

**Department of Transportation**  
**Office of the Secretary**  
**Washington, D.C.**

**ORDER**

DOT 1000.12

1/19/77

**SUBJECT: IMPLEMENTATION OF THE DEPARTMENT OF TRANSPORTATION  
TITLE VI PROGRAM**

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**1. PURPOSE.**

- a. The purpose of this Order is to implement Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.); the regulations of this Department (49 C.F.R. Part 21); and the regulations of the Department of Justice (28 C.F.R. Part 42, Subpart F) issued pursuant to Executive Order 11764. This Order establishes the uniform minimum responsibilities of each operating element of this Department in implementing and enforcing the Title VI program, to the end that 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 from this Department.
- b. Nothing in this Order is intended to, nor shall it diminish or abrogate the requirements of section 905 of the Railroad Revitalization and Regulatory Reform Act of 1976 or section 30 of the Airport and Airway Development Act of 1970 as amended or the regulations, orders or directives established pursuant thereto, to the extent that such requirements are more stringent or contain higher standards.

**2. REFERENCES.**

- a. Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d-1 et seq.;
- b. Regulations of the Department of Transportation, 49 C.F.R. Part 21;
- c. Executive Order 11764, dated January 21, 1974, 42 U.S.C. 2000d-1 (note) (Supp. 1976); and
- d. Regulations of the Department of Justice, 28 C.F.R. Part 42, Subpart F.

**3. SCOPE.** This Order applies to the Departmental Office of Civil Rights and all operating elements of the Department.

**4. BACKGROUND.** Executive Order 11764 delegated to the Attorney General authority to coordinate and assist agency enforcement of Title VI, to prescribe standards and procedures regarding such enforcement, and to issue necessary regulations and orders. On December 1, 1976, at 41 FR 52669, the

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**DISTRIBUTION: All Secretarial Offices  
All Operating Elements**

**OPI: Office of  
Civil Rights**

Department of Justice published regulations, effective January 3, 1977, which govern the respective obligations of Federal agencies regarding enforcement of Title VI. This Order sets forth Departmental instructions establishing explicit procedures for implementing and enforcing the Title VI program and the regulations of the Department of Justice.




  
William T. Coleman, Jr.  
Secretary of Transportation

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CHAPTER IGENERAL

1. PURPOSE. The purpose of the Title VI program of each operating element is to ensure (1) that each applicant for or recipient of Federal financial assistance is, and will continue to be, in compliance with Title VI, and (2) that the program or activity for which Federal financial assistance is sought is consistent with the operating element's Title VI program. In this latter regard, the objective is to ensure among other things that: (1) the benefits and services of the program or activity are made available to, and are fairly and adequately distributed among, beneficiaries without regard to race, color, or national origin; (2) the location of existing or proposed facilities and the provision of services involved in the program or activity will not deny access to any person on the basis of prohibited discrimination; and (3) persons in the affected community are not differentially or adversely impacted on the basis of race, color, or national origin.
2. DEFINITIONS.
  - a. "Affected Community" means that person or persons served or likely to be directly or indirectly affected by a program or activity receiving Federal financial assistance from the Department.
  - b. "Affirmative Action" means a positive program to eliminate discrimination and ensure nondiscriminatory practices in the future.
  - c. "Compliance" means that condition existing when a recipient has implemented all of the Title VI requirements effectively and there is not any evidence of discrimination.
  - d. "Department" and "DOT" mean the Department of Transportation.
  - e. "Director" means the Director of the Office of Civil Rights of the Department.
  - f. "Discrimination" means that act or failure to act, intentional or unintentional, the effect of which is that a person, because of race, color, or national origin, has been excluded from participation in, denied the benefits of, or has been otherwise subjected to unequal treatment under any program or activity receiving Federal financial assistance from the Department.
  - g. "Minority Contractor" means a business, at least 50 percent of which is owned by or controlled by minority group members. For the purpose of this definition, "minority group members" include but are not limited to Blacks, Hispanics, American Indians, Eskimos, Alaskan Aleuts, and American Orientals.

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- h. "Noncompliance" means a failure to meet the requirements of Title VI and the regulations and orders of the Department issued thereunder or failure to implement an approved Title VI affirmative action program.
- i. "Office" means the Department Office of Civil Rights.
- j. "Respondent" means an applicant, recipient, subgrantee, or contractor alleged to be in noncompliance or probable noncompliance with the Title VI program.
- k. "Title VI" means Title VI of the Civil Rights Act of 1964.
- l. "Title VI Program" means the system of requirements, procedures, actions and sanctions through which the Department of Transportation enforces Title VI and the regulations effectuating it and ensures that discrimination does not occur in connection with programs and activities which receive Federal financial assistance from this Department.
- m. Other terms used herein shall have the meaning as defined in 49 C.F.R. 21.23.

3. RESPONSIBILITIES.

- a. Departmental Director of Civil Rights. The Director acts as the responsible Departmental official in matters relating to Title VI and assists the Secretary in carrying out the Title VI responsibilities of the Department. Specifically, the Director has the responsibility to:
  - (1) Recommend, develop, disseminate, monitor, and vigorously pursue Departmental policies on the implementation of Title VI and assist the operating elements in the establishment of Title VI programs.
  - (2) Prepare uniform Departmental Title VI regulations and issue guidelines and program directives.
  - (3) Advise the Secretary concerning significant developments in the implementation of the Department's Title VI program.
  - (4) Review, evaluate, and vigorously monitor operating elements' activities and programs relating to Title VI and effectuate changes to assure consistency and program effectiveness.
  - (5) Monitor compliance with DOT Order 1050.2, Standard DOT Title VI Assurances, including the review of any expansion or addenda to the Assurances by the operating elements.



