NYSDOT – DRAFT TITLE VI COMPLAINT PROCEDURE for FTA REPORT 2011

I. INTRODUCTION

The Title VI and related statutes regarding discrimination complaint procedures are intended to provide aggrieved persons an avenue to raise complaints of discrimination regarding the New York State Department of Transportation (NYSDOT) programs, activities and services as required by statute.

This procedure covers all complaints filed under Title VI of the Civil Rights Act of 1964, as amended and includes Disadvantaged Business Enterprises (DBEs), Equal Employment Opportunity (EEO) and On the Job Training (OJT) Program components Section 504 of the Rehabilitation Act of 1973, Civil Rights Restoration Act of 1987, and the Americans with Disabilities Act of 1990, regarding any program or activity administered by NYSDOT as they relate to local agencies, contractors and other sub recipients of NYSDOT 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), Federal Railroad Administration (FRA) and/or by persons who are not NYSDOT employees.

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

- This procedure does 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.

- This procedure is part of an administrative process, which does not provide for remedies that include punitive damages or compensatory enumeration for the complainant.

Every effort will be made to obtain early resolution of complaints at the lowest administrative level possible. The option of a mediation meeting between the affected parties and the investigation may be utilized for resolution, at any point during the complaint 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.
II. PURPOSE

The purpose of this procedure is to describe the process used by the Office of Civil Rights (OCR) to enforce Title VI of the Civil Rights Act of 1964 as amended, and the Environmental Justice, Executive Order 12898 with respect to the filing and processing of external complaints of discrimination. This external procedure is intended to apply not only to highway and Federal-aid projects but also to all NYSDOT program areas.

NYSDOT, in its continuing effort to ensure equity in employment and in support of Federal and state anti-discrimination legislation, also has an established internal procedure for investigation and resolution of claims of unlawful discrimination on the basis of race, color, national origin, creed, age, sex, marital status, religion, mental or physical disabilities or Vietnam Era Veteran status. The Office of Human Resources is responsible for establishing and implementing the Department’s internal procedure for the investigation and resolution of claims of unlawful discrimination within the Department.

III. AUTHORITY

Federal Laws, Executive Orders and Regulations

Selected Nondiscrimination Authorities

Nondiscrimination Executive Orders
- E.O. 12250, Nondiscrimination on the basis of handicap in Federally assisted programs.
- E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (as amended)
- E.O. 13166, Limited English Proficiency (LEP)

Nondiscrimination Regulations
- 28 CFR 41 Implementation of Executive Order 12250, Nondiscrimination on the basis of handicap in federally assisted programs.
- 28 CFR 42 DOJ’s regulation implementing Title VI Subpart C of the Civil Rights Act of 1964.
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- 49 CFR 21 DOT’s Title VI regulation.
- 23 CFR 200 FHWA’s regulation implementing Title VI of the 1964 Civil Rights Act.

New York State Laws, Executive Orders and Regulations

- Article 15-A (1988)
- Equal Opportunity for Women (A Position Paper - No. 14, State Education Department)
- Executive Order No. 6 (Governor Cuomo, 1983)
- Executive Order No. 17 (Governor Cuomo, 1983)
- Executive Order No. 19 (Governor Cuomo, 1983)
- Executive Order No. 28 (Governor Cuomo, 1983)
- Executive Order No. 28.1 (Governor Cuomo, 1983)
- Executive Order No. 51 (Governor, Cuomo, 1983)
- Executive Order No. 96 (Governor Cuomo, 1983)
- Executive Order No. 154 (Governor Cuomo, 1983)
- New York State Human Rights Law
- New York State-wide Policy on Sexual Harassment

IV. DEFINITIONS

The following definitions will apply for the purpose of this complaint procedure:

(a) Affirmative Action - a process to eliminate past and present discrimination in all federally-assisted programs, and to ensure future non-discriminatory practices.

(b) Beneficiary - any person or group of persons (colleges, commercial enterprises, railroads, trucking companies, local governments entitled to receive benefits, directly or indirectly, from any federally assisted program, i.e., relocates, impacted citizens, and communities, etc.

