

ORDER

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External Civil Rights Complaint Processing Manual

U.S. Department of Transportation
Departmental Office of Civil Rights
External Civil Rights Programs Division

*This manual is for internal agency use.

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Preface

This manual is designed to provide guidance on processing discrimination complaints against U.S. Department of Transportation (DOT) Federal financial assistance recipients. It has been prepared by the Departmental Office of Civil Rights (DOCR), with significant input from representatives of DOT's Operating Administrations' (OA) civil rights offices who participated in a working group during the development of the manual.

The procedures outlined in this document will be reviewed and updated periodically. OAs are asked to notify DOCR when their investigative practices change and no longer match the procedures in this manual and to forward any new internal policy or guidance documents that relate to complaint processing. This information and any suggestions for edits to the manual should be directed to:

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Chapter 1: Introduction

1–1: Purpose and Applicability

The Director of the Departmental Office of Civil Rights (DOCR) provides leadership, policy guidance, and technical assistance to the Operating Administrations (OAs) for implementing DOT’s civil rights responsibilities. Each OA has an Office of Civil Rights, or individuals assigned these responsibilities, to ensure civil rights compliance for their respective organization and programs. The Department’s civil rights activities fall into two broad categories: *Internal* civil rights programs—affecting DOT employees and applicants for employment, and *External* civil rights programs—relating to the beneficiaries and potential beneficiaries of the various transportation programs receiving Federal financial assistance through DOT.

This External Civil Rights Complaint Processing Manual provides guidance to DOT’s Offices of Civil Rights for investigating and resolving complaints against Federal financial assistance recipients allegedly engaged in discriminatory practices.¹ The manual is not intended to offer an exhaustive explanation of external complaint processing and resolution procedures. For additional guidance, see the Department of Justice’s (DOJ) *Investigation Procedures Manual for the Investigation and Resolution of Complaints Alleging Violations of Title VI and Other Nondiscrimination Statutes* (September 1998), the document on which much of this manual is based. When guidance in DOJ’s manual differs from guidance in this manual, this manual should be followed.

In discussing investigative procedures, this manual often references obligations under Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin in any program or activity receiving Federal financial assistance. However, its general investigative guidance should be applied to investigate complaints of discrimination under other statutes as well, including Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act.

Because OAs operate and fund different types of programs, certain complaint procedures within the offices will vary. Some OAs may supplement this manual with their own internal guidance tailored to their caseload. However, any complaint processing procedures an OA adopts should be no less

¹ Unless otherwise noted, references in the manual to “staff,” “office,” “DOT,” “investigating office,” etc., generally refer to the OA Office of Civil Rights responsible for processing external complaints.

comprehensive than the guidelines outlined in this manual. Despite sometimes differing approaches, all offices share the same goal: to ensure that all civil rights laws, regulations, and executive orders for which the Department is responsible are implemented and enforced consistently, correctly, and expeditiously.

1–2: Authorities

General Nondiscrimination Statutes, Regulations, and Guidelines

- Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*
- 49 CFR Part 21 (DOT’s Implementation of Title VI of the Civil Rights Act of 1964, as amended)
- 28 CFR Part 42, Subpart C (DOJ’s Regulations Implementing Title VI of the Civil Rights Act of 1964)
- 28 CFR § 50.3 (DOJ’s Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964)
- 23 CFR Part 200 (FHWA Title VI Program Implementation and Review Procedures)
- 49 CFR Part 265 (Nondiscrimination in Federally Assisted Railroad Programs)
- 49 CFR Part 25 (DOT’s Implementation of Title IX of the Education Amendments Act of 1972)²
- Executive Order 13160, Nondiscrimination on the Basis of Race, Sex, Color, National Origin, Disability, Religion, Age, Sexual Orientation, and Status as a Parent in Federally Conducted Education and Training Programs
- Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101
- Civil Rights Restoration Act of 1987, Pub. L. No. 100-209
- 40 U.S.C. § 476 (Prohibiting sex discrimination in any program or activity carried on or receiving Federal Assistance under Title 40 United States Code (Public Buildings, Property, and Works))
- 49 U.S.C. §§ 47113, 47107, and 47123 (Formerly § 505(f), 511(a)(17), and 520 of the Airport and Airway Improvement Act of 1982, as amended)

² Under 49 CFR § 25.210, Title IX regulations do not apply to institutions whose primary purpose is to train individuals for service in the merchant marine industry.

- Federal-Aid Highway Act, as amended, 23 U.S.C. §§ 140 and 324
- 49 U.S.C. § 306 (Duties of the Secretary of Transportation to prohibit discrimination)
- DOT Order 1000.12, “Implementation of the Department of Transportation Title VI Program,” 1977
- 49 U.S.C. §§ 5310, 5332 (Formerly §§ 16 and 19 of the Federal Transit Act, as amended)
- Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. No 109-59 (2005)
- Transportation Equity Act for the 21st Century (TEA-21), Pub. L. No. 105-178 (1998)
- Intermodal Surface Transportation Efficiency Act of 1991, Pub. L. No. 102-240, 105 Stat. 1919, § 1003
- Highway Safety Act of 1966, as amended, 23 U.S.C. § 402(b)(1)(D)
- Executive Order 12250, Leadership and Coordination of Nondiscrimination Laws
- 49 CFR Part 1, §1.70 (Delegations to the Director of the Departmental Office of Civil Rights)
- 28 CFR § 42.401, Subpart F (Coordination of Enforcement of Non-discrimination in Federally Assisted Programs)
- 28 CFR § 42.601 (Procedures for Complaints of Employment Discrimination Filed Against Recipients of Federal Financial Assistance—DOJ)
- 29 CFR Part 1691 (Procedures for Complaints of Employment Discrimination Filed Against Recipients of Federal Financial Assistance—EEOC)

Environmental Justice

- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
- DOT Order 5610.2, “Department of Transportation (DOT) Order to Address Environmental Justice in Minority Populations and Low-Income Populations”
- FHWA Order 6640.23, “FHWA Actions to Address Environmental Justice in Minority Populations and Low-Income Populations”
- Joint Memorandum by FHWA and FTA, “Implementing Title VI Requirements in Metropolitan and Statewide Planning” (1999)

- 23 CFR Part 771 (Environmental Impact and Related Procedures)
- Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks

Disability Rights

- Americans with Disabilities Act of 1990, Pub. L. No. 101-336, § 2, 104 Stat. 328 (1991)
- Rehabilitation Act of 1973, as amended, 29 U.S.C. §§ 794 and 794a
- 49 CFR Part 27 (Implementing Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. §§ 794 and 794a)
- 49 CFR Part 28 (Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Transportation)
- 49 CFR Part 37 (Transportation Services for Individuals with Disabilities, implementing the transportation and related provisions of Title II and III of the ADA)
- 49 CFR Part 38 (ADA Accessibility Standards for Transportation Vehicles)
- 36 CFR Part 1191, Americans with Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities; Architectural Barriers Act (ABA) Accessibility Guidelines
- 14 CFR Part 382 (Nondiscrimination on the Basis of Disability in Air Travel, implementing the Air Carrier Access Act of 1986, as amended)
- FAA Advisory Circular 150/5360-14 (Access to Airports by Individuals with Disabilities), June 30, 1999
- FAA Order 1400.9 (ADA and Rehabilitation Act Operating Procedures), November 18, 1999
- 14 CFR § 271.9 (Nondiscrimination portion of the guidelines for subsidizing air carriers providing essential air service transportation)
- 23 CFR Part 1235 (FHWA/NHTSA joint regulation governing Uniform System for Parking for Persons with Disabilities)
- 49 CFR Part 609 (FTA/Transportation for Elderly and Handicapped Persons)
- 49 CFR § 374.101 *et seq.* (Discrimination in Operations of Interstate Motor Common Carriers of Passengers)

- 28 CFR Part 41 (Implementing Executive Order 12250, Nondiscrimination on the Basis of Handicap in Federally Assisted Programs, provides guidelines for determining discriminatory practices)
- 28 CFR Part 37 (Procedures for Coordinating the Investigation of Complaints or Charges of Employment Discrimination Based on Disability Subject to the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973—DOJ)
- 29 CFR Part 1640 (Procedures for Coordinating the Investigation of Complaints or Charges of Employment Discrimination Based on Disability Subject to the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973—EEOC)

Disadvantaged Business Enterprises

- 49 CFR Part 23 (Participation by Disadvantaged Business Enterprises in Airport Concessions)
- 49 CFR Part 26 (Participation by Disadvantaged Business Enterprises in DOT Financial Assistance Programs)
- 23 CFR § 420.121 (Requirements Applicable to the Administration of FHWA Planning and Research Funds)

American Indians, Alaska Natives, and Tribes

- DOT Order 5301.1 (Lists statutes, executive orders, and memoranda as well as DOT orders on the concerns of American Indians, Alaska Natives, and tribes)

Limited English Proficiency

- DOT Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, Federal Register, vol. 70, no. 239, December 14, 2005
- DOJ Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, Federal Register, vol. 67, no. 117, June 18, 2002
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency

Alternative Dispute Resolution

- DOT Statement of Policy on Alternative Dispute Resolution, Federal Register, vol. 67, no. 113, June 12, 2002
- Administrative Dispute Resolution Act of 1996, 5 U.S.C. §§ 571–583

- Executive Order 12988, Civil Justice Reform

Other

- DOT Regulations Implementing the Privacy Act (49 CFR Part 10)
- DOT Regulations Implementing the Freedom of Information Act (49 CFR Part 7)

1–3: Definitions

- (a) **Applicant** means a person who submits an application, request, or plan required to be approved by the Secretary, or by a primary recipient, as a condition to eligibility for Federal financial assistance, and “application” means such an application, request, or plan.
- (b) **Complainant** is a party that makes a complaint that he or she or any specific class of persons has been subjected to discrimination or retaliation prohibited by any civil rights authority.
- (c) **Discrimination** involves any act or inaction, whether intentional or unintentional, in any program or activity of a Federal aid recipient, subrecipient, or contractor that results in disparate treatment, disparate impact, or perpetuating the effects of prior discrimination based on such characteristics as race, color, sex, national origin, disability or in the case of disability, failing to make a reasonable accommodation.
- (d) **Facility** includes all or any part of structures, equipment, or other real or personal property or interests therein, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration, or acquisition of facilities.
- (e) **Federal financial assistance** includes (1) grants and loans of Federal funds; (2) the grant or donation of Federal property and interests in property; (3) the detail of Federal personnel; (4) the sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient; and (5) any Federal agreement, arrangement, or other contract that has as one of its purposes the provision of assistance.
- (f) **Flex funding** refers to the program funds originally designated to one OA that may be transferred to and obligated by another OA.
- (g) **Investigator** refers to DOT or contract personnel responsible for conducting complaint investigations. Investigation of complaints may be part of one’s primary job duties, or a duty assigned only occasionally.

- (h) **Operating Administrations (OAs)** refer to the Federal Aviation Administration (FAA), the Federal Highway Administration (FHWA), the Federal Motor Carrier Safety Administration (FMCSA), the Federal Railroad Administration (FRA), the Federal Transit Administration (FTA), the Maritime Administration (MARAD), the National Highway Traffic Safety Administration (NHTSA), the Pipeline and Hazardous Materials Safety Administration (PHMSA), the Research and Innovative Technology Administration (RITA), and the St. Lawrence Seaway Development Corporation (SLSDC).
- (i) **Primary recipient** means any recipient that is authorized or required to extend Federal financial assistance to another recipient for the purpose of carrying out a program.
- (j) **Programs or activities** mean all the operations of any entity receiving DOT financial assistance, as described in 49 CFR § 21.23(e). The Civil Rights Restoration Act of 1987 clarifies the definition of “programs and activities” covered by the nondiscrimination provisions of Title VI and other civil rights statutes (Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, as amended, and the Age Discrimination Act of 1975). Under the act, discrimination is prohibited throughout an entire agency or institution, if any part of that agency or institution receives Federal financial assistance. Title VI applies to discrimination throughout an agency, not just to actions involving the federally assisted program. Therefore, if an agency receives any Federal financial assistance for any program or activity the entire agency is required to comply with Title VI, not just that particular program or activity.
- (k) **Recipient** may mean any state, territory, possession, the District of Columbia, or Puerto Rico, or any political subdivision thereof, or instrumentality thereof, any public or private agency, institution, or organization, or other entity, or any individual, in any state, territory, possession, the District of Columbia, or Puerto Rico, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assignee, or transferee thereof, but such term does not include any ultimate beneficiary under any such program.
- (l) **Secretary** means the Secretary of Transportation or any person to whom he or she has delegated authority in the matter concerned.

1–4: Abbreviations

ADA	Americans with Disabilities Act of 1990
ADR	Alternative Dispute Resolution

DBE	Disadvantaged Business Enterprise
DOCR	Departmental Office of Civil Rights
DOJ	U.S. Department of Justice
DOT	U.S. Department of Transportation
EEOC	U.S. Equal Employment Opportunity Commission
FOIA	Freedom of Information Act
IP	Investigative Plan
IR	Investigative Report
LEP	Limited English Proficiency
OA	Operating Administration
S-33	External Civil Rights Programs Division, DOCR
STA	State Transportation Agency
XTRAK	External Complaints Tracking System

Chapter 2: Evaluating a Complaint

2–1: Determining What Constitutes a Complaint

Any individual, or his or her representative, who believes that he or she or any specific class of persons has been subjected to discrimination or retaliation prohibited by any civil rights authority listed in Section 1–2, based on such characteristics as race, color, sex, age, national origin, religion, or disability may file a complaint with DOT. 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 may be filed by mail or fax, in person, or online. (Section 2–2 below addresses unique situations wherein complaints can be accepted in alternative formats.) Some correspondence DOT receives alleging a violation may not constitute a complaint. Immediately upon receipt, the receiving office should determine whether the correspondence is a complaint.

The following are examples of items that should not be considered a complaint:

- (a) Anonymous correspondence;
- (b) Inquiries seeking advice or information;
- (c) Courtesy copies of correspondence or complaints filed with other agencies; and
- (d) Oral allegations (exceptions should be made for people with disabilities on request).

Correspondence that is not a complaint but nevertheless potentially involves a civil rights issue may be recorded in DOT’s External Complaints Tracking System (XTRAK) as an inquiry. This feature is especially useful when staff believes an issue might eventually rise to a complaint, as the inquiry can be easily converted to an open complaint if more information is received.

Callers wishing to file a complaint should be sent a discrimination complaint form. The Complainant Consent/Release Form (see form, Tab 2) and the Notice About Investigatory Uses of Personal Information (see notice, Tab 3) should accompany the complaint form. However, staff should always advise the complainant that he or she is *not required* to use the complaint form to submit the complaint, but rather may choose to provide the information it asks for in some other format.

The guidelines in this section do not preclude an office from attempting to informally resolve issues and complaints that are not written.

