

Title VI Complaint Process and Procedures

COMPLAINT PROCESS – GENERAL

All Title VI complaints will be filed in accordance with the following Title VI Complaint Procedures.

Any person alleging to be aggrieved by a discriminatory practice may, in person or through a legal representative, obtain a Title VI Complaint Reporting Form, fill it out and file said complaint with the CRCOG Title VI Coordinator:

- Within 180 days following the date of the alleged discriminatory action; or
- The date when the person(s) became aware of the alleged discriminatory action.

Alternatively, CRCOG's Title VI Coordinator may complete the Complaint Reporting Form and attach the Complainant's letter.

The Title VI Coordinator for the Connecticut Department of Transportation (CTDOT) will be notified of all Title VI complaints. CRCOG's Title VI Coordinator will review the complaint and inform the Executive Director and appropriate Program Area Director. Complaints must be in writing, signed by the Complainant or representative, and include the Complainant's name, address, and telephone number, or other means by which the Complainant may be contacted. Complaints shall explain as fully as possible the facts and the circumstances surrounding the alleged discriminatory action, and identify the individual(s) and/or organization(s) responsible for the alleged discriminatory action. In cases where the Complainant will be assisted in converting an oral complaint into a written complaint, the Complainant is required to sign the written complaint. Signed allegations of discrimination received by facsimile or e-mail will be acknowledged and processed. Complaints received by telephone will be reduced to writing and provided to the complainant for confirmation, revision and signature before processing.

The Title VI Coordinator receiving the written complaint will review the written complaint to ensure that the required information is provided, the complaint is timely, and is within the appropriate jurisdiction. The complaint will be accepted unless it is withdrawn, is not filed timely, or the Complainant fails to provide the required information after a written follow-up request for the missing information.

Issues that do not involve discrimination or are not based upon a protected basis will be directed to the appropriate entity. Individuals should never be discouraged from filing a written complaint.

COMPLAINT PROCESS – FEDERAL TRANSIT ADMINISTRATION (FTA)

COMPLAINTS FILED AGAINST CRCOG

Written complaints filed with CRCOG in which CRCOG is named as the Respondent will be forwarded to CTDOT for processing. For all FTA Title VI complaints, CRCOG will respond via acknowledgement letter and forward the complaint to CTDOT within 10 business days of receipt

“No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” (42 U.S.C. 2000d)

of the complaint. The allegation(s) will be analyzed by CTDOT. The CRCOG Title VI Coordinator may conduct an independent evaluation regarding affected CRCOG policy and may direct actions be taken within CRCOG to address any policy deficiencies.

COMPLAINTS FILED AGAINST A SUB-RECIPIENT

Written complaints filed with CRCOG in which a CRCOG sub-recipient (i.e., contractor, subcontractor, consultant, sub-consultant, or other sub-recipient) is named as the Respondent will be analyzed and investigated by the Title VI Coordinator. CRCOG will respond via acknowledgement letter within 10 business days of receipt of the complaint. The Title VI Coordinator may forward a complaint against a sub-recipient to CTDOT for investigation. Once the investigation has been conducted and the investigative report (IR) written, the CRCOG Title VI Coordinator will forward a copy of the complaint and a copy of the IR within sixty (60) days of the complaint date of receipt by CRCOG to the CTDOT Title VI Coordinator.

A complaint log will be maintained for all complaints filed with and investigated by CRCOG. The investigator will advise the Complainant of his/her rights under Title VI, Title VIII, and related statutes.

The Respondent will be notified by CRCOG that he/she has been named in a complaint. The letter of notification will indicate the Investigator's name and inform the Respondent that he/she will be contacted for an interview. The Complaint investigation will be completed within forty (40) days of the date of receipt. In instances where additional information is needed for investigation of the complaint, CRCOG will contact the complainant in writing. In responding to any requests for additional information, a complainant's failure to provide the requested information within thirty (30) calendar days may result in the administrative closure of the complaint.