(c) Compliance - that satisfactory condition existing when a recipient has effectively implemented all of the Title VI requirements or can demonstrate that every good faith effort toward achieving this end has been made.

(d) Contract - a mutually binding legal relationship or any modification thereof obligating the seller to furnish supplies or services, including construction, and the buyer to pay for them.

(e) Deficiency status - the interim period during which the recipient State has been notified of deficiencies, has not voluntarily complied with Title VI Program guidelines, but has not been declared in noncompliance by the Secretary of Transportation.
(f) Discrimination- that act or action whether intentional or unintentional, through which a person in the United States, solely because of race, color, religion, sex, or national origin, has been otherwise subjected to unequal treatment under any program or activity receiving financial assistance from the Federal Highway Administration under title 23 U.S.C. Specific discriminatory actions prohibited include the following:

1. A recipient under any program to which this part (49 21.5) applies may not, directly, or through contractual or other arrangements, on the grounds of race, color, or national origin.

   i. Deny a person any service, financial aid, or other benefit provided under the program.

   ii. Provide any service, financial aid, or other benefit to a person which is different, or is provided in a different manner, from that provided to others under the program.

   iii. Subject a person to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefits under the program.

   iv. Restrict a person in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program.

   v. Treat a person differently from others in determining whether they satisfy any admission, enrollment, quota, eligibility, membership, or other requirement or condition which persons must meet in order to be provided any service, financial aid, or other benefit provided under the program.

   vi. Deny a person an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from the afforded others under the program; or

   vii. Deny a person the opportunity to participate as a member of a planning, advisory, or similar body which is an integral part of the program.

(g) Engineer In Charge (EIC) - the NYSDOT engineer with direct supervision for executing the terms and agreements of a contract under direction of the Regional Construction Engineer.

(h) Equal Employment Opportunity (EEO) - means the absence of disparate treatment in employment and the work environment which guarantees the right of all persons to work and advance on the basis of merit and ability.

(i) EEO Officer - the individual designated by the sub recipient who is responsible for administering and promoting an active contractor program of EEO and is assigned authority and responsibility to do.
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(i) **Good Faith Effort** - the documented steps made by a recipient to meet the EEO provisions of the contract.

(k) **Noncompliance.** A recipient (contractors, consultants, subcontractors, and sub-consultants) has failed to meet prescribed requirements and has shown an apparent lack of good faith effort in implementing all of the Title VI requirements.

(l) **Primary Recipient (e.g. NYSDOT)** - any recipient that is authorized or required to extend Federal financial assistance to another recipient for the purpose of carrying out a program.

(m) **Program** - includes any benefit, project or activity, for the provision of services, financial aid, or other benefits to individuals. This includes education or training, work opportunities, health, welfare, rehabilitation, housing, or other services, whether provided directly by the recipient of Federal financial assistance or provided by others through contracts or other arrangements with the recipient.

(n) **Regional Compliance Specialists.** The NYSDOT personnel whose primary responsibility is to ensure external compliance with all relevant State and Federal Civil Rights laws, rules and regulations as they relate to three basic programs: employment goals, training, and subcontracting opportunities for Disadvantaged Business Enterprises Programs at the regional level. The Regional Compliance Specialists are located in each of the eleven (11) regional offices and report directly to the Regional Construction Engineers.

(o) **Sub recipients (e.g., construction contractors, consultants, material suppliers, municipalities, counties, cities, colleges, universities, planning agencies and other recipients of Federal-aid highway funds).** A sub-recipient is any entity that receives Federal assistance through an entity that

(p) **Title VI Program.** The system of requirements developed to implement Title VI of the Civil Rights Act of 1964. References in this part to Title VI requirements and regulations shall not be limited to only Title VI of the Civil Rights act of 1964. Where appropriate, this term also refers to the civil rights provisions of other Federal statutes to the extent that they prohibit discrimination on the grounds of race, color, sex, or national origin in programs receiving Federal financial assistance of the type subject to Title VI itself.

