



**COMPLAINTS INVESTIGATIONS
REFERENCE NOTEBOOK**

FOR

DIVISION OFFICE CIVIL RIGHTS PERSONNEL

MODULE 3

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**COMPLAINTS INVESTIGATION REFERENCE
NOTBOOK**

Tab 1

Training Outline

COURSE OBJECTIVES

At the conclusion of the training presentation, the participant should have a better understanding of the following:

- 1. The bases covered by the laws;**
- 2. The responsibilities of an investigator;**
- 3. The theories of discrimination and how to recognize the appropriate theory based on the information contained in the complaint of discrimination;**
- 4. The elements of proof and how to apply them to a complaint of discrimination;**
- 5. The 7 parts of the investigative process.**

INVESTIGATIVE PROCESS INCLUDES:

- INVESTIGATIVE PLAN
- REQUEST FOR INFORMATION
- CONDUCTING INTERVIEWS
- ANALYZING DATA
- WRITING THE INVESTIGATIVE REPORT



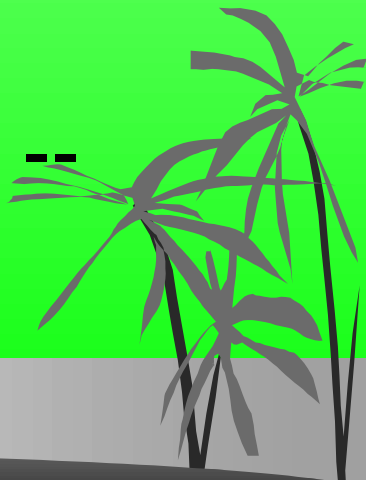
INVESTIGATIVE PLAN

I. COMPLAINANT(S) NAME AND ADDRESS

FOR ATTORNEY COMPLAINANT --
NAME AND ADDRESS

II. RESPONDENT(S) NAME AND ADDRESS

ATTORNEY FOR RESPONDENT --
NAME AND ADDRESS



INVESTIGATIVE PLAN

(cont)

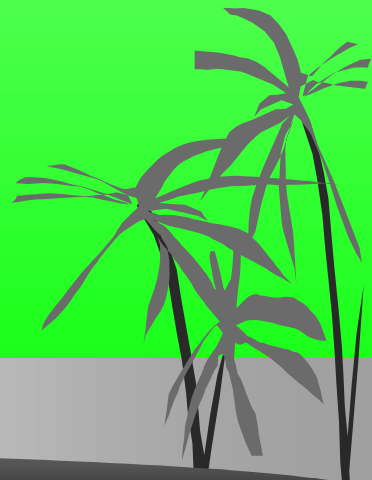
III. APPLICABLE LAW

TITLE VI

COMPLIANCE REVIEW

IV. BASIS

V. ISSUE(S)



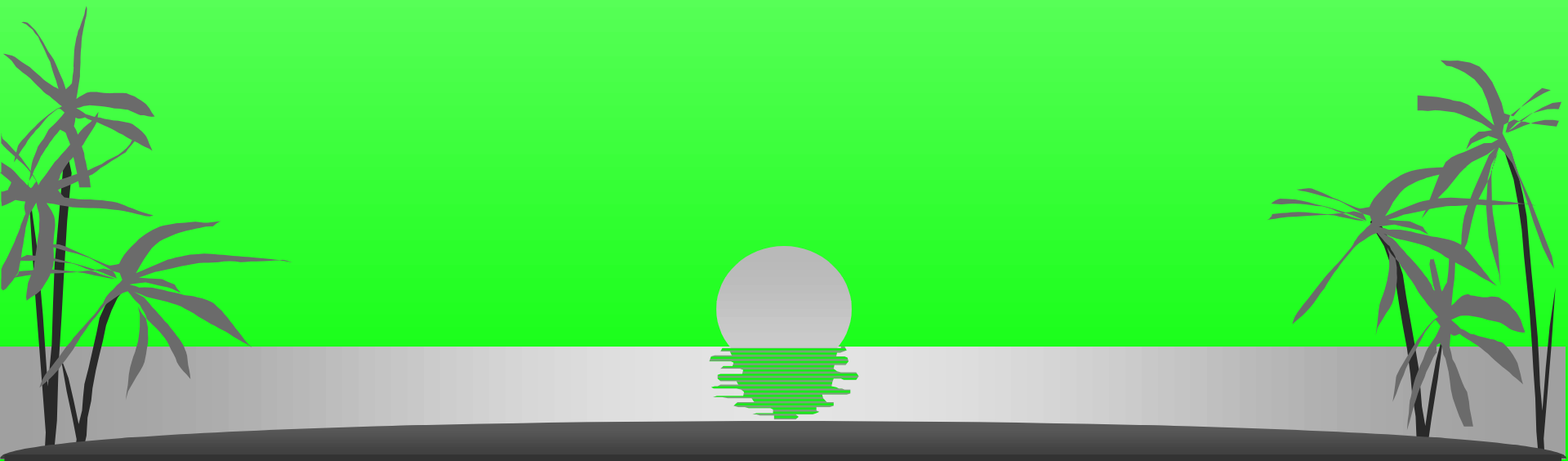
INVESTIGATIVE PLAN

(cont)

VI. BACKGROUND

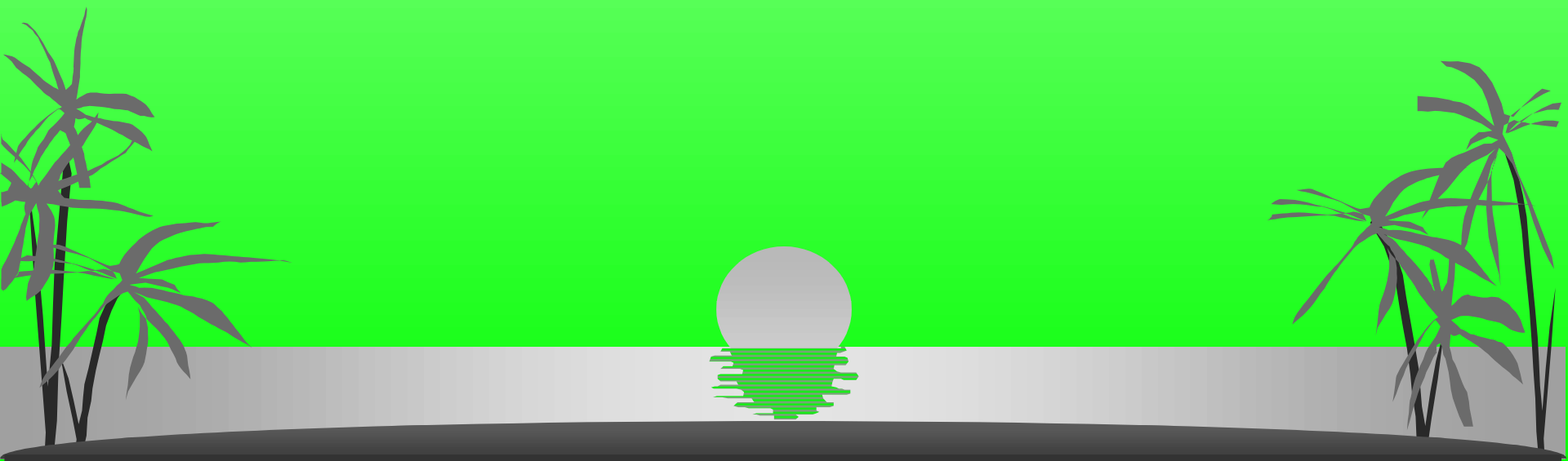
VII. NAME OF PERSON(S) TO BE
INTERVIEWED

QUESTIONS FOR COMPLAINANT



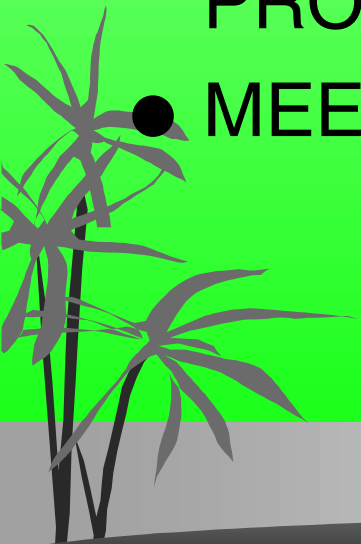
INVESTIGATIVE PLAN (cont)

- VIII. QUESTIONS FOR RESPONDENT
- IX. QUESTIONS FOR WITNESS(ES)
- X. EVIDENCE TO BE OBTAINED
DURING INVESTIGATION



REQUEST FOR INFORMATION (RFI)

- USE EVIDENCE SECTION OF INVESTIGATIVE PLAN TO PREPARE THE RFI
- PREPARE COVER LETTER
- INCLUDE INVESTIGATIVE PROCESS
- MEETING DATES



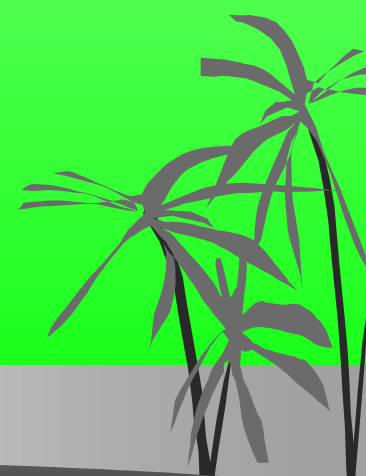
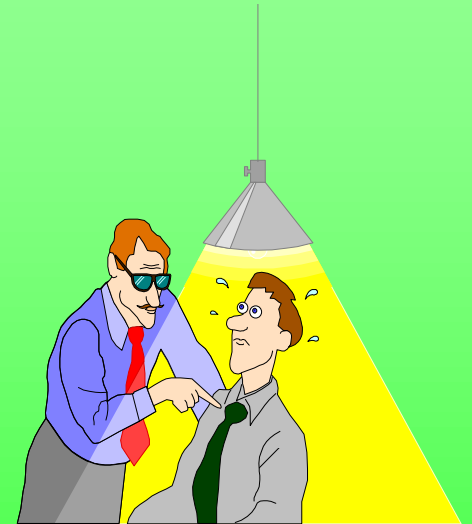
INTERVIEWS

