



In Reply Refer to: HCR-20  
DOT# 2020-0204

July 15, 2021

[REDACTED]

**Subject:** Closure of Complaint #2020-0204

Dear [REDACTED],

The Federal Highway Administration (FHWA) has resolved your complaint against the City of Little Rock, Arkansas. Your complaint, which was received by this office on July 17, 2020, alleged that the City of Little Rock violated Title VI of the Civil Rights Act of 1964 (Title VI) and its implementing regulations, including Title VI regulations administered by the United States Department of Transportation (49 C.F.R. Part 21) and FHWA (23 C.F.R. Part 200).

Part of your complaint alleges that the City of Little Rock never responded to your original complaint, which you filed with the city on or around March 29, 2019. In response to this allegation, FHWA reached a voluntary resolution agreement with the Arkansas Department of Transportation (ARDOT) on April 30, 2021 (enclosed). The agreement pertains to ARDOT's Title VI oversight responsibility over the City of Little Rock. The agreement requires ARDOT to train Little Rock staff on its Title VI program responsibilities and conduct yearly compliance reviews of the Little Rock Title VI program. The FHWA Arkansas Division Office will continue to conduct Title VI stewardship and oversight over ARDOT and its subrecipients of FHWA financial assistance. These oversight activities include reviewing ARDOT's annual Title VI Goals and Accomplishments reports that summarize Title VI compliance reviews conducted for subrecipients. Additionally, FHWA will monitor ARDOT's efforts to implement the terms of the voluntary resolution agreement regarding the City of Little Rock.

Your complaint also alleges that the City of Little Rock's 12<sup>th</sup> Street Jump Start Improvements Project discriminates against the African American population in the 12<sup>th</sup> Street area of Little Rock. You allege that African Americans living south the project area will not benefit from the street improvements that will occur within the project area.

After careful consideration, FHWA has determined the allegations and facts in your complaint regarding the 12<sup>th</sup> Street Jump Start Improvements Project do not meet the minimum criteria under which FHWA could establish a case of disparate impact under Title VI. The available information is insufficient to show that populations in the project vicinity, distinguishable by race, color, or national origin, will be disparately impacted. Specifically, FHWA did not identify any disparity between the populations within the project area and populations immediately south of the project area. Data from the U.S. Census Bureau shows that African Americans represent

the racial majority within the project area and within an area immediately south of the project area. For these reasons, your complaint against the 12<sup>th</sup> Street Jump Start Improvements Project will be dismissed by FHWA and closed with no further action. Nevertheless, as mentioned above, FHWA will continue to monitor ARDOT's compliance with Title VI.

Please be advised 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 requirements that we enforce. Any individual alleging such harassment or intimidation may file a complaint with the FHWA.

Thank you for bringing this matter to our attention. If you have any questions, feel free to contact Nichole McWhorter at (202) 366-1396.

Sincerely,

*Nichole McWhorter*

Nichole McWhorter  
Title VI Team Leader  
Office of Civil Rights

Enclosure: ARDOT Voluntary Resolution Agreement

cc: Vivien N. Hoang, Division Administrator, FHWA Arkansas Division Office  
Peter A. Jilek, Deputy Division Administrator, FHWA Arkansas Division Office  
David T. Blakeney, Civil Rights, FHWA Arkansas Division Office  
Jim Esselman, Senior Attorney-Advisor, FHWA Office of Chief Counsel  
Irene Rico, Associate Administrator, FHWA Office of Civil Rights  
Irene Marion, Director, Departmental Office of Civil Rights  
Yvette Rivera, Associate Director, Equity and Access Division, Departmental Office of Civil Rights  
Barbara Dougherty, Deputy Director, Departmental Office of Civil Rights

## **Title VI Resolution Agreement**

### **I. Purpose**

The Federal Highway Administration (FHWA) and the Arkansas Department of Transportation (ARDOT) hereby enter this Title VI Resolution Agreement (Agreement) regarding the timely processing of complaints filed under Title VI of the Civil Rights Act of 1964 (Title VI).

### **II. Background**

On or around March 29, 2019, the City of Little Rock, Arkansas (City) received a Title VI complaint regarding the City's 12th Street Jump Start Improvements project.

On March 13, 2020, ARDOT received a letter containing the original Title VI complaint sent to the City on March 29, 2019. In the letter, the complainant alleged the City had not responded timely to the complaint.

On March 16, 2020, ARDOT forwarded the letter and complaint to FHWA.

### **III. Applicability**

Title VI provides no person in the United States shall, on the grounds 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. See 42 U.S.C. § 2000d. The U.S. Department of Transportation's (USDOT) Title VI regulations at Title 49 of the Code of Federal Regulations (C.F.R.), Part 21, provide that USDOT recipients may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, or national origin. 49 C.F.R. § 21.5(b)(2). ARDOT is a recipient of Federal financial assistance from FHWA.