(q) **Title VI/EJ Compliance Specialists.** NYSDOT personnel responsible for initiating and monitoring Title VI/EJ activities and preparing required reports. (Main Office Compliance Specialist or his/her designee.)

V. **Roles and Responsibility for Implementation**
VI. Procedures for Filing a Complaint

(a) **Who May File a Complaint.** Any person and or entity who believes they have been subjected to discrimination, retaliation or prohibited by any of the Civil Rights authorities, based upon race, color, sex, age, national origin, religion, marital status, or disability with respect to NYSDOT programs, activities, or services may file a complaint of discrimination with NYSDOT. The complaint may be filed by the individual and or their representative. A complaint must be filed not later than 180 days after the date of the alleged discrimination, unless the filing time is extended by the Federal Division or Regional Office, in accordance with 49 s 21.11(b), (see Appendix B).

(b) **NYSDOT Officials Authorized to Receive a Complaint.** Complainants may submit their complaints to the Director of OCR, EIC, RCS, RCE, Construction supervisors or managers of NYSDOT field offices and installations or the designees of any of these officials. All complaints received by NYSDOT officials must immediately be date stamped and forwarded to the Director of OCR.

(c) **Complaint Format.** All Title VI and related statute complaints are considered formal as there is no informal process. Complaints must be in writing and will be signed by the complainant or their representative. Complaints will explain as fully as possible the facts and circumstances surrounding the claimed discrimination. In the event that a person makes a verbal complaint of discrimination to a NYSDOT officer or employee, the person will be interviewed by an authorized NYSDOT official. Complaints must be in writing and signed by the complainant or their representative before further action is taken. Complaints should state, as fully as possible, the facts, dates and circumstances surrounding the alleged discrimination.

(d) **The Complainant.** File a written complaint of discrimination against a sub-recipient. An authorized NYSDOT official will immediately forward the complaint to the Director of OCR for processing by the Title VI/EJ staff.

(e) **Office of Civil Rights Main Office Title VI/EJCompliance Specialist II.** The Compliance Specialist will first screen the complaint in order to determine whether it is an external or internal complaint (this procedure is only to be used to process external complaints of discrimination). An acknowledgment letter is sent to the complainant and a copy to the sub recipient with instructions that the complaint of discrimination be provided to their
EEO Officer. The acknowledgement letter will explain the responsibilities of the complainant and sub recipient and will also outline the appeal process available to the complainant if the discrimination allegation is not satisfactorily resolved, (See Appendix C). The Title VI/EJ Compliance Specialist also sends an acknowledgement letter to the sub recipient and a copy to the complainant informing the subrecipient of the discrimination complaint and outlining the sub recipient's responsibilities as stated in Section 5.d. of the Required Contract Provisions for Federal Aid Construction Contracts or other applicable requirements; e.g. consultant contracts, local agreements or modal program grants. (see Appendix D).

(f) **Sub recipient / Equal Employment Opportunity Officer.** The subrecipient along with their EEO Officer will promptly investigate all complaints of alleged discrimination in connection with their responsibilities under the clauses contained in their contract. The contractor will make every attempt to resolve complaints, by taking appropriate action within 21 business days. If at anytime during the investigation evidence indicates other persons were affected by the alleged discriminatory actions, that corrective actions will include such other persons. The sub recipient is also instructed to inform OCR of the final determination of the discrimination complaint. Copies of both letters are sent to the Regional Construction Engineer, Regional Compliance Specialist and the Construction Division. In addition to the Construction Division, complaints of discrimination may also involve other NYSDOT program areas.

(g) **The Complainant and the Subrecipient.** Both are responsible for working together to resolve the discrimination complaint to the satisfaction of both parties. At each stage of the process every effort should be made to pursue a resolution of the complaint. Initial interviews with the complainant and the respondent to obtain requests for information and other matters regarding settlement opportunities should occur. It is in the best interest of all parties involved in a complaint of discrimination matter to try to resolve these issues informally. (see Appendix E).

