

Complaint Procedure

The Title VI staff promptly investigates all complaints of alleged discrimination, attempts to resolve such complaints, and takes corrective action within thirty (30) days of a finding of a substantiated complaint in a final report. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the Title VI staff will inform every complainant of all avenues of appeal.

While this procedure is directed at the processing of Title VI complaints, as a general proposition, complaints alleging either discriminatory impact or effect in the context of environmental justice will follow the complaint processing described below. It is the policy of the TDOT Title VI office to encourage the informal resolution of all complaints with the participation of all affected parties.

1. Acceptance of the Complaint -Upon receiving a Title VI complaint, the Title VI office determines whether the complaint states a valid claim. Complaints filed with TDOT in which it is named the respondent will be forwarded to Federal Highway Administration Headquarters Civil Rights Service Business Unit. However, complaints filed against Federal-aid sub-recipients and contractors shall be investigated by the Title VI office. If the complaint states a valid claim, it will be accepted for processing immediately upon acknowledgment of its receipt, and the complainant and TDOT and/or the TDOT recipient will be so notified. If the Title VI office does not accept the complaint, it will be rejected and, if appropriate, referred to a federal/state agency.

2. Investigation - Once a complaint is accepted for processing, the Title VI office conducts a factual investigation to determine whether the action at issue constitutes discrimination based on race, sex, color, age, national origin, or handicap. If, based on its investigation, the Title VI office concludes that there is no discrimination, (or in the case of an environmental justice issue) there is no disparate impact/effect, the complaint will be dismissed. In the case of an environmental justice issue where an immediate health issue is alleged, the Title VI office may make an initial finding of a disparate impact within thirty (30) days after complaint is accepted. In such a case, the Title VI office will notify the appropriate TDOT program, TDOT recipient and the complainant in an effort to seek a response within a specified time period. Under appropriate circumstances, the Title VI office may seek comment from the recipient, and/or complainant(s) on preliminary data analyses before making an initial finding concerning disparate impacts.

3. Rebuttal/Mitigation - The finding of the disparate impact provides the recipient the opportunity to rebut the Title VI office's finding, propose a plan for mitigating the disparate impact, or to "justify" the disparate impact. If the recipient successfully rebuts the Title VI office's finding, or if the recipient elects to submit a plan for mitigating the

disparate impact, and based on its review, the Title VI office agrees that the disparate impact will be mitigated sufficiently pursuant to the plan, the parties will be so notified. Assuming that assurances are provided regarding implementation of such a mitigation plan, no further action on the complaint will be required.

4. **Justification** - If the recipient can neither rebut the finding of the disparate impact nor develop an acceptable mitigation plan, then the recipient may seek to demonstrate that it has a substantial, legitimate interest that justifies the decision to proceed with the action notwithstanding the disparate impact. Even where a substantial, legitimate justification is offered, the Title VI office will need to consider whether it can be shown that there is an alternative that would satisfy the stated interest while eliminating or mitigating the disparate impact.

5. **Finding of Noncompliance** - If the recipient fails to rebut the Title VI office's finding of a disparate impact and can neither mitigate nor justify the disparate impact at issue, the Title VI office will, within sixty (60) calendar days from the start of the complaint investigation, send the recipient a written notice of finding of noncompliance with a copy to the Legal Office for enforcement action. The Title VI office's notice may include recommendations for the recipient to achieve voluntary compliance and, where appropriate, the recipient's right to engage in voluntary compliance negotiations.

6. **Voluntary Compliance** - The recipient will have thirty (30) calendar days from receipt of the formal determination of noncompliance within which to come into voluntary compliance. If the recipient fails to meet this deadline, the Title VI office will start procedures to deny, annul, suspend, or terminate TDOT assistance.

I. Alternative Courses of Action

A. Ultimate sanctions. The ultimate sanctions under Title VI are the refusal to grant an application for assistance and the termination of assistance being rendered. Before these sanctions may be invoked, the Act requires completion of the procedures called for by section 602.

B. Available alternatives

1. Court enforcement compliance with the nondiscrimination mandate of Title VI.
2. Administrative Action – effective alternative courses not involving litigation.

II. Procedures for new applications.

The following procedures are designed to apply in cases of noncompliance involving applications for one-time or non-continuing assistance and initial applications for new or existing programs of continuing assistance. Where an otherwise adequate assurance, statement of compliance, or plan has been filed in connection with an application for assistance, but prior to completion of

action on the application, the head of the agency in question has reasonable grounds, based on a substantiated complaint, the agency's own investigation, or otherwise, to believe that the representations as to compliance are in some material respect untrue or are not being honored, the agency head may defer action on the application pending prompt initiation and completion of section 602 procedures.

III. Procedures in Cases of Sub-grantees.

In situations in which applications for federal assistance are approved by some agency other than the federal granting agency, the same rules and procedures would apply. Thus, the federal agency should instruct the approving agency--typically a state agency--to defer approval or refuse to grant funds, in individual cases, such action would be taken by the original granting agency under the above procedures. Provision should be made for appropriate notice of such action to the federal agency that retains responsibility for compliance with section 602 procedure.