COMPLAINT PROCESS – FEDERAL HIGHWAY ADMINISTRATION (FHWA)

Title VI complaints related to FHWA funded programs will be forwarded upon receipt to the CTDOT Title VI Coordinator. For all FHWA complaints, including Title VI complaints as well as those based on age, sex, or disability, CRCOG will follow FHWA guidance as outlined here: <https://www.fhwa.dot.gov/civilrights/programs/finalcomplaintmanual110410.cfm>

WHAT IS AN INVESTIGATION?

An investigation is an official inquiry for the purpose of determining whether there has been a violation of the laws or statutes and includes a determination of appropriate relief where a violation has been found. An investigation requires an objective gathering and analysis of the evidence.

ROLE OF THE INVESTIGATOR

The investigator is a neutral party provided by the agency to conduct an investigation of the issues raised in a complaint. The investigator's behavior, demeanor, and attitude reflect the agency and may affect the degree of cooperation received from the parties. The investigator has an obligation to identify and obtain relevant evidence from all available sources in order to resolve all of the issues under investigation. *The investigator is not an advocate for the complainant or the respondent.* The investigator is a neutral fact finder.

RESPONSIBILITIES OF THE INVESTIGATOR

The investigator MUST:

- Never express his/her opinions;
- Never tell the parties that the complaint represents a good case or that the complaint is frivolous;
- Always remain NEUTRAL. DO NOT take sides;
- Write the FACTS. State what the facts are based upon the evidence or testimony;
- Stay in control at all levels of the process;
- Decide who is to be interviewed. If the Complainant or the Respondent is adamant about a witness interview, perform the interview;
- Decide when sufficient evidence has been gathered to begin writing the investigative report;
- Always remain professional and polite;
- Be patient; and
- Be a good listener

THEORIES OF DISCRIMINATION

A Theory of Discrimination refers to the *Type of Discrimination*:

- INTENTIONAL DISCRIMINATION/DISPARATE TREATMENT – The decision maker was aware of the complainant's race, color, or national origin and acted at least in part because of that information. The action was taken because of the complainant's race, color, or national origin;
- DISPARATE/ADVERSE IMPACT – Discrimination which occurs when a neutral policy or procedure has a disproportionate impact on a protected class. The practice, even though applied equally to all, has the effect of excluding or otherwise adversely affecting a particular group; and
- RETALIATION – Discrimination against persons because of the filing of a complaint, participation in an investigation, or opposing a practice made unlawful pursuant to the laws.

ELEMENTS OF PROOF

How does the investigator prove discrimination?

ESTABLISH A PRIMA FACIE CASE – The complainant has the responsibility of initially establishing a prima facie case of discrimination. A prima facie case means that the complainant has provided information, which contains all of the elements necessary for a complaint of discrimination. Establishing a prima facie case requires the following elements:

- Complainant is a member of a protected group;
- Complainant was harmed by some decision; and
- Similarly situated persons of a different group were not or would not have been harmed under similar circumstances.

These elements constitute an ideal complaint of discrimination and establish a prima facie case. However, in many situations, the Investigator will not initially have all of these elements. It is the Investigator's responsibility to obtain from the complainant all missing information.

DURING THE INVESTIGATION – One of the first items that must be determined by the Investigator from the Respondent is the reasons for the Respondent’s actions against the Complainant. In other words, establish the Respondent’s legitimate non-discriminatory reasons for the actions taken against the Complainant. The Investigator must also obtain evidence to determine whether Respondent’s reasons are true based upon the evidence or whether the reasons are an excuse (pretext) to discriminate against the Complainant.

OBTAINING THE EVIDENCE – During the investigation, the Investigator should obtain the following types of evidences:

- Respondent’s policies and procedures;
- Evidence establishing actions taken against the Complainant;
- Evidence establishing how others, not in the Complainant’s group, were treated in similar situations;
- Evidence establishing the normal policies and procedure and how Respondent followed or did not follow normal policies and procedures when making the decision / action involving the Complainant;
- Evidence establishing whether Respondent followed the normal policies and procedures for similarly situated persons; and
- A position statement from the Respondent outlining the reasons for the action taken against the Complainant.