COMPLAINANT

- CLARIFY ISSUE(S)
- DETERMINE RELIEF SOUGHT

RESPONDENT

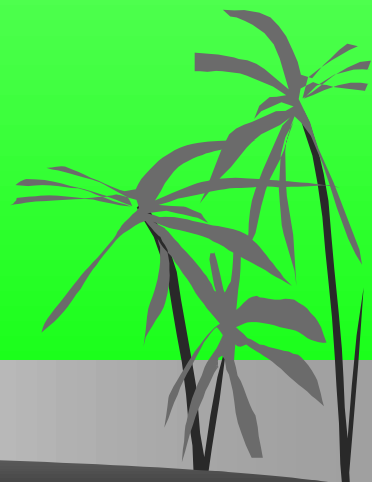
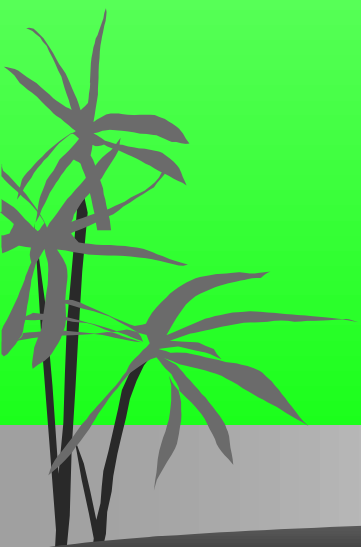
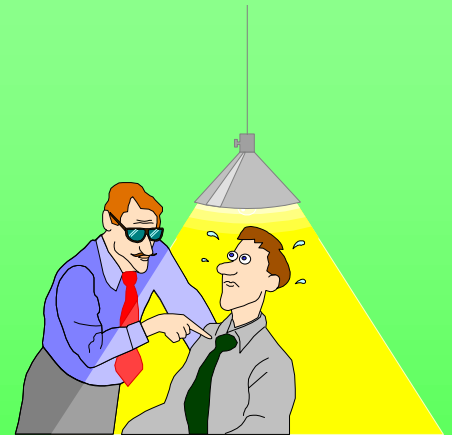
- RESPOND TO ISSUE(S)
- DETERMINE WILLINGNESS TO RESOLVE COMPLAINT



INTERVIEWS (cont)

WITNESSES

- SUBSTANTIATE CP/R STATEMENTS
- OFFER NEW INFORMATION



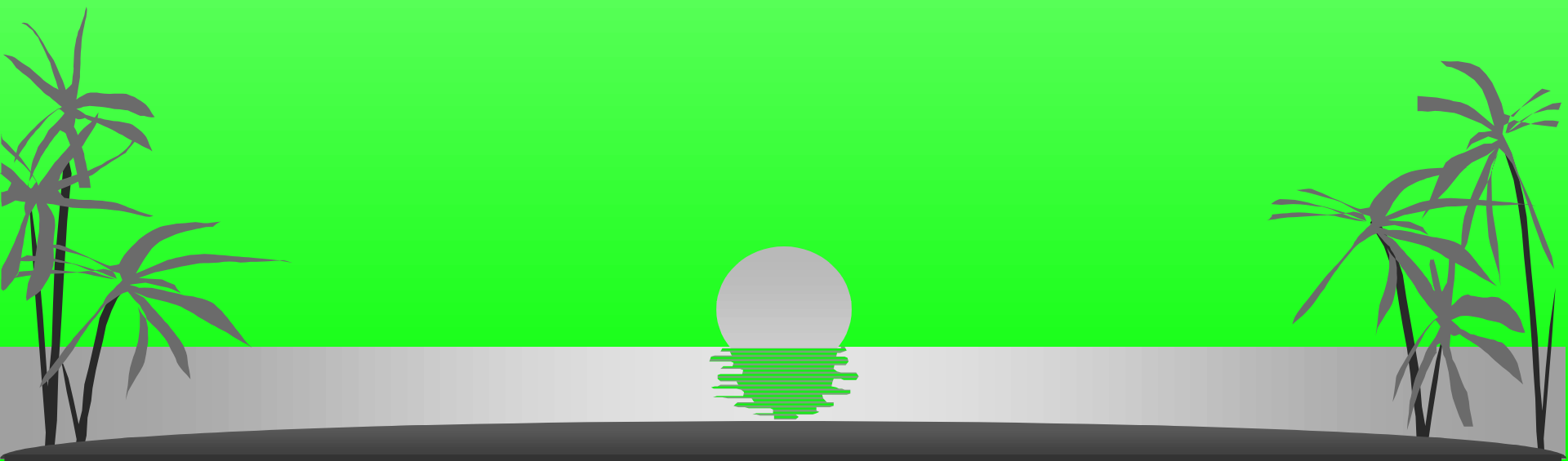
EVIDENCE -- WHAT TO ASK FOR?

- EVIDENCE SHOULD RELATE TO ISSUE(S) IN COMPLAINT
- POLICIES/PROCEDURES
- DOCUMENTS PERTAINING TO COMPLAINANT
- DOCUMENTS ON THE TREATMENT OF OTHERS



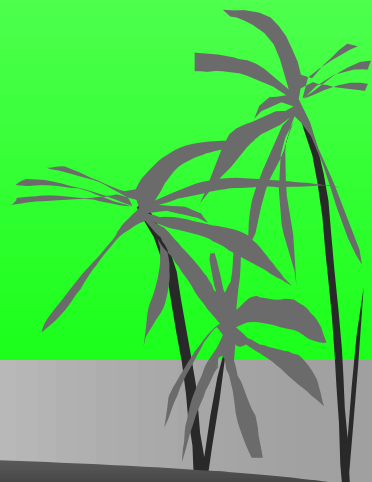
EVIDENCE -- WHAT TO ASK FOR? (cont)

- DOCUMENTS SHOWING THE REASON(S) FOR RESPONDENT'S ACTION



ANALYSIS OF DATA

- DETERMINE WHETHER VIOLATION OCCURRED
- COMPARE COMPLAINANT'S TREATMENT WITH OTHERS
- RESPONDENT'S REASON FOR TREATMENT AFFORDED COMPLAINANT AND OTHERS



INVESTIGATIVE REPORT

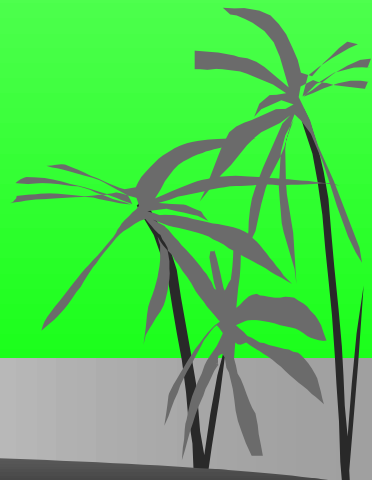
- COMPLAINANT(S) NAME AND ADDRESS
- RESPONDENT(S) NAME AND ADDRESS
- APPLICABLE LAW
- BASIS
- ISSUES



INVESTIGATIVE REPORT

(cont)

- FINDINGS/ISSUES
- CONCLUSION/ISSUE
- RECOMMENDED DECISION
- RECOMMENDATIONS (IF APPLICABLE)

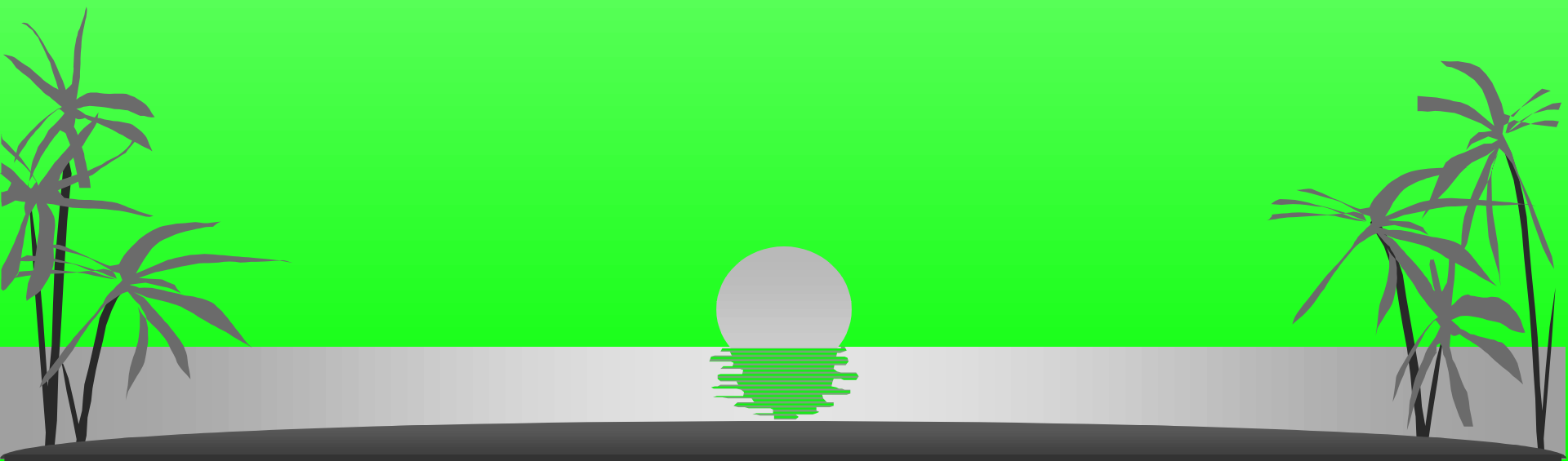


CHARACTERISTICS OF AN INVESTIGATOR

- I. NO OPINIONS.
- II. NEVER TELL COMPLAINANT THAT S/HE HAS A GOOD CASE
- III. ALWAYS REMAIN **NEUTRAL**. DO NOT TAKE SIDES.
- IV. WRITE THE **FACTS**. NEVER SAY WHAT YOU THINK. STATE WHAT THE FACTS ARE BASED ON THE EVIDENCE OR TESTIMONY.

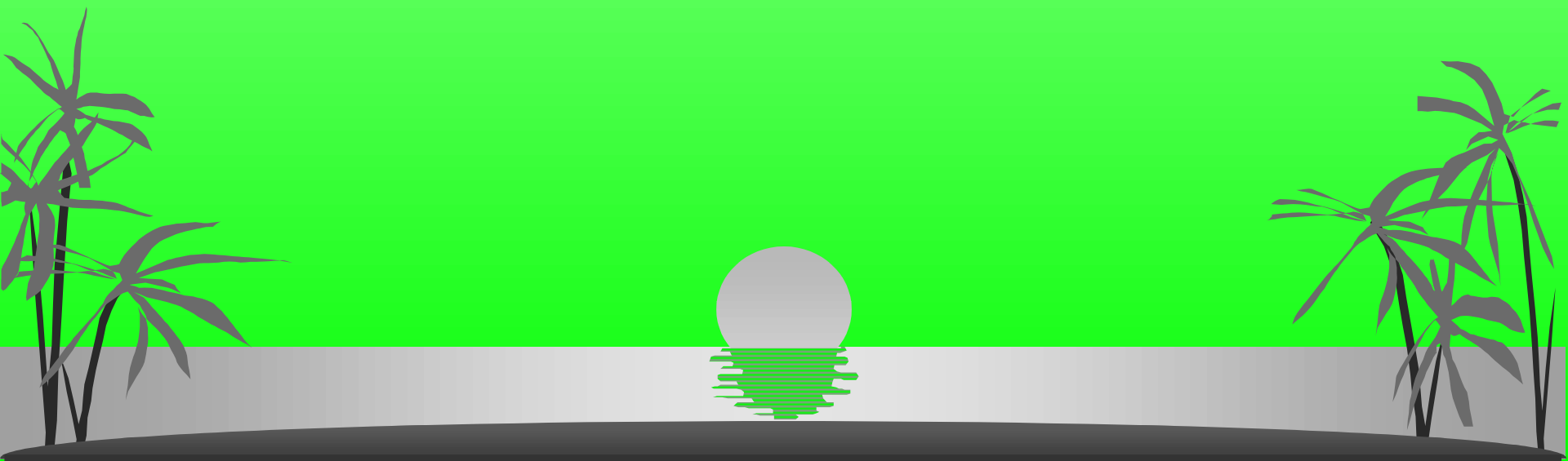
CHARACTERISTICS OF AN INVESTIGATOR (cont)

