

NYS Department of Transportation Procedures for Filing a Complaint under Title VI

Purpose

Complaints under this part are limited to allegations of violation of the provisions of Title VI of the Civil Rights Act of 1964 (and related statutes as identified in Section 1-2) and Title II of the Americans with Disabilities Act of 1990 and/or Section 504 of the Rehabilitation Act of 1973. The procedures are designed to provide due process for complainants and respondents relating to discrimination in federally funded programs and services.

Nondiscrimination Statutes

- **Title VI of the Civil Rights Act of 1964**, 42 U.S.C. 2000d, provides: 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.
- **Section 504 of the Rehabilitation Act of 1973**, 42 U.S.C. 794, et seq., provides: No qualified handicapped person shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, be subjected to discrimination under any program or activity that receives or benefits from Federal financial assistance.
- **Age Discrimination Act of 1975**, 42 U.S.C. 6101, provides: No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.
- **Federal Aid Highway Act of 1973**, 23 U.S.C. 324, provides: No person shall, on the ground of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal assistance under this Title or carried on under this Title.
- **The Civil Rights Restoration Act of 1987**, P.L. 100-209, provides: Clarification of the original intent of Congress in Title VI of the Civil Rights Act of 1964, Title IX of

the Education Amendments of 1972, the Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973. The Act restores the broad, institution-wide scope and coverage of the nondiscrimination statutes to include all programs and activities of Federal-aid recipients, sub-recipients, and contractors, whether such programs and activities are federally assisted or not.

- **Title II of the Americans with Disabilities Act of 1990**, 42 U.S.C. 12131, et seq., provides: No qualified individual with a disability shall, by reason of such disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination by a department, agency, special purpose district, or other instrumentality of a State or local government.

Complaint Policy and Procedure

It is the Policy of the Department of Transportation to never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by Title VI of the Civil Rights Act of 1964 (Title VI) and related statutes, Section 504 of the Rehabilitation Act of 1973 (Section 504), or Title II of the Americans with Disabilities Act of 1990 (ADA). Any person, by themselves or by a representative, that believes they have been subjected to prohibited discrimination or retaliation prohibited may file a complaint.

Further, in administering the Disadvantaged Business Enterprise program pursuant to 49 CFR 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs, the Department shall not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to certified firms. Any person/s who believe they have been subjected to unlawful discrimination by being denied the benefits of, access to, or participation in the programs and activities, or services of NYSDOT or organizations funded through NYSDOT may file a complaint. The complaint may be filed by the individual or his/her representative.

Timeframe for Filing Complaints

Complaints must be filed within 180 days of the last date of the alleged discrimination, unless the time for filing is extended. An extension may be granted under any of the following circumstances:

- a. The complainant could not reasonably be expected to know the act was discriminatory within the 180-day period, and the complaint was filed within 60 days after the complainant became aware of the alleged discrimination;
- b. The complainant was unable to file a complaint because of incapacitating illness or other incapacitating circumstances during the 180-day period, and the complaint was filed within 60 days after the period of incapacitation ended;
- c. The complainant filed a complaint alleging the same discriminatory conduct within the 180-day period with another Federal, State or local civil rights enforcement agency, and filed a complaint with DOT within 60 days after the other agency had completed its investigation or notified the complainant that it would take no further action;
- d. The complainant filed, within the 180-day period, an internal grievance alleging the same discriminatory conduct that is the subject of the DOT complaint, and the complaint is filed no later than 60 days after the internal grievance is concluded;
- e. Unique circumstances generated by NYSDOT action have adversely affected the complainant;
- f. The discriminatory act is of a continuing nature; or
- g. Some complaints will be referred to NYSDOT by other agencies. In the event the referring agency has possessed the complaint for an inordinately long period of time and the complainant filed his or her complaint with that agency within the 180-day timeframe NYSDOT will automatically grant an informal extension. In these cases, staff does not need to notify the complainant of the extension.

Processing Complaints

The Department will follow the protocol below for reviewing a complaint:

1. Acknowledge receipt of the complaint.
2. Determine if the Department has jurisdiction to review the complaint.
3. Schedule an interview, if deemed necessary.
4. Determine if other public or private entities are or should be involved
5. Determine if meetings with affected party or other interested parties are needed.
6. Issue a preliminary review finding.
7. Issue a final review finding.
8. Issue corrective action recommendations.
9. Issue sanction recommendations

Complaints filed under Title VI with NYSDOT in which NYSDOT is named as the respondent will be forwarded to The Federal Highway Administration Headquarters Office of Civil Rights or the Federal Transit Administration for investigation.