EXAMPLES OF ELEMENTS OF PROOF

INTENTIONAL DISCRIMINATION

- Complainant is a member of a protected group;
- Complainant was excluded from participation in or denied the benefits of a program or activity receiving federal financial assistance;
- Complainant was rejected despite his/ her eligibility;
- Respondent selected applicants, whose race, color, or national origin were different from Complainant; or
- The Program remained open and the Respondent continued to accept applications from applicants of different race, color, or national origin than the Complainant.

DISPARATE / ADVERSE IMPACT

- Respondent has a facially neutral policy or practice that has affected the Complainant;
- The policy or practice operates to disproportionately exclude members of the protected group;
- The policy or practice is a business necessity; or
- There is an effective business alternative with less adverse impact.

RETALIATION

- Complainant opposed any policy or practice made unlawful or participated in any manner in an activity pursuant to the law prohibiting discrimination;
- The individual who allegedly retaliated against Complainant knew or should have known of the opposition or participation;
- An adverse action was taken against the Complainant subsequent to the protected activity;

- There was a *causal connection between the opposition or participation and the decision was made involving the Complainant;
- There was a legitimate, non-discriminatory reason for the action taken; or
- The articulated reason is a pretext for retaliatory discrimination.

***Causal connection:** To establish a causal connection, establish the following –

- Did the treatment of the Complainant change after the protected activity;
- Time line: How long after the initial protest did the adverse action occur; and
- Compare the Complainant’s treatment with others who were not engaged in the protected activity.

INVESTIGATION PROCESS

The Investigative Process includes the following documents / actions:

- INVESTIGATIVE PLAN
- REQUEST FOR INFORMATION
- CONDUCTING INTERVIEWS
- ON-SITE VISIT
- OBTAINING EVIDENCE
- ANALYZING DATA
- WRITING THE INVESTIGATIVE REPORT

INVESTIGATIVE PLAN

The Investigative Plan is a working document intended to define the issues and provide a roadmap to complete the investigation. The Investigative Plan is an internal document for use by Investigator and his / her supervisor to keep the investigation on track and focused on the issues. It is Investigator’s checklist. The following elements should be contained in an Investigative Plan:

1. Complainant(s) Name and Address / Attorney For Complainant with Name and Address
2. Respondent(s) Name and Address / Attorney For Respondent with Name and Address
3. Applicable Law (i.e., Title VI, Title VIII, Compliance Review Under Regulations)
4. Basis
5. Issues(s)
6. Background
7. Name of Person(s) to be Interviewed, including Questions for the Complainant, Respondent, and Witness(es)
8. Evidence to be Obtained During the Investigation

REQUEST FOR INFORMATION

To prepare the Request for Information (RFI), refer to the Evidence section of the Investigative Plan. The RFI is sent to the appropriate official(s) at the Respondent’s facility. Contact the Respondent to advise him/ her of the complaint and to determine the appropriate official(s) to whom the RFI should sent and eventually interviewed.

Prepare a cover letter to transit the RFI. The cover letter should explain the process and provide information regarding any meetings that have been scheduled. Modify the cover letter to satisfy the circumstances. Provide the RFI to the Respondent prior to conducting the on-site visit. This will facilitate the availability of the evidence during the on-site visit.

CONDUCTING INTERVIEWS

When preparing for the interviews, the main objective is to obtain information from witnesses who can provide information that will either support or refute the allegations. A list of major questions will be prepared that address the issues involved in the complaint. During the interview, the following steps will be followed:

- Introduce yourself and outline the interviewing process (i.e., whether a signed statement will be requested, whether notes will be taken, etc.);
- Place the person being interviewed at ease;
- Listen effectively;
- Differentiate factual information from opinions;
- Ask questions best worded to provide factual responses;
- Take clear and precise notes; and
- Obtain a signed statement from the person being interviewed.

