

DISCRIMINATION COMPLAINT PROCEDURES

Any person who believes the, or a specific class of persons, were subjected to discrimination on the basis of race, color, or national origin in the programs and activities of Smyth County, a recipient of Federal financial assistance through the Virginia Department of Transportation, may file a Title VI complaint.

Where can one file?

Complaints related to the Federal-aid highway program may be filed with Smyth County, VDOT, FHWA Division Office, the FHWA Headquarters Office of Civil Rights (HCR), the USDOT Departmental Office of Civil Rights, or the USDOJ.

When must one file?

According to USDOT regulations, 49 CFR 521.11(b), a complaint 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 processing agency.

What should a complaint look like?

Complaints should be in writing and signed and may be filed by mail, fax, in person, or e-mail. However, the complainant may call the receiving agency and provide the allegations by telephone, and the agency should transcribe the allegations of the complaint as provided over the telephone and send a written complaint to the complainant for correction and signature. A complaint should contain the following information:

- A written explanation of the alleged discriminatory actions;
- The complainant's contact information, including, if available: full name, postal address, phone number, and email address;
- The basis of the complaint (e.g., race, color, national origin);
- The names of specific persons and respondents (e.g., agencies/organizations) alleged to have discriminated;
- Sufficient information to understand the facts that led the complainant to believe that discrimination occurred in a program or activity that receives Federal financial assistance; and
- The date(s) of the alleged discriminatory act(s) and whether the alleged discrimination is on-going.

How are complaints routed?

FHWA Division Offices do not investigate Title VI complaints. Likewise, State DOTs and its

Subrecipients do not investigate complaints filed against themselves. Finally, FHWA is responsible for all decisions regarding whether a complaint should be accepted, dismissed, or referred to another agency.

With this understanding, complaints should be routed in the following ways:

- All complaints will be routed to the FHWA Headquarters Office of Civil Rights (HCR) for processing. HCR is responsible for all determinations regarding whether to accept, dismiss, or transfer Title VI complaints filed against Smyth County, a Subrecipient of Federal financial assistance.
- Complaints should be forwarded from the initial receiving agency through the Federal-aid highway oversight hierarchy until the complaint reaches HCR. For example, if a complaint is filed with Smyth County, Smyth County will forward the complaint to VDOT, which will forward the complaint to the VDOT's FHWA Division Office, which will forward the complaint to HCR. If a complaint is filed with VDOT, VDOT will forward the complaint to the VDOT's FHWA Division Office, which should forward the complaint to HCR.
- VDOT and Smyth County will log all complaints received.
- When HCR decides on whether to accept, dismiss, or transfer the complaint, HCR will notify the Complainant, the FHWA Division Office, VDOT, and Smyth County.

Complaints may also be sent to HCR directly at:

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|-------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Postal Mail | Federal Highway Administration U.S. Department of Transportation Office of Civil Rights 1200 New Jersey Avenue, SE 8th Floor 81-105 Washington, DC 20590 |
| Email | CivilRights.FHWA@dot.gov |
| Fax | 202-366-1599 |
| Questions? | 202-366-0693 |

What are the potential outcomes for processing a complaint?

There are four potential outcomes for processing complaints:

- Accept: if a complaint is timely filed, contains sufficient information to support a claim under Title VI, and concerns matters under FHWA's jurisdiction, then HCR will send to the complainant, the respondent agency, and the FHWA Division Office a written notice that it has accepted the complaint for investigation.

- Preliminary review: if it is unclear whether the complaint allegations are sufficient to support a claim under Title VI, then HCR may (1) dismiss it or (2) engage in a preliminary review to acquire additional information from the complainant and/or respondent before deciding whether to accept, dismiss, or refer the complaint.
- Procedural Dismissal: if a complaint is not timely filed, is not in writing and signed, or features other procedural/practical defects, then HCR will send the complainant, respondent, and FHWA Division Office a written notice that it is dismissing the complaint.
- Referral\Dismissal: if the complaint is procedurally sufficient but FHWA (1) lacks jurisdiction over the subject matter or (2) lacks jurisdiction over the respondent entity, then HCR will either dismiss the complaint or refer it to another agency that does have jurisdiction. If HCR dismisses the complaint, it will send the complainant, respondent, and FHWA Division Office a copy of the written dismissal notice. For referrals, FHWA will send a written referral notice with a copy of the complaint to the proper Federal agency and a copy to the USDOT Departmental Office of Civil Rights.

The HCR is responsible for conducting all investigations of State DOTs and other primary Recipients. In the case of a complaint filed against a Subrecipient, HCR may either conduct the investigation itself, or it may delegate the investigation to VDOT. If HCR chooses to delegate the investigation of a Subrecipient, HCR will communicate its acceptance of the complaint to the complainant and respondent, but VDOT will conduct all data requests, interviews, and analysis.

VDOT will then create a Report of Investigation (ROI), which it will send to HCR. Finally, HCR will review the ROI and compose a Letter of Finding based on the ROI

What are the timeframes for investigation?

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.

If VDOT is delegated an investigation from FHWA, VDOT must complete the investigation within 60 days of receipt (meaning the date it receives the delegated complaint from FHWA) as stipulated in 23 CFR 5200.9(b)(3)

How does the Investigating Agency gather information?

There are no regulatory requirements for how information is gathered, but VDOT and Smyth County are required to keep detailed records on how they comply with Title VI and to provide USDOT with access to documents and persons with relevant information. 49 CFR 521.9. Typically, the respondent will receive at least one Request for Information and Position

Statement (RFI) to gather documents, and additional requests if necessary. Concurrently, the HCR or VDOT investigator will schedule interviews with relevant parties and conduct site visits as necessary.

Once FHWA starts an investigation, what are the potential outcomes?

First, at any time during the investigation, either FHWA or the respondent may initiate informal negotiations to resolve the issues. The FHWA always strives to resolve Title VI complaints informally, if possible.

In the absence of such negotiations, HCR (or an investigator for VDOT) will draft a Report of Investigation, which should contain all relevant data and findings, with legal conclusions and potentially include recommendations for action. FHWA is responsible for the final disposition of all complaints, including initiation and conduct of informal negotiations and the issuance of Letters of Finding (LOFs).

There are five potential outcomes for concluding an investigation:

1. The FHWA makes a finding of no violation and the case will be closed with no further action. The FHWA will issue an LOF stating in sufficient detail the reasons for the determination of no violation.
2. If, by a preponderance of the evidence, FHWA determines the respondent has failed to comply with its Title VI requirements or threatens to fail to comply by action or inaction, then FHWA will inform the respondent and the matter will be resolved by informal means whenever possible.
 - o If FHWA informally resolves the matter with the respondent by agreement, then FHWA will hold the complaint in abeyance until the respondent completes its corrective actions. If the corrective actions are completed to the FHWA's satisfaction, then the complaint will be dismissed with no further action.
 - o If FHWA cannot informally resolve the matter or the respondent does not complete agreed upon corrective actions, then FHWA may issue a LOF stating that the Recipient is in noncompliance with its Title VI obligations.
3. If FHWA issues a LOF of noncompliance 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.
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 any other means authorized by law such as referral to USDOJ for enforcement.

- o 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 of Transportation 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