



Title VI 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.

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.

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.

[Type text]

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

Filing of Complaints

Persons Eligible to File

Any person or specific class of persons who believe that MassDOT, a MassDOT subrecipient, or a MassDOT contractor has engaged in discrimination may submit a written complaint. Complaints may be on behalf of only the person(s) submitting the complaint or on behalf both of the person(s) submitting the complaint and one or more others who are represented by the person(s). Written complaints should be submitted to:

VP of Human Resources
The Arc of Opportunity
564 Main Street
Fitchburg, MA 10420
978-343-6662

or

Massachusetts Department of Transportation (MassDOT)
Office of Diversity and Civil Rights
Attn: Title VI Specialist
10 Park Plaza, Suite 3800
Boston, MA 02116
Phone: (857) 368-8580
TTY: (857) 368-0603
Email: MassDOT.civilrights@state.ma.us

Complainants may also file directly with the USDOT:

Departmental Office of Civil Rights
U.S. Department of Transportation
1200 New Jersey Ave.
Washington, D.C. 20590
Phone: (202) 366-4648

Time Limits for Filing

Pursuant to 49 C.F.R. § 21.11(b), any person who believes that MassDOT, a MassDOT subrecipient, or a MassDOT contractor has engaged in discrimination has 180 days after the last date of the alleged discrimination to file a complaint. Individuals will never be discouraged from filing a complaint. When a complainant files a complaint more than 180 days after the last date of the alleged discrimination, MassDOT will notify the complainant of the right to request an extension from the Office of Civil Rights at the appropriate operating administration.

[Type text]

Form of Complaints

A complainant may complete, sign, and submit a Title VI/Nondiscrimination Complaint form provided by the Massachusetts Department of Transportation. Alternatively, a complainant may submit correspondence in an alternative format that:

1. Explains the alleged discrimination or violation
2. Provides contact information for the complainant (if the complaint is filed electronically, MassDOT will request the sender's full name, telephone number, and mailing address, if not provided)
3. Identifies the person or group injured by the alleged discrimination, as well as the person, agency, organization, or institution alleged to have discriminated
4. States the basis or bases for the alleged discrimination (e.g., race, gender, age, disability, etc.)
5. Provides sufficient information for understanding the alleged facts that led the complainant to believe that discrimination has occurred, as well as the date of the alleged discrimination

Complaints will be accepted in any recognized language. Any complainant requiring technical assistance with filing a complaint may contact MassDOT's Title VI Specialist at (857)368-8580 (voice) or (857) 368-0603 (TTY).

Receipt, Review, and Initial Handling of Complaint

Upon receipt of correspondence concerning alleged discrimination, MassDOT will proceed according to the following process:

1. The Title VI Specialist or designee will date-stamp the correspondence and review it to confirm that it is a complaint within the meaning of these procedures.
2. The Title VI Specialist or designee will record the complaint in MassDOT's Title VI/Nondiscrimination Complaint Log and assess whether (a) additional information is required, (b) the filing of the complaint was timely, and (c) MassDOT has jurisdiction over the subject matter of the complaint.
3. The Title VI Specialist or designee will handle all complaints in a confidential manner and will not disclose the complainant's identity to a respondent unless (a) disclosure is necessary in order to conduct a preliminary investigation *and* (b) the complainant has checked the disclosure consent box on the complaint form.
4. After reviewing and recording the complaint, MassDOT's Title VI Specialist or designee will acknowledge receipt of the complainant's correspondence and notify the complainant that either: MassDOT has the delegated authority to

[Type text]

proceed with an investigation; or MassDOT does not have the delegated authority and the complaint has been forwarded for investigation by the USDOT operating administration having jurisdiction over the matter.

5. Where MassDOT requires additional information to identify more precisely the nature of the discrimination complaint or its connection to MassDOT's federally funded programs and activities, MassDOT will include with its correspondence acknowledging receipt of the complaint a request that the complainant provide such information within 15 days of receiving the acknowledgment. If the complainant fails to submit the required information within 15 business days, the lack of information may be good cause for a determination of no investigative merit.
6. If the complaint has not been received on a complaint form, MassDOT includes with its correspondence acknowledging receipt of the complaint a request that the complainant complete the disclosure consent statement.

