

2500 Division of Technology and Support Services

2501 External Equal Employment Opportunity Complaint Procedure

1.0 Purpose and Applicability

This document outlines the Delaware Department of Transportation's (DeIDOT) procedures for processing external complaints of discrimination filed under Title VI of the Civil Rights Act of 1964 (and related statutes as identified in Section 2.0) and Title II of the Americans with Disabilities Act of 1990 and/or Section 504 of the Rehabilitation Act of 1973 (ADA) on grounds of race, color, religion, sex, age, national origin, or disability. The procedures are designed to provide due process for complainants and respondents.

2.0 Authorities

2.1 The following Statutes, Regulations, Executive Orders, and References are incorporated by reference into DeIDOT's External Complaints Procedure. The following Authorities define and affect the implementation of Title II/Section 504 and Title VI policies and procedures.

2.1.1 Nondiscrimination Statutes

2.1.1.1 Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, provides: 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.

2.1.1.2 Section 504 of the Rehabilitation Act of 1973, 42 U.S.C. 794, et seq., provides: No qualified individual with a disability shall, by reason of his or her disability be excluded from participation in, be denied the benefits of, be subjected to discrimination under any program or activity that receives or benefits from Federal financial assistance.

2.1.1.3 Age Discrimination Act of 1975, 42 U.S.C. 6101, provides: No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

2.1.1.4 Federal Aid Highway Act of 1973, 23 U.S.C. 324, provides: No person shall, on the ground of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal assistance under this Title or carried on under this Title.

2.1.1.5 The Civil Rights Restoration Act of 1987, P.L. 100-209, provides: Clarification of the original intent of Congress in Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973. The Act restores the broad, institution-wide scope and coverage of the nondiscrimination statutes to include all programs and activities of Federal-aid recipients, sub-recipients, and contractors, whether such programs and activities are federally assisted or not.

2.1.1.6 Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. 12131, et seq., provides: No qualified individual with a disability shall, by reason of such disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination by a department, agency, special purpose district, or other instrumentality of a State or local government.

2.1.2 Regulations. The following Regulations are specific to recipients of funds from FHWA, FTA, and FAA.

2.1.2.1 23 Code of Federal Regulations (CFR) 1.36, Compliance with Federal Laws and Regulations

2.1.2.2 23 CFR 200, Title VI Program and Related Statutes-Implementation and Review Procedures

2.1.2.3 28 CFR 35, Nondiscrimination on the Basis of Disability in State and Local Government Services

2.1.2.4 28 CFR 36, Nondiscrimination on the Basis of Disability in Public Accommodations and in Commercial Facilities

2.1.2.5 28 CFR 42, Subpart C, Implementing Title VI of the Civil Rights Act of 1964

2.1.2.6 28 CFR 50.3, USDOJ's Guidelines Enforcement of Title VI of the Civil Rights Act of 1964

2.1.2.7 49 CFR 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964

2.1.2.8 49 CFR 27, Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance

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- 2.1.2.9 49 CFR 28, Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Transportation (DOT)
- 2.1.3 Executive Orders (E.O.). The following Executive Orders further define and refine Civil Rights Statutes and Regulations.
 - 2.1.3.1 E.O. 12250, Leadership and Coordination of Nondiscrimination Laws
 - 2.1.3.2 E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
 - 2.1.3.3 E.O. 13166, Improving Access to Services for Persons with Limited English Proficiency
- 2.1.4 Directives
 - FHWA Notice 4720.6, Impacts of the Civil Rights Restoration Act (CRRRA) on FHWA Programs
- 2.2 Other References. The following documents are used as reference material in determining the appropriate steps used to investigate External EEO complaints.
 - 2.2.1 USDOJ's Title VI Legal Manual
 - 2.2.2 USDOJ's Investigation Procedures Manual for the Investigation and Resolution of Complaints Alleging Violations of Title VI and Other Nondiscrimination Statutes
 - 2.2.3 ADAAG ADA Handbook Appendix B

3.0 Terms and Definitions

The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

“ADA” means the Americans with Disabilities Act of 1990.

“ADAAG” means the Americans with Disabilities Act Accessibility Guidelines.

“CFR” means the Code of Federal Regulations.

“DelDOT” means the Delaware Department of Transportation.