- (6) Provide leadership, guidance, and technical assistance to the operating elements in the carrying out of their Title VI responsibilities.
  - (7) Ensure that **all** complaints of discrimination alleging noncompliance with Title VI, this Order and the regulations of the Department implementing Title VI are processed, investigated and resolved in a fair and timely manner in accordance with Title VI and the regulations and orders of the Department.
  - (8) Take appropriate, fair and timely action with regard to all findings of noncompliance under Title VI, by initiating or participating inter alia in attempts at informal resolution, hearings, and reports to the Secretary for submission to Congress ordering the suspension or termination of Federal financial assistance.
  - (9) Provide primary coordination and liaison with other agencies, offices, and public and private organizations outside the Department and with the Department of Justice, in conjunction with the Office of General Counsel, to achieve program objectives.
  - (10) Disseminate information to and provide continuous and meaningful consultation with the public concerning the Department's Title VI program, including, in appropriate situations, the provision of material in languages other than English.
- b. Operating Elements. Each operating element, with respect to the Federal financial assistance programs it administers, has the responsibility to ensure that the objectives of Title VI, the regulations of the Department at 49 C.F.R. Part 21, and the regulations of the Department of Justice at 28 C.F.R. Part 42, Subpart F, are achieved. The head of each operating element shall:
- (1) Cause each application for Federal financial assistance:
    - (a) To be reviewed by its office of civil rights for a written determination as to whether the applicant is in compliance with Title VI, and whether the program, project, or activity which is funded in whole or in part by such Federal financial assistance is consistent with the operating element's Title VI program.
    - (b) To include the Standard DOT Title VI Assurances required by DOT Order 1050.2.

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- (2) Within 90 days from the date of this Order, develop and submit to the Director for review and approval:
  - (a) A Title VI program, in accordance with paragraph 4 of this chapter and the regulations of the Department of Justice at 28 C.F.R. 42, Subpart F, relating to each Federal financial assistance program it administers; and
  - (b) A draft of proposed procedures and requirements that will cause the applicants and recipients to take all actions necessary to implement the Title VI program;
- (3) Within 30 days after approval by the Director, cause to be published in the Federal Register, procedures and requirements that will implement the operating element's Title VI program;
- (4) Assign sufficient personnel to implement fully and to ensure compliance with its Title VI program;
- (5) Cause to be included in each agreement pursuant to which Federal financial assistance is to be provided, a requirement that the recipient notify the operating element immediately in writing of:
  - (a) Any lawsuit or complaints filed against the recipient alleging discrimination on the basis of race, color, or national origin; and
  - (b) Any application it files with other Federal agencies for Federal financial assistance, including a brief description of the application; and
- (6) Cause each environmental impact review made pursuant to DOT Order 5610.1B in connection with Federal financial assistance programs to be reviewed by its office of civil rights prior to approval in order to ascertain whether the environmental determinations are consistent with its Title VI program determinations.

#### 4. REQUIREMENTS.

- a. Program Examination. Each operating element shall, in developing its Title VI program, examine in detail the nature and structure of programs and activities for which it provides Federal financial assistance, require information of applicants and recipients to determine compliance, and establish requirements so as to ensure that the purpose of its Title VI program is achieved.

- b. Title VI Program Development. In developing its Title VI program, each operating element shall, in addition to the requirements of 28 C.F.R. Part 42, Subpart F, be guided by the following considerations:
- (1) Covered Employment. Under Title VI, the employment practices of an applicant or recipient can be considered where (1) a primary purpose of the program or activity is to provide employment [see 49 C.F.R. Part 21.5(c)(1)(2)]; or (2) discriminatory employment practices could cause discrimination with respect to beneficiaries. (See Chapter III for further guidance on covered employment.)
  - (2) Participation in Decision Making.
    - (a) Where the program or activity for which Federal financial assistance is sought involves nonelected boards, advisory councils, or committees which are an integral part of planning or implementing the program or activity, the Title VI program shall require appropriate action to insure that such boards, councils or committees reasonably reflect the racial/ethnic composition of the community affected by the program or activity.
    - (b) Where the program or activity requires public hearings, the Title VI program shall require appropriate action to ensure that notice of such hearings reaches all segments of the affected community. Notices shall be published in and announced over general and minority newspaper and broadcast media respectively. Such publications and broadcasts shall state that discrimination in the program is prohibited by Federal law. The Title VI program shall also require that direct contact shall be made with racial/ethnic community organizations and/or leaders in communities affected or served by the program or activity. The participation of such persons and organizations in the decision-making process shall be solicited.
    - (c) Where a significant number or proportion of the affected community needs information in a language other than English in order to be effectively informed of or to participate in the public hearings, the recipient shall publish and announce notices of public hearings in the other languages and shall take any other reasonable steps, including the furnishing of an interpreter, considering the scope of the program and the size and concentration of the non-English speaking population.

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- (3) Minority Contractor Participation. Requirements shall be established to ensure that business organizations are not excluded from participation in the program or activity on the grounds of race, color, or national origin. The Title VI program shall require every application for Federal financial assistance in which there will be contracts awarded to include an affirmative action program for minority contractor participation. (See Chapter II for further guidance on minority contractor participation.)
  - (4) Pre-award Reviews. As part of its Title VI program, each operating element shall cause each application for Federal financial assistance to be reviewed by its office of civil rights which shall make a written determination as to whether the applicant is in probable compliance or compliance with Title VI, and whether the program, project, or activity which is funded in whole or in part by such Federal financial assistance is consistent with the operating element's Title VI program. An application for Federal financial assistance shall not be approved unless the office of civil rights of the operating element has found in its written determination that the applicant is in probable compliance or compliance and that the project, program, or activity is consistent with the Title VI program. (See Chapter IV.)
  - (5) Post-Award Reviews. As part of its Title VI program, each operating element shall establish and maintain an effective program of post-award compliance reviews with respect to programs and activities which have been furnished Federal financial assistance. Such reviews are to include periodic submission of compliance reports by recipients and on-site reviews. (See Chapter IV.)
5. COMPLIANCE WITH TITLE VI. Each operating element shall refer all complaints alleging discrimination which is prohibited by Title VI, and all matters which, based on a compliance review, report or other information, indicate a possible failure to comply with Title VI, to the Director for investigation and handling in accordance with the regulations of this Department at 49 C.F.R. Part 21. Each operating element shall cooperate with the Director in handling all such compliance matters.

CHAPTER II

MINORITY CONTRACTOR PARTICIPATION

1. GENERAL. Each operating element shall develop and maintain procedures to:
    - a. Ensure that an applicant or recipient does not discriminate against any business organization in the award of any contract because of the race, color, or national origin of its managers, employees, or owners; and
    - b. Require applicants and recipients to take affirmative action to ensure that minority businesses are afforded a fair and representative opportunity to do business.
  