Title VI complaints filed directly with NYSDOT its sub-recipients, vendors or contractors will be processed by NYSDOT in accordance with the approved complaint procedures as required under 23 CFR 200.9(b)(3).

Complaints filed under the Section 504/ADA with NYSDOT can be investigated by NYSDOT in accordance with 49 CFR 27.13(b).

Reviews of alleged violations commence within thirty (30) days of a complaint being received by the Department to determine whether it contains all necessary information required for acceptance.

If the complaint is complete and no additional information is needed, the complainant will be sent a letter of acceptance.

If the complaint is incomplete, the complainant will be contacted in writing or by telephone to obtain the additional information. The complainant will be given 15 calendars days to respond to the request for additional information.

If it becomes clear that NYSDOT lacks jurisdiction over a complaint, the complaint will be referred to the appropriate agency. A referral letter will be sent to the agency along with the complaint and other documents. A letter will also be sent to the complainant stating that the complaint has been referred to another agency and that NYSDOT has closed the complaint.

The Department will strive to come to a complaint resolution within 90 days of receipt of the initial complaint.

Dismissals

A complaint may be dismissed for the following reasons:

1. The complaint is untimely filed;
2. The complainant fails to respond to repeated requests for additional information needed to process the complaint;
3. The complainant cannot be located after reasonable attempts;
4. There is no statutory or alleged basis for the complaint, NYSDOT lacks jurisdiction in the matter, or the complainant does not allege any harm with regard to current programs or statutes;
5. The complaint has been investigated by another agency and the resolution of the complaint meets USDOT/FHWA regulatory standards; e.g., all allegations were investigated, appropriate legal standards were applied, and any remedies secured meet USDOT's standards;
6. The NYSDOT obtains credible information at any time indicating that the allegations raised by the complainant have been resolved, or are moot and there are no class-wide allegations or implications. In such a case, NYSDOT will attempt to ascertain the apparent resolution. If NYSDOT determines that there are no current allegations appropriate for further complaint resolution, the complaint will be closed;
7. The complainant decides to withdraw the complaint. If the complaint included class allegations, the NYSDOT may close out the entire complaint, pursue

resolution of the class allegations, or use the information to target future compliance review activity;

8. The same complaint allegations have been filed with another Federal, State, or local agency, or through a respondent's internal grievance procedures, including due process proceedings, and NYSDOT anticipates that the respondent will provide the complainant with a comparable resolution process under comparable legal standards; e.g., all allegations were investigated, appropriate legal standards were applied, and any remedies secured meet USDOT's standards;
9. The NYSDOT refers a complaint over which USDOT has jurisdiction to another agency that also has jurisdiction but may be better suited to conduct the investigation;
10. A complaint, because of its scope, may require extraordinary resources. In such instances, NYSDOT may consider treating such a complaint as a compliance review. Similarly, a compliance review may be the most effective means of addressing multiple individual complaints against the same respondent; or,
11. If NYSDOT selects this option, it should discuss the decision with the complainant(s), close the complaint, and initiate the review as soon as possible. The NYSDOT should provide the complainant(s) with a copy of the resolution documents upon completion of the compliance review.

PART C: Complaint Details

Please place an 'X' on the appropriate line(s). Select the phrase that best represents what occurred.

___ **DISCRIMINATION**

- i. I received negative comments, racial slurs, or other unwelcome remarks, or questions because of my: (Place an 'X' next to all that apply)

Age	
Gender	
National Origin	
Race	
Religion	
Other	

- ii. I was denied equal access to: (place an 'X' next to all that apply)

Contracting Opportunities	
Information	
Programs	
Public Transportation	
Services	
Training	
Other	

because of my: (place an 'X' next to all that apply)

Age	
Disability	
Gender	
Limited English Lang. Proficiency	
National Origin	
Race	
Religion	
Other	

In the space below, provide any other details regarding your complaint that you would like considered that have not already been addressed in this form.