2–2: Accepting Complaints in Alternative Formats or Languages

Although information above indicates that complaints must be in writing, DOT must accept complaints in alternative formats from people with disabilities. For example, the complaint may be filed by audiotape or in Braille. If a complainant is unable to write, staff may need to transcribe the allegations.

DOT must also ensure that people with limited English proficiency (LEP) can meaningfully access the agency’s programs and activities, including its complaint processes, as set forth in Executive Order 13166, “Improving Access to Services for Persons with Limited English Proficiency.” Complaints in languages other than English should be translated and responded to in the language in which they were sent, whenever possible. Staff should consult DOT’s “Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons” for direction on how to appropriately serve LEP individuals.

For both LEP complainants and those with disabilities, staff must provide the Complainant Consent/Release Form and other vital documents in alternative formats (e.g., in Spanish or an electronic text file). Steps also must be taken to ensure the complainant understands the legal implications of signing any document. Some people with disabilities will be unable to sign forms, and in those cases, staff should use other means to ensure they understand their rights, such as through an oral confirmation or via e-mail. For LEP complainants, the Department of Justice has posted Spanish versions of the Complainant Consent/Release Form and a discrimination complaint form on the Internet at www.lep.gov.

It is important to recognize that the need to modify practices to serve LEP complainants and those with disabilities may extend beyond the complaint intake stage. Throughout the complaint resolution process, staff should ensure these individuals understand their rights and responsibilities, as well as the status of their complaint.

2–3: Recording and Tracking the Complaint

A complaint (or potential complaint) should be date stamped by the receiving office immediately upon receipt. This step is important because the date DOT receives the complaint may affect a complainant’s ability to seek redress, even if the complaint is ultimately referred to another agency. Once correspondence has been deemed a complaint, the office should enter the

appropriate information into XTRAK and create an investigative case file to hold all documents and information pertaining to the complaint.

If DOCR's External Civil Rights Programs Division (S-33) receives a complaint, it will determine which OA is responsible for the complaint, enter the appropriate information into XTRAK, send a letter of acknowledgment to the complainant indicating the OA to which the complaint is being sent, and forward all complaint materials to the respective Civil Rights Director or other appropriate official. If it is clear that DOT lacks jurisdiction over an allegation, S-33 will attempt to refer the complaint to the appropriate agency and inform the complainant of the referral.

For multiple complaints, the following guidelines should be applied to determine how many case numbers should be assigned through XTRAK:

- (a) Each named recipient in the complaint should be assigned a separate case number;
- (b) Complaints filed by more than one person that raise substantially identical allegations against the same recipient may be treated as one complaint and assigned one case number;
- (c) Complaints filed by more than one person against the same recipient should be assigned separate case numbers if they contain different allegations;
- (d) New allegations filed by the same complainant against the same recipient after the investigative process has begun should be reviewed on a case-by-case basis to determine whether the allegations should be added to the existing complaint or treated as a new complaint; and
- (e) Complaints filed by such entities as advocacy groups, the Protection & Advocacy Network, and Independent Living Centers, where there are multiple complainants but one entity handling all complaints should receive one case number.

OAs should contact S-33 with any questions on XTRAK.

2-4: Acknowledging the Complaint

A letter should be sent to the complainant within 10 business days of receiving the complaint acknowledging that the correspondence has been received. The acknowledgment letter should state that the complaint will be evaluated to determine whether DOT will investigate the allegations and that further communications about the complaint will occur in the future. Two documents should be referenced in the letter and attached: (1) the Complainant Consent/Release Form (if not already provided by the complainant) with instructions that the signed form must be returned within 30 days; and (2) the Notice About Investigatory Uses of Personal

Information, which outlines the complainant's rights and protections during an investigation (see acknowledgment letter, Tab 4).

If it is immediately clear from the information provided that DOT does not have jurisdiction over the complaint, staff should attempt to refer the complaint to the appropriate agency (see Section 3–2 and agency referral letter, Tab 7). A “dismissal” letter, instead of the standard acknowledgment letter described above, should be sent to the complainant within 10 business days of receiving the complaint informing the complainant that the complaint has been received, that the allegations fall outside DOT's jurisdiction and, where applicable, that the complaint has been referred to another agency (see dismissal letter, Tab 6, and Section 3–2 for more information on referring complaints).

2–5: Determining Whether the Complaint is Complete

Once staff concludes that correspondence is a complaint it should determine whether the complaint is “complete” in order to proceed with complaint processing and resolution. For a complaint to be complete it must include at least the following:

- (a) A written explanation of what happened;
- (b) Information necessary to contact the complainant (if the complaint is filed by e-mail, DOT should request the sender's actual name and address, if not provided);
- (c) Identification of the person or group injured by the alleged discrimination;
- (d) Identification of the person or organization alleged to have discriminated;
- (e) The basis for the alleged discrimination, e.g., race, sex, or disability; and
- (f) Sufficient information to understand the facts that led the complainant to believe discrimination occurred and when the discrimination took place.

Contacting the Complainant for More Information

Staff may contact the complainant by telephone or e-mail to obtain missing information. In instances in which further information is needed in writing, especially when the complainant cannot be reached by telephone, staff may wish to send the individual a complaint form. However, staff should always advise the complainant that he or she is *not required* to use the complaint form to submit the complaint or additional information, but rather may choose to provide the information it asks for in some other format. The cover letter may explain that, without the information requested in the items marked with an asterisk, DOT will be unable to process the complaint.

An information request also may be combined with the standard acknowledgment letter provided it can be sent within 10 business days of DOT receiving the complaint (see combined acknowledgment letter and request for information, Tab 5). Regardless of the method of contact or at what stage in the investigation information is requested, the complainant should be informed that DOT will close the case if the information is not provided within 30 days. DOT may extend the deadline depending on the extent of the information request or other special circumstances. The complainant should be notified in writing of any closure.

If the complaint contains sufficient information for at least one allegation, but lacks sufficient information for other allegations, staff should attempt to obtain the missing information, as described above. Allegations lacking sufficient information that is not supplied within the 30-day timeframe will be closed; DOT will initiate complaint processing and resolution only for those allegations for which sufficient information has been provided.

Staff should work with each complainant to ensure receipt of sufficient information to evaluate the complaint. People with disabilities and limited English proficiency, in particular, may need assistance preparing complaint materials.

Attorney Representation

If the complaint is submitted on behalf of a complainant by an attorney, staff should call the attorney for additional information or to request permission to contact the complainant directly. In addition, if it appears the complainant may be represented by an attorney (especially if the complaint states that the matter raised has been or will be filed in court), staff should ask the complainant whether he or she is represented by an attorney concerning the complaint. If so, staff should contact the attorney for permission before further contacting the complainant directly.

Complainant Consent/Release Form

DOT must receive a signed Complainant Consent/Release Form from the complainant authorizing release of personal information (see form, Tab 2). The form is usually sent along with the letter acknowledging receipt of the complaint. A person filing a complaint on behalf of another person is responsible for securing the written consent from that individual. Where the person is a minor (under 18) or a legally incompetent adult, the consent form must be signed by that person's parent or legal guardian. DOT will inform the complainant that the complaint will be closed if written consent is not received within 30 days of the date of request.

In responding to requests for information, the Department complies with provisions of the Federal Freedom of Information and Privacy Acts (5 U.S.C. §§ 552 and 552a). The Department may make available to the public any information concerning the complaint, the release of which is not prohibited

by Federal law. Nevertheless, the identity of complainants shall be kept confidential at their election. A complainant's refusal to release his identity, however, may hinder the investigation or result in a denial of appropriate administrative due process to other parties. The complainant should be advised that failure to authorize the release may impede the investigation or result in closure of the complaint.

2–6: Determining Whether the Complaint is Timely

Complaints must be filed within 180 days of the last date of the alleged discrimination, unless the time for filing is extended by DOT (49 CFR §§ 21.11 and 27.123). The filing date of the complaint is the earlier of: (1) the post-mark of the complaint or (2) the date the complaint is received by any DOT office.

If a complaint is not filed within the 180-day timeframe, the office should notify the complainant of the right to request a waiver (see waiver letter, Tab 8). The Office Director, or designee, may grant an extension under any of the following circumstances:

- (a) 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;
- (b) 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;
- (c) 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 DOT within 60 days after the other agency had completed its investigation or notified the complainant that it would take no further action;
- (d) The complainant filed, within the 180-day period, an internal grievance alleging the same discriminatory conduct that is the subject of the DOT complaint, and the complaint is filed no later than 60 days after the internal grievance is concluded;
- (e) Unique circumstances generated by DOT action have adversely affected the complainant; or
- (f) The discriminatory act is of a continuing nature.

Some complaints will be referred to DOT by other agencies. In the event the referring agency has possessed the complaint for an inordinately long period of time—and the complainant filed his or her complaint with that agency

within the 180-day timeframe—DOT will automatically grant an informal extension. In these cases, staff does not need to notify the complainant of the extension.

Chapter 3: Determining Jurisdiction and Identifying Issues

3–1: Confirming Jurisdiction

DOT must have jurisdiction over the subject matter of the complaint. For DOT to establish jurisdiction, the complaint must allege, or DOT must be able to infer from the available facts, an allegation of discrimination based on (1) such protected classifications as race, color, national origin, sex, age, or disability; or (2) retaliation as a result of filing or participating in the resolution of a complaint. DOT has jurisdiction in the authorities listed in Section 1–2.

DOT must also have jurisdiction over the entity alleged to have discriminated that receives Federal financial assistance from the Department. In disability-based complaints under Title II of the Americans with Disabilities Act (ADA), DOT has jurisdiction over certain entities whether or not they receive Federal financial assistance (49 CFR §§ 37.11, 37.21). These include any public entity that provides designated public transportation or intercity or commuter rail transportation; any private entity that provides specified public transportation; and any private entity that is not primarily engaged in the business of transporting people but operates a demand responsive or fixed route system. If a complaint is not filed against an entity subject to DOT jurisdiction or does not state a claim under the statutes identified earlier, DOT will not investigate the allegations.

3–2: Referring the Complaint to Another Agency

If it becomes clear that DOT lacks jurisdiction over a complaint, staff should make a good-faith effort to refer the complaint to the appropriate agency. A referral letter should be sent to the agency along with the complaint materials (see agency referral letter, Tab 7). When jurisdiction cannot be determined, staff may call S-33 for guidance or send the complaint to S-33, which will attempt to make an appropriate referral.

A letter should be sent to the complainant stating that the complaint has been referred to another agency and that DOT has closed the complaint (see dismissal letter, Tab 6).

Employment-Related Complaints. Employment discrimination complaints, most of which are filed with the Equal Employment Opportunity Commission (EEOC), can form the basis for a complaint against a DOT funding recipient and can be filed with an OA. Although unlikely, a complainant can

conceivably file a Title VI, Title IX, Section 504, or ADA Title II charge of discrimination involving his or her employment.

The Department of Justice and the EEOC have established procedures for how agencies are to jointly handle employment-related complaints, as well as required correspondence to the complainant (see 28 CFR §§ 42.601–42.613 (DOJ); 29 CFR §§ 1691.1–1691.13 (EEOC); 28 CFR Part 37 (DOJ); and 29 CFR Part 1640 (EEOC)). OAs should follow these procedures and consult DOJ's *Title VI Legal Manual* (January 11, 2001) for clarification.

All age discrimination employment complaints must be referred to the EEOC.

3–3: Processing Multiple Jurisdictional Issues

OAs should contact S-33 when questions of jurisdiction arise. S-33 will coordinate meetings with the Office of the General Counsel, OAs, and other Federal agencies to resolve multiple jurisdictional issues and help determine which OA(s) should act as the lead agency(ies) to process the complaint. When appropriate, S-33 will refer the matter to another OA or Federal agency for processing.

When necessary, such as in flex funding situations where funds, originally designated to one OA may be transferred to and obligated by another OA, S-33 will contact the Office of Budget or the Office of the General Counsel to determine which OAs are authorized to make funds available to a recipient and for what purpose.

3–4: Identifying Issues

Staff should identify the specific practice or service involved in the alleged discrimination, e.g., denial of services or access to a covered program, harassment by the program's employees, or unequal services in a program. Even if discriminatory intent cannot be ascertained, staff should identify the practice, procedure, policy, or service alleged to have a disparate effect on one or more members of a certain protected class.

In identifying the subject matter, staff should look for allegations of one or more of the following on a covered basis or bases; e.g., race, sex, or disability:

- (a) Any difference in the quality, quantity, or manner in which a service or benefit is provided;
- (b) Segregation in any part of a program or separate treatment in any manner;
- (c) Restriction in the enjoyment of any advantages, privileges, or other benefits that are provided by the program;

- (d) Different standards, requirements, or eligibility factors for participation or entry;
- (e) Disparate treatment in any manner related to receipt of services or benefits;
- (f) Restriction of the membership of advisory or planning councils that are an integral part of federally funded programs;
- (g) Failure to provide information or services in languages other than English where a significant number or proportion of potential beneficiaries are of limited English-speaking ability;
- (h) Failure to adequately advise person(s) in the eligible population of the existence of services or benefits;
- (i) Use of criteria or methods of administration that would defeat or substantially impair the accomplishment of program objectives or would more heavily affect members of a protected group;
- (j) Discrimination in any aspect of employment when a primary purpose of the Federal funds is to provide employment, or where the employment discrimination results in discrimination against beneficiaries (for Title VI), or when an agency's program statute prohibits employment discrimination; or
- (k) Failure to comply with specific regulatory requirements.

Examples of the application of nondiscrimination provisions on projects receiving DOT funds are found in Appendix C to 49 CFR Part 21.