  2. APPLICATION REVIEW.
    - a. Reporting. Each operating element shall require every applicant for Federal financial assistance in which there will be contracts awarded to include information sufficient to make a determination as to minority contractor participation. As a minimum, each operating element shall require the following information in the TITLE VI ASSESSMENT required by Chapter IV, paragraph 2a, of this Order:
      - (1) An analysis of awards of contracts to minority contractors during the previous year describing the nature of goods and services purchased and the dollar amount involved.
      - (2) A comparison of the percentage of awards of contracts to minority contractors (by number of contracts and by total dollar amount involved) to the total procurement activity of applicant or recipient for the previous year.
      - (3) Details of proposed contracts in excess of \*\$ \_\_\_\_\_ to be awarded that would describe the services or products which will be sought, including estimated quantities; give the location where the services are to be provided; the manner in which proposals will be solicited and contracts will be awarded; and the description of bidding procedures.
- \* The amount to be established by the head of each operating element for the Federal financial assistance program he/she administers with the concurrence of the Director.

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- (4) Procedures to ensure that known minority contractors will have an equitable opportunity to compete for contracts and subcontracts shall include the:
- (a) Ways in which the applicant plans to arrange solicitations, time for presentation of bids, quantities, specifications and delivery schedules so as to facilitate the participation of minority contractors;
  - (b) Means by which the applicant could assist minority contractors in overcoming barriers to program participation in such areas as bonding, insurance and technical assistance;
  - (c) Kinds of information the applicant will use to make minority contractors aware of contracting opportunities in its program; where appropriate, information should be in languages other than English;
  - (d) Projected percentage goals or dollar values to be awarded to minority contractors; and
  - (e) Designation of a liaison officer who will administer the applicant's minority contract program.
- (5) Procedures by which the applicant or recipient will seek affirmative action from its subgrantees and contractors to ensure minority contractor participation that include:
- (a) In advertised and negotiated specifications for Federally-assisted contracts, requirements that (1) each bidder submit a minority contractor plan stating whether or not the bidder intends to subcontract a portion of the work and, if so, the type of affirmative action taken to seek out and consider minority contractors as potential subcontractors; and (2) each bidder intending to subcontract make contact with potential minority contractors to solicit affirmatively from minority contractors their interest, capability and prices, and document the results of such contacts.
  - (b) In Federally-assisted contract requirements, assurances that prime contractors requesting permission to subcontract part of the contract work take the action required in subparagraphs (4)(a) and (4)(e) of this chapter.

- (c) In every subgrant, a requirement assuring that the subgrantee will take the action required in subparagraphs (4)(a) through (4)(e) of this chapter and subparagraphs (a) and (b) of this paragraph.
- b. Analysis. Based upon the information submitted by the applicant, and any additional information that the operating element may require, the operating element shall determine whether the applicant may be considered to be in compliance with regard to minority contractor participation, or whether, by means of a pre-award agreement, the applicant has been brought in compliance with Title VI. (See Chapter VI.)

CHAPTER III

COVERED EMPLOYMENT

1. DEFINITION. Employment discrimination includes: (1) consideration of a person's race, color, or national origin in weighing a person's qualifications for hire, discharge, promotion, demotion, transfer, layoff, rates of pay or other forms of compensation or benefits, selection for training or apprenticeship; or (2) consideration of race, color, or national origin with respect to recruitment or recruitment advertising techniques. Actions that are required to be taken under an approved affirmative action plan do not constitute discrimination in employment.
  
2. TYPES OF COVERED EMPLOYMENT.
  - a. Primary Objective is to Provide Employment. An operating element may take the actions specified in this Order against any applicant or recipient of Federal financial assistance that practices discrimination in employment, "where a primary objective of the Federal financial assistance is to provide employment." [See, 49 C.F.R. 21.5(c)(1), (2).]
    - (1) Those programs for which the Department has determined that a primary objective is to provide employment are listed in Appendix B to 49 C.F.R. Part 21. In addition, with respect to any program providing financial assistance for construction, including alteration and repair, or for the purchase of transportation equipment, it shall be assumed that a primary purpose of the program is to provide employment, notwithstanding that the program is not listed in Appendix B.
    - (2) Except with respect to those programs listed in Appendix B, each element should determine by examination of the legislative history and the language of each statute authorizing Federal financial assistance, whether a significant concern of Congress was the provision of employment, as well as the provision of any other services to the public. Congress may have had several primary objectives in enacting legislation which provides financial assistance. If providing employment was a substantial concern of Congress in enacting a statute, it shall be deemed to have been a "primary objective," and the employment practices of the applicant or recipient shall be treated under this chapter. Upon a determination of whether the program's primary objectives include or do not include employment, the opinion and information supporting it shall be forwarded to the Director by the operating element involved.



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- b. Primary Objective is Not to Provide Employment. Regardless of the objectives of the Federal financial assistance program, discrimination in employment practices by recipients of Federal financial assistance is prohibited where discrimination in employment causes discrimination to the beneficiaries. [See, 49 C.F.R. 21.5(c)(3).] In this regard, it shall be presumed, with respect to the employment practices of an applicant or recipient, that employees who engage in direct contact with interested beneficiaries, or who engage in the planning and implementation of a program or activity involving Federal financial assistance, have direct impact upon beneficiaries.

### 3. COMPLIANCE RESPONSIBILITIES.

- a. Procedures. Each operating element shall develop and maintain procedures to:
- (1) Analyze each of its programs and recipients to determine:
    - (a) Whether the recipient engages in discrimination in employment; and
    - (b) Whether the recipient's employment practices cause beneficiaries to be denied equal opportunity and nondiscriminatory treatment in connection with the recipient's Federally-assisted activities.
  - (2) Considerations to be taken into account by these provisions include but are not limited to:
    - (a) The nature and purpose of the program;
    - (b) The benefits of the program;
    - (c) The intended beneficiaries (care should be taken to distinguish incidental beneficiaries and intended beneficiaries); and
    - (d) The nature of the recipient's employment practices and the ways in which those practices may affect the benefits provided by the program.
- b. Pre-award Information Required.
- (1) Each operating element shall require that each applicant for Federal financial assistance submit the information necessary to permit the operating element to make the determinations regarding the

employment practices of the applicant necessary for a finding respecting probable compliance. At a minimum, the TITLE VI ASSESSMENT provided for in Chapter IV, paragraph 2a shall contain:

- (a) A statistical breakdown by race, color, and national origin of that portion of the applicant's workforce that is or is likely to be involved in any manner, either directly or indirectly, in the preparation of the application for Federal financial assistance, the handling or use of such funds, or the work to be performed with the aid of such funds. The breakdown shall be by job titles, grouped as necessary for work of comparable difficulty and responsibility.
  - (b) A listing of the number and types of employment openings that are expected to be created in connection with the Federally-assisted work, including those that will not be reimbursed directly from Federal funds.
  - (c) A cumulative listing of employment actions, including hirings, firings, promotions, layoffs, training courses, etc., for the previous year in that portion of the applicant's workforce for which the breakdown in (1) is provided.
  - (d) An analysis of the available workforce in the area in which the applicant does or may reasonably recruit, expressed in terms of the race, color, or national origin characteristics of the workforce.
  - (e) A copy of any affirmative action plan pertaining to the applicant's employment practices.
4. PRE-AWARD AGREEMENTS. Whenever an operating element finds cause to believe that an applicant is in noncompliance or probable noncompliance with the employment requirements of Title VI, it may attempt to resolve the problem informally through the provisions set forth in Chapter VI of this Order. Any such informal resolution of an employment noncompliance problem will set forth in writing the terms and conditions relating to employment to which the applicant will be bound as a condition to receiving Federal financial assistance. Such terms and conditions may include the creation of and commitment to carry out affirmative action steps, including goals and timetables, that are designed to ensure that the purposes of Title VI are met during the period that Federal financial assistance is to be extended. Any such agreement shall be signed by all parties and shall be subject to approval by the Director.

CHAPTER IV

COMPLIANCE REVIEWS

1. GENERAL. Each operating element is responsible for reviewing each application for Federal financial assistance and for monitoring the performance of each recipient of Federal financial assistance from the Department to ensure that each applicant and recipient complies fully with Title VI. It is the policy of the Department to award and to continue to provide Federal financial assistance only to those applicants and recipients who comply fully with all the Title VI requirements.
  
2. APPLICATION REVIEW.
  - a. Title VI Assessments. Each operating element shall require every applicant for Federal financial assistance to include in its application a section entitled "TITLE VI ASSESSMENT." This section shall contain information sufficient to permit an initial determination by DOT of whether the applicant will probably comply fully with the Title VI requirements. This section shall also contain the applicant's analysis of the effects of the proposed use of Federal financial assistance upon Title VI concerns.
    - (1) Information Required. Within 90 days of the effective date of this Order, each operating element shall prepare application guidelines setting forth, in detail, the specific information to be required from applicants with respect to each of the operating element's Federal financial assistance programs. The Director shall review and approve, disapprove or amend these guidelines. A copy of these guidelines will be provided to each applicant requesting Federal financial assistance under the program concerned. While these guidelines should be tailored to the needs of each specific Federal financial assistance program, they shall call for the following information:
      - (a) A statistical breakdown by race, color and national origin of:
        - 1 The population eligible or likely to be served or affected by the project;
        - 2 The projected users or beneficiaries of the project;
        - 3 The owners of property to be taken, and persons or businesses to be relocated or adversely affected, as a result of the project; and

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- 4 The present or proposed membership of any planning or advisory body which is an integral part of the program or project.
  - (b) The information concerning employment required by Chapter III, paragraph 3b of this Order.
  - (c) The information relating to minority contractor participation required by Chapter II, paragraph 2a.
  - (d) The proposed location, and alternative locations, of any facilities to be constructed or used in connection with the project, together with data concerning the composition by race, color and national origin of the populations of the areas surrounding such facilities.
  - (e) A concise description of:
    - 1 Any lawsuits or complaints alleging discrimination on the basis of race, color or national origin filed against the applicant or any of its proposed subgrantees within the five years next previous to the date of the application, together with a statement of the status or outcome of each such complaint or lawsuit;
    - 2 Any pending application by the applicant or any of its proposed subgrantees for Federal financial assistance to any Federal agency; and
    - 3 Any civil rights compliance review performed or being performed on the applicant or any of its proposed subgrantees by any state, local or Federal agency within the five years next previous to the date of the application, together with a statement of the status or outcome of such review.
  - (f) Any other information deemed necessary by the operating element office of civil rights or the Director.
- (2) **Analysis.** Each operating element shall require every applicant for Federal financial assistance, as a part of its "TITLE VI ASSESSMENT," to analyze its probable Title VI performance. The precise components of this analysis shall be made part of the "application guidelines" to be prepared by the operating elements pursuant to this Order. The analysis in any case shall include the following items:

- (a) The relative benefits, services, and adverse impacts of the proposed project and its alternatives on persons and businesses of majority and minority racial and national origin groups;
  - (b) A statement of any problems, potential as well as actual, that will or may occur with respect to any Title VI concern;
  - (c) A statement of what action the applicant agrees to take to correct any such problems;
  - (d) A statement of the affirmative action that the applicant will take to ensure full compliance with all Title VI requirements, including, but not limited to, such matters as provisions for communicating with persons whose primary language is not English, nondiscrimination in covered employment, outreach at all stages of the planning and implementation of the project to persons and communities affected thereby, equal access to services and benefits of the project, and minority contractor participation;
  - (e) A description of how the applicant will enforce the Title VI requirements of its subgrantees and contractors; and
  - (f) Any additional analysis deemed necessary by the operating element office of civil rights or the Director.
- (3) Additional Information and Analysis. If the operating element office of civil rights determines that the "TITLE VI ASSESSMENT" is incomplete or that more information is needed to make a determination respecting probable compliance, the operating element shall require the applicant to provide such information within 60 days of the request. Failure by the applicant to provide such information in a timely fashion shall be a ground for a determination of probable noncompliance.
- b. Initial Determination Respecting Probable Compliance. Based upon the TITLE VI ASSESSMENT, and within 30 days of receiving the application or additional information pursuant to paragraph 2a(3) of this chapter, the operating element office of civil rights shall make a determination respecting probable compliance. This determination shall be one of the following:
- (1) The applicant will probably comply in all respects with the Title VI requirements;

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- (2) It cannot be determined without an on-site compliance review whether the applicant will comply in all respects with the Title VI requirements; or
- (3) The applicant probably will not comply in all respects with the Title VI requirements.

c. Outcomes.

