

## **Addendum 2 — WSDOT’s External Complaint Procedures for Federally Assisted Programs and Activities**

These procedures cover all complaints filed under Title VI of the Civil Rights Act of 1964 (Title VI), including its Disadvantaged Business Enterprises (DBE), Equal Employment Opportunity (EEO) and On-the-Job Training (OJT) Program components, Section 504 of the Rehabilitation Act of 1973 (Section 504), Civil Rights Restoration Act of 1987 (CRRA), and the Americans with Disabilities Act of 1990 (ADA), regarding any program or activity administered by the Washington State Department of Transportation (WSDOT) as they relate to local agencies, contractors and other subrecipients of United States Department of Transportation (USDOT) funds. These procedures apply to complaints filed against a program and/or activity funded by either the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA) or the Federal Aviation Administration (FAA).

Intimidation or retaliation is prohibited per Title 49, Code of Federal Regulations, Part 21.11(e).

The procedures do not deny the right of the complainant to file formal complaints with other state or federal agencies or to seek private counsel for complaints alleging discrimination.

These procedures are part of an administrative process, which do not provide for remedies that include punitive damages or compensatory remuneration for the complainant.

Every effort will be made to obtain early resolution of complaints at the lowest level possible and with the guidance of the USDOT modality (FHWA, FTA, FAA) with jurisdiction over the matters per 49 CFR 21.11(d)(1). The option of informal mediation meeting(s) between the affected parties and the investigator may be utilized for resolution, at any stage of the process. The investigator will make every effort to pursue a resolution of the complaint. Initial interviews with the complainant and the respondent will request information regarding specifically requested relief and settlement opportunities.

WSDOT will not investigate complaints in which it appears as a respondent. The matters will be referred to the USDOT modality under which the complained-of program or activity falls.

### **Procedures**

1. Any person, or specific class of persons believing they have been subjected to discrimination prohibited by the legal provisions of Title VI, Section 504, ADA or the CRRA may file a written complaint with WSDOT’s Office of Equal Opportunity (OEO).

2. A formal complaint must be filed within 180 calendar days of the date of the alleged act of discrimination or the date when the alleged discrimination became known to the complainant(s), or where there has been a continuing course of conduct, the date on which the conduct was discontinued or the latest instance of the conduct. This timeframe is prescribed by 49 CFR 21.11(b).
3. The complaint must meet the following requirements:
  - a. Complaint shall be in writing and signed by the complainant(s).
  - b. Present the date of the alleged act of discrimination; date when the complainant(s) became aware of the alleged discrimination; or the date on which that conduct was discontinued or the latest instance of the conduct.
  - c. Present a detailed description of the issues including names and job titles of those individuals perceived as parties in the complained-of incident.
  - d. Allegations received by fax or e-mail will be acknowledged and processed, once the identity(ies) of the complainant(s) and the intent to proceed with the complaint have been established. For this, the complainant is required to mail a signed, original copy of the fax or e-mail transmittal for OEO to be able to process it.
  - e. Allegations received by telephone will be reduced to writing and provided to the complainant for confirmation or revision before processing. A complaint form will be forwarded to the complainant for him/her to complete, sign and return to OEO for processing.
4. Upon receipt of the complaint, OEO will determine its jurisdiction, acceptability or need for additional information before initiating its investigation. In cases where the complaint is against one of WSDOT's subrecipients of federal highway funds, WSDOT will assume the jurisdiction and will investigate and adjudicate the case. Complaints against WSDOT will be referred to the corresponding USDOT modality for proper disposition. In special cases warranting intervention to ensure equity, the USDOT modality (FHWA, FTA, FAA) may assume jurisdiction and either complete or obtain services to review or investigate matters.
5. Acceptance of a complaint will be determined by:
  - a. Whether the complaint is timely filed;
  - b. Whether the allegations involve a covered basis such as race, color, national origin, gender, disability or retaliation;

- c. Whether the allegations involve a program or activity of a Federal-aid recipient, subrecipient, or contractor; or, in the case of ADA allegations, an entity open to the public;
    - d. Whether the complaint is beyond the administrative authority of WSDOT.
6. A complaint may be dismissed for the following reasons:
  - a. The complainant requests the withdrawal of the complaint;
  - b. The complainant fails to respond to repeated requests for additional information needed to process the complaint, or otherwise fails or refuses to cooperate in the investigation;
  - c. The complainant cannot be located after reasonable attempts to contact him or her.
7. OEO has sole authority for accepting complaints for investigation. Within 5 days of receipt of the complaint OEO will acknowledge its receipt to the parties as well as the course of action on the complaint. The course of action may include acceptance of the complaint for investigation, request for additional information or rejection of the complaint. The complaint will receive a case number and then be logged in OEO's records identifying its basis, alleged harm, the race, color, national origin and gender of the complainant(s).
8. In cases where WSDOT assumes the investigation of the complaint, OEO will provide the respondent with the opportunity to respond to the allegations in writing. The respondent will have 10 calendar days from the date of OEO's written notification of acceptance of the complaint to furnish his/her response to the allegations.
9. Within 40 calendar days of the acceptance of the complaint, the WSDOT's investigator\* will prepare a draft investigative report for the review of the External Civil Rights Branch (ECRB) Manager and the Attorney General's Office (AGO). The report shall include a narrative description of the incident, identification of persons interviewed, findings and recommendations for disposition. The AGO will have 10 calendar days to review and provide comments to the investigator.

\* This can be WSDOT's Title VI Coordinator; the Regional Title VI Liaison or any other qualified investigator designated by OEO.
10. Once the investigator addresses any AGO's comments to the preliminary investigative report, the report and its findings will be forwarded to the ECRB Manager.
11. Any comments or recommendations from the AGO will be reviewed by the ECRB Manager. There will be a period of 10 calendar days for the ECRB Manager to discuss the report and any recommendations with the OEO Director, and have the

investigator address any modifications to the existing investigative report. The report will be modified as needed and made final for its release to the corresponding USDOT modality (FHWA, FTA or FAA).

12. WSDOT's final investigative report with the preliminary findings and a copy of the complaint will be forwarded to either FHWA (both, Washington Division Office and Headquarters Civil Rights [HCR] ), FTA or FAA, within 60 calendar days of the acceptance of the complaint, per 23 CFR 200.9(b)(3).
13. WSDOT OEO will notify the parties of its preliminary findings, which are subject to the corresponding USDOT modality's concurrence.
14. The corresponding USDOT modality will issue its final agency decision (FAD) to WSDOT based on the state's investigative report.
15. Once the corresponding USDOT modality issue its final decision, WSDOT will notify all parties involved about such determination. USDOT's final determination is not subject to an administrative appeal.
16. A complainant dissatisfied with USDOT's FAD may file action with the appropriate US District Court.

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