

Chapter 9

Complaint Procedures

Introduction

This chapter describes the MassDOT procedures for the processing and disposition of Title VI discrimination complaints. These procedures are designed to provide due process for complainants and respondents. The processes detailed herein were updated in 2017 as part of a collaborative effort between ODCR's Title VI unit and the Investigations team. In the spirit of uniformity and transparency, ODCR staff worked to make complaint procedures across federal and state nondiscrimination obligations program areas (such as Title VI and Title VII) as consistent as feasible and presented in such a way that members of the public can easily understand the process.

Purpose and Applicability

The purpose of this chapter is to establish procedures for the processing and disposition of both discrimination complaints filed directly with MassDOT and discrimination complaints that MassDOT has the delegated authority to process under Title VI of the Civil Rights Act of 1964 (Title VI) and related state and federal nondiscrimination authorities, including the Americans with Disabilities Act (ADA).

The procedures describe an administrative process aimed at identifying and eliminating discrimination in federally funded programs and activities. The procedures do not provide an avenue for relief for complainants seeking individual remedies, including punitive damages or compensatory remuneration; they do not prohibit complainants from filing complaints with other state or federal agencies; nor do they deny complainants the right to seek private counsel to address acts of alleged discrimination.

The procedures described in this document apply to MassDOT and its subrecipients, contractors, and subcontractors in their administration of federally funded programs and activities.

As part of their efforts to comply with Title VI, subrecipients of federal financial assistance through MassDOT are encouraged to adopt these complaint procedures. In so doing, these subrecipients acknowledge their obligation to afford members of the public with an opportunity to file complaints alleging violations of nondiscrimination requirements across the organization's programs, services, and activities. In accordance with federal guidance, subrecipients of transit-related funds understand they have the authority to process Title VI complaints and will inform their recipient, MassDOT, of complaints received and the outcome of investigations as the matters are handled. Subrecipients of highway-related funds further understand they do not have the authority to investigate Title VI violation claims filed against their organization (where their organization is the respondent or party alleged to have violated Title VI). All such claims will be forwarded to MassDOT to determine the appropriate investigative authority. Highway-funding subrecipients retain the right to consider Title VI violation allegations as a matter of Assurance and/or internal policy compliance but are precluded from making determinations as to possible violations of Title VI. MassDOT encourages all subrecipients to communicate with ODCR's Title VI Specialist, the Manager of Federal Programs, and/or the Manager of Investigations when/if Title VI complaints are received to ensure proper handling.

Definitions

Complainant – A person who files a complaint with MassDOT.

Complaint – Written or electronic statement concerning an allegation of discrimination that contains a request for the receiving office to take action. Where a complaint is filed by a person with a disability, the term complaint encompasses alternative formats to accommodate the complainant's disability.

Discrimination – That act or inaction, whether intentional or unintentional, through which a person in the United States, solely because of race, color, national origin, or bases covered by other nondiscrimination authorities, such as gender, age, or disability, has been subjected to unequal treatment or disparate impact under any program or activity receiving federal assistance.

Operating Administrations – Agencies of the U.S. Department of Transportation, including the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), the Federal Rail Administration (FRA), and the National Highway Traffic Safety Administration (NHTSA), that fund transportation programs or activities.

Respondent – The person, agency, institution, or organization alleged to have engaged in discrimination.

Filing of Complaints

This section details the Massachusetts Department of Transportation's (MassDOT's) procedures for processing Title VI discrimination complaints (on the basis of race, color, or national origin, including language) and complaints alleging discrimination on the basis of additional federal nondiscrimination provisions (on the basis of age, sex, and disability). Federal law and regulations governing Title VI of the Civil Rights Act of 1964 (Title VI) places the overall coordination authority for the investigation of civil rights complaints in the United States Department of Justice, which works collaboratively with federal agencies that carry out this responsibility. In the transportation sector, this investigative authority rests with the US Department of Transportation (US DOT) and its agencies for the different modes of transportation, including the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA). In coordination with USDOT requirements, FHWA and FTA have established regulations and guidance that require recipients and subrecipients of federal financial assistance to establish procedures for processing Title VI complaints filed with these organizations.

The procedures described below, modeled on recommended complaint procedures promulgated by the US Department of Justice (US DOJ), are designed to provide a fair opportunity to have complaints addressed that respect due process for both complainants and respondents. In addition to the formal complaint resolution process detailed herein, MassDOT takes affirmative steps to pursue informal resolution of any and all Title VI complaints, when possible.

The Complaint Process

1. Who can file a complaint?

ANY member of the public, along with all MassDOT customers, applicants, contractors, or sub-recipients who believe that they themselves, a third party, or a class of persons were mistreated or

treated unfairly because of their race, color, or national origin (including limited English proficiency) in violation of Title VI of the Civil Rights Act of 1964, related federal and state laws and orders, or MassDOT's Anti-Discrimination Harassment Prevention (ADHP) Policy. Retaliation against a member of the public on the basis of race, color, or national origin is also prohibited under Title VI and the ADHP policy.