- (1) In the event that a determination of probable compliance is made, no further pre-award civil rights review shall be necessary.
- (2) In the event that an on-site compliance review is required, the applicant shall be found as a result of this review either to be in compliance or noncompliance with all aspects of the Title VI requirements.
- (3) In the event that a determination of probable noncompliance is made, the applicant may, within 60 days of receiving notice of the determination, ask for reconsideration, submitting therewith any additional information or analysis it believes to be relevant. The operating element office of civil rights shall consider and decide any such request for reconsideration, within 30 days of receiving it. In response to a request for reconsideration, the operating element may make one of the findings in paragraph b(1) or paragraph b(2).
- (4) In the event of a determination of probable compliance after an application review or of compliance as the result of a pre-award on-site compliance review, the operating element office of civil rights shall concur in any approval of the application. The operating element office of civil rights shall not concur in the approval of the application where there is a finding of probable noncompliance resulting from an application review or noncompliance resulting from a pre-award on-site compliance review. An operating element may not approve any application for Federal financial assistance without the concurrence of its office of civil rights pursuant to this subsection.

- d. Review by the Director. Where a finding of probable noncompliance or noncompliance is made by the operating element, as the result of a complaint investigation, application review, or on-site review, the operating element shall notify the Director within five working days. The Director shall decide within five working days whether the Office or the operating element office of civil rights shall process the matter thereafter.

3. ON-SITE COMPLIANCE REVIEWS.

- a. Responsibility for Conducting On-Site Compliance Reviews. On-site compliance reviews shall be conducted by the operating elements' office of civil rights. The Director may order that the Office perform a review rather than the operating element's office of civil rights.
- b. Content.
- (1) On-site compliance reviews shall include, in detail, all aspects of a recipient's performance relevant to Title VI compliance. The review shall include personal interviews with persons in the applicant's or recipient's organization and in the community likely to have relevant information or views. The reviewer shall also gather all statistical and documentary materials needed to make a determination of compliance or noncompliance. The findings, conclusions and recommendations, with supporting rationale, should be set forth in a report.
  - (2) Each operating element office of civil rights shall, within 120 days of the effective date of this Order, develop a manual prescribing in detail the procedures to be followed and the information to be gathered as part of its on-site compliance reviews and a uniform review format. The procedural and substantive requirements should be tailored to fit the needs of the particular programs through which each operating element provides Federal financial assistance. The manual shall also set forth standards for evaluating the Title VI performance of applicants and recipients examined by on-site compliance reviews. The Director shall review and approve, disapprove, or amend as necessary the operating elements' manuals.
- c. When Required. On-site compliance reviews shall be required under the following circumstances:
- (1) When it is determined, pursuant to paragraph 2b(2) of this chapter, that a determination respecting probable compliance cannot be made on the basis of the applicant's "TITLE VI ASSESSMENT."
  - (2) When a project for which a determination of probable compliance has been made on the basis of the applicant's TITLE VI ASSESSMENT, within one year of the approval of Federal financial assistance for the project, or at the estimated mid-point of a project expected to be completed within less than two years.

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- (3) When recipients have been found in partial noncompliance by a pre-award on-site compliance review and, as the result of informal resolution, have agreed to take corrective measures, within one year of the approval of Federal financial assistance for the project, or at the estimated mid-point of a project expected to be completed within less than two years. The operating element office of civil rights concerned has the discretion to limit such reviews to consideration of the deficiencies identified by the previous review and the corrective measures undertaken as a result of conciliation.
  - (4) When projects require or are expected to require at least three years from approval of Federal financial assistance to completion, and a total of at least \*\$ \_\_\_\_\_ in Federal financial assistance has been or will be expended, recurrent reviews shall be conducted at two-year intervals. If, in the opinion of the operating element office of civil rights, less than one year remains before total completion of the project, this requirement may be waived.
  - (5) At any time when the Director believes that such a review is warranted with respect to any project. The staff of the Office shall perform all special on-site compliance reviews.
  - (6) When less than \*\$ \_\_\_\_\_ in Federal financial assistance is provided by DOT with respect to any project, the operating element office of civil rights may waive any requirement for a post-award on-site compliance review.
- d. Reports. The result of every compliance review shall be set forth in a written report to be completed within 30 days of the completion of the on-site visit. The report shall include a summary of the information obtained, specific findings of fact, a determination of compliance or noncompliance, and recommendations, if any. A copy of this report and the CRIS Data Entry form shall be sent to the Director and to the applicant or recipient within five (5) days of its approval by the operating element's office of civil rights.
- e. Reconsideration. Within 60 days of being notified of a finding of non-compliance, the applicant or recipient may request reconsideration of the findings by submitting to the operating element's office of civil rights any additional information or analysis it considers relevant. The operating element's office of civil rights shall consider the request within 30 days.
- \* The amount to be established by the head of each operating element for the Federal financial assistance program he/she administers with the concurrence of the Director.



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- f. Notification of the Assistant Attorney General. The Director shall promptly notify the Assistant Attorney General, Civil Rights Division, of every finding of noncompliance resulting from an on-site compliance review.

#### 4. PERIODIC COMPLIANCE REPORTS.

- a. The operating elements shall require all recipients to submit semiannual compliance reports to the operating element's office of civil rights. The content of these reports shall be prescribed in detail by compliance report guidelines which the operating elements shall develop and submit to the Director for approval within 120 days of the effective date of this Order. These reports shall provide updated information in those categories of data required as part of the TITLE VI ASSESSMENT in the recipient's application and relate progress made with respect to the recipient's affirmative equal opportunity programs and agreements to correct any previously identified noncompliance problems.
- b. In the event that the operating element office of civil rights involved believes that a compliance report indicates a possible noncompliance problem, he shall, within 30 days of receiving the report, advise the Director. Based upon the report and the operating element office civil rights' comments, the Director shall decide within 10 days whether a special compliance review pursuant to paragraph 3c(5) of this chapter is necessary.

CHAPTER VCOMPLAINT PROCEDURES1. GENERAL.

Purpose. These procedures are intended to prescribe the responsibilities of the Department of Transportation to enforce Title VI of the Civil Rights Act of 1964 with respect to the filing, processing, investigating, and disposing of complaints of discrimination.