Processing Complaints

Jurisdiction

The USDOT operating administrations each have an office of civil rights that is responsible for all phases of the Title VI complaint process, including accepting, rejecting, and investigating complaints; making and issuing findings; and obtaining voluntary compliance.

Upon receipt of a complaint and, if necessary, any additional information needed to identify more precisely the nature of the alleged discrimination or the connection to MassDOT's federally funded programs and activities, MassDOT will assess whether it has jurisdiction over the subject matter of the complaint. MassDOT will also identify the specific practice, procedure, policy, or service involved in the alleged discrimination. When a complaint alleges matters that are outside of MassDOT's jurisdiction, MassDOT will make a good-faith effort to refer the complaint to the appropriate agency and notify the complainant accordingly.

When MassDOT receives a complaint alleging that a subrecipient or contractor has engaged in employment discrimination, MassDOT will refer the complaint to the U.S. Equal Employment Opportunity Commission or the Massachusetts Commission Against Discrimination (MCAD).

Dismissal of a Complaint

MassDOT will contact the regional or division office Civil Rights Specialist of the appropriate operating administration and recommend dismissal in the following circumstances:

- The complainant withdraws the complaint

[Type text]

- The complainant fails to respond to repeated requests for information needed to process the complaint or otherwise fails to cooperate in the investigation
- The complaint is so weak, insubstantial, or lacking in detail that it is without merit, or so replete with incoherent or unreadable statements that MassDOT cannot consider the complaint, on the whole, to be grounded in fact
- MassDOT cannot locate the complainant after making reasonable attempts to contact him or her

Responsibility of MassDOT

After receipt, review, and initial handling, MassDOT will process discrimination complaints filed directly with MassDOT or through one of its subrecipients according to the procedure described below.

Complaints Against MassDOT

When MassDOT receives a complaint with a basis under Title VI alleging that MassDOT has discriminated against the complainant and/or other person(s) in its programs, services, or activities, the MassDOT Title VI Specialist or designee shall conduct an intake interview with the complainant and, within 60 days of the date the complaint was received, forward the complaint and a summary of the intake interview to the regional or division office Civil Rights Specialist of the USDOT operating administration having jurisdiction over the matter. The complainant will be advised that the complaint has been forwarded to the appropriate USDOT operating administration.

Any complaint alleging discrimination on the basis of age or sex with respect to a MassDOT Highway Division program, service, or activity shall be treated as a Title VI complaint.

If the complaint's basis is disability, the Title VI Specialist or designee shall conduct an intake interview with the complainant and, within 15 days of the date the complaint was received, forward the complaint and a summary of the intake interview to the regional or division office Civil Rights Specialist of the appropriate USDOT operating administration. The USDOT Civil Rights Specialist will make a determination as to whether or not to delegate authority to investigate the complaint to MassDOT. If the USDOT Civil Rights Specialist delegates the authority to investigate the complaint to MassDOT, the MassDOT Title VI Specialist or designee shall proceed with conducting an investigation and completing a Report of Investigation. The draft Report of Investigation, with recommended findings and corrective actions, shall be transmitted to the USDOT operating administration having jurisdiction over the matter within 60 days of the date the complaint was received by MassDOT. The MassDOT Title VI Specialist or designee shall consider the operating administration's comments before completing a final Report of Investigation and communicating the disposition to the complainant. A copy of the final Report of Investigation shall be forwarded to the operating administration.

[Type text]

Complaints against MassDOT Subrecipients or Contractors

When MassDOT receives a complaint alleging that a MassDOT subrecipient or contractor has discriminated against a complainant and/or other person(s) in its programs, services, or activities on the basis of Title VI (race, color, or national origin), the Title VI Specialist or OCR Civil Rights Investigator shall review, log, and investigate the allegation, and complete a Report of Investigation. Any subrecipient who receives a complaint with a basis under Title VI shall forward the complaint to the Title VI Specialist; subrecipients do not have the delegated authority under Title VI to investigate complaints. The Report of Investigation shall be transmitted to the USDOT operating administration having jurisdiction over the matter within 60 days of the date the complaint was received by MassDOT.

Any complaint alleging discrimination on the basis of age or sex with respect to a MassDOT Highway Division program, service, or activity shall be treated as a Title VI complaint.

