

Appendix D: Discrimination Complaint Procedures

DISCRIMINATION COMPLAINT PROCEDURES – HANDLING, TRACKING, RESOLVING, AND REPORTING INVESTIGATIONS/COMPLAINTS

Title VI Complaint Procedures

Any individual may exercise his or her right to file a complaint with the Harrisonburg-Rockingham Metropolitan Planning Organization (HRMPO) if that person believes that s/he or any other program beneficiaries have been subjected to unequal treatment or discrimination in the receipt of benefits/services or prohibited by non-discrimination requirements.

The HRMPO will follow the Nondiscrimination Complaint Procedures, as described below:

1. All written complaints received by the MPO shall be referred immediately by the MPO's Title VI Coordinator, to the VDOT's Central Office: Civil Rights Division and FHWA District Office.
2. These procedures apply to all complaints filed under Title VI of the Civil Rights Act of 1964 as amended, and the Civil Rights Restoration Act of 1987, relating to any program or activity administered by the HRMPO, as well as to subrecipients, consultants, and/or contractors. Intimidation or retaliation of any kind is prohibited by law.
3. These procedures do not deny the right of the complainant to file formal complaints with other state or federal agencies, or to seek private counsel for complaints alleging discrimination. These procedures are part of an administrative process that does not provide for remedies that include punitive damages or compensatory remuneration for the complainant. Every effort will be made to obtain early resolution of complaints by the FHWA.
4. In accordance with federal law, FHWA will require that recipients of federal assistance notify FHWA of any law suits filed against the recipient or sub-recipients of federal assistance or alleging discrimination; and a statement as to whether the recipient or sub-recipient has been found in noncompliance with any relevant civil rights requirements.
5. Pursuant to the Virginia Public Records Act (VPRA) § 42.1-76 et seq., the MPO will retain Discrimination Complaint Forms and a log of all complaints filed with or investigated by the MPO.
6. Records of complaints and related data will be made available by request in accordance with the Virginia Freedom of Information Act

Procedures

Who can file?

Any person who believes they—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 a primary Recipient of Federal financial assistance (e.g. VDOT), Subrecipient (e.g., the HRMPO), or a HRMPO Subrecipient such as an MPO contractor or consultant, may file a Title VI complaint.



Where can one file?

Complaints related to the Federal-aid highway program may be filed with the HRMPO, VDOT, a 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 §21.11(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?

The complaint must be submitted using the appropriate Title VI form, which is included as an appendix to this document, and posted on the HRMPO website. Complaints should be signed, and may be filed by mail, fax, in person, or e-mail.

The complainant may request a complaint form by contacting the HRMPO at 540-885-5174, or Bonnie Riedesel, HRMPO Title VI Manager at bonnie@cspdc.org.

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.

How are complaints routed?

FHWA is responsible for all decisions regarding whether a complaint should be accepted, dismissed, or referred to another agency. FHWA notes that FHWA Division Offices do not investigate Title VI complaints, and Recipients such as VDOT; Subrecipients such as HRMPO; and HRMPO Subrecipients, such as MPO contractors and consultants do not investigate complaints filed against themselves.

Complaints should be routed in the following ways:

- All complaints should 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 VDOT, HRMPO, and HRMPO subrecipients, contractors, and consultants.
- 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 HRMPO, the MPO should forward the complaint to VDOT, which should forward the complaint to the State's FHWA Division Office, which should forward the complaint to HCR. If a complaint is filed with a HRMPO subrecipient, contractor, or consultant, then HRMPO should forward the complaint to VDOT, which should forward the complaint to the State's FHWA Division Office, which should forward the complaint to HCR.
- VDOT and the HRMPO must 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 HRMPO (where applicable).

Complaints against HRMPO may also be sent to HCR directly at:

Postal Mail	Federal Highway Administration U.S. Department of Transportation Office of Civil Rights 1200 New Jersey Avenue, SE 8th Floor E81-105 Washington, DC 20590
Email	CivilRights.FHWA@dot.gov
Fax	202-366-1599
Questions?	202-366-0693

Complaints against HRMPO Subrecipients, such as contractors and consultants, may be sent to HRMPO at:

Postal Mail	Harrisonburg-Rockingham Metropolitan Planning Organization 112 MacTanly Place Staunton, VA 24401
Email	bonnie@cspdc.org
Fax	540-885-2687
Questions	540-885-5174

What are the potential outcomes for processing a complaint?

There are four potential outcomes for processing complaints:

- Accept: if a complaint is timely filed (see Question 2c, above), 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 (see Question 2c, above), 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 VDOT and other primary Recipients. In the case of a complaint filed against HRMPO, HCR may either conduct the investigation itself, or it may delegate the investigation to VDOT. If HCR chooses to delegate the investigation of HRMPO, 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 investigations?

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 has been delegated an investigation from FHWA, 23 CFR §200.9(b)(3) provides that State DOTs must complete investigations within 60 days of receipt (meaning the date it receives the delegated complaint from FHWA).

How do Investigating Agencies gather information?

There are no regulatory requirements for how information is gathered, but VDOT and HRMPO 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 §21.9. 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?

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 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