2. FILING OF COMPLAINTS.

- a. Persons Eligible to File. Any person who believes that he or she, individually, as a member of any specific class of persons, or in connection with any minority contractor, has been subjected to discrimination prohibited by Title VI of the Civil Rights Act of 1964 may file a complaint, as stated in 49 C.F.R. 21.11(b). A complaint may also be filed by a representative on behalf of such a person.
- b. Time for Filing. In order to have the complaint considered under this chapter, the complainant must file the complaint no later than 180 days after:
  - (1) The date of an alleged act of discrimination; or
  - (2) Where there has been a continuing course of conduct, the date on which that conduct was discontinued.

In either case, the Director or his/her designee may extend the time for filing or waive the time limit in the interest of justice, specifying in writing the reason for so doing.

- c. Officials Authorized to Receive Complaints. Complainants may submit their complaints to the Director, heads of operating elements, directors of civil rights of operating elements, heads of DOT field offices and installations, or the designees of any of these officials. Any other DOT officer or employee receiving a complaint shall immediately forward it to the nearest such official. All complaints received by officials other than the Director shall immediately be forwarded to the Director, date-stamped and marked "Attention: Complaints Division."

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- d. Form of Complaints. Complaints shall be in writing and shall be signed by the complainant and/or the complainant's representative. Complaints shall set forth 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 DOT officer or employee, the person shall be interviewed by a DOT official authorized to receive complaints or the official's designee. If necessary, the official will assist the person in reducing the complaint to writing and submit the written version of the complaint to the person for signature. The complaint shall then be handled in the usual manner.
- e. Responsibility of Operating Elements. Operating elements shall require their applicants for and recipients of Federal financial assistance to forward any complaint of discrimination made to them about their own actions or actions of subgrantees or contractors to a DOT official authorized to receive the complaint.

### 3. PROCESSING OF COMPLAINTS.

- a. Acknowledgement. The Complaints Division of the Office shall acknowledge in writing the receipt of every complaint within five (5) days of receiving it. At the same time, the Complaints Division shall notify the party charged (and the primary recipient, if the primary recipient is not the party charged) that a complaint has been filed.
- b. Information for Operating Elements. Immediately upon receiving a complaint, the Complaints Division shall request the following information from the operating element(s) concerned, which shall furnish the information requested within ten (10) days of receiving the request:
  - (1) Project and file number(s);
  - (2) Location and brief description of project;
  - (3) Status of funding for the project;
  - (4) Copies of any compliance reviews of the recipient with respect to the project;
  - (5) Copies of the TITLE VI ASSESSMENT and other nondiscrimination assurances signed with respect to the project; and
  - (6) A statement of whether a compliance review with respect to the project has been scheduled or is contemplated within the time allowed for processing of the complaint.

- c. Information from Other Agencies. The Complaints Division shall contact the Equal Employment Opportunity Commission (EEOC), state or local civil rights offices, other Federal agencies providing Federal financial assistance to the respondent, and community organizations to determine whether any other allegations of noncompliance against the respondent exist. The existence of a pattern of such allegations may be ground for the Director to initiate a special on-site compliance review pursuant to paragraph 3c(5) of Chapter IV.
- d. Determination of Jurisdiction and Investigative Merit. Based upon the information in the complaint and the information provided by the operating element, the Complaints Division shall determine whether the Department has jurisdiction to pursue the matter and whether the complaint has sufficient merit to warrant investigation. These determinations shall be made within 15 days of the receipt by the Complaints Division of the information requested from the operating element.
  - (1) Jurisdiction. The Department has jurisdiction to investigate a complaint if:
    - (a) The complaint involves a program or activity for which DOT has furnished or agreed to furnish Federal financial assistance, or for which such assistance has been requested by an applicant;
    - (b) The complaint alleges any of the specific actions prohibited by 49 C.F.R. 21.5 or any other action which discriminates against any person, class, or minority contractor on the basis of race, color, or national origin; or
    - (c) The complaint alleges discrimination with respect to covered employment (see Chapter III).
  - (2) Investigative Merit. A complaint shall be regarded as meriting investigation unless:
    - (a) It clearly appears on its face to be frivolous or trivial;
    - (b) Within the time allotted for making the determination of jurisdiction and investigative merit, the party complained against voluntarily concedes noncompliance and agrees to take appropriate remedial action;

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- (c) Within the time allotted for making the determination of jurisdiction and investigative merit, the complainant withdraws the complaint; or
  - (d) Other good cause for not investigating the complaint exists.
- (3) Request for Additional Information from Complainant. In the event that the complaint does not contain sufficient information to permit a determination of jurisdiction and investigative merit to be made, the Complaints Division shall request the complainant to provide specific additional information. Such a request shall be made within fifteen (15) days of the receipt by the Complaints Division of the complaint, and shall require the complainant to furnish the information within 60 days. Failure of the complainant to do so may be considered good cause for a determination of no investigative merit.
- (4) Concurrence of Director. The Director must personally review and concur with any determination that a complaint should not be investigated for lack of jurisdiction or investigative merit. The Director will approve or disapprove the determination of the Complaints Division within five (5) days of receiving it.
- (5) Notification of Disposition. Within five (5) days of the Director's decision concerning the disposition of the complaint, the Director shall notify by registered letter the complainant, party charged, and primary recipient (if not the respondent) of the disposition.
- (a) In the event of a decision not to investigate the complaint, the notification shall specifically state the reason for the decision.
  - (b) In the event the complaint is to be investigated, the notification shall state the grounds of DOT jurisdiction, inform the parties that an on-site investigation will take place and request any additional information needed to assist the investigator in preparing for the investigation.
- (6) Referral to Other Agencies. When DOT lacks jurisdiction, the Director shall, when possible, refer the complaint to other state or Federal agencies, informing the parties of his action. For example, the Director could refer complaints regarding noncovered employment to the EEOC or the state anti-discrimination agency.

- (7) Priority Complaints. All incoming complaints shall be examined to determine whether the discrimination alleged would be irremediable if not dealt with promptly; e.g., complaint of a minority contractor when the contract is to be awarded in a short time. If such a determination is made, the complaint shall be given priority status. The processing, investigation, and determination of such complaints shall be accelerated so as to advance significantly the normal completion date of the process.