“Discrimination” means any act or inaction, whether intentional or unintentional in any program or activity of a Federal-aid recipient, sub-recipient, or contractor, which results in disparate (unfavorable) treatment, disparate impact, or perpetuating the effects of prior discrimination based on race, color, sex, national origin, age, disability or in the case of disability, failing to make a reasonable accommodation. An action (or inaction) whether intentional or unintentional, through which a person, based on race, color, sex, age, national origin or disability, has been subjected to unequal treatment or denied benefits under any program or activity receiving financial assistance from the FHWA under Title 23 U.S.C.

“EEOC” means the U.S. Equal Employment Opportunity Commission.

“E.O.” means Executive Order.

“FHWA” means the Federal Highway Administration.

“FTA” means the Federal Transportation Administration.

“HCR” means the Federal Highway Administration Headquarters Office of Civil Rights.

“Investigator” means an individual or entity assigned to conduct an investigation of a complaint. This may be DelDOT personnel or consultant(s) acting on DelDOT's behalf.

“Investigative report (IR)” means a written record which contains various documents and information acquired during the investigation under this procedure, including affidavits of the complainant, the alleged discriminating official, and the witnesses, and copies of, or extracts from, records, policy statements, or regulations of the agency, organized to show their relevance to the complaint or the general environment out of which the complaint arose. This document will be provided to the Federal Highway Administration, as required, and will otherwise be maintained confidentially, except where a lawsuit on the same subject has been filed.

“LOF” means Letter of Finding.

“Probable cause” means evidence and information gathered and reviewed as part of the investigation that support the allegations of the complainant and comprise sufficient support that discrimination, or a violation, and/or non-compliance may have occurred.

“Respondent” means a person, party, business entity or agency whose action or inaction results in the filing of a complaint by an aggrieved party as being discriminatory or non-compliant with applicable statutes, regulations and policies.

“U.S.C.” means the United States Code.

“**USDOJ**” means the U.S. Department of Justice.

“**USDOT**” means the U.S. Department of Transportation.

4.0 Complaint Intake

4.1 Who Can File a Complaint?

Any person or any specific class of persons, by themselves or by a representative, organizations or business entities that believe they have been subjected to discrimination or retaliation prohibited by Title VI of the Civil Rights Act of 1964 (Title VI) and related statutes, Section 504 of the Rehabilitation Act of 1973 (Section 504), or Title II of the Americans with Disabilities Act of 1990 (ADA) may file a complaint.

4.2 What is a Complaint?

4.2.1 A complaint is a written or electronic statement concerning an allegation of discrimination that contains a request for the receiving office to take action. Complaints should be in writing and signed and may be filed by mail, fax, in person, or e-mail. A complaint should contain at least the following information:

4.2.1.1 A written explanation of what allegedly happened or is happening;

4.2.1.2 Information necessary to contact the complainant;

4.2.1.3 The basis of the complaint, e.g., age, sex, race, color, national origin, or disability;

4.2.1.4 The identification of the respondent, e.g., agency/organization alleged to have discriminated;

4.2.1.5 Sufficient information to understand the facts that led the complainant to believe that discrimination occurred; and

4.2.1.6 The date(s) of the alleged discriminatory act(s).

4.2.2 While subsection 4.2.1 indicates a complaint should be in writing and signed, the receiving agency must accept complaints in alternate formats from persons with disabilities, upon request.

4.2.2.1 The complaint may be filed on a computer disk, by audio tape, or in Braille.

4.2.2.2 The complainant may call the agency and provide the allegations by telephone. The agency will transcribe the allegations of the complaint as provided over the telephone and send a written complaint to the complainant for signature and confirmation of the accuracy of the written complaint.

4.2.2.3 Complaints in languages other than English will be translated and responded to in the language in which they were sent in accordance with E.O. 13166, "Improving Access to Services for Persons with Limited English Proficiency." DeIDOT will provide translation services in as many languages as it has available to it.

4.3 Where to Submit Complaints.

4.3.1 Complaints may be submitted to DeIDOT or FHWA.

4.3.1.1 DeIDOT address is:

PO Box 778

Dover, DE 19903

4.3.1.2 DeIDOT Persons Authorized to Receive Complaints:

4.3.1.2.1 DeIDOT Civil Rights Administrator, (302) 760-2555

4.3.1.2.2 DeIDOT ADA Title II/Section 504 Coordinator, (302) 760-2467

4.3.1.2.3 DeIDOT Contract Services Administrator, (302) 760-2031

4.3.1.3 Complaints submitted to FHWA may be sent to:

FHWA, the DelMar Division Office

1201 College Park Road

Suite 102

Dover, DE 19904

(302) 734-5323

4.3.2 Complaints submitted to the Department of Justice may be sent to:

U.S. Department of Justice

Civil Rights Division

Disability Rights Section - 1425 NYAV

950 Pennsylvania Avenue, N.W.

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4.4 Timeframe for Filing Complaints

4.4.1 Complaints must be filed within 180 days of the last date of the alleged discrimination, unless the time for filing is extended for cause.