3–5: Dismissing Complaints

DOT may decline to proceed further with complaint allegations if one or more of the following conditions exist:

- (a) The complaint is untimely filed;
- (b) The complaint is so weak, insubstantial, or lacking in detail that it is without merit, or so replete with incoherent or unreadable statements that it, as a whole, cannot be considered to be grounded in fact;
- (c) The complainant fails to respond to repeated requests for additional information needed to process the complaint;
- (d) The complainant cannot be located after reasonable attempts;
- (e) There is no statutory or alleged basis for the complaint, DOT lacks jurisdiction in the matter, or the complainant does not allege any harm with regard to current programs or statutes;

- (f) The complaint has been investigated by another agency and the resolution of the complaint meets DOT regulatory standards; i.e., all allegations were investigated, appropriate legal standards were applied, and any remedies secured meet DOT's standards;
- (g) The complaint allegations are foreclosed by previous decisions of the Federal courts, the Secretary, DOT policy determinations, or DOOCR;
- (h) DOOCR or an OA obtains credible information at any time indicating that the allegations raised by the complaint have been resolved, or are moot and there are no classwide allegations or implications. In such a case, DOOCR or an OA will attempt to ascertain the apparent resolution. If DOOCR or an OA determines that there are no current allegations appropriate for further complaint resolution, the complaint will be closed;
- (i) DOOCR or an OA determines that its ability to complete the investigation is substantially impaired by the complainant's or injured party's refusal to provide information necessary for investigation of the complaint. DOOCR or an OA will so inform the complainant or injured party in writing as soon as possible. The letter must also inform the complainant or injured party that if the necessary information is not provided within 30 days of receiving the letter, the case will be closed;
- (j) The complaint is a continuation of a pattern of previously filed complaints involving the same or similar allegations against the same recipient or other recipients that have been found factually or legally insubstantial by DOOCR or an OA;
- (k) The same allegations and issues of the complaint have been addressed in a recently resolved complaint or compliance review;
- (l) The complainant decides to withdraw his or her complaint. If the complaint included class allegations, the office may close out the entire complaint, pursue resolution of the class allegations, or use the information to target future compliance review activity;
- (m) Litigation has been filed raising the same allegations with the same basis(es) and issue(s) involved in the complaint. In such cases, the complaint should not be held in abeyance, but dismissed. A complaint, however, may be re-filed within 60 days following termination of the court proceeding if there has been no decision on the merits or settlement of the complaint allegations. (Dismissal with prejudice by a court of competent jurisdiction is considered a decision on the merits);
- (n) The same complaint allegations have been filed with another Federal, state, or local agency, or through a recipient's internal grievance procedures, including due process proceedings, and DOOCR or an OA anticipates that the recipient will provide the complainant with a comparable resolution process under comparable legal standards; i.e., all allegations were investigated, appropriate legal standards were applied,

and any remedies secured meet DOT's standards. The complainant should be advised that he or she may re-file within 60 days of the completion of the other agency's action. Generally, DOOCR's or an OA's consideration of such a complaint will not be a de novo investigation of the facts and DOOCR or an OA will not conduct a hearing. Instead, DOOCR or an OA will review the evidence to determine whether it constitutes a violation of a statute that DOT enforces;

- (o) DOOCR or an OA refers a complaint over which DOT has jurisdiction to another agency that also has jurisdiction but may be better suited to conduct the investigation;
- (p) The death of the complainant or injured party makes it impossible to investigate the allegations fully, or when the death of the complainant or injured party forecloses the possibility of relief because the complaint involved potential relief solely for the complainant or injured party;
- (q) A complaint, because of its scope, may require extraordinary resources. In such instances, an OA may consider treating such a complaint as a compliance review. Similarly, a compliance review may be the most effective means of addressing multiple individual complaints against the same recipient. If an OA selects this option, it should discuss the decision with the complainant(s), close the complaint, and initiate the review as soon as possible. The OA should provide the complainant(s) with a copy of the resolution documents upon completion of the compliance review; or
- (r) The complainant does not accept a reasonable resolution of the case. Reasonableness is determined by the investigating office.

A dismissal letter should be sent to the complainant whenever a complaint is dismissed for the reasons stated above.

Chapter 4: Investigating a Complaint

This chapter outlines the steps involved in a complete investigation of a discrimination complaint. Where appropriate, the guidelines below also should be followed when conducting a compliance review.

4–1: Roles and Responsibilities

Each OA has an Office of Civil Rights that is responsible for all phases of the complaint process, including acceptance or rejection, investigation, making and issuing compliance findings, and obtaining voluntary compliance. Some OAs have resource or service centers, and division offices that receive complaints. Complaints also may be submitted to an OA’s grantees, subgrantees, and the Departmental Office of Civil Rights. Specific complaint processing procedures unique to the Federal Motor Carrier Safety Administration (FMCSA), and the Federal Highway Administration (FHWA) and its State Transportation Agencies are listed in Tab 17. In the event an OA uses contract investigators, they are to be held to the same standards as if the OA itself were to conduct the investigation.

DOCR provides policy guidance and technical assistance to the OAs and Secretarial officers concerning the implementation and enforcement of all civil rights laws, regulations, and executive orders for which the Department is responsible. DOCR’s External Civil Rights Programs Division (S-33) monitors external civil rights complaints and the OAs’ complaint handling; and tracks and reports on DOT’s external civil rights complaints. S-33 also handles appeals by businesses that have been denied Disadvantaged Business Enterprise (DBE) certification from a state, local, or municipal agency, and third-party challenges to DBE certification. An appeal process was established under 49 CFR Part 26 to help businesses and individuals address their concerns. When necessary, DOCR will consult the Office of the General Counsel for guidance.

In the event a complaint presents a novel issue, or an issue with which the OA investigating office is unfamiliar, the OA office should consult its internal counsel, S-33, and the Department’s Office of the General Counsel. Depending on the issues involved, this consultation may occur before or during an investigation; however, offices should always contact the two departmental offices prior to issuing a final agency decision on such complaints to ensure they are resolved uniformly across the Department. “Novel issues” are those which raise substantive legal or policy questions that are not addressed in departmental or OA regulations or guidelines. In addition, when investigating a case in which there is media interest or

political sensitivity, OAs should inform S-33 as soon as possible. For novel or politically sensitive disability-based complaints, the OA should also consult the Department's Disability Law Coordinating Council.

4–2: Scope of the Investigation

The investigation should be confined to the issues and facts relevant to the allegations in the complaint, unless evidence shows the need to extend the issues. A future compliance review of the recipient may be appropriate when issues identified during the complaint investigation cannot be feasibly covered within the scope of the complaint investigation.

4–3: Notifying the Complainant and Recipient

After deciding to proceed with investigation of the complaint, staff should notify the complainant and the recipient that the complaint has been accepted for investigation (see Tab 9 for letter to complainant and Tab 10 for letter to recipient). The notification letter to the complainant and recipient should contain the following:

- (a) Basis for the complaint;
- (b) Brief statement of the allegations over which DOT has jurisdiction;
- (c) Brief statement of DOT jurisdiction over the recipient to investigate the complaint;
- (d) Indication of when the parties will be contacted;
- (e) Cautionary statement that recipients or other persons shall not intimidate, threaten, coerce, or discriminate against the complainant because he or she has made a complaint, testified, assisted, or participated in any manner in an investigation proceeding or hearing under Title VI or any other laws or regulations related to nondiscrimination;
- (f) Notice of availability of alternative dispute resolution (ADR) and early resolution, if appropriate;
- (g) Request for the recipient to submit a position statement to the OA responding to the allegations, if appropriate; and
- (h) DOT contact information.

4–4: Developing an Investigative Plan

Case planning should begin as early as possible, and the approach should be tailored to the nature and complexity of the issues involved. The investigating office should prepare an Investigative Plan (IP), a working document that defines the issues and serves as a blueprint to complete the investigation. The IP is an internal reference that helps staff keep the investigation on track and remain focused on the issues and likely sources of evidence or corroboration (see format for Investigative Plan, Tab 11). The extensiveness of an IP depends on the complexity of the case, and some investigations will require modifications to the IP as facts are gathered or additional information is provided by the complainant. Generally, the following elements, as appropriate, should be included in an IP:

- (a) DOT’s jurisdiction over the subject matter and parties;
- (b) Description of the issues, including identification of the specific action, policy, or practice responsible for the alleged discrimination;
- (c) Applicable legal theories (e.g., intentional discrimination/disparate treatment or disparate impact/effects);
- (d) Data to be gathered during the investigation; and
- (e) Proposed activity schedule (including anticipated sequence of case activities such as on-site visits and interviews, and timeframes).

The case file should contain documentation that supports the decisions made with respect to each of the above planning elements. Planning documentation should be organized so that it can be readily located in the case file.

As noted above in line (c), the IP should explain the theory or theories of discrimination anticipated to be used in the investigation, which will determine the standards of proof needed to establish a violation. Two primary legal theories are used to establish a case of prohibited discrimination: intentional discrimination/disparate treatment and disparate impact/effects.

Intentional Discrimination

Intentional discrimination may take many forms, but disparate treatment is one of the most common. Simply put, disparate treatment means that similarly situated persons are treated differently (i.e., less favorably) than others because of their race, color, national origin, sex, etc. Another type of intentional discrimination involves the use of policies or practices that explicitly classify individuals on the basis of their membership in a particular group. Such “classifications” may constitute unlawful discrimination if they are based on characteristics such as race, color, or sex.

To prove intentional discrimination, the investigator must show that a challenged action was motivated by an intent to discriminate. This requires a showing that the decisionmaker was not only aware of the complainant's race, color or national origin, but that the recipient acted, at least in part, because of the complainant's race, color, or national origin.

If the record contains sufficient evidence to establish a prima facie case of discrimination, the investigating agency must then determine if the recipient can articulate a legitimate, nondiscriminatory reason for the challenged action. If the recipient can articulate a nondiscriminatory explanation for the alleged discriminatory action, the investigating agency must determine whether the record contains sufficient evidence to establish that the recipient's stated reason was a pretext for discrimination. In other words, the evidence must support a finding that the reason articulated by the recipient was not the true reason for the challenged action, and that the real reason was discrimination based on race, color, or national origin.

Disparate Impact

The second primary theory for proving a Title VI violation is based on Title VI regulations and is known as the discriminatory "effects" or disparate impact theory. In contrast to disparate treatment, the disparate impact/effects theory does not require proof of discriminatory intent. Rather, disparate impact cases involve claims that a recipient is violating Title VI regulations by using a neutral policy or practice that has the effect of disproportionately excluding or adversely affecting members of a protected group, and the recipient's policy or practice lacks a substantial legitimate justification.

In a disparate impact case, the focus of the investigation concerns the consequences of the recipient's practices, rather than the recipient's intent. To establish liability under disparate impact, the investigator must first ascertain whether the recipient used a facially neutral practice that had a disproportionate impact on a group protected by Title VI. If the evidence establishes a prima facie case, the investigating agency must then determine whether the recipient can articulate a substantial legitimate justification for the challenged practice.

To prove a substantial legitimate justification, the recipient must show that the challenged policy was necessary to meeting a goal that was legitimate, important, and integral to the recipient's mission. If the recipient can make such a showing, the inquiry must focus on whether there are any equally effective alternative practices that would result in less adverse impact or whether the justification proffered by the recipient is actually a pretext for discrimination. If a substantial legitimate justification is identified, the third stage of the disparate impact analysis is the complainant's demonstration of a less discriminatory alternative.

For a detailed discussion of Investigative Plans, including how to apply the appropriate legal theories and evidentiary standards, see the Department of Justice's *Investigation Procedures Manual*.

4–5: Collecting Data

The types of data collected during an investigation will vary from case to case depending on the issue in question, the availability of the information, and the investigative strategy. The goal of all data collection efforts, however, should be to answer two main questions:

- ***What happened?*** (Including when, where, and how). A complaint alleges that something did or did not happen. Data must be collected to determine whether the alleged event occurred.
- ***Why did it happen?*** (On what basis? For what reason?) The information gathered should help the investigator determine whether the reasons alleged in the complaint are accurate.

Investigators should adhere to three key principles when collecting data:

- (a) Try to obtain independently written documentation to corroborate oral statements that are critical to proving the case;
- (b) Clearly label evidence identifying the case under investigation and the circumstances under which the evidence was obtained (e.g., where and when an interview was conducted, who provided a given document); and
- (c) Keep in mind that documents cannot always be relied upon to provide verification.

Requesting and Accessing Recipient Information

DOT has legal authority under 49 CFR § 21.9 and § 27.121(c) to seek the cooperation of recipients and contractor personnel, to the fullest extent possible, in providing access to records and other information needed to determine whether the recipient is complying with Title VI, the ADA, and other statutes under the Department’s authority. DOT may also request recipients to provide access to its employees for interviews and to produce documents for examination during normal business hours.

Staff should send a letter to the recipient requesting information relevant to the allegations under investigation. The initial information request can be combined with the formal notification letter, or it can be sent later. The information request letter may be comprehensive and cover all allegations and data needed, a preliminary request for a portion of the information needed, or a request for information the recipient should provide during an on-site visit. Information could include documents regarding prior dealings with the complainant, documents that show how others similarly and differently situated were treated, the recipient’s reasons for the action taken, and statistical data related to the issues involved in the complaint and similar or dissimilar individuals or groups.

All information request letters, however, should contain the following:

- (a) The case number;
- (b) The anticipated investigatory process;
- (c) Citation to the statute and/or regulations under which the investigation is being conducted;
- (d) Reference to DOT's legal authority for access to information;
- (e) A list of the information requested;
- (f) An offer to settle or resolve the complaint, if appropriate; and
- (g) A deadline for responding to the request for information.

Recipients typically must provide information in the form DOT requests. However, Federal regulations and policies may restrict information requests. Offices may not generally require a recipient to record information on a "form" or other standardized data collection instrument without obtaining prior approval for its use by the Office of Management and Budget. Offices may, however, suggest suitable formats to be used at the discretion of the recipient as information collection instruments. Similarly, offices must consider Federal policies concerning paperwork burdens when requesting a recipient to do more than provide staff access to normally maintained information. Requests that a recipient manipulate or compile information to meet a need must be reasonable and take into consideration the burden being placed on the recipient.

Timeframes for Recipient's Response

The recipient should be given 30 days from the date of DOT's request to submit the required information. DOT may modify the timeframe depending on the extent of the data request or other special circumstances.

Confidentiality

The Freedom of Information Act (FOIA), 5 U.S.C. § 552, gives the public a right of access to records of Federal agencies, including the records and files of the Department and its OAs. The FOIA is implemented by departmental regulations (49 CFR §§ 7.1–7.46).

The Privacy Act of 1974 (5 U.S.C. § 552a) regulates the collection, maintenance, use, and dissemination of certain personal information in Federal agency files. It is the policy of DOT to comply with the Privacy Act. Therefore, personal data contained in each system of records is afforded adequate protection against unauthorized access, is as accurate as is feasible, and is limited to that necessary to accomplish the stated use of the system. OA staff and recipients should redact information in accordance with the Privacy Act. DOT's policy and regulations concerning maintenance and availability of records is contained in 49 CFR §§ 10.1–10.85.

Third parties may not gain access to records about individuals within a system of records without the consent of the subject individual except as required by FOIA or pursuant to other statutory exceptions contained in the Privacy Act (5 U.S.C. § 552a(b)).

Any requests for copies of documents or other access to information contained in office files should be referred to the staff responsible for handling FOIA and Privacy Act requests.

Some records DOT requests may identify individuals by name, including those not relevant to the investigation. To protect the confidential nature of certain files, DOT may permit a recipient to conceal names by, for example, replacing names with a code and retaining a key to the code. However, if such a practice impedes timely investigation DOT should inform the recipient that it requires access to unmodified records.