#### 4. INVESTIGATIONS.

- a. Assignment. The Chief of the Complaints Division shall assign all complaints to an investigator within the division, except where the Director determines that because of workload in the Office:
- (1) The matter would be expedited if handled by an operating element's office of civil rights and that such handling is appropriate in the case; or
  - (2) The complaint shall be referred to the primary recipient for action pursuant to paragraph 6 of this chapter.

The responsibilities of an operating element's office of civil rights to investigate the complaint may not be delegated to any regional field office. When an operating element's office of civil rights makes the investigation and prepares the investigation report, the Director shall review and approve the recommended disposition of the matter in the same manner provided in paragraph 5h of this chapter.

- b. Investigator's Preparation. Before beginning the field investigation, the investigator shall become familiar with all factual and legal aspects of the case, send a letter of introduction, prepare an investigation plan and establish the dates and times for visits and interviews. This preparation shall be completed within thirty (30) days of the assignment of the case to the investigator.

- (1) Letter of Introduction. This letter shall inform the party charged with discrimination of the identity of the investigator, request any specific information or documents which the party will be asked to produce, and propose a time and place for a visit (at least two weeks subsequent to the date of the letter). A copy of the letter will also be sent to the complainant (and the complainant's authorized representative, if applicable) and to the primary recipient (if different from the respondent).

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- (2) Rescheduling of Visit. The investigator shall contact the head of the party charged with discrimination to confirm the time and date of the scheduled visit. If necessary, the visit may be rescheduled for any time within ten (10) days of the original date.
- (3) Investigation Plan. Prior to contacting the recipient to schedule the complaint investigation, the investigator shall prepare an investigation plan, in order to focus on relevant issues; diminish the possibility of inadvertent gaps in the investigation, and note areas in which additional information will be required. In the event that an office, other than the Complaints Division, is conducting the investigation, the investigation plan shall be submitted to the Complaints Division for review and approval.

## 5. CONDUCT OF INVESTIGATIONS.

- a. Scope. Investigations shall be confined to issues and facts relevant to the allegations of the complaint. Investigators who are concurrently conducting a compliance review shall gather all information relevant to both purposes.
- b. Confidentiality. Complainant shall be offered a pledge of confidentiality as to his or her identity. This offer, if accepted by the complainant, shall be binding on the investigator. Complainants shall be interviewed at times and places which will not create a risk of violating or vitiating this pledge. Except where essential to the investigation (e.g., in an individual employment discrimination case), the investigator shall not reveal the identity of the complainant to the respondent or to any third party. If the investigator in such a case determines that he must reveal the complainant's identity, he shall first secure the complainant's permission to do so. In no case may any DOT officer or employee provide a copy of the complaint to the respondent or to any third party unless the prior written consent of the complainant is obtained.
- c. Cooperation of Recipients. The operating elements shall require that their recipients and applicants (and, through primary recipients, subgrantees and contractors as well) cooperate fully in the conduct of investigations. Such cooperation shall include, but not be limited to, the following:
  - (1) Question Responses. Officials and employees of the respondent shall answer fully all questions proposed to them by the investigator.

- (2) Compliance Data. The respondent shall furnish to the investigator all relevant compliance data required to be compiled by the operating element pursuant to 49 C.F.R. Section 21.9(b).
  - (3) Access to Sources of Information. The respondent shall permit access to such books, records, accounts, and other sources of information as may be pertinent to the investigation.
  - (4) Records in Possession of Third Party. In the event that any information requested of a respondent is in the exclusive possession of any other agency, institution, or person, which refuses or fails to furnish this information to the respondent, the respondent shall so certify and set forth the efforts it has made to obtain the information.
- d. Failure to Cooperate. Failure or refusal by the respondent to furnish requested information or other failure to cooperate is a violation of DOT Title VI regulations. In the event that a respondent fails or refuses to furnish information to an investigator, the investigator shall inform the head of the respondent organization that such failure may result in the imposition of sanctions, or termination or refusal to grant or to continue to grant pursuant to 49 C.F.R. section 21.13. The investigator shall indicate in the investigation report that the respondent refused to provide pertinent information, and shall set forth efforts to obtain the information.
- e. Interview with Respondent.
- (1) Purpose Explained. After presenting his/her credentials, the investigator shall explain the right secured by Title VI and indicate the purpose of the visit to be: (1) a complaint investigation or (2) a combined complaint investigation and compliance review.
  - (2) Allegations Explained. The investigator shall provide a complete summary of the allegations made in the complaint and provide the respondent an opportunity to rebut or refute information on allegation provided or made by the complainant.
  - (3) Request for Compliance Records. The investigator shall request copies of all records and other material requested in the letter of introduction which have not been received.



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- (4) Written Statements. The investigator may, with the consent of an interviewee, take a written statement which shall be reviewed by the interviewee, signed and filed with the investigator's report.
- f. Other Interviews. The investigator shall interview the complainant and any third parties having or likely to have information relevant to the subject matter of the complaint during this interview or at an appropriate later time, the complainant shall have an opportunity to refute information or allegations provided by the respondent.
- g. Investigation Report. Within ten (10) days after the conclusion of the investigation, the investigator shall prepare an investigation report, setting forth all relevant information, findings, and recommendations for submission to the Director. This report shall include a summary of the complaint; citation of all relevant Federal, state and local laws, rules, regulations, and formal procedures; a concise summary of the issues raised by the complaint; a description of the investigation; findings (of compliance or noncompliance) and recommendations. The report shall include as attachments all correspondence, reports, data, written statements, and other information collected and/or received during the course of the investigative process. The report shall be submitted to the Director for review and approval.

Approval and Notice of Finding. The Director shall approve or disapprove the findings and recommendations of the investigation report within ten (10) days of the submission of the report to the Director. The consequent disposition of the complaint shall be communicated to the complainant, respondent, and primary recipient (if not the respondent) by registered letter within five (5) days of the Director's decision. A summary of the rationale supporting the disposition made and any recommendations to any party shall be included in this letter.

- i. Request for Reconsideration. Within 30 days of being notified of a finding of noncompliance, pursuant to a complaint, the respondent may file a request for reconsideration, submitting any additional information or analysis it considers relevant. The Director shall decide such requests within 30 days of receiving them.