V. STAY IN CONTROL. REMEMBER, YOU KNOW THE PROCESS --THEY DON'T.



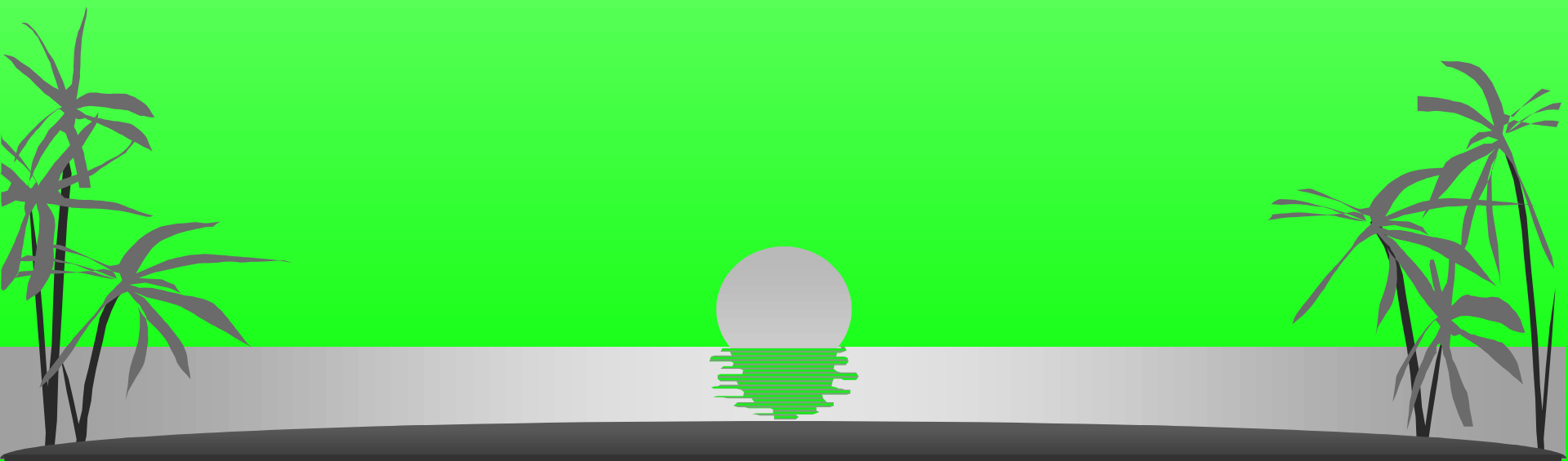
CHARACTERISTICS OF AN INVESTIGATOR (cont)

VI. YOU DECIDE WHO IS TO BE INTERVIEWED. IF COMPLAINANT OR RESPONDENT IS ADAMANT ABOUT A WITNESS INTERVIEW, GO AHEAD WITH IT.



CHARACTERISTICS OF AN INVESTIGATOR (cont)

- VII. YOU DECIDE WHEN YOU HAVE ENOUGH EVIDENCE TO BEGIN WRITING YOUR INVESTIGATIVE REPORT.

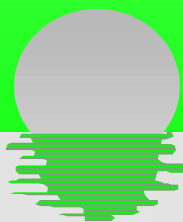
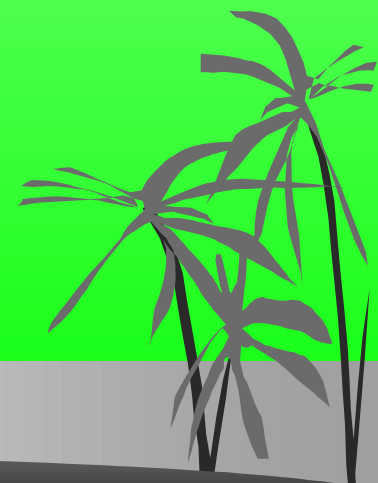
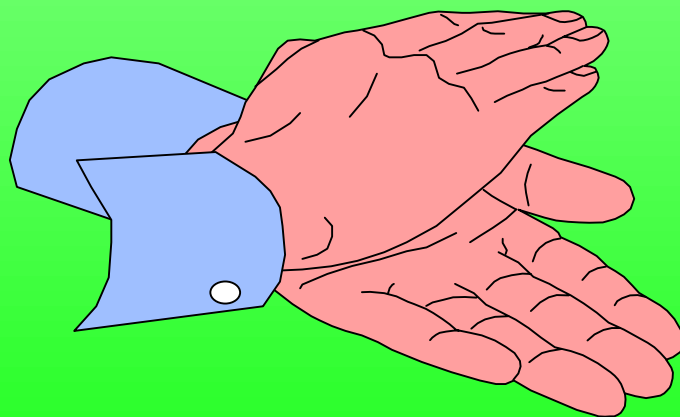


COURSE OBJECTIVES

At the conclusion of the training presentation, the participant should have a better understanding of the following:

- 1. The bases covered by the laws;**
- 2. The responsibilities of an investigator;**
- 3. The theories of discrimination and how to recognize the appropriate theory based on the information contained in the complaint of discrimination;**
- 4. The elements of proof and how to apply them to a complaint of discrimination;**
- 5. The 7 parts of the investigative process.**

THE END



**COMPLAINTS INVESTIGATION REFERENCE
NOTBOOK**

Tab 2

Theories of Discrimination

THEORIES OF DISCRIMINATION

A THEORY OF DISCRIMINATION REFERS TO THE TYPE OR METHOD THAT WAS USED TO DISCRIMINATE. EXAMPLES:

DISPARATE TREATMENT

Whenever similarly situated individuals of a different race, sex, national origin, etc., are accorded different treatment in the context of a similar situation, it is reasonable to infer, absent other evidence, that discrimination occurred.

ADVERSE IMPACT

Discrimination which occurs when a neutral policy or procedure has a disproportionate impact on a protected class. (Facial hair: Black men wear mustaches--White men usually don't)

PERPETUATION OF PAST DISCRIMINATION

The maintenance of a neutral policy or practice which perpetuates past discrimination. For example, if respondent previously refused to hire certain protected class members for certain job categories and presently hires most of its employees through word of mouth recruitment the policy may perpetuate the respondent's past discriminatory hiring practices, since the current workforce does not include protected class members.

ACCOMMODATION

The failure to accommodate a religious practice or the failure to accommodate a disability.

RETALIATION

Discrimination against persons because of the filing of a complaint, participation in an investigation, or opposing a practice made unlawful pursuant to the laws.

INTENTIONAL DISCRIMINATION

The decision maker was aware of the complainant's race, color, or national origin and acted at least in part because of that information. The action was taken because of complainant's race, color, national origin, etc.

**COMPLAINTS INVESTIGATION REFERENCE
NOTBOOK**

Tab 3

Elements of Proof

ELEMENTS OF PROOF

HOW DO YOU PROVE DISCRIMINATION?

In a complaint of discrimination, each party has responsibility for proving or disproving that discrimination occurred. The Complainant has the responsibility of initially establishing a prima facie (at first view; before further examination) case of discrimination. This requires having evidence that shows the following:

- **that the complainant is a member of a protected group;**
- **that the complainant was harmed by some decision;**
- **that similarly situated persons of a different group were not or would not have been harmed under similar circumstances.**

The burden then shifts to the respondent. The respondent has to articulate a legitimate non-discriminatory reason for its actions. This is respondent's defense.

The burden then returns to the complainant to establish that the defense offered by the respondent is pretext (untrue).

The Equal Employment Opportunity Commission states that in the administrative process, it is the investigator's responsibility to obtain evidence that addresses all of these points.

HOW TO DETERMINE WHETHER RESPONDENT'S REASON IS PRETEXT?

The investigator can determine whether the respondent's reasons are a pretext to discriminate by:

- **reviewing comparative data;**
- **showing that others, not in complainant's group, were treated differently in comparable situations;**
- **showing that normal policies and procedures were not followed in making the decision involving complainant;**
- **showing that policies normally followed for similarly situated persons were not followed for complainant.**

EXAMPLES OF ELEMENTS OF PROOF

DISPARATE TREATMENT

- Whether complainant belongs to a protected group;
- Whether complainant was harmed by a decision;
- Whether similarly situated employees were not harmed under similar circumstances;
- Whether there was a legitimate, non-discriminatory reason for the decision;
- Whether the stated reason for the decision was pretext.

RETALIATION

- Whether complainant opposed any practice made unlawful or participated in any manner in an activity pursuant to the laws against discrimination;
- Whether the individual who allegedly retaliated against complainant knew or should have known of the opposition or participation;
- Whether an adverse action was taken against complainant subsequent to the protected activity;
- Whether there was a causal connection between the opposition or participation and the decision made involving complainant;
- Whether there was a legitimate, non-discriminatory reason for the employment action;
- Whether the articulated reason is a pretext for retaliatory discrimination.

ADVERSE IMPACT

- Whether the respondent has a facially neutral policy or practice that has affected the complainant;
- Whether the policy or practice operates to disproportionately exclude members of the protected group;
- Whether the policy or practices is a business necessity;
- Whether there is an effective business alternative with less adverse impact;

RELIGIOUS/DISABILITY ACCOMMODATION

- Whether complainant requested accommodation for a religious observance or practice or for a disability;
- Whether the respondent did not grant the request for accommodation;
- Whether the respondent could reasonably make the accommodation without undue hardship.

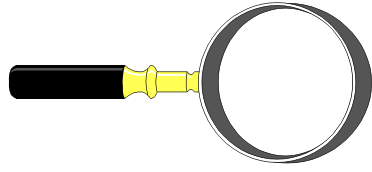
INTENTIONAL DISCRIMINATION

- Whether the complainant is a member of a protected group;
- Whether the complainant applied for and was eligible for a federally assisted program that was accepting applicants;
- Whether despite the complainant's eligibility, he or she was rejected; and,
- Whether the respondent selected applicants of a different race, color, or national origin than the complainant--or that the program remained open and the respondent continued to accept applications from applicants of a different race, color, or national origin.