COMPLAINANT – The purpose of the interviews is to gain a better understanding of the situation outlined in the complaint of discrimination. The Investigator needs to contact the Complainant to ensure that he/she understands the Complainant allegations(s). It is recommended that the Investigator interview the Complainant prior to preparing the Investigative Plan. If this is not possible, be ready to make any changes as appropriate to the Investigative Plan based upon any new information provided by the Complainant. Always inquire of the Complainant whether he/she desires to resolve the complaint.

RESPONDENT – Respondents are interviewed to provide an opportunity to respond to the allegations raised by the Complainant as well as to provide the Investigator the opportunity to understand the Respondent's operation or policies that Complainant cites in the complaint. As the keeper of the records, you will need to discuss the RFI with the Respondent and be able to explain the need for requesting any document on the list. Inform the Respondent that he/she has the right to submit a formal position statement addressing the Complainant's allegations. Question the Respondent regarding possible settlement opportunities.

WITNESSES – Complainant or Respondent may request that additional persons be interviewed. Determine what relevance information, if any, a witness has to provide prior to conducting an interview. Only interview persons who have information relevant to the allegations raised in complaint of discrimination. Determine whether the testimony to be provided is relevant. Determine when sufficient interviews have been conducted.

ON-SITE VISIT

An On-Site visit will be conducted when:

- Personal contact with the Complainant and Respondent may yield information and clarification that might not otherwise be discovered by only reviewing the written document or telephone contacts;
- It is necessary to review the physical environment;
- More effective communication can be established with representatives and witnesses of the Complainant and Respondent; and
- Documentation can only be examined on-site for reasons of convenience, cost, format, or volume.

OBTAINING EVIDENCE

Evidence requested shall be related to the issues cited in the complaint. An evidence request may contain some or all of the following:

- The policies and procedures regarding the practice that Complainant has alleged;
- All documents relating to Respondent's dealing with Complainant in the situation described in the complaint;
- Documents which exhibit how others, not in the Complainant's group, were treated under similar circumstances;
- Respondent's reason(s) for the action taken ; and
- A formal position statement from Respondent addressing Complainant's allegations.

The Types of Evidence including the following:

- *CIRCUMSTANTIAL EVIDENCE* – Includes facts from which may be inferred intent or indiscriminately motive and proves intent by using objectively observable data;
- *COMPARATIVE EVIDENCE* – A comparison between similarly situated individuals;
- *DIRECT EVIDENCE* – Related to the Respondent's motive, it is defined as any statement or action by an official of the Respondent that indicates a bias against members of a particular group;
- *DOCUMENTARY EVIDENCE* – Written material, which is generated during the course of a normal business activity;
- *STATISTICAL EVIDENCE* – Statistics, facts, or data of a numerical type, which are assembled, classified, and tabulated so as to present significant information about a given subject; and
- *TESTIMONIAL EVIDENCE* – Evidence which is provided orally.

ANALYZING DATA

Data will be analyzed to determine whether a violation has occurred. When analyzing data, you must:

- Review what happened to the Complainant;
- Compare Complainant's treatment with appropriate policies and procedures;
- Compare Complainant's treatment with others in the same situation;
- Review Respondent's reason(s) for the treatment afforded the Complainant; and
- Compare Respondent's treatment of the Complainant with treatment afforded others.

In instances where additional information is needed for investigation of the complaint, CRCOG will contact the complainant in writing. In responding to any requests for additional information, a complainant's failure to provide the requested information within thirty (30) calendar days may result in the administrative closure of the complaint.

WRITING THE INVESTIGATIVE REPORT

The Investigative Report (IR) will contain the following sections:

- Complainant(s) Name and Address
- Respondent(s) Name and Address
- Applicable Law
- Basis
- Issues
- Finding for Each Issue with corresponding Conclusion for Each Issue
- Recommended Decision
- Recommendation (If Applicable)