PART C: Complaint Details- continued

___ HARASSMENT

i. I was: (place an 'X' next to all that apply)

Harassed	
Subjected to unfair worksite policies and practices	
Subjected to unfair bidding practices	
Other	

ii. I was sexually harassed because I: (place an 'X' next to all that apply)

Was subjected to unwelcome sexual advances and/or sexually charged comments	
Am/was exposed to sexually explicit pictures/posters posted in common and/or public areas	
Other	

In the space below, provide any other details regarding your complaint that you would like considered that have not already been addressed in this form.

Regarding barriers to equal access, select all that apply to your experience: (place an 'X' next to all that apply)

Written information related to instructions, directions, or vital information was not available in my native language.	
Translation services I requested were not made available to me for live or recorded events, presentations, or trainings.	
I was denied an accommodation to enter a building, or to access a facility or room in the building.	
There were no signs conspicuously posted notifying me of wheelchair accessibility.	
Readers and/or interpreters for the blind and/or hearing impaired I requested were not provided to me.	

PART C: Complaint Details- continued

In the space below, provide any other details regarding your complaint that you would like considered that have not already been addressed in this form.

___ **ADA**

I could not access public transportation, a public facility, or public right of way because: (place an 'X' next to all that apply)

Of physical barriers (e.g. Improper ramps, lack of equipment or crossing aids, etc.)	
The bus did not have chair lifts or there was no bus-lowering mechanism.	
The sidewalks, roadways or public facility was not maintained to allow access.	
The paratransit bus schedule does not accommodate my activities of daily living.	
The bus routes do not sufficiently deviate from routes to accommodate me.	
The vehicles, shelters, and/or other facilities are not accessible to me.	

In the space below, provide any other details regarding your complaint that you would like considered that have not already been addressed in this form.

PART C: Complaint Details- continued

FRAUD

- i. I witnessed a disadvantaged business enterprise (DBE), a minority or women owned (M/WBE), or a service disabled veteran owned (SDVOB) firm not performing the contractual commercially useful function (CUF) on a NYSDOT contract.

The firm is: _____

Contractual services that were to be performed include: _____

_____ Place an 'X' on the line to attach any documents or photos that substantiate your complaint.

- ii. I have not been paid promptly for the work I have performed as follows: (place an 'X' next to one)

I have not received any payments	
I have received some and/or partial payments	
I received full payments, but they are late	
I received partial payments and they are late	

- iii. My payment is _____ days late. Attach the following documentation to this complaint:

Place an 'X' in the next box to attach the signed contract/agreement between your firm and the Prime Contractor that outlines the scope of services and payment or reimbursement schedules for services or supplies.	
Place an 'X' in the next box to attach documentation to support that your firm fulfilled its obligations in the project, e.g. signed delivery slips, payroll reports, etc.	
Place an 'X' in the next box to attach documentation or communications from the Prime Contractor regarding any payment issues or reasons why you have not been compensated.	
If you received partial payments, place an 'X' in the next box to attach a listing of the payment dates and amounts received.	

- iv. My firm was negatively affected by a removal or substitution for an approved item of work for project: _____ Location: _____
(Project No.)

Attach the following documentation to this complaint:

Place an 'X' in the next box to attach documentation to support the original scope of the project.	
Place an 'X' in the next box to attach documentation or communications from the Prime Contractor regarding why your firm's scope of work was being removed from the project or why your firm was being replaced with another firm.	

- v. A Prime Contractor did not negotiate a bid with me/my firm in good faith.

Place an 'X' in the next box to attach any documents or other information that substantiates your complaint.	
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In the space below, provide any other details regarding your complaint that you would like considered that have not already been addressed in this form.

PART D: Additional Information

- i. Were there any witnesses to the action or inaction leading to your complaint? (Place an 'X' in the box next to your response)

Yes	
No	
Unknown	

Please provide the name(s) and contact information for any witnesses: (if any)

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- ii. Was this complaint filed with another agency? (Place an 'X' in the box next to your response)

Yes	
No	

Filed with: (Place an 'X' in the box next to your response)

Local Entity	
Private Entity	
Human Rights Commission	
Department of Justice	
USDOT-FTA	

- iii. Were you the recipient of intimidation or retaliatory actions because you filed a complaint? (Place an 'X' in the box next to your response)

Yes	
No	

PART E: Complaint Submission

Signature:

Date:

Completed forms may be submitted to:

Civilrights@dot.ny.gov

or

Department of Transportation
Office of Civil Rights
50 Wolf Road
Albany, NY 12232