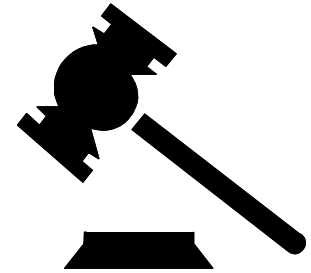
**COMPLAINTS INVESTIGATION REFERENCE
NOTBOOK**

Tab 4

Procedures for Investigating Complaints of Discrimination

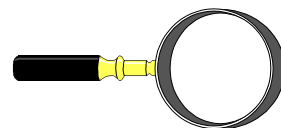
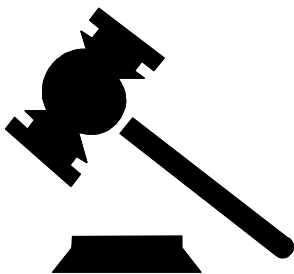


INVESTIGATING



COMPLAINTS OF

DISCRIMINATION



INVESTIGATING COMPLAINTS OF DISCRIMINATION
Thursday, August 31, 2000

1. INTRODUCTIONS
2. COURSE OVERVIEW
3. WHAT IS AN INVESTIGATION?
4. ROLE OF AN INVESTIGATOR
5. LAWS AND REGULATIONS
6. THEORIES OF DISCRIMINATION
7. ELEMENTS OF PROOF
8. EXERCISE—ESTABLISHING A PRIMA FACIE CASE
9. THE INVESTIGATIVE PROCESS
 - A. Complaint Activity Log
 - B. Investigation Plan
 - C. Request for Information (RFI)
 - D. Interviews
 - E. Preparing for the Interviews
 - F. Formal Statement
 - G. On-Site Visit
 - H. Evidence
 - I. Types of Evidence
 - J. Analysis of Data
 - K. Investigative Report
9. CASE STUDY

COURSE OBJECTIVES

At the conclusion of the training presentation, the participant should have a better understanding of the following:

- 1. The bases covered by the laws;**
- 2. The responsibilities of an investigator;**
- 3. The theories of discrimination and how to recognize the appropriate theory based on the information contained in the complaint of discrimination;**
- 4. The elements of proof and how to apply them to a complaint of discrimination;**
- 5. The 7 parts of the investigative process.**

INVESTIGATING COMPLAINTS OF DISCRIMINATION

WHAT IS AN INVESTIGATION?

An investigation is an official inquiry for the purpose of determining whether there has been a violation of the laws or statutes and includes a determination of appropriate relief where a violation has been found. An investigation requires an objective gathering and analysis of the evidence which will insure that the final decision is as accurate as possible.

ROLE OF THE INVESTIGATOR

The investigator is a neutral party provided by the agency to conduct an investigation of the issues raised in a complaint. The investigator's behavior, demeanor, and attitude reflect the agency and may affect the degree of cooperation received from the parties.

The investigator has an obligation to identify and obtain relevant evidence from all available sources in order to resolve all of the issues under investigation.

The investigator is not an advocate for the complainant or the respondent. The investigator is a neutral fact finder .

RESPONSIBILITIES OF THE INVESTIGATOR

1. You must never express your opinions.
2. You must never tell the parties that the complaint represents a “good case” or that it is frivolous.
3. You must always remain NEUTRAL. DO NOT take sides.
4. You must write the FACTS. Never say what you think. State what the facts are based on the evidence or testimony.
5. You must stay in control at all levels of the process.
6. You decide who is to be interviewed. If the Complainant or the Respondent is adamant about a witness interview, go ahead with it.
7. You decide when you have enough evidence to begin writing your investigative report.
8. You must always remain professional and polite.
9. You must be patient.
10. You MUST be a good listener.

THEORIES OF DISCRIMINATION

A THEORY OF DISCRIMINATION REFERS TO THE TYPE OF DISCRIMINATION.

DISPARATE TREATMENT

Whenever similarly situated individuals of a different race, sex, national origin, etc., are accorded different treatment in the context of a similar situation, it is reasonable to infer, absent other evidence, that discrimination occurred.

DISPARATE/ADVERSE IMPACT

Discrimination which occurs when a neutral policy or procedure has a disproportionate impact on a protected class. (Height/weight requirements; Facial hair; Legitimate DBE goals; however, some groups excluded.)

PERPETUATION OF PAST DISCRIMINATION

The maintenance of a neutral policy or practice which perpetuates past discrimination. For example, if respondent previously refused to hire certain protected class members for certain job categories and presently hires most of its employees through word of mouth recruitment the policy may perpetuate the respondent's past discriminatory hiring practices, since the current workforce does not include protected class members.

ACCOMMODATION

The failure to accommodate a religious practice or the failure to accommodate a disability.

RETALIATION

Discrimination against persons because of the filing of a complaint, participation in an investigation, or opposing a practice made unlawful pursuant to the laws.

INTENTIONAL DISCRIMINATION

The decision maker was aware of the complainant's race, color, or national origin and acted at least in part because of that information. The action was taken because of complainant's race, color, national origin, etc.

EXAMPLES OF ALLEGATIONS INVOLVING THE DIFFERENT THEORIES

DISPARATE TREATMENT

Complainant alleges that she is not permitted to attend training this year. She believes that it is because of her race, African American. All of her co-workers are going and all of her co-workers are white.

DISPARATE/ADVERSE IMPACT

1. Complainant, a Hispanic DBE surveying firm believes that he is not getting contracts because of his national origin. The prime keeps using the same female owned DBE firm for its surveying work. Since the 10% goal is met using the female owned firm, the prime does not attempt to use any other DBE firms for surveying.
2. Complainant alleges that she was denied the position of stock clerk because of her sex. The Respondent has a requirement that all stockers must be at least 175 lbs. and no less than 5'10" tall. The Respondent claims that the average item stocked weighs a minimum of 40 lbs.

PERPETUATION OF PAST DISCRIMINATION

Respondent a major steel manufacturer has maintained an all white male executive staff for the past 20 years. Whenever there is a vacancy, Respondent's executives ask their country club buddies if they know of anyone who might be interested in the job. What candidates are likely to be recruited?

ACCOMMODATION

- An employee needs Saturdays off for religious reasons. The Respondent has Saturday as a regular work day. Respondent must accommodate or show why it would be a hardship to do so.
- An employee who is hearing impaired needs and has requested a signer for meetings. What must the Respondent do?

RETALIATION

After filing a Title VI complaint, a female contractor feels that she has been unable to get work. Before she complained about late payments from the prime contractor, allegedly because of her sex, she was getting a good share of contracts.

INTENTIONAL DISCRIMINATION

The Respondent makes a negative statement about female employees missing too much time because of day care problems. He is overheard by several people. He advertises for a position and interviews several qualified females, all of whom have school age children. He continues his recruitment effort until a male applies who is selected on the spot. Could you make a case of intentional discrimination here?

BASES COVERED BY THE LAWS

- **RACE**
- **COLOR**
- **RELIGION**
- **SEX**
- **NATIONAL ORIGIN**
- **AGE**
- **DISABILITY**
- **SEXUAL ORIENTATION** (EXECUTIVE ORDER 13087)
- **RETALIATION**

ELEMENTS OF PROOF

HOW DO YOU PROVE DISCRIMINATION?

In a complaint of discrimination, the Complainant has the responsibility of initially establishing a prima facie case of discrimination. A prima facie case means that the Complainant has provided information which contains all of the parts necessary for a complaint of discrimination. This requires evidence that shows the following:

- that the complainant is a member of a protected group;
- that the complainant was harmed by some decision;
- that similarly situated persons of a different group were not or would not have been harmed under similar circumstances.

The burden then shifts to the respondent. The respondent has to articulate a legitimate non-discriminatory reason for its actions. This is respondent's defense.

The burden then returns to the complainant to establish that the defense offered by the respondent is pretext (untrue).

In all cases, it is the investigator's responsibility to obtain evidence that addresses all of these points.

HOW TO DETERMINE WHETHER RESPONDENT'S REASON IS PRETEXT?

The investigator can determine whether the respondent's reasons are a pretext to discriminate by:

- reviewing comparative data;
- showing that others, not in complainant's group, were treated differently in comparable situations;
- showing that normal policies and procedures were not followed in making the decision involving complainant;
- showing that normal policies and procedures were followed for similarly situated persons.

EXAMPLES OF ELEMENTS OF PROOF

DISPARATE TREATMENT

- Whether complainant belongs to a protected group;
- Whether complainant was harmed by a decision;
- Whether similarly situated employees were not harmed under similar circumstances;
- Whether there was a legitimate, non-discriminatory reason for the decision;
- Whether the stated reason for the decision was pretext.

RETALIATION

- Whether complainant opposed any practice made unlawful or participated in any manner in an activity pursuant to the laws against discrimination;
- Whether the individual who allegedly retaliated against complainant knew or should have known of the opposition or participation;
- Whether an adverse action was taken against complainant subsequent to the protected activity;
- Whether there was a causal connection (reasonable time frame) between the opposition or participation and the decision made involving complainant;
- Whether there was a legitimate, non-discriminatory reason for the action;
- Whether the articulated reason is a pretext for retaliatory discrimination.

DISPARATE/ADVERSE IMPACT

- Whether the respondent has a facially neutral policy or practice that has affected the complainant;
- Whether the policy or practice operates to disproportionately exclude members of the protected group;
- Whether the policy or practices is a business necessity;
- Whether there is an effective business alternative with less adverse impact;

RELIGIOUS/DISABILITY ACCOMMODATION

- Whether complainant requested accommodation for a religious observance or practice or for a disability;
- Whether the respondent did not grant the request for accommodation;
- Whether the respondent could reasonably make the accommodation without undue hardship.

INTENTIONAL DISCRIMINATION

- Whether the complainant is a member of a protected group;
- Whether the complainant was excluded from participation in or denied the benefits of a program or activity receiving Federal financial assistance;

- Whether despite the complainant's eligibility, complainant was rejected;
- Whether the Respondent selected applicants whose race, color, or national origin were different from complainant; or
- Whether the program remained open and the respondent continued to accept applications from applicants of a different race, color, or national origin than the complainant.

ESTABLISHING A PRIMA FACIE CASE

COMPLAINANT ALLEGES THAT BLACK CONTRACTORS WERE DENIED THE OPPORTUNITY TO BID ON CONTRACTS ASSOCIATED WITH A SCENIC BY-WAY PROJECT THAT IS OF SPECIAL INTEREST TO THE BLACK COMMUNITY. COMPLAINANT ALLEGES THAT A WHITE CONTRACTOR WAS AWARDED THE CONTRACT.

ELEMENTS OF PROOF

HAS COMPLAINANT ESTABLISHED A PRIMA FACIE CASE?

RESPONDENT'S LEGITIMATE NON-DISCRIMINATORY REASON

IS RESPONDENT'S REASON A PRETEXT TO DISCRIMINATE?

ESTABLISHING A PRIMA FACIE CASE

COMPLAINANT APPLIED FOR AND WAS NOT SELECTED FOR A PROMOTIONAL POSITION. COMPLAINANT ALLEGES THAT SHE WAS NOT SELECTED BECAUSE OF HER SEX, FEMALE. COMPLAINANT ALLEGES THAT A LESS QUALIFIED MALE WAS SELECTED FOR THE POSITION.

ELEMENTS OF PROOF

HAS COMPLAINANT ESTABLISHED A PRIMA FACIE CASE

RESPONDENT'S LEGITIMATE NON-DISCRIMINATORY REASON

IS RESPONDENT'S REASON A PRETEXT TO DISCRIMINATE?