USDOT and its Operating Administrations are required to promptly investigate Title VI complaints and, where appropriate, review the pertinent practices, policies, and circumstances under which the possible noncompliance occurred. See 49 C.F.R. § 21.11(c). FHWA requires State Departments of Transportation (State DOTs) to take specific steps in compliance with Title VI. Specific steps include developing procedures for prompt processing of complaints, reviewing subrecipients of Federal-aid highway funds, and conducting Title VI training. See 23 C.F.R. § 200.9. FHWA issued guidance regarding Title VI complaint processing in its 2017 *Questions and Answers for Complaints Alleging Violations of Title VI of the Civil Rights Act of 1964*. The guidance instructs recipients to forward all complaints to FHWA and provides that FHWA is responsible for all determinations regarding whether to accept, dismiss, or transfer Title VI complaints filed against State DOTs or subrecipients of Federal financial assistance.

#### **IV. Effective Date, Term of the Agreement, and Timelines**

The term of this Agreement (Term) shall commence on the date that both ARDOT and FHWA have signed this document and end once ARDOT has satisfactorily completed all actions in Section V of this Agreement. If ARDOT is unable to comply with the timelines in this Agreement, then ARDOT may request an extension, in writing, which shall not be unreasonably withheld.

If ARDOT, through its actions or inaction, fails to implement any part of this Agreement or fails to cooperate with FHWA documentation and information requests, FHWA may invoke its authority pursuant to 49 C.F.R. § 21.13, et seq. for failure or threatened failure to comply with Title VI of the Civil Rights Act of 1964. If at any time FHWA makes such a determination, then FHWA shall notify ARDOT in writing. The notice shall include a statement of the basis for FHWA's determination and shall allow ARDOT fifteen (15) days to either; (a) explain in writing the reason for the actions and describe the remedial actions that have been or shall be taken to achieve compliance with this Agreement or (b) dispute the accuracy of FHWA's findings. If ARDOT does not respond to the notice, or if, upon review of ARDOT's response, FHWA determines ARDOT has not complied with the terms of the Agreement, FHWA may pursue its statutory and/or contractual remedies. Should a violation of the agreement occur, the time period of the agreement will be extended for an amount of time equal to the time FHWA determines a violation occurred to the time of the FHWA approved remedy.

Nothing in this Agreement shall be construed as creating any liability in favor of any third party or parties against FHWA or ARDOT.

#### **V. ARDOT Actions**

As a primary recipient of Federal-Aid Highway continuing program funding from FHWA, ARDOT is responsible for its subrecipients implementing FHWA Title VI Program requirements. See 28 C.F.R. § 42.410. This requires ARDOT to ensure that its subrecipients are trained on and follow Title VI program requirements, including timely complaint processing. To address concerns regarding timely complaint processing, ARDOT agrees to undertake the following actions:

- Enter into a separate agreement with the City for the purpose of establishing procedures that ensure the City processes Title VI complaints in compliance with current FHWA requirements and guidance. The separate agreement shall be executed no later than May 31, 2021. If ARDOT is unable to reach an agreement with the City or if such an agreement is ever terminated, ARDOT shall notify the FHWA-Arkansas Division promptly in writing. This written notification shall contain proposed alternative remedies for ensuring Title VI compliance. Any proposed alternative remedies are subject to final approval by FHWA.
- Provide training to City staff no later than October 31, 2021, on FHWA requirements related to the processing of Title VI complaints. Those requirements include the expectation that Title VI complaints be promptly forwarded to ARDOT and that the City

maintain a complaint log.

- Conduct a Title VI compliance review of the City during each federal fiscal year 2022, 2023, and 2024.
- Develop a written plan no later than December 1, 2021, for ensuring all ARDOT subrecipients are trained and notified of their FHWA Title VI program requirements.
- Beginning on December 1, 2021, ARDOT shall submit a written progress report annually for three years to the FHWA-Arkansas Division. The reports shall include a summary of all the activities required in this Agreement. Additionally, the reports shall include a summary of activities related to its Title VI Program oversight of subrecipients.

#### **VI. Modification of Agreement**

This Agreement may be modified only by agreement of both FHWA and ARDOT after negotiating in good faith.

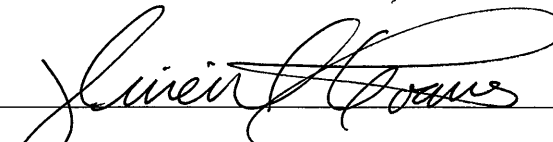
#### **VII. Subrecipient Agreement**

With respect to the separate agreement ARDOT is directed to enter into with the City in Section V of this Agreement, no provision in such agreement will affect ARDOT's obligations to FHWA or supersede any provision described herein to the extent that separate agreement conflicts with any provision contained herein or Federal law or regulations.

#### **VIII. Intimidation or Retaliatory Acts Prohibited**

Neither ARDOT nor any entity or business party to an agreement to carry out the actions herein shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Section 601 of Title VI or 49 C.F.R. Part 21, or because such individual has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing pursuant to 49 C.F.R. Part 21.

FEDERAL HIGHWAY ADMINISTRATION



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Vivien N. Hoang, P.E.  
Arkansas Division Administrator

Dated: 4/30/2021

ARKANSAS DEPARTMENT OF TRANSPORTATION

Lorie H. Tudor

Dated: 4/27/2021

Lorie H. Tudor, P.E.  
Director