

Overview of FHWA Title VI Complaints

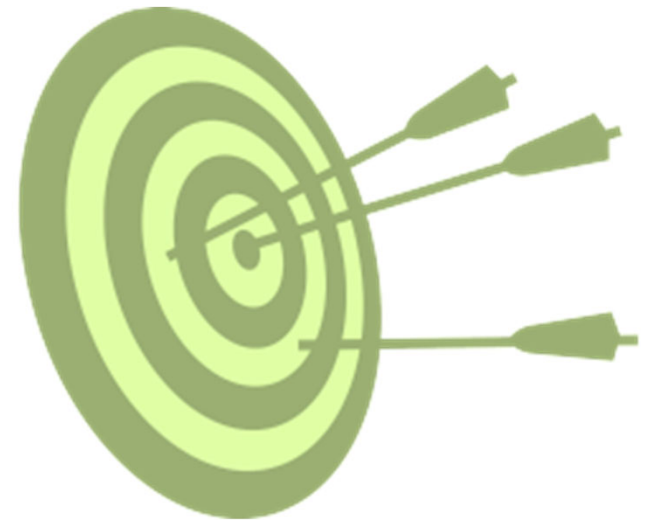
FHWA Headquarters Office of Civil Rights



U.S. Department of Transportation
Federal Highway Administration

Discussion Outline

- I. Procedures for filing a complaint
- II. Routing complaints
- III. Investigations
- IV. Potential outcomes
- V. Sample language



Laws, Regulations, and Guidance

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d)
- DOJ regulations: 28 CFR Part 42
- DOT regulations: 49 CFR Part 21
- FHWA regulations: 23 CFR Part 200
- Guidance - [DOJ Title VI Legal Manual](#)
- [Q&A for Complaints Alleging Violations of Title VI of the Civil Rights Act of 1964](#)

Who can File a Complaint

Any person who believes they—or with a specific class of persons—were subjected to discrimination on the basis of race, color, or national origin in the programs and activities of a Federal-aid Recipient may file a Title VI complaint.

Where Complaints can be Filed

- Recipient State DOT
- Subrecipient (e.g., city, MPO)
- FHWA Division Offices or Headquarters Office of Civil Rights
- USDOT Departmental Office of Civil Rights
- USDOJ

When Complaints Must be Filed

Not later than 180 days after the date of the last instance of alleged discrimination, unless the time for filing is extended by the investigating agency.



Complaint Format

- Written or reduced to writing
- Signed
- Basis
- Contact information
- Date(s) of discriminatory actions
- Respondent(s)
- Description of events

Complaint Format

What does not constitute a complaint?

1. Inquiries seeking advice or information
2. Courtesy copies of court pleadings
3. Newspaper articles (e.g. FYIs)
4. Courtesy copies of internal grievances

Complaints - Processing

How are complaints routed?

Complaint against STA

- Refer to FHWA Division or Headquarters (HCR)
- HCR investigates & HCR issues Letter of Finding (LOF)
- Division receives notification & copy of LOF

Complaint against STA's subrecipient

- STA may investigate if investigation delegated by FHWA after acceptance
- STA issues report to FHWA
- FHWA issues LOF

Potential Outcomes

- 1. Accept:** if complaint filed in 180 days (or Agency grants a waiver), contains sufficient information to allege a prima facie case under Title VI, and concerns matters under the Agency's jurisdiction, then Agency shall accept the complaint.
- 2. Preliminary review:** if unclear whether complaint alleges prima facie case, then Agency may (1) dismiss or (2) engage in a preliminary review to acquire additional information from the complainant and/or respondent.

Potential Outcomes (cont.)

3. **Procedural Dismissal:** if complaint not filed in 180 days (and no waiver granted), is not in writing and signed, or features other procedural defects, then Agency shall dismiss the complaint.
4. **Referral\Dismissal:** if complaint procedurally sufficient but the Agency (1) lacks jurisdiction over the subject matter or (2) lacks jurisdiction over Recipient, then Agency will either dismiss complaint or refer it to another agency that does have jurisdiction. For referrals, Agency will send a referral notice with a copy of the complaint to its Title VI counterparts at the proper agency and a copy to the USDOT Departmental Office of Civil Rights.