INVESTIGATIVE PROCESS INCLUDES:

- **INVESTIGATIVE PLAN**
- **REQUEST FOR INFORMATION**
- **CONDUCTING INTERVIEWS**
- **ON-SITE VISIT**
- **OBTAINING EVIDENCE**
- **ANALYZING DATA**
- **WRITING THE INVESTIGATIVE REPORT**

INVESTIGATIVE PLAN

PURPOSE

The Investigative Plan is a working document intended to define the issues and lay out the blueprint to complete the investigation. The Investigative Plan is an internal document for use by the investigator and his/her supervisor to keep the investigation on track and focused on the issues. It is the investigator's checklist.

SAMPLE INVESTIGATIVE PLAN

I. COMPLAINANT(S) NAME AND ADDRESS

ATTORNEY FOR COMPLAINANT--NAME AND ADDRESS

II. RESPONDENT(S) NAME AND ADDRESS

ATTORNEY FOR RESPONDENT--NAME AND ADDRESS

III. APPLICABLE LAW

(TITLE VI, COMPLIANCE REVIEW UNDER REGULATIONS)

IV. BASIS

V. ISSUE(S)

VI. BACKGROUND

VII. NAME OF PERSON(S) TO BE INTERVIEWED

QUESTIONS FOR COMPLAINANT

QUESTIONS FOR RESPONDENT

QUESTIONS FOR WITNESS(ES)

VIII. EVIDENCE TO BE OBTAINED DURING THE INVESTIGATION.

SAMPLE

INVESTIGATIVE PLAN

I. COMPLAINANT

Mary Jones
Meters
East 51 Place
Grapetown, Washington 78900

II. RESPONDENTS

State Department of Transportation
P.O. Box 778
Anywhere, USA

Ms. Ann Johnson
Secretary
300 200-0000

Recorders, Inc.
P.O. Box 14068
Parktown, USA 90045

Mr. David L. Smith
Chairman, CEO, & President
900-000-0000

III. APPLICABLE LAW

Title VI of the Civil Rights Act of 1964

IV. BASIS

Sex--Female

V. ISSUES

1. Complainant alleges that she encountered some unexpected but severe disparate treatment based on gender while providing service on a multi-state Project on the coast. Complainant alleges that she was arbitrarily and wrongfully dismissed, without cause, well before the work was completed and well before the DBE goal had been met.

2. Complainant further alleges that two other DBE firms scheduled to perform work were cut along with her.

VI. BACKGROUND

Complainant states that she was supposed to receive a 12% DBE contract for the project. Complainant states that the total dollar amount of the project was around \$92,000. Complainant states that she was not permitted to complete the contract and was paid only \$33,000.

VII. INTERVIEWS

Interviews need to be conducted with appropriate representatives from the State DOT and the prime contractor.

Questions for Complainant

Complainant has been interviewed and notes are in the file.

Questions for Respondent

1. Background information on the project. Name and purpose of the project.
2. Number of contracts the prime, Recorders, Inc., has with DBEs and subcontractors. Names of DBEs and subcontractors and the dollar value of contract award.
3. Reason Complainant's contract was terminated.
4. Amount of original contract with Complainant and the amount Complainant was paid.

EVIDENCE NEEDED FOR REVIEW

Issue #1

Complainant alleges that she encountered some unexpected but severe disparate treatment based on gender while providing service on a multi-state Project on the coast. Complainant alleges that she was arbitrarily and wrongfully dismissed, without cause, well before the work was completed and well before the DBE goal had been met.

Documents Needed

1. Provide the following information for the Complainant:
 - a. A copy of the signed contract with Complainant;
 - b. Documents which show why the Complainant's contract was terminated.
 - c. Documents which show the amount of work Complainant completed on the contract and the dollar amount paid to her for the completed work.
 - c. Provide the name, address, telephone number, and gender of the DBE or

- subcontractor selected to complete the work initially assigned to the Complainant.
2. Provide the following information for each DBE and/or subcontractor utilized by the prime contractor, Recorders, Inc. for the project involving Complainant.
 - a. Name, address, telephone number, and gender of each DBE or subcontractor utilized on the project;
 - b. Type of work to be completed on awarded contract;
 - c. Dollar value of contract;
 - d. Indicate whether contract completed by DBE or subcontractor. If not, state the reason for failure to complete the contract and the dollar amount paid for work completed;
 - e. Name, address, telephone number, and gender of the DBE or subcontractor selected to complete the work.
 3. Provide the following information for all projects awarded to Recorders, Inc. using federal funds anytime during the period January 1, 1996 to the present:
 - a. Name and number of the project and the dollar value;
 - b. Name, address, telephone number, and gender of all DBE or subcontractors utilized on the project;
 - c. Provide the dollar value for each contract awarded to a DBE or subcontractor;
 - d. Indicate whether contract completed by DBE or subcontractor. If not, state the reason for failure to complete the contract and the dollar amount paid for work completed;
 - e. Name, address, telephone number, and gender of the DBE or subcontractor selected to complete the work.

Issue #2

Complainant further alleges that two other DBE firms scheduled to perform work were cut along with her.

Documents Needed

1. Name, address, telephone number, and gender of the DBE firms scheduled to perform the work along with the Complainant. For each of the DBE firms named, provide the following information:
 - a. A copy of the contract and the dollar value;
 - b. Reason for the termination of the DBE;
 - c. Dollar value paid for completed work;
 - d. Name, address, telephone number, and gender of DBE or subcontractor selected to complete the work.

REQUEST FOR INFORMATION (RFI)

After drafting the Investigative Plan, you can now prepare the Request for Information (RFI). The RFI can be taken directly from the evidence section of the Investigative Plan.

The RFI is sent to the appropriate official(s) at Respondent's facility. You should make contact with Respondent to advise them of the complaint and to determine the appropriate official(s) to interview and receive the RFI.

Prepare a cover letter to be sent with the RFI. The cover letter should explain the process and provide information regarding any meetings that have been scheduled. Adjust the cover letter to fit your set of circumstances.

You want the Respondent to have a copy of the RFI before your visit to the facility. This way, **MAYBE**, your evidence can be ready for your review when you arrive.

SAMPLE "RFI" COVER LETTER

Refer to: HCR-20

Mr/Ms. _____
Administrator
State Highway Administration
P.O. Box 000
Baltimore, Maryland 21200

Dear Mr/Ms. _____:

This is in reference to the complaint of discrimination filed by the Case Name. The complaint of discrimination cites several alleged violations of Title VI of the Civil Rights Act of 1964. The Federal Highway Administration initially conducted a review of the Complainant's allegations and submitted a report of its findings to the Department of Transportation's Departmental Office of Civil Rights (DOCR). The DOCR has reviewed the report and determined that a full scale investigation of the allegations must be conducted before a decision can be rendered in this complaint.

In accordance with Title 49, Code of Federal Regulations 21.11 and the Department of Transportation's Interim Procedures for Processing External Civil Rights Complaints, the Federal Highway Administration is required to investigate complaints of discrimination in order to determine whether the recipient has failed to comply with Title VI requirements.

As part of the investigative process, Mr/Ms. Name of my staff will be meeting with Mr/Ms. Name of your staff on Thursday, March 7 at 9:00 A.M. to review the documents requested in the attached request for information.

If you have any questions regarding this matter, you may contact Ms. Armstead at 202-366-1583.

Sincerely yours,

Director, Office of Civil Rights

SAMPLE
REQUEST FOR INFORMATION
CASE NAME

Issue #1

The State Highway Administration engages in and/or facilitates intentional adverse impact discrimination against Black and Hispanic-owned businesses by administering their Federal Highway Administration (FHWA) Federal-Aid Highway Construction program in such a manner that Black and Hispanic-owned businesses are excluded from participation based on their race and national origin, in violation of Title VI of the Civil Rights Act of 1964 and 49 C.F.R. Parts 21 and 23.

Documents Needed

Information on hand indicates that The County may have enough DBE firms to provide the sampling needed to retrieve the necessary information for analysis of this issue. It appears that there are a 100 or more firms in the County. All information will be for 1991 through fiscal year 1995.

1. A list of all DBE firms in the County. The listing should contain the following information.
 - a. Name, address, and telephone number,
 - b. Name of firm president,
 - c. Ethnic code,
 - d. Type of business,
 - e. How long certified in the DBE program,
 - f. List of all contracts received, including contract number, and the dollar value,
 - g. Prime contractor involved in the contract award.

Issue #2

SHA's Disadvantaged Business Enterprise-Minority Business Enterprise (DBE-MBE) program, submitted to and approved by FHWA in 1989, was deficient and not in full compliance with the requirements of 49 C.F.R. Part 23, which has adversely affected Black and Hispanic DBE program beneficiaries.

Documents Needed

1. Copies of any procedures used by FHWA to approve DOT's DBE Manual.
2. Copies of DOT's DBE Manual and any updates, including the 1993 Manual and documents showing approval.

Issue #3

Since 1989, SHA has not submitted its revised DBE program to FHWA for reevaluation and approval on a yearly basis, in violation of 49 C.F.R. Part 23, which adversely affected Black and Hispanic DBE program beneficiaries.

Documents Needed

Copies of policies and procedures provided to recipients regarding annual DBE updates, if the procedures are separate and apart from the provisions outlined in 49 C.F.R. Part 23.

Issue #4

SHA has engaged in unlawful employment discrimination against Blacks and other racial minority persons managing their DBE program which has caused an adverse effect on certain Black and Hispanic DBE program beneficiaries.

Documents Needed

1. Policies and procedures regarding hiring for all positions related to managing and administering the DBE program.
2. Organizational chart for the positions involved in managing the DBE program.
3. Documents which show all positions involved in administering the DBE program. Include the following information for each position.
 - a. Position description
 - b. Name, race, date of hire of incumbent of the position,
 - c. Indicate how the employee and his/her duties are involved in the DBE program.
4. Documents which show the awards to DBE firms before and after the reorganization. Provide a detailed explanation for any significant changes in the awards before and after reorganization.

Issue #5

In 1990, when DOT became the sole MBE-DBE certification body, it accepted and “grandfathered” over 600 firms owned and operated by non-minority males into the Directory of Certified MBE-DBE firms without on-site visits and personal interviews, in violation of 49 C.F.R. Part 23 and the Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA).

Documents Needed

1. Documents which show all of the firms that were “grandfathered” into the DBE program.
2. Documents which show which of these firms received contracts. If contracts received, provide the following information:
 - a. Name, address, and telephone number of firm,
 - b. Name of firm president,
 - c. Ethnic code,
 - d. Type of business,
 - e. How long certified in the DBE program,
 - f. List of all contracts received, including contract number and date, and the dollar value,
 - g. Prime involved in the contract award,
 - h. Copy of on-site review report.

PREPARING FOR THE INTERVIEWS

When preparing for the interviews, always remember that the main objective is to obtain information from witnesses who can provide information that will either support or refute the allegations. A list of major questions should be prepared that address the issues involved in the complaint. During the interview, you should generally do the following:

- Introduce yourself and outline the interviewing process--(whether a signed statement will be requested, whether notes will be taken, etc).;
- Put the individual being interviewed at ease;
- Listen effectively during the interview;
- Distinguish factual information from opinions;
- Ask questions that will get you the facts;
- Take clear and precise notes; and
- Obtain a signed statement from the individual being interviewed.