4–6: Interviews

During the investigative process, the complainant, appropriate recipient staff, and any witnesses should be interviewed. The main objectives of an interview are to gather information that will either support or refute the allegations in the complaint, and obtain an understanding of the recipient's operation or policies that the complainant is citing in the complaint. The investigator should ensure that he or she understands the nature of the complaint, as the complainant's concerns may be different from what was originally written in the complaint. Staff may conduct interviews in person or over the telephone, and in some cases, through written inquiry and follow-up by telephone or e-mail as appropriate.

Notice

Before initiating an interview of recipient staff or witnesses, DOT should inform the person of the following:

- (a) The purpose of the interview, including DOT's role, what laws may be relevant to the investigation, and, if appropriate, an explanation of what is under investigation;
- (b) The potential uses of the information to be collected from the witness and the applicable disclosure provisions of the Freedom of Information Act;
- (c) The witness' right to personal representation during the interview by a person of his or her choice;
- (d) If the witness is an employee of a recipient, his or her right to refuse to have anyone else present during the interview and his or her right to refuse to reveal the content of an interview to the recipient, unless required by law;

- (e) The regulatory provisions on prohibition of intimidation or retaliation by a recipient;³ and
- (f) If the witness has a disability, his or her right to reasonable accommodation to participate in the interview.

Preparing for and Conducting Interviews

A list of primary questions should be prepared before the interview that addresses the allegations in the complaint. During the interview, the investigator should generally do the following:

- (a) Introduce him/herself and try to put the individual being interviewed at ease;
- (b) Explain the purpose of the interview and the interviewing process (indicate that a signed statement will be requested and that notes will be taken);
- (c) Listen effectively;
- (d) Remain impartial;
- (e) Distinguish facts from opinions;
- (f) Anticipate and be able to deal with negative reactions;
- (g) Ask open-ended questions that will elicit the witness' perception—who, what, where, when, and how;
- (h) Take precise notes; and
- (i) Obtain a signed summary or position statement from the interviewee addressing the complainant's allegations.

Witness' Right to Representation

The witness' right to representation does not include a general right to have other persons present during the interview. Besides the investigator, the person being interviewed, and any needed interpreters/translators, the only other persons present during any interview should be the witness' designated representative.

If the witness, other than a manager, supervisor, or policymaker of the recipient, identifies the recipient's counsel or a supervisor or manager for the recipient as a personal representative, the witness should be informed that such a person may have a conflict of interest between that person's responsibilities to the recipient and the person's responsibilities as a personal

³ See, e.g., 49 CFR §§ 21.11(e), 26.109(d), and 27.123(e).

representative. The witness also should be informed that if a representative with responsibilities to the recipient appears to interfere with the investigator's ability to interview the witness or obtain requested information, the representative will be asked to leave. The witness should then be asked again if the witness wishes to have a personal representative and whom the witness wishes to have as that representative. If the witness still identifies the same person as the witness and the investigator has no other reason to believe the presence of the identified representative will interfere with gathering information, the investigator should proceed with the interview.

If the person being interviewed is a manager, supervisor, or policymaker of the recipient, he or she is often, in essence, an agent of the recipient. If this employee is represented by an attorney—either provided by the recipient or hired personally—the attorney may be present during the interview of this person.

Investigators should discuss these considerations with the witness before scheduling the interview, if at all possible.

Interviews with Minors or Legally Incompetent Individuals

DOT should obtain written consent of a parent or guardian before interviewing a person under 18 years of age or otherwise legally incompetent, for example, mentally impaired.

If a parent or guardian refuses to provide consent for an interview, and DOT determines that the child's information is critical, DOT may attempt to secure parental or guardian consent by inviting the parent or guardian to be present during the interview. If consent is denied, DOT cannot interview the child or legally incompetent individual.

Records of Interviews

A written record of both telephone and in-person interviews must be created and kept in the case file. An interview may be tape recorded with the written consent of the interviewee, in which case the tape recording becomes part of the record along with the written transcription. Notes and subsequent reports of the interview should contain the following:

- (a) Case number;
- (b) Name and identification of the interviewee, interviewer, and any other person present (include explanation for the presence of any other person);
- (c) Date, time, and location of interview (including whether the interview was conducted by telephone);
- (d) A record of whether the interviewee was informed of the required Privacy Act notifications and signed a summary statement; and

- (e) A summary of the questions and responses (this need not be a verbatim transcript but should accurately reflect the responses of the witness).

4–7: Failure by the Recipient to Provide Access to Information

Recipients and contractor personnel must provide DOT access to all books, records, accounts, electronic media, audiotapes, and other sources of information or facilities necessary to determine compliance. Failure by a recipient's contract personnel to cooperate fully can be grounds for a determination of noncompliance on the part of the recipient. Access to information includes that which an employee can supply orally as well as any written information he or she may have that is not maintained elsewhere by the recipient. DOT cannot compel a recipient's employee to provide information if the employee refuses. The recipient, in appropriate circumstances, should be informed of its employee's unwillingness to cooperate with the investigation, and that it is responsible for providing the information by any other possible method.

A recipient denies DOT access when it:

- (a) Refuses to permit DOT access to written or unwritten information, such as electronic storage media, microfilm, retrieval systems, and photocopies, and the recipient's facilities during the recipient's normal business hours;
- (b) Refuses to permit DOT access to employees during recipient's normal business hours; or
- (c) Fails to provide information by virtue of the refusal of one of its employees to do so or to provide access to information maintained exclusively by an employee in his or her official capacity.

If access is denied, the investigator should do the following:

- (a) If the refusal is stated orally, either in person or over the telephone (or comparable alternative means of communication), the investigator should ascertain the basis for the recipient's refusal, and explain DOT's authority (under 49 CFR § 21.13, 23 CFR § 1.36) or try to provide other information to address the recipient's concerns;
- (b) If the investigator is unable to obtain access to the requested information, the investigator must consult DOT legal staff (when on site, this should be done over the telephone whenever possible before the investigator leaves the recipient's premises). Where appropriate, legal staff should discuss the refusal to provide information directly with the recipient's representative;
- (c) Where attempts to persuade a recipient to provide information have failed, a letter should be prepared setting forth DOT's authority to obtain

access to the information and addressing any particular concerns expressed by the recipient; and

- (d) Whenever the office determines that compliance cannot be achieved, the office should initiate enforcement under 49 CFR § 21.13 or § 27.125.

The investigator should indicate in the final Investigative Report that the recipient refused to provide pertinent information and describe efforts made to obtain the information, including the identity of persons not cooperating in the investigation.

There may be instances wherein another agency, institution, or person, has exclusive possession of information and refuses to furnish this information to the recipient. The recipient must certify that this has occurred in its response or report to DOT and describe what efforts it has made to obtain the information.

4–8: On-site Visits

Determining if an On-Site Visit is Needed

A thorough investigation can often be conducted without an on-site visit to the recipient's facility. If all the following conditions are present, an on-site visit is usually unnecessary:

- (a) Individuals are not the primary source of information needed (i.e., interviews are unnecessary or can be done by telephone);
- (b) All needed information can be specified precisely in the information request letter and can be easily provided by the recipient;
- (c) The recipient can provide written documentation to verify its position in its response to DOT's information request letter; and
- (d) There is good reason to conclude that the complainant is the only person affected by the alleged discrimination.

After analyzing the recipient's response to the initial information request letter, DOT may decide that a visit to the recipient's facility is necessary. An investigator should consider the possibility of conducting a portion of the investigation on site if any of the following apply:

- (a) Personal contact with the complainant and the recipient may yield information and clarification that might not otherwise be discovered by just reviewing written documents or speaking over the telephone;
- (b) A more accurate impression of the physical environment and general atmosphere of the recipient and the surrounding community can be obtained, which may help in making a determination on the complaint;

- (c) More effective communication can be established with representatives of the recipient who can be of assistance in the present or a future complaint investigation; or
- (d) Some documentation can only be examined on site for reasons of convenience, cost, format, or bulk.

Notifying the Complainant and Recipient

When DOT determines that an on-site visit is needed, it should send a notification letter to both the complainant and the recipient advising them of the planned visit.

An on-site notification letter to the *complainant* should include at least the following:

- (a) DOT's intention to investigate his or her allegations, if not already acknowledged;
- (b) Anticipated date of the on-site visit;
- (c) Time and place for interviewing the complainant;
- (d) Request for the complainant to provide any additional information and documentation he or she considers relevant to the investigation, possibly including a list of witnesses; and
- (e) A timeframe to provide the additional information and list of witnesses.

At this point of the review process, the recipient is already aware of the existence of the complaint, DOT's jurisdiction, the basis of the complaint, and DOT's legal authority to investigate the complainant's concerns. However, the letter notifying the *recipient* of the scheduled on-site visit should:

- (a) Restate the allegations made by the complainant, their basis, and the legal authority under which the complaint is being investigated;
- (b) State the section of the appropriate regulation that prohibits the discrimination;
- (c) Provide the general time schedule under which DOT will conduct its investigation;
- (d) Request additional information or data needed before the on-site visit, including a deadline for submission;
- (e) Identify additional data that must be available during the on-site visit;
- (f) Request that the recipient's staff to be interviewed and those responsible for the release of additional records be asked to be available as appropriate during the on-site visit;

- (g) Request an opening meeting with the designated responsible official to be held upon the investigator's arrival on site. Also, if appropriate, request an orientation meeting with selected staff (state the date and time—usually the first or second day of the on-site);
- (h) Identify the recipient's staff to be interviewed, if this can be determined in advance. Also request that the recipient set up the interview schedule at convenient times and private locations during the on-site visit; and
- (i) Suggest that the recipient designate a liaison person, if it has not already done so.

Immediately upon arrival on site, and after meeting with the complainant, the investigator should hold an opening conference with the head of the agency or organization or his or her designee to ensure that adequate preparation for the investigation has taken place and satisfactory arrangements have been made to allow the investigator to interview the recipient's management and other employees and to conduct a review of the recipient's records and other information.

Analyzing Evidence After the On-site Visit

Properly collected and analyzed evidence is essential to determining compliance. Upon completion of the on-site visit, but before returning to DOT, the investigator should review the information and cross-check it with the Investigative Plan to ensure that all needed information has been collected. Missing information should be gathered in an exit conference, which provides an opportunity for the investigator to clarify any questions that may have arisen and request any additional information. Once the information packet is deemed complete, the investigator should take the following steps in analyzing data and information:

- (a) ***Read and Interpret.*** Be sure to have a clear and thorough understanding of what the information collected says. Investigators should review what happened to the complainant; compare the complainant's treatment with the appropriate policies and procedures; compare the complainant's treatment with others in the same situation; review the recipient's reason for the treatment afforded the complainant; and compare the recipient's treatment of the complainant with the treatment afforded others. Seek clarification where needed to understand the written language, i.e., obtain definitions for abbreviations; identify words and phrases that are key to interpreting the message; where words used within a given context do not take on an obvious meaning, ask interpretive questions; do not make assumptions. Never read meanings into the evidence. Accept the evidence at face value.
- (b) ***Determine Relevance.*** Read with a purpose. Know what information or answers should be sought and recognize their presence or absence. Where the evidence (1) does not provide the answers needed, (2) does not provide any direction to a source for the answers needed, or (3) does not

raise additional questions (issue-related), the evidence, at least for the moment, is not relevant. (However, the fact that evidence is not relevant at this time does not mean that it could not become relevant at a later stage of the investigation.) Categorize the evidence by issue and/or allegation.

- (c) **Verify the Evidence.** Develop a system for cross-checking. Identify and try to resolve conflicting information.
- (d) **Assemble the Evidence.** Put the evidence together so that it illustrates a logical continuity of dependent, or related independent, occurrences leading to a conclusion.
- (e) **Draw Conclusions.** Allow the evidence to speak for itself. Test conclusions. Try to consider all possible rebuttal arguments by the recipient and the complainant.

Both the recipient and the complainant must be given an opportunity to confirm or rebut the assertions of the other party.

The analysis of numerical evidence can range from easily calculated averages (or means) to very complex techniques that can be performed efficiently by computers. A statistician may need to be consulted for advanced quantitative analyses.

4–9: Preparing an Investigative Report

An Investigative Report (IR), also called an Investigative Summary, prepared after a full investigation is completed, (a) presents all facts pertinent to the case in an organized, logical fashion; (b) analyzes those facts in light of the complainant’s allegations and pertinent departmental regulations; (c) evaluates the validity of the allegations based on that analysis and the compliance status of the recipient; and (d) recommends corrective or remedial action, as appropriate.

An IR may be unnecessary in cases that are straightforward, raise only limited issues, do not involve significant rebuttal by either party, and result in compliance or findings of no violation. In such cases, a letter explaining the findings to the complainant may substitute for the IR. However, an IR should always be prepared if (a) complex or class issues are involved that require extensive analysis of evidence, or (b) a Violation Letter of Findings has been prepared that does not stand on its own as support for the findings.

An IR should contain the following major sections:

- (a) Introduction (optional);
- (b) Applicable laws/regulations;

- (c) Basis (e.g., race, sex, or disability);
- (d) Allegations;
- (e) Methodology;
- (f) Findings and analysis for each allegation; and
- (g) Decision and recommended corrective/remedial action.

References should be used throughout the IR to direct the reader to the appropriate supporting documentation in the investigative case file (see IR format, Tab 12). For large case files, it is suggested that the IR include an index of documents and a key referencing by tab the evidence in the file relied upon in making any determination.

4–10: Timeframe for Investigating Complaints

DOT’s Title VI regulations at 49 CFR § 21.11 and Section 504 regulations at 49 CFR § 27.123(c) require the Department to make “a prompt investigation” whenever information suggests a possible failure to comply with the regulations. All complaints, unless extenuating circumstances are present, should be resolved within 180 days from an investigating office’s receipt of the complaint.

Chapter 5: Resolving a Complaint Before or After an Investigation

DOT's ultimate responsibility is to ensure nondiscrimination in the programs to which it provides financial assistance. The opportunity to resolve a complaint informally should be encouraged throughout the complaint process. As early as the initial discussions with the complainant and the recipient, the investigator should request information on acceptable relief and settlement options. Under Title VI and other nondiscrimination laws, an agency must determine that voluntary compliance cannot be achieved before taking formal enforcement action.

To close a complaint investigation there are three primary types of letters (described below) that can be sent to the recipient and complainant: No Violation Letter of Findings, Letter of Resolution, and, when there is sufficient evidence to support a finding of noncompliance and negotiations with the recipient have failed, a Violation Letter of Findings. In lieu of a Letter of Findings, an OA may decide to transmit a copy of the Investigative Report, together with a cover letter (see cover letter for Investigative Report, Tab 13). In this case the letter need not repeat information in the Investigative Report, but the package should include all the information outlined below.

5-1: Alternative Dispute Resolution

The DOT Policy Statement on Alternative Dispute Resolution (ADR) expresses the Department's commitment to advancing national transportation goals through ADR. As the statement notes, decision-making on incorporating ADR into dispute resolution processes and allocating resources rests with the individual OA.