## 6. INVESTIGATIONS BY PRIMARY RECIPIENTS.

- a. Authorization of Primary Recipients to Process Complaints. The Director may authorize primary recipients to investigate and make findings and recommendations with respect to Title VI complaints, subject to the provisions of subparagraph b of this section. The Director may authorize

such action only by those primary recipients who have submitted to the Office a complaint handling procedure substantially complying with this chapter and which the Director has approved. Before approving any such procedure, the Director must be convinced that the primary recipient has the staff and resources to deal effectively, thoroughly and promptly with Title VI complaints.

- b. Scope of Primary Recipients' Authority. The role in processing Title VI complaints granted to primary recipients under this section is regulated as follows:
- (1) The primary recipient may process complaints against its subgrantees or contractors; it may not process any such complaint, however, if the complaint directly or indirectly implicates the primary recipient itself, or any of its officers or employees, in the alleged discrimination;
  - (2) When a complaint is made to the recipient about the conduct of one of its contractors or subgrantees, the recipient shall forward a copy to the Director within five (5) days. The Director shall decide within ten (10) days of receiving the complaint from the primary recipient whether to permit the primary recipient to process the complaint or to assign the complaint to the Complaints Division for action.
  - (3) When the Director receives a complaint against a primary recipient's subgrantee or contractor which was not first filed with the primary recipient, the Director may, at his/her discretion, refer the complaint to the primary recipient for action or assign the matter to the Complaints Division.
  - (4) The Director may withdraw the recipient's authority to investigate a complaint at any time prior to the forwarding of the report, findings and recommendations.
  - (5) In any case in which the primary recipient processes the complaint, the primary recipient shall forward the investigation report, findings and recommendations to the Director. The Director shall review and approve or disapprove the findings and recommendations and notify the parties of the decision as provided in paragraph 5h of this chapter.

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**7. RECORD-KEEPING AND REPORT REQUIREMENTS.**

- a. Records. The Director shall maintain a log of Title VI complaints filed with it and with its recipients, identifying each complainant by race, color, or national origin; the recipient; the nature of the complaint; the dates the complaint was filed and the investigation completed; the disposition; the date of disposition; and other pertinent information. Each recipient processing Title VI complaints shall be required to maintain a similar log.
- b. Reports to the Assistant Attorney General Civil Rights Division. The Director shall prepare the semiannual reports to the Assistant Attorney General, Civil Rights Division, concerning Title VI complaints required by 28 C.F.R. section 42.408(d).

CHAPTER VI  
INFORMAL RESOLUTION

1. GENERAL. Informal resolution means the voluntary agreement by the respondent to take steps, approved by the Department, to correct noncompliance or probable noncompliance identified by complaint investigations, on-site compliance reviews or application reviews. The purpose of resolving the matter by informal means is not to alter or review findings of noncompliance. Rather, the purpose is to create a plan agreeable to the respondent and the Department that will correct noncompliance which the Department has found to exist and assure continued compliance.
  
2. PROCEDURE.
  - a. Invitation to Informal Resolution. In every case in which a complaint investigation, application review, or on-site compliance review results in a finding that respondent is in noncompliance or probable noncompliance, the Director shall in the notification of this finding invite the respondent to participate in informal resolution. The invitation shall summarize the steps in the informal resolution process and inform the respondent that it must submit its proposal for correcting noncompliance or probable noncompliance within 30 days.
  
  - b. Respondent's Submission. Within 30 days of the receipt of the invitation, any respondent desiring to participate in informal resolution shall submit to the Director its proposal for correcting the noncompliance problems identified by the complaint investigation, application review, or field compliance review involved.
  
  - c. Informal Resolution.
    - (1) Within 5 days of receiving the respondent's submission, the Director shall assign action on the matter to the staff of the Office or the office of civil rights of the concerned operating element. The operating element office of civil rights may, with the concurrence of the Director, reassign action to regional or field offices in cases of relatively narrow scope which can be handled appropriately at that level. The Director or his/her designee may be present at and participate in any meeting to resolve informally the matter.

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- (2) The action office shall set a date for a meeting agreeable to the respondent which shall be no later than 30 days from the date on which action is assigned.
- (3) Meetings to resolve informally the matter shall be on-the-record, with the verbatim record kept either by stenographic reporter or tape recording. Tapes or transcripts of the meeting shall be available to all participants for a reasonable fee.
- (4) The subject matter of the meetings shall be limited to means of correcting noncompliance problems identified by complaint investigations, application reviews, or field compliance reviews. The validity or correctness of findings of noncompliance or probable noncompliance shall be presumed and shall not be discussed or negotiated at meetings.
- (5) In the event that the parties are able to agree on a plan to bring the respondent into compliance, the action office shall within ten days of the meeting submit the written agreement to the Director for his/her review. The Director will approve or disapprove the agreement within 20 days of receiving it. If the Director approves the agreement, it will be forwarded to the respondent for signature. If the Director disapproves the agreement, the reasons therefor shall be specific in writing and amendments to the agreement shall be proposed to meet his/her objections. The Director shall submit the proposed amendments to the respondent, requiring the respondent to notify him/her of its agreement or disagreement with the amendments within 20 days.
- (6) In the event that no agreement is reached at the meeting to resolve informally the matter, but it appears to the action office that further meetings may produce agreement, the action office may schedule further meetings with the respondent for any dates within 60 days from the date of which action was assigned. If no agreement can be reached by that time, the negotiations shall be terminated unless the action office, with the concurrence of the Director, determines that negotiations should continue for a specified additional period of time. In any case in which the Director has decided to permit negotiations to continue beyond 60 days from the date action is assigned, the Director shall promptly notify the Assistant Attorney General, Civil Rights Division, stating the reasons for the length of the negotiations.

- d. Effect of Agreement. In the event that there is an approved agreement pursuant to this chapter, the existence of the finding of noncompliance or probable noncompliance shall not act as a bar to the provision of Federal financial assistance. When Federal financial assistance is provided as a result of such an agreement, an on-site compliance review shall be conducted to ascertain whether the agreement has been fully implemented (see Chapter IV).
  
- e. Failure to Effect an Agreement. Failure to reach an informal resolution will result in the initiation of action pursuant to 49 C.F.R. 21.13.