4.4.2 The filing date of the complaint is the earlier of:

4.4.2.1 the postmark of the complaint; or

4.4.2.2 the date the complaint is received by any office authorized to receive complaints.

4.4.3 An extension may be granted under any of the following circumstances:

4.4.3.1 The complainant could not reasonably be expected to know the act was discriminatory within the 180-day period, and the complaint was filed within 60 days after the complainant became aware of the alleged discrimination;

4.4.3.2 The complainant was unable to file a complaint because of incapacitating illness or other incapacitating circumstances during the 180-day period, and the complaint was filed within 60 days after the period of incapacitation ended;

4.4.3.3 The complainant filed a complaint alleging the same discriminatory conduct within the 180-day period with another Federal, State or local civil rights enforcement agency, and filed a complaint with DeIDOT within 60 days after the other agency had completed its investigation or notified the complainant that it would take no further action;

4.4.3.4 The complainant filed, within the 180-day period, an internal grievance alleging the same discriminatory conduct that is the subject of DeIDOT complaint, and the complaint is filed no later than 60 days after the internal grievance is concluded;

4.4.3.5 Unique circumstances generated by DeIDOT action have adversely affected the complainant;

4.4.3.6 The discriminatory act is of a continuing nature; or

4.4.3.7 Some complaints may be referred to DeIDOT by other agencies. In the event the referring agency has the complaint in its possession for an inordinately long period of time and the complainant filed his or her complaint with that agency within the 180-day timeframe, DeIDOT will automatically grant an informal extension. In these cases, the complainant will not receive notification of the extension of the filing deadline.

4.5 DeIDOT Responsibilities

4.5.1 Complaints filed under Title VI in which DeIDOT is named as the respondent will be forwarded to FHWA for investigation.

4.5.2 Title VI complaints filed against sub-recipients will be processed by DeIDOT in accordance with these complaint procedures. However, only HCR has the authority to make all final decisions including dismissing complaints and issuing LOFs.

4.5.3 Complaints filed under the ADA Title II/Section 504 will be investigated by DeIDOT in accordance with these complaint procedures.

4.5.4 DeIDOT may use contract investigators to conduct investigations if necessary to prevent or eliminate a backlog of complaints. All complaints will be investigated in accordance with approved complaint processing procedures.

5.0 Processing Complaints

5.1 Recording Complaints

Upon initial receipt, the complaint will be date stamped and logged in by the receiving office.

5.2 Items Not Considered a Complaint

5.2.1 The following are examples of items that are not considered a complaint, unless the item contains a signed cover letter specifically asking that the agency take action concerning the allegations:

5.2.1.1 An anonymous complaint;

5.2.1.2 Inquiries seeking advice or information;

5.2.1.3 Courtesy copies of court pleadings;

5.2.1.4 Courtesy copies of complaints addressed to other local, State, or Federal agencies;

5.2.1.5 Newspaper articles; and

5.2.1.6 Courtesy copies of internal grievances.

5.3 Reviewing Complaints

- 5.3.1 The complaint will be reviewed within 10 calendars days of receipt to determine whether it contains all the necessary information required for acceptance.
- 5.3.2 If the complaint is unclear or incomplete, the complainant will be contacted in writing or by telephone to obtain additional information. The complainant will have 15 calendars days to respond to the request for additional information.
- 5.3.3 Once the complaint is complete and no additional information is needed, the Complainant Consent/Release form and the Notice About Investigatory Uses of Personal Information form will be sent to the complainant for signature.

5.4 Complaint Jurisdiction

- 5.4.1 If it becomes clear that DeIDOT lacks jurisdiction over a complaint, the complaint will be referred to the appropriate authorized agency.
- 5.4.2 A referral letter will be sent to the agency along with the complaint and any other documents collected.
- 5.4.3 A letter will also be sent to the complainant stating that the complaint has been referred to another agency and that DeIDOT has closed the complaint.