(h) **Title VI/Coordinator.** Investigates the discrimination complaint to determine if a compliance review relating to a specific contract or contracts is warranted. If so, a recommendation will be made to the OCR Director. One indication of the need for a compliance review is a history of EEO complaints. If the Director agrees and a compliance review is approved, it is conducted in accordance with the compliance review requirements of the appropriate Federal agency.

(i) **Regional Compliance Specialist.** Once notified of an alleged discrimination complaint by the copy of the letters from the CS II, the RCS contacts the complainant to determine if the complaint has been resolved. If the complaint has been resolved to the satisfaction of all parties, the RCS notifies the CS II and ends the complaint. If the complaint cannot be resolved at this level, the avenues of appeal are explained to the
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complainant, (see Appendix F).

(j) Complainant. If the complaint is not resolved, the complainant may appeal to the New York State Division of Human Rights. If the decision is to appeal, the complainant files the complaint in accordance with regulations in effect at the time and sends a copy of the appeal to OCR.

(k) Title VI/ Coordinator. When a copy of the appeal to the NYS Division of Human Rights is received, the Title VI Unit forwards it to the New York State Department of Transportation’s Office of Legal Affairs.

(l) Office of Legal Affairs (OLA). Requests from the NYS Division of Human Rights that a copy of the findings in the appeal be sent to OLA for Departmental consideration. When the findings are received, if there is a finding of probable cause, a copy is first sent to the Commissioner of Labor so that any violation of NYS Labor Laws may be acted upon and second, OLA meets with OCR to prepare a Show-Cause Notice.

(m) Office of Civil Rights (OCR). Prepares and sends the Show-Cause Notice informing the contractor of the reasons why the contractor is requested to appear before the Department and show cause why additional contract enforcement sanctions should not be pursued. All documents obtained during the investigation along with a recommendation are forwarded to the appropriate Federal regional or district office for their review and comments.

(n) Federal Regional or District Office. The appropriate Federal agency renders a determination based on the information provided by OCR. The Federal agency has several options: it may agree with OCR’s recommendation, it may return the complaint to OCR with comments; or, it may render its own determination. When the Federal agency concludes it review they will notify OCR of their finding.

(o) Title VI/ Coordinator. Will notify the complainant of the Federal agency’s final recommendation and if necessary the CS III will explain all avenues for appeal available to the complainant.

LIST OF APPENDICES

A. COMPLAINTS LOG

B. DISCRIMINATION COMPLAINT FORM

C. ACKNOWLEDGMENT LETTER TO COMPLAINANT

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D. ACKNOWLEDGMENT LETTER TO SUBRECIPIENT/RESPONDENT

E. RESOLUTION AGREEMENT BETWEEN COMPLAINANT AND RESPONDENT

F. NYSDOT REGIONAL COMPLIANCE SPECIALIST REGIONS 1 – 11

G. NOTICE OF RIGHTS FOR PERSONS INTERVIEWED BY NYSDOT AND FHWA/FTA/FAA

H. COMPLAINT CONSENT AND RELEASE FORM

I. REJECTION LETTER TO COMPLAINANT
APPENDIX A

COMPLAINT LOG

In order to comply with CFR 23 Part 200 - Title VI Program and Related Statutes - Implementation and Review Procedures, each complaint must include the following information:

1. Complainant must be identified by race, color, sex or national origin.

2. Name of the sub recipient and respondent.

3. Nature of the complaint.

4. The date the complaint was filed and the investigation completed.

5. The disposition and the date of the disposition.

6. Other pertinent information.
ACKNOWLEDGMENT LETTER TO COMPLAINANT

The Office of Civil Rights (OCR) received your complaint of alleged discrimination filed against **Name of Sub recipient/Respondent**. Your complaint has been assigned to **Name of Staff person** who will contact you within the next few days to discuss the procedures for the investigation of your complaint.

The **name of sub-recipient** will also be notified of your formal complaint and is required to provide a copy of your complaint to the sub-recipient’s Equal Employment Opportunity Officer.