INTERVIEWS

Complainant

The purpose of interviews are to gain a better understanding of the situation outlined in the complaint of discrimination. Usually, complaints are received through the mail from Complainants. The investigator needs to contact the Complainant to make sure that he/she understands what the Complainant is talking about. Sometimes, what the Complainant means is totally different from what is written on the complaint.

It is best to interview the Complainant before the IP. However, if this cannot be done, you have to be ready to make any changes as appropriate to the IP based on any new information provided by the Complainant.

You also need to know what Complainant wants to resolve the complaint. Your interview with the Complainant should always include this question.

Respondent

Respondent's are interviewed to allow them to respond to the issues raised by the Complainant as well as to get an understanding of the Respondent's operation or policies that Complainant is citing in the complaint. As keeper of the records, you will need to discuss the RFI with the Respondent and be able to explain the need for requesting any document on your list.

Respondent should always be advised that they have a right to submit a formal position statement addressing the Complainant's allegations.

You should also question Respondent regarding settlement opportunities.

Witnesses

Complainant or Respondent may have persons that they wish you to speak with. You should determine what relevant information any witness has before you attempt to conduct an interview. You only want to interview individuals who have information relevant to the issues raised in the complaint of discrimination. YOU will determine whether the testimony to be provided is relevant.

You must also determine when enough interviews have been conducted.

FORMAL STATEMENT

Name _____

Address _____

Telephone Number: Day _____ Evening _____

Place of Employment _____

Position _____ Date of Hire _____

Immediate Supervisor _____

STATEMENT

Page _____ of _____

Signature _____ Date _____

Investigator _____ Date _____

ON-SITE VISIT

An on-site investigation should be conducted when:

- Personal contact with the complainant and the recipient may yield information and clarification that you might not otherwise discover by just reviewing written documents or speaking over the telephone;
- It is necessary to review the physical environment;
- More effective communication can be established with representatives and witnesses of the recipient and the complainant;
- Documentation can only be examined on-site for reasons of convenience, cost, format, or volume

EVIDENCE--WHAT TO ASK FOR?

Evidence requested should be related to the issues cited in the complaint. An evidence request should contain some or all of the following:

1. The policies and procedures regarding the practice that Complainant is concerned with.
2. All documents pertaining to Respondent's dealing with Complainant in the situation complained of.
3. Documents which show how others, not in Complainant's group were treated under similar circumstances..
4. Respondent's reason for the action taken with Complainant.
5. A formal position statement from Respondent addressing Complainant's issues.

TYPES OF EVIDENCE

CIRCUMSTANTIAL EVIDENCE

Includes facts from which one may infer intent or discriminatory motive. Circumstantial evidence proves intent by using objectively observable data.

EXAMPLE: Historical information on how members of the protected group at issue have been treated by the recipient, and the extent of similar complaints and corrective action taken can aid in developing an inference of discriminatory intent.

COMPARATIVE EVIDENCE

A comparison between similarly situated individuals.

DIRECT EVIDENCE

Related to the respondent's motive. It is defined as any statement or action by an official of the respondent that indicates a bias against members of a particular group.

DOCUMENTARY EVIDENCE

Written material which is generated during the course of normal business activity.

STATISTICAL EVIDENCE

Statistics--facts or data of a numerical kind; assembled, classified and tabulated so as to present significant information about a given subject.

Statistical evidence can indicate the presence of a discriminatory motive in an individual case of disparate treatment or it can demonstrate a pattern and practice of disparate treatment.

Statistics alone will not normally prove an individual case of disparate treatment. Statistical evidence is necessary to establish an adverse impact case. Statistical evidence may indicate that certain policies of the respondent have an adverse impact on members of a protected class or have not been equally applied.

TESTIMONIAL EVIDENCE

Evidence which is given orally. Witness testimony is an integral part of all investigations. It assists in obtaining information regarding alleged discriminatory statements, events, policies, or practices; in ascertaining the qualification and job performance of class and non-class members; in testing the validity of respondent defenses; in resolving job equality issues in EPA investigations, in understanding records maintained by respondent, and in testing the accuracy and validity of those records.

ANALYSIS OF DATA

Data must be analyzed to determine whether a violation has occurred. When analyzing data, you must:

- Review what happened to Complainant;
- Compare Complainant's treatment with the appropriate policies and procedures;
- Compare Complainant's treatment with others in the same situation;
- Review Respondent's reason for the treatment afforded Complainant;
- Compare Respondent's treatment of Complainant with the treatment afforded others.

WRITING THE INVESTIGATIVE REPORT

COMPLAINANT(S) NAME AND ADDRESS

RESPONDENT(S) NAME AND ADDRESS

APPLICABLE LAW

BASIS

ISSUES

FINDINGS FOR EACH ISSUE

CONCLUSION FOR EACH ISSUE

RECOMMENDED DECISION

RECOMMENDATIONS (IF APPLICABLE)

SAMPLE
INVESTIGATIVE REPORT

I. COMPLAINANT

Black People's Action Committee
123 South Street
Anywhere, USA 14456

Brenda Armstead, President

II. RESPONDENT

State Department of Transportation
1409 ABC Boulevard
Anywhere, USA 14457

Mr. James Doe
Transportation Director

III. APPLICABLE LAW

Title VI of the Civil Rights Act of 1964

IV. BASIS

Race--Black

V. LEGAL THEORIES AND ELEMENTS OF PROOF FOR TITLE VI COMPLAINT

Title VI provides 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.

Title VI and regulations promulgated thereunder bar (1) intentional discrimination and (2) policies and practices that have a discriminatory impact.

APPLICABLE LEGAL THEORIES

Intentional Discrimination/Disparate Treatment

Under intentional discrimination, the recipient, in violation of the statute, engages in intentional discrimination based on race, color, or national origin. An intent claim alleges that similarly situated persons are treated differently because of their race, color, or national origin. To prove intentional discrimination, one must show that a challenged action was motivated by an intent to discriminate. This requires a showing that the decisionmaker was not only aware of the complainant's race, color or national origin, but that the recipient acted, at least in part, because of the complainant's race, color, or national origin.

Direct proof of discriminatory motive is often unavailable. In the absence of such evidence, claims of intentional discrimination under Title VI may be analyzed using the Title VII burden shifting analytic framework established by the Supreme Court in McDonnell Douglas v. Green, 411 U.S. 792 (1973).

Applying the McDonnell Douglas principles to a Title VI claim, the investigating agency must first determine if the complainant can raise an inference of discrimination by establishing a prima facie case.

If the record contains sufficient evidence to establish a prima facie case of discrimination, the investigating agency must then determine if the recipient can articulate a legitimate, nondiscriminatory reason for the challenged action. If the recipient can articulate a nondiscriminatory explanation for the alleged discriminatory action, the investigating agency must determine whether the record contains sufficient evidence to establish that the recipient's stated reason was a pretext for discrimination. In other words, the evidence must support a finding that the reason articulated by the recipient was not the true reason for the challenged action, and that the real reason was discrimination based on race, color, or national origin.

Disparate Impact

Under the disparate impact theory, a recipient, in violation of agency regulations, uses a neutral procedure or practice that has a disparate impact on protected individuals, and such practice lacks a substantial legitimate justification. In a disparate impact case, the focus of the investigation concerns the consequences of the recipient's practices, rather than the recipient's intent. To establish liability under disparate impact, the investigating agency must first ascertain whether the recipient utilized a facially neutral practice that had a disproportionate impact on a group protected by Title VI.

If the evidence establishes a prima facie case, the investigating agency must then determine whether the recipient can articulate a substantial legitimate justification for the challenged practice. To prove a substantial legitimate justification, the recipient must show that the challenged policy was necessary to meeting a goal that was legitimate, important, and integral to the recipient's mission.

If the recipient can make such a showing, the inquiry must focus on whether there are any equally effective alternative practices that would result in less adverse impact or whether the justification proffered by the recipient is actually a pretext for discrimination.

If a substantial legitimate justification is identified, the third stage of the disparate impact analysis is the complainant's demonstration of a less discriminatory alternative.

VI. FINDINGS

Issue #1

Complainant alleges that the State Department of Transportation (DOT) has engaged in a pattern and practice of racial discrimination against the Black citizens of Anywhere, USA by awarding a consulting contract to gather information on the Black Historical Project to an exclusive white company with no Black employees.

Analysis of Evidence

Respondent stated that the engineering firm selected for this project is a consulting engineering firm. Respondent further stated that this was a qualification based selection utilizing the State Department of Transportation procedures for the selection of architect and/or engineering services. Respondent stated that these procedures are approved by the Federal Highway Administration.

Record evidence shows that Respondent's written procedures for selection of architect and/or engineering services state that upon determining that services are warranted, the Respondent will notify by mail, firms that have expressed interest in providing the services contemplated or advertise one time in a state newspaper of general circulation.

Record evidence shows that Respondent sent a "Notice of Need for Services" to the firms listed on the State Department Listing of Consultant Firms. The notice stated that a consultant was needed to perform studies and to prepare a Corridor Management Plan (Master Plan) for the Black Historical Project. Record evidence further shows that Respondent advertised in the Anywhere News.

Record evidence shows from a computer listing provided by Respondent that 158 notices were sent out. Of that number, 13 firms were identified as minority firms with at least 2 of the 13 being identified as black owned firms. Record evidence further shows that Respondent received 22 responses and from that number selected 6 firms to make presentations to the selection committee. None of the 6 firms selected to make presentations were black owned firms.

Investigation disclosed that one of the black owned firms that Respondent named as having received a notice denies that this occurred. The firm representative stated that he learned of the

available contract for the Black Historical Project from a fellow business associate. The representative further stated that his firm is capable of performing the type of work outlined in Respondent's notice.

Respondent stated that it does not maintain copies of each notice mailed to each individual firm, nor does it maintain any document which can show proof of mailing.

The record shows that the other Black firm was notified of the contracting opportunity, submitted a response as one of the 22 responding firms, but was not selected. The record further shows that this firm does not perform highway design or architectural work.

Investigation disclosed from review of Respondent's Disadvantaged Business Enterprise directory that Respondent has at least 18 black owned firms with the capabilities to perform architectural and/or engineering services, yet only 2 black owned firms appeared on Respondent's mailing list.

Record evidence shows that a white owned firm, based in Somewhere, USA, was selected for the contract in question.

Conclusion

The record shows that Respondent followed its written procedures in notification of the availability of the contract. The record is unclear as to whether one of the black owned firms received the notice regarding the contracting opportunity. Record evidence shows, based on the scope of work and the black owned firm's profile that this firm had the capability to perform the work in question. The record shows that a white owned firm was selected for the contract.

The record further shows that Respondent's Disadvantaged Business Enterprise directory has at least 18 black owned firms with the capabilities to perform architectural and/or engineering services, yet only 2 black owned firms appeared on Respondent's mailing list.

Issue #2

Complainant alleges that the project manager is a recent retiree and top administrator with the State DOT.