Timeframes

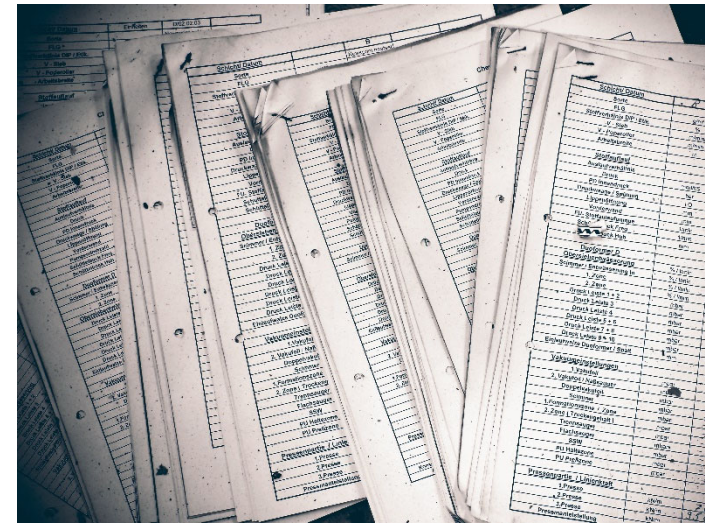
For FHWA, there is no regulatory timeframe for completing investigations. However, FHWA strives to complete all tasks within 180 days from the date of acceptance.

For State DOTs as investigators, 23 CFR §200.9(b)(3) provides that State DOTs must complete investigations within 60 days from receipt. However, FHWA understands investigations may take more time to complete.

Gathering Information

There are no regulatory requirements for how Agencies gather information. Typically, investigating Agencies will first send the Respondent a Request for Information and Position Statement (RFI) to gather initial documents.

Agencies will request documents and information from the complainant, schedule interviews with relevant parties, and conduct site visits as necessary.



Potential Outcomes

First, at any time during investigation, FHWA or Respondent may initiate informal negotiations to resolve the Complainant's issues. FHWA always strives to resolve Title VI complaints informally.

In the absence of negotiations, investigating Agencies draft Investigative Report (IR) with relevant data and findings, legal conclusions, and recommendations. Note that if the investigating Agency is a State DOT investigating its Subrecipient, it will send the IR to FHWA Division Office, and HCR will determine the proper course of action.

Potential Outcomes (cont.)

1. FHWA makes a finding of **no violation**.
2. FHWA finds the Respondent **failed to comply** with Title VI requirements, or threatens to fail to comply by action or inaction.
 - If informally resolved with Respondent by agreement, then complaint held in abeyance until respondent completes its corrective actions. If actions sufficient, then complaint dismissed.
 - If FHWA cannot informally resolve the matter or the respondent does not complete agreed upon corrective actions, then the FHWA may issue a formal Letter of Finding (LOF), stating that the recipient is in noncompliance with its Title VI obligations.

Potential Outcomes (cont.)

3. If FHWA issues a LOF to the respondent, the LOF will request that the respondent provide to FHWA, within 90 days, an action plan that implements the recommendations in the LOF.
4. If FHWA approves the action plan, then the respondent will be given a reasonable amount of time to implement the plan. At the end of the implementation period, FHWA will assess whether the respondent has sufficiently corrected the deficiencies.

Potential Outcomes (cont.)

5. If FHWA does not approve the action plan, or the respondent is nonresponsive/uncooperative, then FHWA may seek **administrative sanctions**, including, but not limited to, suspension or termination of Federal funds or referral to USDOJ for enforcement.
6. If USDOT seeks to **suspend or terminate funds**, it must provide the Respondent with an opportunity for a hearing on the record. If the Secretary determines that the Respondent has not complied with Title VI and voluntary compliance cannot be secured, USDOT must notify Congress before that finding goes into effect. 49 CFR §21.13(c).

LOFs issued by FHWA are administratively final.

Discussion

Questions & Comments?