Enclosed are two copies of our Complaint Consent/Release form concerning the Privacy Act of 1974 and the Freedom of Information Act. Please review this form and decide whether you wish to release your identity. By giving consent, you agree that your identity as a complainant and personal information about you may be revealed in the course of the investigation, and that the Department of Justice may receive personal information concerning you. Your decision not to release your identity may restrict any investigation action and may result in the dismissal of our complaint. Please complete one of the forms and return it to our office within 30 days of your receipt of this letter. You may retain the other copy for your records.

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 civil rights laws we enforce. Any individual alleging such harassment or intimidation may file a complaint with the New York State Department of Transportation.

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

If you have any questions please contact **staff person**. Please reference the complaint number above in all future correspondence.

Sincerely,
NYSDOT – DRAFT TITLE VI COMPLAINT PROCEDURE for FTA REPORT 2011

Warren S. Whitlock
Director, Office of Civil Rights

APPENDIX C

ACKNOWLEDGMENT LETTER TO SUB RECIPIENT/RESPONDENT

Date

Name of Sub recipient/ Respondent
Address

RE: Alleged Complaint of Discrimination
Complaint Number:

Dear:

A formal complaint of discrimination has been filed with the New York State Department of Transportation’s Office of Civil Rights against name of sub recipient/respondent. The complaint was filed by name of complainant. The complaint alleges (basis of complaint i.e. race, color, national origin, sex, age, disability/handicap).

This letter should be provided to your Equal Employment Opportunity Officer who is required to follow the guidance provided in Section 5.d. of the required contract provisions for Federal-Aid Construction Contracts which instructs:

“The sub recipient will promptly investigate all complaints of alleged discrimination made to the contractor in connection with his obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation the contractor will inform every complainant of all of the avenues of appeal.”

Complaints of discrimination should be resolved by informal means whenever possible. Such informal attempts and their results should be summarized in the EEO Officer’s findings. The sub recipient should make every attempt to resolve this complaint by taking appropriate action within a reasonable time frame and inform OCR of the final resolution of the discrimination complaint.

Under the Freedom of Information Act, 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.

Sincerely,

Warren S. Whitlock
Director

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APPENDIX  D

RESOLUTION AGREEMENT BETWEEN COMPLAINANT AND RESPONDENT

Complainant ____________________________________  Complaint Number ______________

Sub recipient/Respondent ___________________________

IT IS HEREBY AGREED by and between (NAMES) herein after referred to as the Complainant and
(NAME), herein after referred to as the Sub recipient/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 ALLEGATION).

Section Three: Terms of Settlement

The Complainant and the Respondent enter into this agreement prior to a 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. ____________________________________________
4. ____________________________________________

A. The parties agree that this settlement will not constitute an admission of discrimination or
violation of any provision of law on the part of the Sub recipient/Respondent.
B. It is understood that if the Sub recipient/Respondent fails to fulfill or rescinds any provision of
this agreement, the Complainant, upon written request, will be entitled to reinstate the matter
for further processing from the point processing ceased.

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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 Sub recipient/Respondent will notify the NYSDOT 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 will become effective on the date that the last signatory signs this agreement.

____________________________________  ____________________
Complainant  Date

____________________________________  ____________________
Sub recipient/Respondent  Date

____________________________________  ____________________
Warren S. Whitlock, Director, Office of Civil Rights  Date
### Appendix F

#### NYSDOT Regional Compliance Specialist Regions 1 - 11

The Regional Compliance Specialist report directly to the Regional Construction Engineers.