Analysis of Evidence

Respondent stated that the contractor's principal assigned to this project retired from the State DOT after working 25 or more years. The employee held the position of Environmental Coordinator upon his retirement. Respondent further stated that the employee retired on 5/1/96 and that the notices had been sent out on 3/20/96.

Respondent stated that the employee was working for the contractor when the firms made presentations to the committee. Respondent also stated that the employee was not involved in

the development of the contract and the requirements, but that the employee may have been involved in the development of the statement of work.

Respondent currently has the following policy which became effective on June 19, 1996.

No public official, director, assistant director, department or division chief, purchasing or procurement agent, having the authority to make purchases, or any person who participates in negotiation or approval of contracts, grants, or awards, or any person who negotiates or approves contracts, grants, or awards, shall enter into, solicit or negotiate a contract, grant, or award with a governmental agency of which the person was a member or employed for a period of two years after he or she leaves the membership or employment of such governmental agencies.

No public official or public employee who personally participates in the direct regulation, audit, or investigation of a private business, corporation, partnership, or individual shall within two years of his or her departure from such employment, solicit or accept employment with such private business, corporation, partnership, or individual.

Conclusion

The record shows that the principal assigned by the contractor to the project and who also manages the contractor's local Anywhere office was formerly employed by the Respondent. The record further shows that the employee was employed by the contractor before Respondent's new policy became effective.

Issue #3

Complainant alleges that the Black people of Anywhere have been completely excluded on this project from employment and participation.

Analysis of Evidence

Respondent stated that five involvement meetings will be held in Anywhere, USA and at locations along the route between these two cities. Respondent stated that numerous opportunities will be available for black citizen input during this process. In addition, several black individuals have been retained through contract with the consulting firm to handle the public involvement aspects of this project.

Record evidence shows that the contractor selected is a white owned firm. Record evidence further shows that the contract in question was awarded in the amount of \$121,000. Record evidence also shows that the contractor has a subcontract with a black owned firm for approximately \$58,200. The record shows that the Black Historical Project has approximately \$2.7 currently available for completion of the project. Investigation disclosed that no other contracts have been awarded on this project.

Conclusion

Thus, the record shows that although a white owned firm was awarded the contract in question, the white owned firm has a subcontract with a black owned firm. The record further shows that there is currently \$2.7 million available for contracting on the Black Historical project.

VII. DECISION

Regarding Complainant's allegation that Respondent engaged in racial discrimination by awarding a consulting contract to an exclusive white company, the evidence reviewed during the investigation shows that Respondent followed its policy regarding notification to firms concerning the availability of the contract in question. The record is unclear concerning whether one black owned firm received notification of the availability of the contract.

The record shows that Respondent has a policy regarding notification of contract availability that has a disparate impact on Complainant's protected group. There is probable cause to believe that a violation of Title VI occurred and such violation will continue with the same disparate effects if not adequately addressed in the area of notification and selection for award of architectural and engineering contracts.

In order to be in compliance with the State's Title VI Assurance to prevent discrimination in all its programs and activities, the Respondent must within 90 days of receipt of this report, take action sufficient to address and prevent a recurrence of the situation which led to the probable cause finding. The actions taken may be different from, but must be at least as effective as those outlined in the following recommendations

VIII. RECOMMENDATIONS

1. It is recommended that Respondent immediately implement notification procedures that: (1) make known throughout the state that Respondent maintains a listing of consulting firms and the purpose of the list; (2) provide information which outlines how firms may be placed on the list; and, (3) encourage black owned firms to become a part of the list through notification of the existence of the list through publications circulated to the black contracting community.
2. It is recommended that the number of advertisements regarding contract availability placed in state newspapers of general circulation be increased to include more newspapers in more areas, specifically, newspapers which minorities are likely to read.
3. It is recommended that Respondent develop a procedure to verify that all firms maintained on its list of consulting firms actually receive the "Notice of Need for Services". This would eliminate any confusion regarding whether or not a firm received the notice.

4. It is further recommended that the above recommendations be immediately implemented so that all remaining contracting opportunities for the Black Historical Project may be processed under the above recommendations.
5. It is recommended that the minority contractors associations, local and state, be contacted regarding upcoming contracting opportunities so their meetings or information dissemination mechanisms can assist in ensuring that minority contractors are aware of opportunities to bid or submit proposals.
6. Finally, it is recommended that the Regional Office in Anywhere direct the FHWA Division Office to work with the State Department of Transportation to make minority outreach efforts a part of Respondent's consulting contract procedures consistent with 49 Code of Federal Regulations 21.5 (b)(7), and that these efforts extend to both Federal-aid and State funded programs and activities.

Regarding Complainant's issue concerning the retired employee, the FHWA does not find that this action was a violation of Title VI of the Civil Rights Act of 1964.

Regarding Complainant's issue that blacks have been excluded on this project from employment and participation, the FHWA finds that while the contract was awarded to a white owned firm, a subcontract was awarded to a black owned firm. Further, the FHWA finds that there are contracting opportunities remaining which will afford black owned firms the opportunity to participate on the Black Historical Project. Therefore, the FHWA concludes that the evidence reviewed does not support a violation of Title VI of the Civil Rights Act of 1964.

**Black People's Action Committee vs. State DOT
#00-000**

APPROVED BY:

DIVISION CHIEF, PROGRAM OPERATIONS DIVISION

DATE

DIRECTOR, OFFICE OF CIVIL RIGHTS

DATE

EXERCISE #1

Directions

Read the statements below. Determine whether the statement should be included in an Investigative Report. If not, explain. If the statement needs to be changed, indicate how you would change it.

1. The treatment may have been unfair, but I do not believe that it reaches the level that would be necessary to be considered illegal discrimination.
2. There did not appear to be anything discriminatory regarding this issue.
3. This issue should concern the Respondent the most.
4. I assumed that
5. It appears that the Respondent was responsive to the Complainant's request.
6. It was concluded that the Respondent did give Complainant incorrect information, but Complainant was not discriminated against.
7. Complainant alleged retaliation. The evidence shows that Complainant had filed a complaint, that Respondent was aware of the complaint, and that as a result of that information, the Respondent acted negatively toward Complainant. Even so, the evidence did not reach the level of intentional discrimination.
8. The investigators firmly believe that if proper sensitivity training was provided to the company employees, this incident would not have happened.

CASE STUDY #1

COMPLAINT

A white male employee believes that he is being discriminated against because of his age, 50. He believes that he was denied a promotion because of his age, since the person selected was a 35 years old white male. He has noticed that the last five managerial positions have been filled by persons who were much younger than he is. It's beginning to look like a nursery around the office because the staff bring their kids into the office on the way to the agency child development center.

The position he sought was Manager of Operations for Civil Rights Programs. The job would have required him to be responsible for the daily operations of the division of about 12 employees. He is currently the Assistant Manager of Operations. The 35 year old male selected came from another department.

RESPONDENT'S REASON

When questioned about the selection, the selecting official stated that the most qualified person was selected for the position.

QUESTIONS

1. Do you have a prima facie case?
2. Has Respondent articulated a legitimate non-discriminatory reason for the action?
3. As the Investigator, what is your next step?

INVESTIGATIVE PLAN

I. COMPLAINANT

II. RESPONDENTS

III. APPLICABLE LAW

IV. BASIS

V. ISSUES

VI. BACKGROUND

VII. INTERVIEWS

VIII. EVIDENCE NEEDED FOR REVIEW

COMPLAINANT'S QUALIFICATIONS

- Master's Degree in Business Administration.
- Worked for the agency for the past 25 years in several management type positions.
- Held current position as Assistant Manager of Operations for the past 5 years. Position requires him to run the division in the absence of the Manager, who is frequently on travel.
- Operations Division has 14 employees including Complainant and the Manager--10 professional and 2 administrative assistants.
- Complainant's division is responsible for 10 different program areas.
- Performance evaluations for the past five years in the position have been meets/or exceeds for 3 years and outstanding for the last 2 years.

QUALIFICATIONS OF THE 35 YEAR OLD SELECTEE

- Masters Degree in Business Administration.
- Worked for the agency for the past 10 years in trainee and management positions.
- Position held prior to selection--Manager of Program Operations for Publications. He managed a staff of 5 employees. He was responsible for reviewing, preparing, printing and issuing all agency publications in a timely fashion.
- Performance evaluations have been outstanding for the past 3 years.

OTHER INFORMATION ABOUT THE POSITION

- Position could have been filled at the GS-14 or GS-15 level.
- Selecting official selected at GS-14 level.
- Complainant was a GS-14 and sought the position at the GS-15 level.
- Selecting official has filled 5 positions in the office in the last 18 months--4 professional type positions and 1 administrative assistant.
- All of the selectees were under 40.

Total Workforce: 14
Over 40: 4
Under 40: 10

QUALIFICATIONS FOR THE MANAGER OF OPERATIONS FOR CIVIL RIGHTS PROGRAMS POSITION

- Minimum of 3 years in a managerial position managing a minimum of 3 employees and at least 1 major agency-wide program operation.
- Performance evaluations for the past 5 years at the meets/exceeds level.
- At least a year of the experience must have been at the next lower grade for which the applicant is applying.

INVESTIGATIVE REPORT

I. COMPLAINANT

II. RESPONDENT

III. APPLICABLE LAW

IV. BASIS

V. LEGAL THEORIES AND ELEMENTS OF PROOF FOR COMPLAINT

VI. FINDINGS

- State the Issue**
- Analysis of Evidence for the Issue**
- Conclusion based on Evidence**

VII. DECISION

- Violation or No Violation**

VIII. RECOMMENDATIONS

CASE STUDY #2

COMPLAINT

Complainant, a female contracting firm alleges that she was discriminated against when Respondent provided her firm with incorrect instructions which required her employees to do work over. Complainant also alleges that her firm was retaliated against because she filed a complaint of discrimination. Complainant alleged that Respondent employees refused to talk with her and members of her firm after she filed her complaint.

RESPONDENT'S RESPONSE

Respondent stated that Complainant was mistakenly provided the wrong information by employees of Respondent's staff who were new employees and did not know the process.

Respondent further stated that employees of Respondents staff were instructed not to talk with Complainant and her employees after she filed her complaint, but it was a means of protecting the agency from further complaints.

QUESTIONS

1. Do you have a prima facie case?
2. Has Respondent articulated a legitimate non-discriminatory reason for the action?
3. As the Investigator, what is your next step?

CASE STUDY #3

Complaint

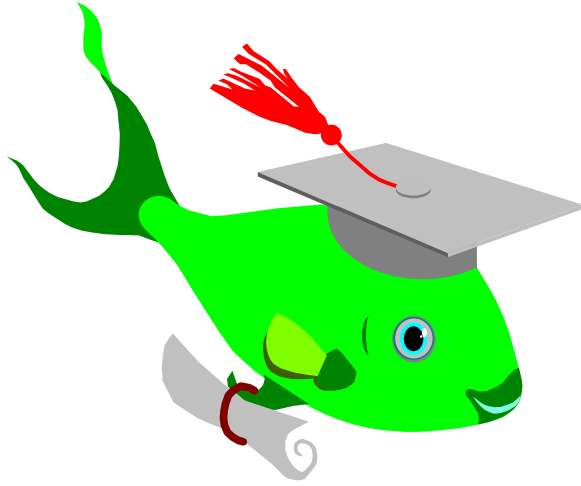
An employee believes that he is being discriminated against because of his sex. He believes that his manager, who is a female assigns him more work than his female counterpart. He and his female co-worker are both GS-14s. He has responsibility for 4 program areas while the female has only 1 program area. He finds himself totally overwhelmed during the day, while the female has time for lengthy personal phone conversations and time to read the newspaper. He can just barely keep up with the work. He constantly misses lunch and often does not take a break during the workday. He knows that he is doing far more work than his female counterpart, although the manager has told him he is not. The male employee believes that he is being discriminated against because of his sex.