There are several approaches to resolving a complaint that fall under the broad category of ADR. ADR is a collaborative, consensual dispute resolution approach that describes a variety of problem-solving processes that are used in lieu of litigation or other adversarial proceedings to resolve disagreements. It can consist of staff informally resolving the matter without completing a full investigation to using a neutral third party or mediator. Often staff will use an informal process whereby the recipient is contacted by telephone, notified of the allegations, and (if appropriate) is provided technical assistance in resolving the complaint.

Some OAs, including FHWA, recommend the use of mediation. An office's role in mediation often encompasses the following:

- (a) To serve as facilitator;

- (b) To inform the parties of the procedures, establish a constructive tone, and encourage the parties to work in good faith toward a mutually acceptable resolution;
- (c) To maintain an impartial approach and inform the parties that DOT will not insist on any specific resolution;
- (d) To review the allegations and make sure the parties understand the issues that DOT has accepted for investigation;
- (e) To present and provide explanations of the applicable requirements and how these requirements apply to the allegations;
- (f) To facilitate a discussion between the parties regarding possible actions that the parties may consider in working toward a resolution; and
- (g) To offer assistance, as appropriate, with regard to reducing any resolution to writing. If an agreement is reached and approved by the responsible DOT office, the parties are informed that DOT will issue a closure letter reflecting the voluntary resolution of the complaint by agreement of the parties.

At the conclusion of the process, the office obtains a copy of a statement signed by the complainant that the allegation has been resolved. Once resolution of any allegation has been obtained, the office may close that portion of the complaint; other approaches may be used to resolve any outstanding allegations.

5–2: Closure Letters Generally

Different types of letters will be issued to the complainant and recipient depending on the findings of an investigation or how the case is resolved. All closure letters, however, should include the following:

- (a) A statement of DOT's jurisdictional authority, including the statutory basis for the investigation;
- (b) A statement of each allegation and the applicable regulation;
- (c) An explanation of the status of any issues that were investigated but are not included in the letter or any issues that were raised but not investigated;
- (d) A paragraph on the prohibition of retaliation by the recipient against the complainant or anyone who has either taken action or participated in an action to secure rights protected by the civil rights statutes;
- (e) A paragraph on the Freedom of Information Act and the Privacy Act;

- (f) The name and telephone number of the staff person to contact for additional information; and
- (g) Thanks to the recipient for its cooperation (optional).

Copies of all closure letters should be sent to DOCR's External Civil Rights Programs Division (S-33) upon issuance to the parties. However, if the complaint investigation has raised questions that are not answered by existing departmental or OA regulations or guidelines, or raised novel or politically sensitive issues, the OA investigating office should consult its internal legal counsel, S-33, and the Department's Office of the General Counsel before issuing a closure letter. For novel or politically sensitive disability-based complaints, the OA should also consult the Department's Disability Law Coordinating Council.

5-3: No Violation Letter of Findings

When DOT concludes that evidence is insufficient to show a recipient failed to comply with applicable regulations—or it is clear the recipient is in compliance—the Department will inform the parties in writing. A No Violation Letter of Findings (also called a Compliance Letter of Findings) should include, in addition to the items in Section 5-2, the following:

- (a) An explanation of why the recipient was found in compliance;
- (b) Notification of the complainant's appeal rights (letter to complainant), if applicable; and
- (c) A list of any procedural violations, such as lack of posted notice, or other concerns uncovered during the investigation. Inclusion of these items will put the recipient on notice that certain practices are questionable and that without corrective steps a future violation finding is possible.

See Tab 14 for no violation letter to complainant and Tab 15 for letter to recipient.

5-4: Letter of Resolution

A Letter of Resolution is issued when the recipient has voluntarily taken actions to come into compliance or has agreed to take the required steps. It can be issued before any discrimination has been proven and a Letter of Findings prepared, or after an investigation that finds noncompliance. A Letter of Resolution can simply explain the steps the recipient has taken or promises to take, or it can include a Settlement Agreement (see sample informal agreement, Tab 16). Letters of Resolution should include, in addition to the items in Section 5-2, the following:

- (a) The steps that the recipient has taken or will take to come into compliance and an explanation of how these actions meet the requirements of the applicable regulation;
- (b) Notice that failure to take or continue these actions may result in the finding of a violation and that compliance will be monitored, if necessary; and
- (c) If applicable, the date(s) that any promised action will occur and when monitoring or other reports will be due.

5–5: Violation Letter of Findings

When DOT determines that the recipient has not complied with applicable regulations and the recipient declines to enter into an agreement, it will prepare a Violation Letter of Findings. A Violation Letter of Findings should include, in addition to the items in Section 5–2, the following:

- (a) A statement of each issue and the findings of fact for each, supported by any necessary explanation or analysis of the evidence on which the findings are based;
- (b) Conclusions for each issue that reference the relevant facts, the applicable regulation, and the appropriate legal standards;
- (c) A description of proposed remedies and/or directions to the recipient on resolving the matter;
- (d) An offer of assistance in devising a remedial plan for compliance (if a proposed formal agreement is not included), if appropriate;
- (e) Notice that the Letter of Findings is not intended and should not be construed to cover any other issue regarding the recipient’s compliance;
- (f) Notice of the time limit on the conciliation process and the consequence of failure to achieve voluntary compliance;
- (g) Notice of recipient’s obligation to take immediate action by the Department, or alternatively, any other time limit set by the Department regarding the settlement process;
- (h) The consequence of failure to take DOT directed action or settlement; and
- (i) If a decision is made to defer final approval of any application by the recipient for additional Federal financial assistance, the letter should also provide notice of such possible deferral.

When writing a Violation Letter of Findings, the following guidelines should be considered:

- (a) The Letter of Findings should present a complete, neutral discussion of the facts in a clear, concise, and logical manner;
- (b) Where the investigation has revealed two different versions of the facts, state both sides;
- (c) The intended reader should be considered to have no knowledge of civil rights laws or the facts of the particular investigation;
- (d) The Letter of Findings cannot assume facts or the law. These elements must be clearly articulated in the letter;
- (e) The general prohibition contained in the relevant statute and the particular regulation governing the issues should be cited. Only focus on those parts of the regulations necessary to resolve the complaint;
- (f) The Letter of Findings should tell the reader why a particular set of facts demonstrates compliance or noncompliance;
- (g) Where it is necessary to credit one version of the facts and discredit another version, the Letter of Findings should state the basis on which the one version was determined to be more credible than the other;
- (h) In the conclusion of the Letter of Findings, the determinations of compliance, noncompliance, or both should be highlighted; and
- (i) The Letter of Findings must contain the information necessary to meet the burden of proof. The legal standard for a Letter of Findings is the “preponderance of the evidence.”

Letters of Resolution and Violation Letters of Finding are both often called Noncompliance Letters of Finding, and should be recorded as such in the annual Executive Order 12250 report to DOJ.

5–6: Reconsideration Rights and Final Agency Decisions

If staff has kept the complainant advised of the progress of the investigation and thoroughly explained the basis for DOT’s resolution or closure of the case, complainants will generally accept the results. However, this is clearly not always the case. A complainant may believe that the investigator has overlooked important evidence or failed to interview key witnesses.

An OA may decide to have a formal or informal appeal process. For a formal process, the complainant should be informed in the No Violation Letter of Findings that he or she may send a request for reconsideration within 30 days of the letter. The Office Director may grant a waiver of the 30-day deadline in special circumstances. If the complainant files a request for reconsideration, the Office Director should issue a written decision, as promptly as possible, on whether to reopen the case.

If an OA chooses not to implement a formal appeal process, it should have an informal review procedure and be open to revising its findings if a major substantive error is brought to its attention.

Reasons for reconsidering a decision include, but are not limited to, the following:

- (a) Complaint allegations were not investigated;
- (b) The investigation was insufficient, e.g., there was a failure to interview complainant's witnesses or perform an on-site visit when one was necessary;
- (c) Facts or evidence from the complainant were not adequately considered;
- (d) Issues were investigated under the wrong authority or the correct authority was applied inappropriately;
- (e) The wrong evidentiary standard was applied;
- (f) Material information became available that was not available previously;
- (g) Fraud or misrepresentation occurred; or
- (h) The OA's decision would have a substantial impact on the policies, practices, or operations of the OA.

Although there is no formal appeal process at the departmental level, S-33 sometimes receives requests from members of Congress and others to review an OA's decision in a particular case. In these situations, S-33 may in its sole discretion decide to conduct a de novo review of the complaint file on a case-by-case basis. S-33 will consult the responsible OA office during its review and before issuing any response.

Firms and businesses wishing to appeal recipients' decisions to deny or remove Disadvantaged Business Enterprise (DBE) certification must follow procedures set forth under 49 CFR Parts 23 and 26. If an OA receives such a complaint or other information dealing with the DBE program, it should promptly be forwarded to S-33.

5–7: Developing and Monitoring Settlement Agreements

The investigator should contact both the recipient and the complainant to determine options to be considered in settling a case. Settlement Agreements can be negotiated before or after a Letter of Findings is issued.

Guidelines for Agreements

Settlement Agreements must be signed by the appropriate DOT official—usually the OA Civil Rights Director—the responsible official of the recipient, and the complainant. The agreement should be sent to the recipient with the Letter of Findings, if prepared, and contain, but not be limited to, the following elements:

- (a) A description of the allegations;
- (b) The authority of DOT to investigate the complaint and secure voluntary compliance;
- (c) The jurisdiction of DOT to cover the entity (e.g., receives funds from specific agency or program);
- (d) Terms of the settlement, including the specific steps the recipient will take to correct the compliance issues and dates for implementing each step;
- (e) Dates for submitting reports and documentation verifying implementation, if applicable; and
- (f) Provision for enforcement in the event the recipient fails to comply with the agreement, if applicable.

Monitoring Recipients' Actions

Monitoring activities should be tailored to follow the agreement. While many agreements can be fulfilled in a short period of time, others will take longer to implement because of complex terms. DOT should notify the recipient when it has satisfied the terms of the Settlement Agreement. If DOT determines that the recipient has failed to implement the agreement, DOT should provide written notice to the recipient outlining the deficiencies and needed remedial actions.

Modifying an Agreement

DOT may modify the Settlement Agreement if circumstances have arisen that fully resolve, or render moot, any compliance concerns addressed by the agreement (e.g., further remedial action is not required because the programs at issue no longer exist). DOT will also modify the agreement to comport with changes in controlling case law, statutes, regulations, or agency policy that make provisions in the agreement no longer legally required.

A Recipient's Failure to Comply with an Agreement

If DOT learns or has reason to believe that the agreement is not being complied with, it should contact the recipient immediately. If the matter cannot be resolved expeditiously, subsequent actions will depend on the enforcement language contained in the agreement.

Chapter 6: Initiating Enforcement Action

If DOT is unable to negotiate a settlement with a recipient found to be in noncompliance, or the recipient fails to meet the terms of an existing agreement, DOT will begin enforcement action. Enforcement is a formal process that is initiated only after other means for compelling compliance have failed. Except where otherwise indicated, DOT and its Operating Administrations will follow the procedures in the DOT Title VI regulations (49 CFR Part 21) when enforcing any civil rights statute.⁴ For disability-based complaints, DOT regulations at 49 CFR Part 27 (implementing Section 504 of the Rehabilitation Act of 1973) and 49 CFR Parts 37 and 38 (implementing the Americans with Disabilities Act) should be followed.

The decision to initiate administrative enforcement proceedings or referral to the Department of Justice must be made in consultation with S-33, which will help develop an enforcement strategy and coordinate meetings with DOJ officials and others.

6–1: Available Enforcement Options

The Department of Justice guidelines for enforcing Title VI (28 CFR § 50.3) note that several enforcement options exist. Title VI itself and relevant presidential directives preserve in each agency the authority and duty to select, from among available sanctions, the methods best designed to secure compliance in individual cases. These sanctions include referral to the Department of Justice, termination of or refusal to grant assistance, and other administrative actions. In each case, DOT's primary objective is to compel recipients to promptly and fully comply with civil rights laws, thus promoting the delivery of accessible, nondiscriminatory transportation services and ensuring that needed Federal assistance may commence or continue.

Referral to the Department of Justice

Compliance may be effected by referring the matter to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States, or any assurance or other contractual undertaking. OAs may initiate referrals to DOJ by following all regulations, guidance, policies, and any memoranda of

⁴ The Federal Highway Administration has separate Title VI implementation regulations at 23 CFR Part 200.

understanding between an OA and DOJ specific to the applicable statute. OAs should, however, inform S-33 and the Department's Office of the General Counsel on the prospective referral, and the underlying basis for the referral, before requesting DOJ's involvement.

Termination of or Refusal to Grant Assistance

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, DOT regulations at 49 CFR § 21.13(c) require the following to have occurred:

- (a) The Secretary has advised the applicant or recipient of his or her failure to comply and has determined that compliance cannot be secured by voluntary means;
- (b) There has been an express finding on the record, after opportunity for hearing (see 49 CFR § 21.15 for hearing requirements), of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this part;
- (c) The action has been approved by the Secretary pursuant to 49 CFR § 21.17(e); and
- (d) The expiration of 30 days after the Secretary has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action.

DOT's Section 504/ADA regulations at 49 CFR § 27.125 outline actions to be taken before terminating or denying funding in disability-based cases, which differ from Title VI cases.

When the OA recommends the termination of or refusal to grant assistance, it should work with its internal legal counsel, S-33, and the Department's Office of the General Counsel to prepare an enforcement recommendation package, which is submitted to the Secretary for consideration. The package should include the following items:

- (a) Letter of Findings;
- (b) Litigation memorandum describing the issues, nature of violation found on each issue investigated, applicable statutes, regulations, and case law, and an evaluation of evidence that supports each finding;
- (c) Information regarding Federal financial assistance; and
- (d) Discussion of attempts at settlement.

Other Administrative Actions

A number of effective alternative courses not involving litigation also may be available in many cases. These possibilities include:

- (a) Consulting with or seeking assistance from other Federal agencies having authority to enforce nondiscrimination requirements;
- (b) Consulting with or seeking assistance from state or local agencies having such authority;
- (c) Bypassing a recalcitrant central agency applicant in order to obtain assurances from, or to grant assistance to complying local agencies; and
- (d) Bypassing all recalcitrant non-Federal agencies and providing assistance directly to the complying ultimate beneficiaries.

The use of such administrative alternatives should be considered at all stages of enforcement when appropriate and feasible.

6–2: When Enforcement Occurs

Before proceeding with enforcement, DOT must determine that compliance cannot be secured through voluntary means. Enforcement should be initiated following a violation finding and failure of all settlement efforts. The following actions constitute failure:

- (a) The recipient has unreasonably prolonged settlement negotiations with DOT;
- (b) The recipient is not negotiating in good faith;
- (c) The recipient is not represented by an official of sufficient stature to bind the recipient; or
- (d) The recipient has taken actions that will not cure the discrimination found.