<table>
<thead>
<tr>
<th>Region</th>
<th>Address</th>
<th>Specialist</th>
<th>Phone/Fax</th>
</tr>
</thead>
<tbody>
<tr>
<td>01</td>
<td>328 State Street, Schenectady, NY 12305</td>
<td>Barbara Mosher</td>
<td>(518) 388-0163, 388-0194</td>
</tr>
<tr>
<td>02</td>
<td>207 Genesee St., Utica, NY 13501</td>
<td>Eugene Walker</td>
<td>(315) 793-2482, 793-2230</td>
</tr>
<tr>
<td>03</td>
<td>109 S. Warren St., Suite 518, St. Twr. Bldg., Syracuse, NY 13202</td>
<td>Sue O’Neal</td>
<td>(315) 448-7344, 448-7362</td>
</tr>
<tr>
<td>04</td>
<td>1530 Jefferson Road, Rochester, NY 14623</td>
<td>Troy Salley</td>
<td>(585) 272-3348, 427-7294</td>
</tr>
<tr>
<td>05</td>
<td>125 Main St., Buffalo, NY 14203</td>
<td>Mohamed A. Mohamed</td>
<td>(716) 847-3098, 847-3823</td>
</tr>
<tr>
<td>06</td>
<td>107 Broadway, Hornell, NY 14843</td>
<td>Raul Estela</td>
<td>(607) 324-8427, 324-8346</td>
</tr>
<tr>
<td>07</td>
<td>317 Washington St., Watertown, NY 13601</td>
<td>Susan O’Neill</td>
<td>(315) 785-2331, 785-2483</td>
</tr>
<tr>
<td>08</td>
<td>4 Burnett Boulevard,</td>
<td>Melissa Slater</td>
<td>(845) 575-6037</td>
</tr>
</tbody>
</table>

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### NYSDOT – DRAFT TITLE VI COMPLAINT PROCEDURE for FTA REPORT 2011

<table>
<thead>
<tr>
<th>Location</th>
<th>Contact Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Poughkeepsie, NY</td>
<td>Larry Hughes (607) 721-8100</td>
</tr>
<tr>
<td>44 Hawley St.</td>
<td>575-6005</td>
</tr>
<tr>
<td>Binghamton, NY 13901</td>
<td>721-8113</td>
</tr>
<tr>
<td>Veterans Memorial Hwy.</td>
<td>Vacant (631) 952-6106</td>
</tr>
<tr>
<td>NYS Office Bldg.</td>
<td>575-6005</td>
</tr>
<tr>
<td>Hauppauge, NY 11787</td>
<td>952-6772</td>
</tr>
<tr>
<td>One Hunter’s Point Plaza</td>
<td>Maria Ramirez (718) 482-4784</td>
</tr>
<tr>
<td>Long Island City, NY 11101</td>
<td>575-6005</td>
</tr>
<tr>
<td></td>
<td>482-4601</td>
</tr>
</tbody>
</table>
NOTICE OF RIGHTS FOR PERSONS INTERVIEWED BY NYSDOT, FHWA/FTA/FAA

Complainants and individuals who cooperate in an investigation, proceeding or hearing conducted by NYSDOT or FHWA are afforded certain rights and protections. This brief description will provide you with an overview of these rights and protections.

1. A recipient may not force its employees to be represented by the recipient’s counsel nor may it 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 NYSDOT or with FHWA/FTA/FAA. The representative may be the recipient’s counsel, the employee’s private counsel, or anyone else the interviewee authorized to be present.

2. The laws and regulations which govern NYSDOT’s and FHWA/FTA/FAA’s compliance and enforcement authority provide that no recipient or other person shall intimidate, threaten, coerce or discriminate against any individual because they have made a complaint, testified, assisted or participated in any manner in an investigation, proceeding, or hearing conducted under the Department Of Justice’s (DOJ) jurisdiction, or has asserted rights protected by statutes DOJ enforces.

3. Information obtained from the complainant or other individual who is maintained in NYSDOT’s or in FHWA/FTA/FAA’s investigative files may be exempt from disclosure under the Privacy Act or under the Freedom of Information Act (FOIA) if release of such information would constitute an unwarranted invasion of personal privacy.

4. NYSDOT is required to investigate complaints of discrimination on the basis of race, color, national origin, sex, disability, age, and religion against recipients of Federal financial assistance. NYSDOT is authorized to conduct reviews of federally funded recipients to assess their compliance with civil rights laws.

