



Disadvantaged Business Enterprise (DBE) Program Complaint Guidelines

Purpose: The attached form is for use by any affected business or person who believes that a recipient of FHWA assistance has failed to carry out its obligations pursuant to the requirements of 49 CFR Part 26. The FHWA DBE Program Complaint process provides a means to submit allegations of noncompliance regarding matters believed to be the responsibility of a recipient. Such allegations include, but are not limited to, procedural deficiencies, compliance determinations, or other recipient activities believed to be in violation of the requirements.

Filing Instructions: All complaints must be filed no later than 180 days from the date of the alleged violation of 49 CFR Part 26. If you need assistance in completing the complaint form or require it in an accessible format, including another language, please contact the FHWA Office of Civil Rights at (202) 366-0693. Please send the signed complaint form along with the attached "COMPLAINANT CONSENT/RELEASE FORM" (pages 1-3) via email to FHWA.DBEcomplaints@dot.gov, or regular mail to:

Federal Highway Administration
U.S. Department of Transportation
Office of Civil Rights
1200 New Jersey Avenue, SE
8th Floor E81-328
Washington, DC 20590

Disposition of Complaints: Complaints should contain specific information to support each allegation. Any complaint that, on its face, lacks evidence supporting the allegations may be dismissed or held until additional information is obtained from the Complainant. Upon review of each complaint received by the FHWA Office of Civil Rights, the following actions will be taken, as appropriate:

- Notify Complainant of acceptance, dismissal, or make request for additional information
- Notify Complainant of lack of jurisdiction and transfer the complaint to another USDOT operating administration, government agency, or FHWA program office;
- Notify the Complainant of referral to the FHWA Division Office charged with oversight of the recipient's DBE Program; AND
- Where the FHWA Office of Civil Rights has completed an investigation, the Complainant and Respondent will be notified by letter.

Confidentiality: The FHWA Office of Civil Rights will protect the identity of Complainants to the maximum extent possible by law. Any individual filing a complaint may request to remain anonymous by indicating so in the attached "COMPLAINANT CONSENT/RELEASE FORM"; however, doing so may impede the completion of an investigation and resolution of any matters in which the Complainant or the FHWA hold interest.



DBE Program Complaint Form

1) Name of FHWA recipient or State highway agency:

2) State or Federal Project # and description of project on which alleged violation(s) occurred:

3) **Complaint Description**

Check one or more boxes, indicating the area(s) of concern:

- Good Faith Effort Determinations (pre-award/post-award) (49 CFR 26.53)
- Goal-setting (49 CFR 26.49 & 26.51)
- Monitoring and Enforcement of Commercially useful function (49 CFR 26.55)
- Counting/Crediting of DBE Participation (49 CFR 26.55)
- Termination (including substitution or modification of work under commitment) (49 CFR 26.53)
- Prompt Payment/Return of Retainage (49 CFR 26.29)
- Eligibility (49 CFR 26.87)
- Suspected Fraud or Criminal activity
- Other (e.g. 49 CFR 26.7- Discriminatory action based on race, sex, color or national origin)

Please list below each allegation, including essential elements of information (who, what, where, when). Provide the date of each occurrence and describe how it violates the requirement(s). Attach any evidence or documentation supporting your claim(s). If you need additional space, you may do so on a separate page (attach to this document).

COMPLAINANT CONSENT/RELEASE FORM

Name:

Address:

Complaint number(s):

Please read the information below, check the appropriate box, and sign this form.

I have read the Notice of Investigatory Uses of Personal Information by the Federal Highway Administration (FHWA). As a complainant, I understand that in the course of an investigation it may become necessary for FHWA to reveal my identity to persons at the organization or institution under investigation. I am also aware of the obligations of FHWA to honor requests under the Freedom of Information Act. I understand that it may be necessary for FHWA to disclose information, including personally identifying details, which it has gathered as a part of its investigation of my complaint. In addition, I understand that as a complainant I am protected by FHWA's regulations from intimidation or retaliation for having taken action or participated in action to secure rights protected by nondiscrimination statutes enforced by FHWA.

CONSENT/RELEASE

CONSENT - I have read and understand the above information and authorize FHWA to reveal my identity to persons at the organization or institution under investigation. I hereby authorize the 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.

CONSENT DENIED - I have read and understand the above information and do not want 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 _____

SIGNATURE _____

DATE _____

NOTICE ABOUT INVESTIGATORY USES OF PERSONAL INFORMATION

NOTICE OF COMPLAINANT/INTERVIEWEE RIGHTS AND PRIVILEGES

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

- 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 FHWA. The representative may be the recipient's counsel, the employee's private counsel, or anyone else the interviewee authorizes to be present.

- The laws and regulations which govern FHWA's compliance and enforcement authority provide that no recipient or other person shall intimidate, threaten, coerce or discriminate against any individual because he/she has made a complaint, testified, assisted or participated in any manner in an investigation, proceeding, or hearing conducted under DOJ's jurisdiction, or has asserted rights protected by statutes DOJ enforces.

- Information obtained from the complainant or other individual which is maintained in FHWA's investigative files may be exempt from disclosure under the Privacy Act or under the Freedom of Information Act if release of such information would constitute an unwarranted invasion of personal privacy.

There are two laws governing personal information submitted to any Federal agency, including the Federal Highway Administration (FHWA): The Privacy Act of 1974 (5 U.S.C. ' 552a), and the Freedom of Information Act (5 U.S.C. ' 552).

THE PRIVACY ACT protects individuals from misuse of personal information held by the Federal Government. The law applies to records that are kept and that can be located by the individual's name or social security number or other personal identification system. Persons who submit information to the government should know that:

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

- Information that FHWA collects is analyzed by authorized personnel within the agency. This information may include personnel records or other personal information. FHWA 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. FHWA also may be required to reveal certain information to any individual who requests it under the provisions of the Freedom of Information Act. (See below)

- Personal information will be used only for the 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 C.F.R. Part 16, 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 the Freedom of Information Act. (See below)

- No law requires a complainant to give personal information to FHWA, and no sanctions will be imposed on complainants or other individuals who deny FHWA's request. However, if FHWA fails to obtain information needed to investigate allegations of discrimination, it may be necessary to close the investigation.

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

- FHWA does not reveal the names or other identifying information about an 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. FHWA 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.

THE FREEDOM OF INFORMATION ACT gives the public access to certain files and records of the Federal Government. Individuals can obtain items from many categories of records of the Government --not just materials that apply to them personally. FHWA must honor requests under the Freedom of Information Act, with some exceptions. FHWA generally is 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. Also, any 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."