Under Department of Justice regulations at 28 CFR § 42.411, agencies must notify the Assistant Attorney General for Civil Rights of any case in which negotiations have continued for more than 60 days after making the determination of probable noncompliance and state the reasons for the length of negotiations.

6–3: Letter to the Recipient Regarding Imminent Enforcement

At the enforcement stage, a Violation Letter of Findings will have already been sent to the recipient outlining DOT's findings, actions the recipient must

take to come into compliance, and the consequences of failing to take those actions. Nevertheless, before proceeding further, DOT should send a letter to the recipient setting out the last clear opportunity for settlement and, again, the actions to be taken to effect compliance. Enforcement should not be initiated before the passage of at least 10 days from the mailing of such notice to the recipient. During this period of at least 10 days, additional efforts should be made to persuade the recipient to comply with the regulations and take corrective action (49 CFR § 21.13(d)(3)).

6-4: Special Procedures for Short-Term Programs

Special enforcement procedures may sometimes be required where there is noncompliance with Title VI regulations in connection with a program of such short total duration that all assistance funds will have to be paid out before DOT's usual administrative procedures can be completed and where deferral in accordance with these guidelines would be tantamount to a final refusal to grant assistance.

In such a case, DOT may, although otherwise following these guidelines, suspend normal agency procedures and institute expedited administrative proceedings to determine whether the regulations have been violated. An OA, after consulting with S-33, should simultaneously refer the matter to the Department of Justice for consideration of possible court enforcement, including interim injunctive relief. Deferral of action on an application is appropriate, in accordance with DOJ guidelines, for a reasonable period of time, provided such action is consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with the action taken. As in other cases, where noncompliance is found in the hearing proceeding, and if administrative alternatives are ineffective or inappropriate and court enforcement is not feasible, procedures under Section 602 of Title VI may be completed and assistance finally refused.

Appendices

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Complaint Processing Checklist

EVALUATE THE COMPLAINT

- Determine whether the correspondence is a complaint
- Record the complaint in XTRAK
- Acknowledge the complaint
- Determine whether the complaint is complete
- Identify missing information
- Determine whether the complaint is timely filed

DETERMINE JURISDICTION AND ISSUES

- Confirm DOT jurisdiction over the issues
- Determine regulatory authority
- Refer the complaint to another agency?
- List allegations/issues
- Close the case administratively or otherwise?

DATA COLLECTION

- Notify the recipient and the complainant of the investigation
- Write an Investigative Plan
- Identify relevant data needed
- Select appropriate data collection methods
- Send data request letter
- Create an interview list with preliminary questions
- Decide whether an on-site visit is necessary
- Arrange the on-site visit

ON-SITE

- Conduct an opening conference
- Review on-site records for relevant data
- Conduct interviews
- Write up interview notes
- Conduct an exit conference

DATA ANALYSIS

- Cross-check data collected with the Investigative Plan
- Determine relevance and verify evidence
- Assemble the evidence
- Draw conclusions and develop patterns established by information

DEVELOP FINDINGS

- Summarize the complainant's position
- Summarize the recipient's position
- Apply relevant statutes and regulations to the data collected
- Develop and articulate preliminary/recommended conclusions
- Develop and articulate final conclusions
- Write the Investigative Report
- Write the Letter of Findings

COMPLAINANT CONSENT/RELEASE FORM

Forthcoming

NOTICE ABOUT INVESTIGATORY USES OF PERSONAL INFORMATION

NOTICE OF COMPLAINANT/INTERVIEWEE RIGHTS AND PRIVILEGES

Complainants and individuals who cooperate in an investigation, proceeding, or hearing conducted by the Department of Transportation (DOT) are afforded certain rights and protections. This brief description will provide you with an overview of these rights and protections.

— A recipient may not force its employees to be represented by the recipient's counsel nor may a recipient intimidate, threaten, coerce or discriminate against any employee who refuses to reveal to the recipient the content of an interview. An employee does, however, have the right to representation during an interview with DOT. The representative may be the recipient's counsel, the employee's private counsel, or anyone else the interviewee authorizes to be present.

— The laws and regulations which govern DOT's compliance and enforcement authority provide that no recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual because he/she has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing conducted under DOT's jurisdiction, or has asserted rights protected by statutes DOT enforces.

— Information obtained from the complainant or other individual which is maintained in DOT's investigative files may be exempt from disclosure under the Privacy Act or under the Freedom of Information Act if release of such information would constitute an unwarranted invasion of personal privacy.

There are two laws governing personal information submitted to any Federal agency, including DOT: The Privacy Act of 1974 (5 U.S.C. § 552a) and the Freedom of Information Act (5 U.S.C. § 552).

THE PRIVACY ACT protects individuals from misuse of personal information held by the Federal Government. The law applies to records that are kept and that can be located by the individual's name or social security number or other personal identification system. Persons who submit information to the government should know that:

— DOT is required to investigate complaints of discrimination on the basis of race, color, national origin, sex, disability, age, and,

in some instances, religion against recipients of Federal financial assistance. DOT also is authorized to conduct reviews of federally funded recipients to assess their compliance with civil rights laws.

— Information that DOT collects is analyzed by authorized personnel within the agency. This information may include personnel records or other personal information. DOT staff may need to reveal certain information to persons outside the agency in the course of

verifying facts or gathering new facts to develop a basis for making a civil rights compliance determination. Such details could include the physical condition or age of a complainant. DOT also may be required to reveal certain information to any individual who requests it under the provisions of the Freedom of Information Act. (See below)

— Personal information will be used only for the specific purpose for which it was submitted, that is, for authorized civil rights compliance and enforcement activities. Except in the instances defined in DOT's regulation at 49 CFR Part 10, DOT will not release the information to any other agency or individual unless the person who supplied the information submits a written consent. One of these exceptions is when release is required under the Freedom of Information Act. (See below)

— No law requires a complainant to give personal information to DOT, and no sanctions will be imposed on complainants or other individuals who deny DOT's request. However, if DOT fails to obtain information needed to investigate allegations of discrimination, it may be necessary to close the investigation.

— The Privacy Act permits certain types of systems of records to be exempt from some of its requirements, including the access provisions. It is the policy of DOT to exercise authority to exempt systems of records only in compelling cases. DOT may deny a complainant access to the files compiled during the agency investigation of his or her civil rights complaint against a recipient of Federal financial assistance. Complaint files are exempt in order to aid negotiations between recipients and DOT in resolving civil rights issues and to encourage recipients to furnish information essential to the investigation.

— DOT does not reveal the names or other identifying information about an individual unless it is necessary for the completion of an investigation or for enforcement activities against a recipient that violates the laws, or unless such information is required to be disclosed under the Freedom of Information Act (FOIA) or the Privacy Act. DOT will keep the identity of complainants confidential except to the extent necessary to carry out the purposes of the civil rights laws, or unless disclosure is required under FOIA, the Privacy Act, or otherwise required by law.

THE FREEDOM OF INFORMATION ACT gives the public access to certain files and records of the Federal Government. Individuals can obtain items from many categories of records of the Government—not just materials that apply to them personally. DOT must honor requests under the Freedom of Information Act, with some exceptions. DOT generally is not required to release documents during an investigation or enforcement proceedings if the release could have an adverse effect on the ability of the agency to do its job. Also, any Federal agency may refuse a request for records compiled for law enforcement purposes if their release could be an “unwarranted invasion of privacy” of an individual. Requests for other records, such as personnel and medical files, may be denied where the disclosure would be a “clearly unwarranted invasion of privacy.”

Acknowledgment Letter to Complainant

Complainant
Address
City, State, Zip Code

DOT #[0000-0000]

Dear:

We have received your complaint against [recipient] and are reviewing it for possible investigation under [statute]. The complaint was received in our office on [date]. Specifically, you have alleged that [describe allegations].

We will notify you in writing at a later date whether we will investigate these allegations and, if necessary, request additional information from you to process your complaint.

Please be advised that no one may intimidate, threaten, coerce, or engage in other discriminatory conduct against anyone because he or she has either taken action or participated in an action to secure rights protected by the civil rights laws we enforce. Any individual alleging such harassment or intimidation may file a complaint with the [OA]. We would investigate such a complaint if the situation warrants. Any questions or concerns you have regarding the investigative process and your rights can be discussed with the investigator.

Under the Freedom of Information Act (5 U.S.C. § 552) and the Privacy Act (5 U.S.C. § 552a), it may be necessary to release this document and related correspondence and records upon request. Therefore, enclosed for your information are the “Complainant Consent/Release Form” and the “Notice of Investigatory Uses of Personal Information” fact sheet. Please sign and date the “Complainant Consent/Release Form” and return it to this office in the enclosed self-addressed envelope within 30 days of receiving this letter. In the event that we receive such a request, we will seek to protect, to the extent provided by law, personal information which, if released, could constitute an unwarranted invasion of privacy.

If you have any questions, please contact [staff member], the investigator assigned to this case, who can be reached at [(000) 000-0000] (voice), [(000) 000-0000] (TTY), or electronically at [e-mail address]. Please reference the complaint number cited above in all future correspondence or contact with this office.

Sincerely,

DOT Official

Enclosures

Acknowledgment Letter and Request for Information to Complainant

Complainant
Address
City, State, Zip Code

DOT #[0000-0000]

Dear:

We have received your complaint against [recipient] and are reviewing it for possible investigation under [statute]. The complaint was received in our office on [date]. Specifically, you have alleged that [describe allegations].

After a preliminary review of your complaint, it has been determined that additional information is needed from you in order to more fully understand the facts and circumstances that lead you to believe discrimination occurred. Please provide [specify information] to this office by [date]. If the information is not received by that date, the case will be closed and the [OA] will take no further action.

Please be advised that no one may intimidate, threaten, coerce, or engage in other discriminatory conduct against anyone because he or she has either taken action or participated in an action to secure rights protected by the civil rights laws we enforce. Any individual alleging such harassment or intimidation may file a complaint with the [OA]. We would investigate such a complaint if the situation warrants. Any questions or concerns you have regarding the investigative process and your rights can be discussed with the investigator.

Under the Freedom of Information Act (5 U.S.C. § 552) and the Privacy Act (5 U.S.C. § 552a), it may be necessary to release this document and related correspondence and records upon request. Therefore, enclosed for your information are the “Complainant Consent/Release Form” and the “Notice of Investigatory Uses of Personal Information” fact sheet. Please sign and date the “Complainant Consent/Release Form” and return it to this office in the enclosed self-addressed envelope within 30 days of receiving this letter. Should we receive such a request, we will safeguard, to the extent permitted by the Freedom of Information Act and the Privacy Act, the release of information which could constitute an unwarranted invasion of your or other’s privacy.

If you have any questions concerning this letter, please contact [staff member], the investigator assigned to this case, who can be reached at [(000) 000-0000] (voice), [(000) 000-0000] (TTY), or electronically at [e-mail address]. Please reference the complaint number cited above in all future correspondence or contact with this office.

Sincerely,

DOT Official

Enclosures

Dismissal Letter to Complainant

Complainant
Address
City, State, Zip Code

DOT #[0000-0000]

Dear:

This letter acknowledges receipt of your complaint of discrimination filed against the [recipient]. The complaint was received in our office on [date]. After a thorough review of the information you provided, it has been determined that the matters raised in your complaint are not related to the laws or statutes for which the U.S. Department of Transportation has jurisdiction. Therefore, we have closed your case and will take no further action in this matter.

[Add language below if the complaint can be referred to another agency:]

However, we have referred your complaint to the [agency] since it appears that agency may have jurisdiction over the matter. Any questions about this referral and all further correspondence should be addressed to:

[Referral Agency Address]

Sincerely,

DOT Official

Referral Letter to Another Agency

DOT #[0000-0000]

Agency or Component Head designated
for civil rights complaint referrals and address

Dear:

Enclosed for your review is correspondence received by the [OA]. The correspondence was received in our office on [date]. The complainant alleges that [briefly describe allegations]. The matter does not appear to be within the jurisdiction of our office.

However, the issues raised may fall within the jurisdiction of your agency, so we are referring this complaint to your office for review and disposition. If you have any questions about this letter, please feel free to call [staff member] of my staff at [(000) 000-0000]. The complainant has been informed of the referral.

Sincerely,

DOT Official

Enclosure

Notification of Complainant's Right to Request a Waiver of Timeliness Requirement

Complainant
Address
City, State, Zip Code

DOT #[0000-0000]

Dear:

This letter responds to your complaint of discrimination against the [recipient] on the basis of [list basis, e.g., "your race, African American"]. Your complaint was received by the [OA office] on [date]. You allege [describe allegations].

Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.*, prohibits discrimination based on race, color, and national origin in federally funded programs and activities. The Department of Transportation (DOT) enforces Title VI and other civil rights statutes and investigates complaints against recipients of financial assistance from DOT.

[Substitute legislative/regulatory reference above if authority is other than Title VI.]

Based on our review of your complaint, we have determined that the alleged act(s) of discrimination occurred on [date]. Normally, a complaint must be received by DOT within 180 days of the alleged act of discrimination; in the case of your complaint, 180 days from the date of the alleged act(s) of discrimination would be [date]. Therefore, you have failed to file your complaint in a timely manner.

The Department has the authority to waive the 180-day time period required for filing a complaint if you can demonstrate that your failure to file was based on "good cause." Generally, DOT will find good cause in the following circumstances:

- (a) 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;
- (b) 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;
- (c) 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 DOT within 60 days after the other agency had completed its investigation or notified the complainant that it would take no further action;
- (d) The complainant filed, within the 180-day period, an internal grievance alleging the same discriminatory conduct that is the subject of the DOT complaint, and the complaint is filed no later than 60 days after the internal grievance is concluded;
- (e) Unique circumstances generated by DOT action have adversely affected the complainant; or
- (f) The discriminatory act is of a continuing nature.

If you wish to request a waiver, please submit a detailed description explaining why you failed to file your complaint within 180 days of the alleged act(s) of discrimination. If you do not seek a waiver within 30 days of your receipt of this letter, we will close our your complaint and take no further action.

Under the Freedom of Information Act (5 U.S.C. § 552) and the Privacy Act (5 U.S.C. § 552(a)), we may be required to release this letter and other correspondence and records related to your complaint in response to a request from a third party. Should we receive such a request, we will safeguard, to the extent permitted by the Freedom of Information Act and the Privacy Act, the release of information which could constitute an unwarranted invasion of your or other's privacy.

If you have any questions concerning this letter, please contact [staff member], the investigator assigned to this case, who can be reached at [(000) 000-0000] (voice), [(000) 000-0000] (TTY), or electronically at [e-mail address]. Direct any written correspondence regarding this matter to [investigator and address]. Please reference the complaint number cited above in all future correspondence or contact with this office.

