMMON COMPLIANCE FINDINGS

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### Common Issues

- Adopting Another Agency's Plan Without Making It Your Own
- Notice
  - Not Posted at All Places Listed in the Plan
  - Not Posted in Public Places
- Lack of Evaluation in Outreach Efforts
  - How is public feedback actually being used and considered?

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### Common Issues

- Four Factor Analysis
  - Use of Improper Demographics
    - Ethnicity in Lieu of Language Spoken
    - Failure to Find Data in Census/American Community Survey
    - Failure to Use the Most Recent Census/American Community Survey Data

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## Common Issues

- Safe Harbor
  - Confusion that Safe Harbor is 5% Population or 1,000 People, Whichever is Higher, When in Fact it is Whichever is Lower
    - Not Translating All LEP Languages Above the Threshold or Not Justifying the Reason for Not Translating

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## Common Issues

- Complaint Process
  - No Information on How to File a Complaint Readily Available to the Public
  - No Formal Processes for
    - Tracking Complaints
    - Investigating Complaints
    - Resolving Complaints
  - Lack of Complaint Recordkeeping
  - Failure to Report Complaints to Primary Recipient

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## Common Issues

- Expanding Title VI Notice
  - Expanding the Title VI Notice Language Beyond Race, Color, and National Origin

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## Common Issues

- **Website**
  - Broken Website Links to Access the Title VI Plan and Complaint Form
  - Failure to Update the Website With the Most Recent Plan
  - Inconsistencies Between Internal Procedures and Those Held Out to the Public

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## Common Issues

- **Not Revising Title VI Plan On FTA Request**
  - FTA Issues "Concur" Letters
  - Often, the Concurrence is Conditional on Making Additional Changes
  - Not Making Appropriate Revisions Prior to Next Review Often Results in a Deficiency

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## Common Issues

- **Opportunity for Public Involvement**
  - Failure to Provide Continuous Opportunity for Public Input
    - Language Assistance Needs
    - Availability of Language Assistance
    - Public Education on Title VI Protections
    - Fare Changes
    - Major Service Changes (major service change policy is by route out system)

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## Common Issues

- Translation of Vital Documents
  - Failure to Translate Vital Documents
  - Failure to Verify Accuracy of Translation

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## Common Issues

- Three Year Update Requirement
  - Failure to Prepare the Required Three Year Update (at least 60 days prior to expiration)
  - Failure of the Entity to Formally Approve the Update
  - Failure to Update the LEP Section
    - Reliance on Outdated Demographic Data

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