5.5 Notification of Acceptance of Complaints

After determining the complaint will be accepted for investigation, a notification letter will be sent to the complainant and the respondent.

5.6 When the Complainant is Represented by an Attorney

Complainants represented by an attorney must provide a letter authorizing representation. The authorized attorney will be copied on all correspondence with the complainant.

5.7 Timeframes for Investigations

Title VI and ADA Title II/Section 504 complaint investigations will be completed within 90 days of receipt of the complete complaint unless circumstances exist justifying additional investigative time.

5.8 Withdrawal of Complaint

Complainants may withdraw their complaint at any time. This action closes the case without prejudice.

5.9 Dismissals

- 5.9.1 The HCR has the sole authority for dismissing Title VI complaints.
- 5.9.2 DeIDOT ADA Title II/Section 504 Coordinator has the authority to dismiss ADA Title II/Section 504 complaints.
- 5.9.3 A complaint may be dismissed for any of the following reasons:
 - 5.9.3.1 The complaint is not filed in a timely manner;
 - 5.9.3.2 The complainant fails to respond to repeated requests for additional information needed to process the complaint;
 - 5.9.3.3 The complainant cannot be located after reasonable attempts;
 - 5.9.3.4 There is no statutory or alleged basis for the complaint, or the complainant does not allege any harm with regard to current programs or statutes;
 - 5.9.3.5 The complaint has been investigated by another agency and the resolution of the complaint meets USDOT/FHWA regulatory standards; e.g., all allegations were investigated, appropriate legal standards were applied, and any remedies secured meet USDOT's standards;
 - 5.9.3.6 Credible information found at any time indicating that the allegations raised by the complainant have been resolved, or are moot and there are no class-wide allegations or implications;
 - 5.9.3.7 The same complaint allegations have been filed with another Federal, State, or local agency possessing statutory authority to accept and process such complaints;
 - 5.9.3.8 The complainant has filed a legal action in Federal District Court with the same basis(es) and issue(s) involved in the complaint.

5.10 Resolution of Complaint

- 5.10.1 It is in the best interest of all parties involved that issues raised in a complaint of discrimination be resolved informally. Every effort will be made to pursue resolution of the complaint, even while the investigation is underway.
- 5.10.2 Based on the investigation and the analysis of information and evidence gathered, specific recommendations or a formal corrective action plan may be generated.

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- 5.10.3 Complainants will be advised of their right to file their grievances with other governmental agencies possessing the statutory authority to accept and process such complaints; (such as the Delaware Human Relations Commission, Delaware Department of Labor) or, appropriate Federal agencies, including but not limited to FHWA, FTA, USDOT or the EEOC.
- 5.11 Letters of Finding (LOFs)
- 5.11.1 For Title VI Complaints:
- 5.11.1.1 The HCR has sole authority for issuing LOFs for all complaints processed by DeIDOT.
- 5.11.1.2 A Title VI finding of violation, no violation, or dismissal is a Federal decision that cannot be delegated. DeIDOT can conduct a Title VI investigation of its sub-recipients or contractors and make a recommended finding to the Federal decision-making authority; the HCR has sole authority for all final decisions, dismissals, and LOFs.
- 5.11.2 For Title II/Section 504 Complaints:
- 5.11.2.1 DeIDOT ADA Title II/Section 504 Coordinator will attempt to mediate/resolve all ADA Title II/Section 504 complaints.
- 5.11.2.2 When the ADA Title II/Section 504 Coordinator is unable to mediate a resolution of the complaint, the ADA Title II/Section 504 Coordinator will arrange a meeting with the complainant and **their** authorized representative(s), if applicable. If the complaint involves additional agencies/entities, the ADA Title II/Section 504 Coordinator will attempt to coordinate the meeting to include participation of an official representative from all parties involved.
- 5.11.2.3 DeIDOT must answer the complaint in writing within 15 working days of the meeting unless circumstances arise that require reasonable extensions.

6.0 Appeals

- 6.1 For Title VI Complaints: LOFs issued by the HCR are administratively final.
- 6.2 For Title II/Section 504 Complaints: If the complainant wishes to appeal the ADA Title II/Section 504 Coordinator's determination, the complaint can be submitted to the US Department of Justice, Disability Rights Section, ADA Mediation Program. The ADA Mediation Program will follow its established complaint resolution and appeal processes as are appropriate for each specific complaint.

11 DE Reg. 1067 (02/01/08)

17 DE Reg. 1101 (05/01/14)