5. Information collected by NYSDOT is reviewed by authorized personnel within the agency. This information may include personnel records or other personal information. NYSDOT 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. NYSDOT also may be required to reveal certain information to any individual who requests it under the provisions of the FOIA.
6. Personal information will be used only for specific purpose for which it was submitted, that is, for authorized civil rights compliance and enforcement activities. Except in the instances defined in FHWA’s regulation at 28 16, NYSDOT and FHWA 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 FOIA.

7. No law requires a complainant to give personal information to NYSDOT or FHWA/FTA/FAA and no sanctions will be imposed on complainants or other individuals who deny request from NYSDOT or FHWA/FTA/FAA. If NYSDOT or FHWA/FTA/FAA fails to obtain information needed to investigate allegations of discrimination, it may be necessary to close the investigation.

8. 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 NYSDOT and FHWA/FTA/FAA to exercise authority to exempt systems of records only in compelling cases. NYSDOT or FHWA/FTA/FAA may deny a complainant access to the files compiled during the agency investigation of their civil rights complaint against a recipient of Federal financial assistance. Complaint files are exempt in order to aid negotiations between recipients and FHWA/FTA/FAA in resolving civil rights issues and to encourage recipients to furnish information essential to the investigation.

9. NYSDOT and FHWA/FTA/FAA do not reveal the names or other identifying information about any 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 FOIA or the Privacy Act. NYSDOT and FHWA/FTA/FAA 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.

10. The Freedom Of Information Act gives the public access to certain files and records of the State and Federal Government. Individuals can obtain items from many categories of records of the Government, not only materials that apply to them personally. NYSDOT and FHWA/FTA/FAA must honor requests under FOIA, with some exceptions. NYSDOT and FHWA generally are 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. Any State or 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.”
I have read Appendix E - Notice of Complainant and Interviewee Rights and Privileges by the New York State Department of Transportation (NYSDOT) and by the Federal Highway Administration (FHWA).

As a complainant, I understand that in the course of an investigation it may become necessary for NYSDOT or FHWA to reveal my identity to persons at the organization or institution under investigation. I am also aware of the obligations of NYSDOT and FHWA to honor requests under the Freedom of Information Act (FOIA). I understand that it may be necessary for NYSDOT or FHWA to disclose information, including personally identifying details gathered as part of their investigation of my complaint. In addition, I understand that as a complainant I am protected by NYSDOT’s and by FHWA’s regulations from intimidation or retaliation for having taken action or participated in action to secure rights protected by non-discrimination statues enforced by NYSDOT or FHWA.

CONSENT/RELEASE

Please carefully read the information below and circle, CONSENT or CONSENT DENIED, and sign this form.

CONSENT
I have read and understand the above information and authorize NYSDOT or FHWA to reveal my identity to persons at the organization or institution under investigation. I authorize the NYSDOT or FHWA to receive material and information about me pertinent to the investigation of my complaint. I understand that the material and information will be used for authorized civil rights compliance and enforcement activities. I further understand that I am not required to authorize this release, and do so voluntarily.

___________________________________  _____________________
Signature  Date

CONSENT DENIED
I have read and understand the above information and do not want NYSDOT or FHWA to reveal my identity to the organization or institution under investigation, or to review, receive copies of, or discuss material and information about me, pertinent to the investigation of my complaint. I understand this is likely to impede the investigation of my complaint and may result in the closure of the investigation.

___________________________________  _____________________
Signature  Date
APPENDIX I

REJECTION LETTER TO COMPLAINANT

Date

Name of Complainant
Address

RE: Rejection of Discrimination Complaint
Case Number:

Dear:

This acknowledges receipt of your compliant of discrimination against *.

After reviewing your compliant, it has been determined that the issues in your complaint are not related to the laws or statutes for which this agency has jurisdiction. Therefore, we have closed your case and will take no further action in this matter.

We have referred your complaint to * because that agency has jurisdiction over the issues raised in your complaint.

Sincerely,

Warren S. Whitlock
Director, Office of Civil Rights

cc: J. Samaniuk, NYSDOT, ACRD