If the complaint's basis is disability, MassDOT has the delegated authority and shall proceed with conducting an investigation. A copy of the complaint, together with a copy of MassDOT's Report of Investigation, shall be forwarded to the FHWA division office within 60 days of the date the complaint was received by MassDOT.

Investigations

Where MassDOT has the delegated authority to conduct an investigation, a preliminary investigation will be conducted by either the Title VI Specialist or designee. 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.

Preliminary Investigation Plan

After assessing jurisdiction and identifying the specific practice, procedure, policy, or service involved in the discrimination alleged in the complaint, MassDOT's Title VI Specialist shall confer with the MassDOT Title VI Coordinator. The preliminary investigation may be assigned to either the Title VI Specialist or designee, who will prepare a 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

[Type text]

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

Notifications and Requests for Information

MassDOT will notify the complainant and respondent that MassDOT is investigating matters raised in the complaint. The notification letter will state the following:

1. The basis/bases for the complaint
2. Allegations over which MassDOT has jurisdiction
3. MassDOT's jurisdiction over the respondent
4. An admonition that the respondent shall not intimidate, threaten, coerce, retaliate against, or discriminate against anyone involved in the investigation of the complaint, including the complainant, witnesses, and others who are sources of information regarding matters alleged or related to the complaint
5. A request that the respondent submit a position statement to MassDOT responding to the allegations within 15 days of the date of MassDOT's notification letter
6. A request for additional information relevant to matters raised in the complaint, if appropriate, to be submitted to MassDOT within 15 days of the date of MassDOT's notification letter

Interviews, Data Collection, and On-site Visits

After preparing a Preliminary Investigation Plan, MassDOT will gather information needed to complete the preliminary investigation by conducting interviews and, if necessary, on-site visits; it will also, if necessary, collect other available, relevant data through other means. All documentation will be kept on file. These documents may include, but are not limited to, transcripts, notes, letters, forms, and interview summaries.

Preliminary Investigation Report

No later than 60 days after receiving a complaint, MassDOT will transmit the complaint and a Preliminary Investigation Report to the regional or division Civil Rights Specialist of the appropriate USDOT operating administration. The Preliminary Investigation Report will discuss the issues raised in the complaint, describe the information obtained during the preliminary investigation, and explain how MassDOT obtained and evaluated

[Type text]

that information. The Preliminary Investigation Report will also include an analysis of each allegation and provide MassDOT's recommendations.

The Preliminary Investigation Report shall include the following components:

1. Name(s) and address(es) of complainant(s)
2. Name(s) and address(es) of respondent(s)
3. Applicable law/regulation
4. Basis/bases
5. Issues
6. Findings for each issue, with a corresponding conclusion for each issue
7. Recommended decision
8. Recommendations (if applicable)

Investigations under the Americans with Disabilities Act

Under ADA, (1) MassDOT has the delegated authority to investigate complaints of discrimination based on disability against its sub-recipients and contractors, and (2) based on the nature of the complaint, the operating agency may authorize MassDOT to investigate its own ADA complaint. In these cases, the investigation procedures will differ slightly from that for Title VI.

In the case of an ADA complaint against a subrecipient/contractor, MassDOT will conduct the investigation in the following manner.

Investigation Plan

After assessing jurisdiction and identifying the specific practice, procedure, policy, or service involved in the discrimination alleged in the complaint, MassDOT's Title VI Specialist or designee shall confer with the MassDOT Title VI Coordinator. The investigation may be assigned to either the Title VI Specialist or or designee, who will prepare an Investigation Plan. The Investigation Plan defines the issues raised in the complaint and serves as a guide for completing the investigation. The 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)

[Type text]

7. Basis/bases of alleged discrimination
8. Background information on file
9. Information needed
10. Sources of information needed

Notifications and Requests for Information

MassDOT will notify the complainant and respondent that MassDOT is investigating matters raised in the complaint. The notification letter will state the following:

1. The basis/bases for the complaint
2. Allegations over which MassDOT has jurisdiction
3. MassDOT's jurisdiction over the respondent
4. An admonition that the respondent shall not intimidate, threaten, coerce, retaliate against, or discriminate against anyone involved in the investigation of the complaint, including the complainant, witnesses, and others who are sources of information regarding matters alleged or related to the complaint
5. A request that the respondent submit a position statement to MassDOT responding to the allegations within 15 days of the date of MassDOT's notification letter
6. A request for additional information relevant to matters raised in the complaint, if appropriate, to be submitted to MassDOT within 15 days of the date of MassDOT's notification letter

Interviews, Data Collection, and On-site Visits

After preparing an Investigation Plan, MassDOT will gather information needed to complete the investigation by conducting interviews and, if necessary, on-site visits; it will also, if necessary, collect other available, relevant data through other means. All documentation will be kept on file. These documents may include, but are not limited to, transcripts, notes, letters, forms, and interview summaries.