Sincerely,

DOT Official

Notification of Investigation Letter to Complainant

Complainant
Address
City, State, Zip Code

DOT #[0000-0000]

Dear:

This letter is to notify you that we have reviewed your complaint against the [recipient] and are initiating an investigation of your allegations under [statute]. Specifically, you allege that [describe allegations].

Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.*, prohibits discrimination based on race, color, and national origin in federally funded programs and activities. The U.S. Department of Transportation (DOT) enforces Title VI and other civil rights statutes and investigates complaints against recipients of financial assistance from DOT. The Department's recipients include transit authorities, departments of motor vehicles, state departments of transportation, and other entities. The [recipient] is a recipient of financial assistance from DOT, and therefore must comply with all Title VI requirements.

[Substitute the legislative/regulatory reference above if authority is other than Title VI.]

The investigation will include, where appropriate, a review of pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with the Department's Title VI and other civil rights regulations. If the investigation indicates the recipient failed to comply with these regulations, the Department will inform the recipient and the matter will be resolved by informal means whenever possible. We will inform you and the recipient in writing if the investigation does not warrant Department action.

You should be aware that no one may intimidate, threaten, coerce, or engage in other discriminatory conduct against anyone because he or she has either taken action or participated in an action to secure rights protected by the nondiscrimination statutes we enforce. Any individual alleging such harassment or intimidation may file a complaint with the U.S. Department of Transportation. We would investigate such a complaint if the situation warrants.

You should further note that the Department's investigation represents the interests of the United States and the Department does not represent you individually. Our primary goal is to ensure nondiscrimination by recipients of financial assistance from the Department and remedial action will be negotiated principally with this goal in mind. This relief may be consistent with your interests; however, you may wish to consult private counsel of your choosing to determine what, if any, relief you may be entitled to receive through private litigation.

Under the Freedom of Information Act (5 U.S.C. § 552) and the Privacy Act (5 U.S.C. § 552a), it may be necessary to release this document and related correspondence and records upon request. In the event that we receive such a request, we will seek to protect, to the extent provided by law, personal information which, if released, could constitute an unwarranted invasion of privacy.

[Name of staff member], the investigator assigned to this case, will be contacting you in the near future to schedule an interview with you [by telephone/in person]. We will keep you informed of the progress of our investigation. If you have any questions, please contact [investigator] at [(000) 000-0000] (voice), [(000) 000-0000] (TTY), or electronically at [e-mail address]. Please reference the complaint number cited above in all future correspondence or contact with this office.

Sincerely,

DOT Official

Notification of Investigation Letter to Recipient

Responsible Agency Official

Address

City, State, Zip Code

Re: DOT #[0000-0000]

Complainant v. Recipient

Dear:

This letter is to notify you that the [OA], U.S. Department of Transportation (DOT), has received a complaint against the [recipient], alleging discrimination based on [basis or bases]. The complainant, [complainant's name], alleges that [describe allegations].

The [OA] is responsible for investigating complaints against recipients of financial assistance from DOT. Since the [recipient] is a recipient of financial assistance from DOT, Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.*, applies. Title VI prohibits discrimination based on race, color, and national origin and provides jurisdiction for the [OA] to investigate the complainant's allegations.

[Substitute legislative/regulatory reference above if authority is other than Title VI]

In addition to investigating complaints against DOT's recipients, we are required to make findings of fact and conclusions of law, and attempt to negotiate voluntary compliance if a violation is found. Our regulation also provides for the use of alternative means of dispute resolution, where appropriate, including settlement negotiations and conciliation. Generally, when an investigation is completed, the results of the investigation are sent to a recipient in a Letter of Findings. If the investigation reveals discrimination that violates [statute], attempts will be made to resolve the matter before issuing a violation Letter of Findings. If a violation letter is issued and an agreement cannot be reached on a remedy, enforcement action may be initiated. This enforcement may be an administrative hearing to terminate DOT's financial assistance to the programs and services of the [recipient], referral of the matter to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States, or other means authorized by law. We are committed to resolving this complaint in a productive and amicable manner.

[In order to facilitate our investigation, we will send you an initial Information Request in the near future. We will review and analyze your response, and determine whether further investigation is necessary, including an on-site visit to conduct interviews and review additional documents.]

[In order to facilitate our investigation, we request that you submit a position statement responding to the allegations listed above, within 30 days of the date of this letter. Please include any pertinent documents, records, names of witnesses, (list as appropriate) to support your statement.]

[We believe that the issues raised in this complaint may best be addressed through a negotiated settlement. If you are interested in entering into negotiations to address the allegations raised in this

complaint, please notify [staff member], the investigator assigned to this case, at [(000) 000-0000] (voice) or [(000) 000-0000] (TTY) within 15 days of the date of this letter.]

We are obligated to inform you that no one may intimidate, threaten, coerce, or engage in other discriminatory conduct against anyone because he or she has either taken action or participated in an action to secure rights protected by the civil rights laws we enforce. Any individual alleging such harassment or intimidation may file a complaint with the U.S. Department of Transportation. We would investigate such a complaint if the situation warrants.

Under the Freedom of Information Act (5 U.S.C. § 552) and the Privacy Act (5 U.S.C. § 552a), it may be necessary to release this document and related correspondence and records upon request. In the event that we receive such a request, we will seek to protect, to the extent provided by law, personal information which, if released, could constitute an unwarranted invasion of privacy.

If you or your staff wish to discuss this complaint, please feel free to contact [staff member] at [(000) 000-0000] (voice), [(000) 000-0000] (TTY), or electronically at [e-mail address]. Please direct any written correspondence regarding this matter to [investigator and address] and reference the complaint number cited above. Thank you for your cooperation.

Sincerely,

DOT Official

Enclosure

Investigative Plan Format

INVESTIGATIVE PLAN*

Case Number

2007-0046

Complainant

Douglas McManus
123 South Street
Anywhere, USA 14456
(571) 555-1212

Recipient

State Department of Transportation
1409 ABE Boulevard
Anywhere, USA 14457
(571) 555-1456

Contact: James Perry, Transportation Director

Investigator

Mary Smith, Equal Opportunity Specialist

I. JURISDICTION

This section should note that a covered basis of discrimination (e.g., race, sex, or disability) has been alleged in a timely fashion against an agency's recipient, giving DOT jurisdiction to investigate.

For example:

Timeliness: Complainant alleges ongoing violations.

Recipient Status: The State Department of Transportation received XYZ grants in May 2004.

Basis: Race—African American

Legal Authority: Title VI of the Civil Rights Act of 1964, 49 CFR Part 26

* Some language in this appendix was excerpted from the Department of Justice's *Investigation Procedures Manual for the Investigation and Resolution of Complaints Alleging Violations of Title VI and Other Nondiscrimination Statutes*, September 1998, at http://www.usdoj.gov/crt/grants_statutes/complain.html #format. DOJ's manual in the beginning of Chapter 5 provides extensive guidance on planning investigations, including how to apply the appropriate legal theories and evidentiary standards.

II. ISSUES

Here the investigator should identify the specific action, policy, or practice responsible for the alleged discrimination (e.g., denial of transportation services, harassment, retaliation for filing a complaint or giving testimony in an investigation, provision of unequal services). The issues should be numbered.

For example:

1. Complainant alleges that the State Department of Transportation (SDOT) has not always followed the requirements of 49 CFR Part 26 relative to the DBE program eligibility standards for certification.
2. Complainant alleges that SDOT has not sufficiently publicized the third-party challenge procedure.
3. Complainant alleges that the SDOT has provided slow payments to minority contractors.

III. APPLICABLE LEGAL THEORIES

The applicable legal theory of discrimination, which will determine the standards of proof needed to establish a violation, should be listed in this section. Two primary legal theories are used to establish a case of prohibited discrimination: intentional discrimination/disparate treatment and disparate impact/effects.

IV. DATA NEEDED

In this section, the investigator should list the data that must be gathered during the investigation and their source. Both documentary evidence, such as business records, and testimonial (or oral) evidence should be listed. The list of documents may correspond to the Issues outlined in Section II above.

For example:

Issue #1

Complainant alleges that the SDOT has not always followed the requirements of 49 CFR Part 26 relative to the DBE program eligibility standards for certification.

Documents Needed

1. Policies and procedures regarding the DBE certification process (Source: Recipient).
2. Copies of all documents used in the certification process (Source: Recipient).
3. Documents that show the number of certifications and certification denials processed anytime from January 1, 1996, to the present. Indicate the reason for any certification denial (Source: Recipient).

A list of interview questions for the complainant, recipient, and witnesses may be included in this section.

V. PROPOSED ACTIVITY SCHEDULE

This section should list the anticipated sequence of activities that will be important in proving whether discrimination occurred or not.

For example:

Notification and data request by [date].

Response due from recipient [date].

Interviews by [date].

On-site visit by [date].

Analysis of data by [date].

Discussion of settlement with recipient, if applicable, by [date].

Letter of Findings issued by [date].

Investigative Report Format

INVESTIGATIVE REPORT*

Case Number

2007-0047

Complainant

Michael Kennedy
123 South Street
Anywhere, USA 14456
(571) 555-1212

Recipient

State Department of Transportation
1409 ABE Boulevard
Anywhere, USA 14457
(571) 555-1456

Contact: Janice King, Transportation Director

Investigator

Roger Johnson, Equal Opportunity Specialist

I. INTRODUCTION (OPTIONAL)

This section should provide the reader with a historical overview of the actions taken on the case prior to DOT's involvement and should chart an office's activities prior to accepting the complaint for investigation.

II. APPLICABLE LAWS/REGULATIONS

For example, Title VI of the Civil Rights Act of 1964; and DOT DBE regulations at 49 CFR Part 26.

III. BASIS

For example, race, sex, or disability.

* Some language in this appendix was excerpted from the Department of Justice's *Investigation Procedures Manual for the Investigation and Resolution of Complaints Alleging Violations of Title VI and Other Nondiscrimination Statutes*, September 1998, at http://www.usdoj.gov/crt/grants_statutes/complain.html#format. A completed sample Investigative Report also can be found in the DOJ manual.

IV. ALLEGATIONS

In this section, the investigator should describe each individual or class allegation, stating it as succinctly and clearly as possible. The allegations should be numbered.

V. METHODOLOGY

Here the investigator should explain *how* the investigation was conducted, *what* documents were reviewed, and *which* witnesses were interviewed. The investigator need not provide the names and addresses of the witnesses, but should provide the reader with both quantitative and qualitative information about what he or she did with sufficient specificity to identify the types of documents reviewed (e.g., ADA transition plans, business plans, citizen complaints, internal grievances) and the category and number of witnesses interviewed (e.g., three witnesses for the complainant, seven witnesses for the recipient, and two individuals identified by the investigator).

VI. FINDINGS AND ANALYSIS FOR EACH ALLEGATION

All facts relevant to the investigator's analysis and recommended determination in the case should be set forth in this section. It is important both to the settlement/conciliation process and for establishing credibility of the determination that only clear, accurate, and factual evidence be included in this section. Facts should be presented in a logical sequence, such as the chronological order of the events or by subject matter. Factual issues in dispute should be resolved through examination of the relevant documents and the testimony in the record. Where appropriate, specific evidence supporting a finding should be cited, e.g., "statement of John Doe, who was at the meeting with the director on June 2, 2003."

Each fact or series of related facts should be sequentially numbered and listed separately.

In this section, the investigator also conducts an analysis of the facts presented, and draws his or her conclusions as to the validity of the complainant's allegations based on that analysis. Each fact should be weighed against the allegation to which it pertains, and a prima facie case of discrimination either established based on the preponderance of the evidence or the allegation rejected as without merit. An example from the Federal Highway Administration shows how this section could be organized:

Issue #3

Complainant James Doe alleges that he has submitted 30 bids to prime contractors in the State DOT for highway contracts during the past two years. The Complainant alleges that he has not received a telephone call or any other communication from these contractors since he started filing complaints of race discrimination.

Analysis

The State DOT stated that it does not receive bids submitted to the prime contractors. The State DOT further stated it does not require prime contractors to document how they process bids that are received from DBE firms or identify all DBE bidders and provide reasons for how they chose the successful DBE bidder.

The record shows that Complainant James Doe was not awarded any contracts anytime during the period reviewed for this investigation.

The record shows that African American DBEs are not awarded contracts in accordance with their representation in the DBE program. The record further shows that State DOT does not have a procedure in place to monitor the selection practices of its prime contractors. The regulations at 49 CFR § 21.7 and the Federal-aid project agreements require that the recipients of federal financial assistance provide assurances that all programs will be conducted in compliance with all the requirements of Title VI and other related statutes. The record shows that State DOT is not carrying out this requirement with regard to the prime contractors selection of DBEs.

VII. DECISION AND RECOMMENDED CORRECTIVE/REMEDIAL ACTION

In this section, the investigator includes a brief statement indicating whether or not the recipient was found to have discriminated. Next, the investigator describes the action(s), if any, required of the recipient in order to make the complainant whole and eliminate the discriminatory practices. The investigator may want to seek those remedies suggested by the complainant, but must remember that the complaint is between the recipient and DOT concerning a violation(s) of a federal civil rights statute(s). The investigator should ensure that the remedy DOT seeks will provide both remedial relief for identified victims and prospective relief (e.g., changes in policies and procedures, training for staff, development of adequate complaint procedures, a public notice to beneficiaries concerning new procedures) required to bring the recipient into compliance. Both remedial and prospective relief (corrective action) should be specifically identified, not implied.

Cover Letter for Investigative Report

DOT #[0000-0000]

Recipient

Address

City, State, Zip Code

Dear:

The [OA] has completed the investigation of the complaint of discrimination received [date] by [complainant] against the [recipient]. Based on the evidence reviewed during the investigation, the [OA] has concluded that such evidence does not support the allegation(s) raised in the complaint of discrimination. A copy of the Investigative Report is enclosed.

Anyone who intimidates, threatens, coerces, or engages in other discriminatory conduct against a complainant or any witness because of actions taken to secure rights protected by civil rights laws may be found in violation of these laws. Any individual who believes he or she has been subjected to harassment or intimidation may file a complaint with the [OA].

Please be aware that under the Freedom of Information Act (5 U.S.C. § 552) and the Privacy Act (5 U.S.C. § 552a), it may be necessary to release this document and related correspondence and records. In the event we receive such a request, we will seek to protect personal information which, if released, could constitute an unwarranted invasion of privacy.

This concludes the [OA]'s processing of this complaint and no further action will be taken.

Sincerely,

DOT Official

Enclosure

No Violation Letter of Findings to Complainant

DOT #[0000-0000]

Complainant

Address

City, State, Zip Code

Dear:

The [OA] has completed the investigation of the complaint of discrimination that you filed against the [recipient]. In your complaint received by the [OA] on [date], you alleged [describe allegations broadly]. Specifically, you alleged [describe allegations] and you believe the reasons were due to your [basis].

Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d *et seq.*, prohibits discrimination based on race, color, and national origin in federally funded programs and activities. The U.S. Department of Transportation (DOT) enforces Title VI and other civil rights statutes and investigates complaints against recipients of financial assistance from DOT. The [recipient] receives funds from DOT, and therefore must comply with all Title VI requirements.

[Substitute legislative/regulatory reference above if authority is other than Title VI.]

The [OA] has concluded that the evidence obtained during the investigation does not support the allegation(s) raised in your complaint.

[Explain why the recipient was found in compliance.]

Under the Freedom of Information Act (5 U.S.C. § 552) and the Privacy Act (5 U.S.C. § 552a), it may be necessary to release this information and related correspondence and records upon request. In the event that we receive such a request, we will seek to protect, to the extent provided by law, personal information which, if released, could constitute an unwarranted invasion of privacy.

You should be aware that no one may intimidate, threaten, coerce, or engage in other discriminatory conduct against anyone because he or she has taken action or participated in an action to secure rights protected by the [statute]. Any individual alleging such harassment or intimidation may file a complaint with the [OA]. We would investigate such a complaint if the situation warrants.

If you have any questions concerning this letter, please contact [staff member], who can be reached at [(000) 000-0000] (voice), [(000) 000-0000] (TTY), or electronically at [e-mail address]. Please reference the complaint number cited above in all correspondence or contact with this office.

This concludes the [OA]'s processing of this complaint and no further action will be taken.

Sincerely,

DOT Official

No Violation Letter of Findings to Recipient

DOT #[0000-0000]

Recipient

Address

City, State, Zip Code

Dear:

The [OA] has completed the investigation of the complaint of discrimination filed by [complainant] against the [recipient]. The complaint, received by the [OA] on [date], alleges [describe allegations and include basis].

Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d *et seq.*, prohibits discrimination based on race, color, and national origin in federally funded programs and activities. The U.S. Department of Transportation (DOT) enforces Title VI and other civil rights statutes and investigates complaints against recipients of financial assistance from DOT. The [recipient] receives funds from DOT, and therefore must comply with all Title VI requirements.

[Substitute legislative/regulatory reference if authority is other than Title VI.]

The [OA] has concluded that the evidence obtained during the investigation does not support the allegation(s) raised in the complaint.

[Explain why the recipient was found in compliance.]

Under the Freedom of Information Act (5 U.S.C. § 552) and the Privacy Act (5 U.S.C. § 552a), it may be necessary to release this information and related correspondence and records upon request. In the event that we receive such a request, we will seek to protect, to the extent provided by law, personal information which, if released, could constitute an unwarranted invasion of privacy.

You should be aware that no one may intimidate, threaten, coerce, or engage in other discriminatory conduct against anyone because he or she has taken action or participated in an action to secure rights protected by the [statute]. Any individual alleging such harassment or intimidation may file a complaint with the [OA]. We would investigate such a complaint if the situation warrants.

If you have any questions concerning this letter, please contact [staff member], who can be reached at [(000) 000-0000] (voice), [(000) 000-0000] (TTY), or electronically at [e-mail address]. Please reference the complaint number cited above in all correspondence or contact with this office.

This concludes the [OA]'s processing of this complaint and no further action will be taken.

Sincerely,

DOT Official

Informal Settlement Agreement

[OPERATING ADMINISTRATION]
U.S. DEPARTMENT OF TRANSPORTATION

Complainant

DOT #[0000-0000]

Respondent

INFORMAL RESOLUTION AGREEMENT

IT IS HEREBY AGREED by and between [name], hereinafter referred to as the Complainant, and the [name], hereinafter referred to as the Respondent as follows:

Section One: Purpose

This agreement is made between the parties for the complete and final settlement of their claims, differences, and actions with respect to the matters described below.

Section Two: Description of Allegation

The Aggrieved Person initiated the complaint of discrimination by a complaint filed on [date]. The Complainant alleged that [statement of allegations].

Section Three: Terms of Settlement

The Complainant and the Respondent enter into this agreement without any finding of discrimination having been determined. The parties agree to the following, which will resolve and settle all claims and issues arising from the above-mentioned allegation:

1. _____
2. _____
3. _____

A. The parties agree that this settlement shall not constitute an admission of discrimination or violation of any provision of law on the part of the Respondent.

- B. It is understood that if the Respondent fails to fulfill or rescinds any provision of this agreement, the Complainant, upon written request, shall be entitled to reinstate the matter for further processing from the point processing ceased.
- C. It is understood that if the Complainant fails to comply with the responsibilities under the terms of the agreement, the agreement may be terminated and any subsequent complaint based on the same issues will be rejected or canceled. The Respondent shall notify the [operating administration] in writing of its intention to terminate the agreement within _____ days of the Complainant's failure to comply.
- D. The parties agree that this settlement constitutes the sole and complete understanding between them. No other promises or agreements shall be binding unless signed by them and made a part of this agreement.
- E. The parties agree that this settlement shall become effective on the date that the last signatory signs this agreement.

Complainant	Date
-------------	------

Respondent	Date
------------	------

Director, Civil Rights [operating administration]	Date
--	------

Examples of Complaint Procedures Unique to Operating Administrations*

FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

Complaint Investigation

All complaints received by the service centers or the division offices will be forward to the FMCSA Office of Civil Rights (OCR) for appropriate action. Complaints received by OCR filed against grantees will be investigated by OCR. The OCR will make all determinations regarding the acceptance or rejection of complaints. All complaints received by the Service Centers or the Division Offices will be forwarded to OCR for appropriate action within 14 calendar days of receipt.

Generally, the OCR will assign complaints filed under the ADA to the Division Office for investigation. OCR will investigate all non-ADA related complaints of discrimination; however, the division office may be called upon by OCR to assist in investigations. The OCR will maintain a complaints log for all ADA complaints.

Grantees

Complaints filed with grantees in which the grantee is named as the respondent, shall be forwarded to OCR for processing.

Generally, the OCR shall assign ADA complaints to the Division office for investigation.

The Division Office shall maintain a log for all complaints submitted by the grantee.

Complaints received by OCR filed against subgrantees will be sent to the grantee for investigation.

FEDERAL HIGHWAY ADMINISTRATION

These procedures outline the responsibilities of the Headquarters Civil Rights (HCR), the Division offices, and the State Transportation Agencies (STA) in the complaint processing system.

The Division offices are responsible for informally resolving or, where necessary, investigating assigned ADA complaints. All complaints initially received by any FHWA office must be immediately forwarded to HCR. Complaints filed under Title VI against state subgrantees or contractors shall be investigated by the STA. Complaints filed against the STA will be investigated by FHWA. The HCR will issue decisions in all cases, including complaints investigated by the STA. It is imperative that all FHWA and state personnel understand that no information is to be disclosed or working papers shared with any party not involved in the processing of the investigation. Any questions about access to the files should be referred to the HCR.

* Language in this appendix excerpted from the Federal Highway Administration's and Federal Motor Carrier Safety Administration's complaint processing manuals.

PROCESSING COMPLAINTS

A. Responsibilities

1. Federal Highway Administration

- a. The Director, Investigations and Adjudications in the Headquarters Civil Rights (HCR) will acknowledge receipt of all complaints filed with Headquarters, the resource centers or the division offices. The allegation will be analyzed and the complainant notified of those aspects accepted for investigation.
- b. Complaints received by HCR filed against Federal-aid subrecipients and contractors will be sent to the appropriate STA for investigation.
- c. All complaints received by the resource centers or the division offices will be forwarded to the Director, Investigations and Adjudication for appropriate action.
- d. The Director, Investigations and Adjudication, will determine the matters accepted for investigation and determine whether the complaint will be reviewed or investigated by HCR, resource center civil rights staff, or a team involving division office and Resource Center personnel.
- e. Complaints filed under the Americans with Disabilities Act (ADA) will be assigned to the appropriate division office for investigation if the complaint is lodged against the STA. ADA complaints filed against subrecipients will be referred by the involved division to the responsible STA for resolution or investigation. The division office will maintain the complaints log for all ADA complaints. ADA complaints against entities open to the public but not receiving Federal-aid and those involving law enforcement referred to FHWA by DOJ will be investigated by the Division to which the matter is referred for action
- f. Except for ADA complaints, division office personnel will not investigate complaints lodged against the state for which it is responsible. Division office personnel may be assigned as team members or team leaders in investigations of complaints in other states.
- g. The Investigations and Adjudications Team will obtain a control number for each complaint from the Departmental Office of Civil Rights (DOCR).
- h. Upon request, resource center and SBU Directors and CBU Program Managers will designate knowledgeable and objective program personnel to provide information and insights into applicable Federal-aid programs in processes involved in complaints.

2. STAs

- a. Complaints filed with STAs in which the STA is named as the Respondent, shall be forwarded to HCR for processing.
- b. Complaints received by HCR filed against Federal-aid subrecipients and contractors will be sent to the appropriate STA for investigation.
- c. Complaints filed with STAs against their recipients shall be processed by the STA in accordance with the FHWA approved complaint procedures as required under 23 CFR Part 200.
- d. STAs shall maintain a log of complaints which are filed with and investigated by the STA.
- e. In accordance with the regulations at 23 CFR § 200.9(b)(3), a copy of the complaint, together with a copy of the state's report of the investigation, shall be forwarded to the FHWA Division Office within 60 days of the date the complaint was received by the STA. An extension of an additional 60 days may be granted by the FHWA for justifiable reasons. The division office will forward the complaint to HCR for review and issuance.
- f. The Division Office shall also maintain a separate log designated for all complaints other than ADA complaints processed by the STA.

3. Subrecipients

- a. Complaints filed with a subrecipient will be processed in accordance with the approved STA procedures.
- b. In special cases warranting intervention to ensure justice, the FHWA may assume jurisdiction and either complete or obtain services to review or investigate a matter. Materials already obtained by state investigators may be relied upon, or supplemented or the matter may be re-investigated.

B. Receipt and Acceptance

Upon receipt of a complaint by the FHWA, the Director, Investigations and Adjudication will determine jurisdiction and whether there is the need for additional information. The HCR has sole authority for accepting complaints for investigation. All complaints received by the resource centers or the division offices will be forwarded to HCR for appropriate action.

The Investigations and Adjudication Team will acknowledge receipt of all complaints received in HCR within 10 days of receipt.

C. Timeframes

All complaints shall be investigated and an investigative report issued to all parties within 180 days from the initial receipt of the complaint. Complaints processed by the STA are bound by the timeframes outlined in 23 CFR § 200.9(b)(3).

D. Final Agency Decisions

1. All final agency decisions and dismissals will be issued by the HCR, including all ADA decisions.
2. The investigator will forward the investigative report, investigative file, and a recommended decision to the Director, Investigations and Adjudication.
3. The STAs which have conducted investigations of complaints filed against subrecipients and contractors will submit their investigative reports, investigative files, and recommended decisions to the Director, Investigations and Adjudication.

The DOJ's Civil Rights Division takes the position that a Title VI finding of violation or no violation is a federal decision that cannot be delegated. Although a state recipient can conduct a Title VI investigation of its subrecipients or contractors and make a recommended finding to the federal decisionmaking authority, FHWA recipients must submit their proposed dispositions to FHWA for a Final Agency Decision. The HCR may request that further investigation be undertaken if the record of evidence is incomplete.

INVESTIGATING COMPLAINTS

A. Responsibilities

1. DOT/Federal Highway Administration
 - a. Complaints filed directly with USDOT/FHWA against an STA shall be, at the discretion of the HCR, investigated by the Investigations and Adjudication Team or the civil rights staff of the resource center. The division office personnel may be assigned as team members or team leaders in investigations of complaints in states other than that to which they are permanently assigned.
 - b. Complaints filed directly with USDOT/FHWA against a contractor or subrecipient will be referred to the appropriate STA for investigation.
 - c. Complaints filed against FHWA shall be referred to the USDOT for appropriate action or referral to DOJ.
 - d. The HCR shall assign ADA complaints to the division offices for resolution or investigation.

- e. All final agency decisions shall be issued by the HCR, including findings on investigations conducted by the STAs.
- f. All informal agreements must be concurred in by the Director, HCR or his/her designee.
- g. The FHWA in cases involving allegations of program management with discriminatory impacts, may opt to conduct a program review to ascertain facts, and, if the need is indicated, rely on the compliance process to obtain needed corrections.

2. STAs

- a. Complaints filed directly with an STA against contractors or subrecipients shall be investigated by the STA, utilizing procedures approved by FHWA in accordance with 23 CFR § 200.9(b)(3).
- b. Complaints filed directly with the STA against the STA shall be forwarded directly to HCR.
- c. The STAs which have conducted investigations of complaints filed against subrecipients and contractors will submit their investigative reports, investigative files, and recommended decisions to HCR for review, approval, and issuance.
- d. The STA may use contract investigators to conduct investigations of complaints of discrimination, if the use of contract investigators will assist in preventing or eliminating a backlog of complaints. All complaints are to be investigated in accordance with approved complaint processing procedures.

The STA remains the responsible entity for all investigations received by it or referred to the STA by the FHWA.

3. Investigators

- a. FHWA investigators and members of their teams will be issued letters of authority.
- b. Investigators assigned a complaint for investigation shall obtain written statements from witnesses and copies of records and other evidence needed to ascertain the validity of allegations raised in the complaint. Witnesses are required to cooperate. Any failure to cooperate must be documented to allow appropriate action to be initiated.
- c. Within 60 days of the completion of the investigation, investigators shall analyze the evidence, coordinate with disinterested program personnel as necessary, and complete and submit a report of findings of facts with recommendations to the Director, Investigation and Adjudication.

B. Failure to Cooperate

In the event any person, individually or as an agency or organization representative, fails or refuses to furnish information to an investigator, the investigator shall inform the head of the STA or contractor that such failure may result in a finding of noncompliance. A finding of noncompliance can result in the imposition of administrative remedies pursuant to 23 CFR § 1.36 or the imposition of sanctions pursuant 49 CFR § 21.13. The investigator shall indicate in the Investigative Report that the contractor or agency refused to provide pertinent information, and shall set forth efforts made to obtain the information.

C. Appeal Rights

Final agency decisions issued by the FHWA are administratively final.

1. Records

The STAs and their subrecipients shall maintain records of external complaints filed with them, identifying each complaint by race, color, sex, age, religion/creed, disability, national origin or retaliation. The record should contain:

- the complaint;
- the agency with which the complaint was filed;
- the date the complaint was filed;
- the investigative plan;
- the investigative report;
- the complaint disposition and date; and
- other pertinent information.

2. Investigative Report

The investigative report shall be reviewed and a final agency decision issued by HCR. A copy of the investigative report shall be provided to both complainant and to the respondent.