7. Informal Resolution - Title VI regulations call for TDOT to pursue informal resolution of administrative complaints wherever practicable. Therefore, TDOT will discuss, at any point during the process outlined above, offers by recipients to reach informal resolution, and will, to the extent appropriate, endeavor to facilitate the informal resolution process and involvement of affected stakeholders. Additionally, in notifying a recipient of acceptance of a complaint for investigation, TDOT will encourage the recipient to engage the complainant(s) in informal resolution in an effort to negotiate a settlement. TDOT will also provide the services of a trained and licensed mediator to facilitate informal settlements of disputes.

8. Rejecting or Accepting Complaints for Investigation - It is the general policy of the TDOT Title VI Office to investigate all administrative complaints that have apparent merit and are complete or properly pleaded. Examples of complaints with no apparent merit might include those which are so insubstantial or incoherent that they cannot be considered to be grounded in fact.

A complete or properly pleaded complaint is:

1. in writing, signed, and provides an avenue for contacting the signatory (e.g., phone number, address);
2. describes the alleged discriminatory act(s) that violate Title VI regulations (i.e., an act of intentional discrimination or one that has the effect of discriminating on the basis of race, color, national origin, sex, age or disability);
3. filed within 180 calendar days of the alleged discriminatory act(s); and
4. identifies the TDOT recipient that took the alleged discriminatory act(s).

TDOT will make a determination to accept, reject, or refer (to the appropriate federal/state agency) a complaint within seven (7) calendar days of acknowledgment of its receipt. TDOT will establish whether the person or entity that took the alleged discriminatory act is in fact a TDOT sub-recipient. If the complaint does not specifically mention that the alleged discriminatory actor is a TDOT financial assistance recipient,

TDOT may presume so for the purpose of deciding whether or not to accept the complaint for further processing.

9. Timeliness of Complaints - In order for a complaint against TDOT or a sub-recipient(s) to be considered timely, it must be filed within one hundred and eighty (180) calendar days after the alleged incident has occurred. TDOT will waive the one hundred and eighty (180) day time limit for good cause. TDOT will determine on a case-by-case basis whether to waive the time limit for good cause.

10. Processing complaints –

- a) TDOT will maintain a log of all complaints and appeals. The complaint will be noted in the log by case number based on year, month and sequence in which complaint was received (Example: A complaint received in December, 1999 and is the second complaint received in 1999 will be case number 99 (year)-12 (month)-002 (sequence).
- b) TDOT will forward an initial report to FAA /FHWA/FTA within seven (7) working days.
- c) A copy of the complaint will also be forwarded to the alleged discriminatory service or program official including the name and telephone number of the Title VI officer assigned to investigate the complaint.
- d) The investigating officer will initiate the investigation by first contacting the complainant by telephone within three (3) workdays of receiving the assignment to set up an interview.
- e) The complainant will be informed that they have a right to have a witness or representative present during the interview and can submit any documentation he/she perceives as relevant to proving his/her complaint.
- f) The alleged discriminatory service or program official will be given the opportunity to respond to all aspects of the complainant's allegations.
- g) The investigating officer will determine, based on relevancy or duplication of evidence, which witnesses will be contacted and questioned.
- h) The investigating officer will contact the complainant at the conclusion of the investigation, but prior to writing the final report and give the complainant an opportunity to give a rebuttal statement only at the end of the investigation process.
- i) The investigation will be completed and a final report will be sent to the FAA/FHWA/FTA, the alleged discriminatory service or program, and the complainant within sixty (60) calendar days of the date the complaint was received by TDOT. The final report will include the following:
 - (a) the written complaint containing the allegation, basis, and date of filing
 - (b) summarized statements taken from witnesses
 - (c) finding of facts
 - (d) opinion(s) (based on all evidence in the record) that the incident is substantiated or unsubstantiated
 - (e) remedial action(s) for substantiated cases
- j) If corrective action(s) is recommended the alleged discriminatory agency will be given thirty (30) calendar days to inform the Director for Title VI of the actions taken for compliance.

- k) Corrective actions can be in the form of actions to be taken at a future date after the initial thirty (30) days with projected time period(s) in which action will be completed.
- l) If the recommended corrective action(s) have not been taken within the thirty (30) day time period allowed, the recipient will be found to be in noncompliance with Title VI and implementing regulations, and a referral will be made to the Legal Office for enforcement action.

11. Appeals Procedures-

- a) The complainant has the right to appeal all written reports to the Title VI Advisory Board.
- b) This appeal must be made in writing to the Title VI Director within fourteen (14) days of receipt of the department's final report.
- c) The appeal must specifically cite the portion(s) of the finding with which the complainant disagrees and his/her reason(s) for the disagreement.
- d) The Title VI Director will forward this appeal within seven (7) calendar days to the TDOT Title VI Advisory Board for review.
- e) The Board's review of the finding will be based on the entire record.
- f) The Board must complete the appeal review within thirty (30) calendar days after receipt of the appeal.
- g) The Board will forward their written findings to the complainant and the TDOT Commissioner.

The TDOT Title VI complaint policy and procedures will be documented in the TDOT Title VI brochures. These brochures will accompany all contracts and will be used as a public information resource tool.