Investigation Report

No later than 60 days after receiving a complaint, MassDOT will transmit the complaint and the Investigation Report to the complainant and the regional or division Civil Rights Specialist of the appropriate USDOT operating administration. The Report will discuss the issues raised in the complaint, describe the information obtained during the preliminary investigation, and explain how MassDOT obtained and evaluated that information. The Investigation Report will also include an analysis of each allegation and provide MassDOT's recommendations.

The Investigation Report shall include the following components:

[Type text]

1. Name(s) and address(es) of complainant(s)
2. Name(s) and address(es) of respondent(s)
3. Applicable law/regulation
4. Basis/bases
5. Issues
6. Findings for each issue, with a corresponding conclusion for each issue
7. Recommended decision
8. Recommendations (if applicable)

If MassDOT is given the authority to investigate a complaint against itself based on disability, the Title VI Specialist or or designee will investigate the complaint according to the procedures described for ADA complaints against subrecipients and contractors, but will instead complete a draft Report of Investigation. The Report of Investigation will contain the following sections, consistent with the outline provided in the FHWA Procedures Manual for Processing External Complaints of Discrimination:

1. Name(s) and address(es) of complainant(s)
2. Name(s) and address(es) of respondent(s)
3. Applicable law
4. Basis
5. Issues
6. Findings for each issue, with a corresponding conclusion for each issue
7. Recommended decision
8. Recommendations (if applicable)

MassDOT will transmit the draft Report of Investigation to the regional or division Civil Rights Specialist of the appropriate USDOT operating administration no later than 60 days after receiving a complaint.

The operating administration will review the draft Report of Investigation and provide feedback to MassDOT. MassDOT will consider the feedback provided and prepare a final Report of Investigation. The Report of Investigation will be released to the complainant within 120 days of original receipt of the complaint. The complainant will be advised of the right to file directly with the USDOT should the findings and action taken by MassDOT be unsatisfactory to the complainant.

Record Keeping

[Type text]

A complaint log will be maintained for all USDOT complaints filed with and investigated by MassDOT. The log will identify: each complainant by race, color, national origin, income, age, gender, and disability status; the subrecipient (when applicable); the nature of the complaint; the dates the complaint was filed and the investigation completed; the disposition; the date of disposition; and any other pertinent information. A separate log will be maintained that will include USDOT and state-level matters that are on our docket.

Title VI Complaint Investigation Procedures

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 the Investigator and his/her supervisor to keep the investigation on track and focused on the issues. It is the Investigator's checklist. The following elements should be contained in an Investigative Plan:

- I. Complainant(s) Name and Address/ Attorney For Complainant with Name and Address
- II. Respondent(s) Name and Address/ Attorney For Respondent with Name and Address
- III. Applicable Law (i.e., Title VI, Title VIII, Compliance Review Under Regulations)
- IV. Basis
- V. Issue(s)
- VI. Background
- VII. Name of Person(s) to be Interviewed, including Questions for the Complainant, Respondent, and Witness(es)
- VIII. Evidence to be Obtained During the Investigation

[Type text]

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 be sent and eventually interviewed.

Prepare a cover letter to transmit 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, always remember that 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 should be prepared that address the issues involved in the complaint. During the interview, the following steps are recommended:

- 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 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's allegation(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

[Type text]

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 relevant 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 the 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 should be conducted when:

- Personal contact with the Complainant and the Respondent may yield information and clarification that might not otherwise be discovered by only reviewing the written documents 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 should be related to the issues cited in the complaint. An evidence request should 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 include the following:

[Type text]

- Circumstantial Evidence – Includes facts from which may be inferred intent or discriminatory 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 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 must 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 the 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 the treatment afforded others.

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
- Findings For Each Issue with a corresponding Conclusion For Each Issue
- Recommended Decision
- Recommendations (If Applicable)