2. **How do I file a complaint?**

A complaint may be filed with the following:

The MassDOT Title VI Specialist

MassDOT Office of Diversity and Civil Rights
10 Park Plaza, Suite 3800, Boston, MA 02116
Phone: (857) 368-8580 or 7-1-1 for Relay Service.
Email: MassDOT.CivilRights@state.ma.us

The MassDOT Office of Diversity and Civil Rights – Investigations Unit

Assistant Secretary of Diversity & Civil Rights, MassDOT
10 Park Plaza, Suite 3800, Boston, MA 02116
Email: odcrcomplaints@dot.state.ma.us

The Federal Highway Administration

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

The Federal Transit Administration

Federal Transit Administration
U.S. Department of Transportation
Office of Civil Rights
Attention: Complaint Team
East Building, 5th Floor - TCR
1200 New Jersey Avenue, SE
Washington, DC 20590

Please note:

- When FTA receives a Title VI complaint regarding MassDOT, a subrecipient, or a contractor, the FTA may request the matter be investigated by MassDOT.

- If a Title VI complaint is filed with MassDOT that alleges a violation by MassDOT's Highway Division, then it will be forwarded to the local FHWA Division Office which will then forward the complaint to the FHWA Headquarters Office of Civil Rights (HCR) for processing.
- If a Title VI complaint is received by MassDOT that is filed against a subrecipient of the MassDOT Highway Division, then MassDOT may process and investigate the complaint or may refer to HCR for investigation.

3. **What do I need to include in a complaint?**

A Title VI/Nondiscrimination Complaint form is available electronically on the MassDOT Title VI website (<http://www.massdot.state.ma.us/OfficeofCivilRights/TitleVI/FileAComplaint.aspx>) or in hardcopy from the MassDOT Title VI Specialist, identified above. Alternatively, a complainant may submit correspondence in an alternative format that should include:

- Your name, signature and, current contact information (i.e. telephone number and mailing address);
 - The name and badge number (if known and applicable) of the alleged perpetrator;
 - A description of how, when, where, the alleged prohibited conduct occurred;
 - A detailed description of why you believe you were treated differently;
 - Names and contact information of any witnesses; and
 - Any other information you believe is relevant to your complaint.
- A. In cases where the complainant is unable to provide a written statement, a verbal complaint may be made to the Office of Diversity & Civil Rights (ODCR). Complainants will be interviewed by a Civil Rights Investigator (CRI). If necessary, the CRI will assist the person in converting the verbal complaint to writing. All complaints should be signed by the complainant.
- B. Anonymous complaints may be filed in the same manner. Anonymous complaints shall be investigated in the same manner as any other complaint.
- C. Complaints will be accepted in any recognized language. Multi-lingual complaint forms are available.

4. **How long do I have to file a complaint?**

- A. A complaint alleging violation of Title VI and/or MassDOT's ADHP policy should be filed no later than one hundred and eighty (**180**) days from the date of the alleged violation.
- B. Complaints alleging violations of state or federal law must be filed within the time frames established by statute, regulation, or case law.

5. **How will my complaint be handled?**

When a complaint is received, it is assigned to a Civil Rights Investigator (CRI). The CRI will

A. Determine Jurisdiction:

ODCR has jurisdiction if the complaint:

1) involves a statement or conduct that violates:

- MassDOT's legal obligation and commitment to prevent discrimination, harassment or retaliation on the basis of a protected characteristic with regard to any aspect of the Agency's service to the public; or
- The commitment made by subrecipients and contractors working with MassDOT to adhere to MassDOT policies; AND

2) is timely filed.

B. Acknowledge receipt of the complaint and provide jurisdictional determination within ten (10) business days of receipt of the complaint.

- If the CRI determines that any complaint does not have the potential to establish a civil rights violation, then the CRI shall notify the complainant and Title VI Specialist in writing of its finding and the matter shall be closed.

C. Conduct a thorough investigation of the allegations contained in the complaint in accordance with the MassDOT Internal Complaint Procedures.

6. **Findings and Recommendations?**

At the conclusion of the investigation, the CRI will transmit to the complainant and the respondent one of the following three letters based on the findings:

A. A letter of resolution that explains the steps the respondent has taken or will take to comply with Title VI.

B. A letter of finding that is issued when the respondent is found to be in compliance with Title VI. This letter will include an explanation of why the respondent was found to be in compliance, and provide notification of the complainant's appeal rights.

C. A letter of finding that is issued when the respondent is found to be in noncompliance. This letter will include each violation referenced as to the applicable regulations, a brief

description of findings/recommendations, the consequences of failure to achieve voluntary compliance, and an offer of assistance in devising a remedial plan for compliance, if appropriate.

7. **Can I appeal a Finding?**

If a complainant or respondent does not agree with the findings of the CRI then he/she/they may appeal to the Assistant Secretary of Diversity & Civil Rights. The appealing party must provide any **new information that was not readily available during the course of the original investigation that would lead MassDOT to reconsider its determinations**. The request for an appeal and any new information must be submitted within sixty (60) days of the date the letter of the finding was transmitted. After reviewing this information, MassDOT will respond either by issuing a revised letter of resolution or by informing the appealing party that the original letter of resolution or finding remains in force.

Investigations

Where MassDOT has the delegated authority to conduct an investigation, investigation reports shall include recommended findings and corrective actions and will be submitted to the appropriate USDOT operating administration for final determination and communication of disposition to the complainant, where necessary.

Preliminary Investigation Plan

The Preliminary Investigation Plan defines the issues raised in the complaint and serves as a guide for completing the preliminary investigation. The Preliminary Investigation Plan will include the following elements:

1. Complainant name and contact information
2. Respondent name and contact information
3. Date filed
4. Last date of alleged discrimination
5. Complaint allegations
6. Potential violations (applicable laws)
7. Basis/bases of alleged discrimination
8. Background information on file
9. Information needed
10. Sources of information needed