Respondent's Reason

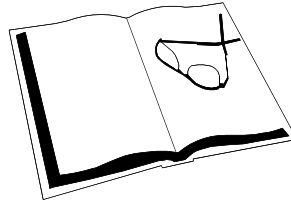
When questioned about this situation, the manager states that the female's one (1) program area is much more complex than the combined four (4) program areas that the male employee is assigned.

Questions

1. Do you have a prima facie case?
2. Has Respondent articulated a legitimate non-discriminatory reason for her actions?
3. As the investigator, what is your next step?



EXERCISES



EVIDENCE

CASE STUDY #1

CASE STUDY #1

COMPLAINT OF EMPLOYMENT DISCRIMINATION

CASE STUDY #2

COMPLAINT ALLEGING A VIOLATION OF TITLE VI

EXERCISE #2

CASE STUDIES

**COMPLAINTS INVESTIGATION REFERENCE
NOTBOOK**

Tab 5

Characteristics of An Investigator

CHARACTERISTICS OF AN INVESTIGATOR

1. No opinions
2. Never tell Complainant that they have a good case.
3. Always remain NEUTRAL. DO NOT take sides.
4. Write the FACTS. Never say what you think. State what the facts are based on the evidence or testimony.
5. Stay in control. Remember, you know the process, they don't.
6. You decide who is to be interviewed. If Complainant or Respondent is adamant about a witness interview, go ahead with it.
7. You decide when you have enough evidence to begin writing your investigative report.

**COMPLAINTS INVESTIGATION REFERENCE
NOTEBOOK**

Tab 6

FHWA Complaint Processing Procedures

**FEDERAL HIGHWAY
ADMINISTRATION
EXTERNAL
COMPLAINT PROCESSING
PROCEDURES**

TABLE OF CONTENTS

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PROCESSING PROCEDURES FOR EXTERNAL COMPLAINTS OF DISCRIMINATION

I. PURPOSE

To describe the rights of complainants to file and the responsibilities of the Federal Highway Administration (FHWA), and State Transportation Agencies (STAs) to process, resolve and investigate external complaints of discrimination. These procedures do not preclude the responsible staff of any agency from attempting to resolve any verbal or non-written concerns or complaints that it is aware of.

II. APPLICABILITY

The complaint procedures outlined herein apply to the FHWA, STAs, and sub-recipients in their administration of the Federal-Aid Highway Program.

III. AUTHORITIES

See Appendix A

IV. DEFINITION

Discrimination--An act (or action) whether intentional or unintentional, through which a person in the United States, based on race, color, sex, age, national origin, or disability has been subjected to unequal treatment under any program or activity receiving financial assistance from the FHWA under title 23 U.S.C.

V. FILING OF COMPLAINTS

A. Persons Eligible to File

Any person who believes that he or she or any specific class of persons to be subjected to discrimination or retaliation prohibited by any of the Civil Rights authorities listed in Appendix A, based upon race, color, sex, age, national origin, or disability may file a written complaint. The complaint may be filed by the individual or the individual's representative.

B. Time Limits for Filing

A complaint must be filed no later than 180 days after the following:

1. The date of the alleged act of discrimination; or
2. The date when the person(s) became aware of the alleged discrimination;
or
3. Where there has been a continuing course of conduct, the date on which that conduct was discontinued or the latest instance of the conduct.

C. Form of Complaints

1. Complaints shall be in writing and signed by the person(s) or representative and include the complainant's name, address and telephone number. These procedures do not preclude any agency from attempting to informally resolve issues and complaints that are not written. (Appendix B--Complaint Form)
2. The complainant will be provided with a Notice of Investigatory Uses of Personal Information which outlines the complainant's rights and protections during an investigation. The complainant will also be provided with a Complainant Consent/Release Form which requests the complainant's consent to release information about the complainant's identity during the course of the investigation.

(Appendix C-D-- Notice of Investigatory Uses of Personal Information; Complainant Consent/Release Form)

D. Agencies Authorized to Receive Complaints

Complaints may be submitted to FHWA, STAs, STA sub-recipients, and the United States Department of Transportation (USDOT).

E. Responsibilities

1. Federal Highway Administration

- a. The Program Operations Unit of the Headquarters Office of Civil Rights (HCR) will acknowledge receipt of all complaints filed with Headquarters, the Resource Centers or the Division Offices within 10 days of receipt of the complaint.¹ The acknowledgment will indicate whether the complaint is accepted or rejected. The complainant shall be provided with a copy of the Notice of Investigatory Uses of Personal Information and the Complainant Consent/Release Form if these documents have not previously been provided. (Appendix E--Acknowledgment Letters; Appendix C-D--Notice of Investigatory Uses of Personal Information; Complainant Consent/Release Form)
- b. Complaints received by HCR filed against STA recipients will be sent to the STA for investigation. (Appendix F--Referral Letters)
- c. All complaints received by the Resource Centers or the Division Offices will be forwarded to the Program Operations Unit for appropriate action.
- d. The Program Operations Unit will make all determinations regarding the acceptance or rejection of complaints.

¹All days refer to calendar days.

- e. The Program Operations Unit shall determine whether the complaint should be investigated by the HCR or Resource Center Civil Rights staff.
- f. The Program Operations Unit will assign all complaints filed under the Americans with Disabilities Act (ADA) to the Division Office for investigation. The Division Office will not be responsible for investigating complaints of discrimination filed under any of the other Civil Rights statutes listed under Appendix A. The Division Office will maintain the complaints log at Appendix G for all ADA complaints.
- g. The Program Operations Unit will forward a copy of all complaints to the Departmental Office of Civil Rights (DOCR) for a control number.
- h. The Program Operations Unit will be responsible for any questions or concerns the STA or complainant has regarding any Title VI matters, including investigations.**

2. STAs

- a. Complaints filed with STAs in which the STA is named as the Respondent, shall be forwarded to HCR for processing.
- b. Complaints filed with STAs against their recipients shall be processed by the STA in accordance with the FHWA approved complaint procedures as required under 23 CFR 200.
- c. STAs will maintain a complaint log of all complaints which are filed with and investigated by the STA. (Appendix G–Record of Complaints)
- d. In accordance with the regulations at 23 CFR 200, a copy of the complaint, together with a copy of the State’s report of the investigation, shall be forwarded to the FHWA Division Office within 60 days of the date the complaint was received by the STA. An extension of an additional 60 days may be granted by the FHWA for justifiable reasons.
- e. The Division Office shall also maintain the log designated at Appendix G for all complaints submitted by the STA.

3. Sub-recipients

Complaints filed with a sub-recipient will be processed in accordance with the approved STA procedures.

VI. PROCESSING COMPLAINTS

A. Receipt and Acceptance

Upon receipt of a complaint by the FHWA, the HCR will determine if it has jurisdiction and whether there is the need for additional information. Acceptance of a complaint will be determined by: (1) whether the complaint is timely filed; (2) whether the allegations involve a covered basis such as race, color, sex, age, national origin, disability, or retaliation; and, (3) whether the allegations raised are related to covered programs and/or statutes. The HCR has sole authority for the acceptance and rejection of complaints. Complaints received by the Resource Centers or the Division Offices will be forwarded to HCR for appropriate action. Complaint numbers will be assigned by the Departmental Office of Civil Rights.

The FHWA HCR will acknowledge receipt of all complaints received within 10 days of receipt.

B. Time Frames

1. All complaints shall be investigated and an investigative report issued to all parties within 180 days from the initial receipt of the complaint.
2. Complaints processed by the STA are bound by the time frames outlined in 23 CFR 200.9

C. Dismissals

A complaint may be dismissed for the following reasons:

1. The complaint is untimely filed;
2. The complaint does not allege a basis covered by the statutes for which HCR is responsible;
3. The complaint does not allege any harm with regard to covered programs or statutes;
4. The complainant requests the withdrawal of the complaint;
5. The complainant fails to respond to repeated requests for additional information needed to process the complaint;
6. The complainant cannot be located after reasonable attempts;
7. The complainant fails to accept a reasonable resolution. Reasonableness to be determined by the HCR;
8. The complainant has filed a legal action in Federal District Court with the same basis(es) and issue(s) involved in the complaint.

D. Final Agency Decisions

1. All final agency decisions and dismissals will be issued by the HCR, including all ADA decisions.
2. The involved Resource Centers or the Division Office will forward the

investigative report and a recommended decision to the HCR.

3. If necessary, the HCR may request the investigative file from the Resource Center or the Division Office.
4. The HCR may request that further investigation be undertaken if the record of evidence is incomplete.

VII. INFORMAL RESOLUTION

It is in the best interest of all parties involved that issues raised in a complaint of discrimination be resolved informally. At each stage of the process the investigator will make every effort to pursue a resolution of the complaint. Initial interviews with the complainant and the respondent will request information regarding settlement opportunities. (Appendix H--Informal Resolution)

VIII. INVESTIGATION OF COMPLAINTS

A. Responsibilities

1. USDOT/FHWA

- a. Complaints filed directly with USDOT/FHWA against an STA shall be, at the discretion of the HCR, investigated by the HCR or the civil rights staff of the Resource Center to which it is assigned.
- b. Complaints filed directly with USDOT/FHWA against a contractor or sub-recipient will be referred to the STA for investigation.
- c. Complaints filed against FHWA shall be referred to the USDOT for appropriate investigative action.
- d. FHWA has the option of investigating class action and pattern and practice complaints of employment discrimination filed against recipients of Federal financial assistance subject to Title VI of the Civil Rights Act of 1964 in accordance with the Department of Justice and the Equal Employment Opportunity Commission (EEOC) regulations at 29 CFR 1691, Procedures for Complaints of Employment Discrimination filed Against Recipients of Federal Financial Assistance. Individual complaints of employment discrimination shall be referred to the EEOC.
- e. The HCR shall assign ADA complaints to the Division Office for investigation.
- f. All final agency decisions shall be issued by the HCR. The STA will issue letters of findings for all complaints investigated by the STA.
- g. All informal agreements must be concurred in by the Director, HCR or his/her designee, except complaints investigated by the STA.
- h. The FHWA in cases involving allegations of program management

with discriminatory impacts, may opt to conduct a program review to ascertain facts, and, if the need is indicated, rely on the compliance process to obtain needed corrections.

- i. **The HCR shall be responsible for providing any assistance or guidance and responding to any questions or concerns the STA or the complainant may have regarding Title VI matters.**

2. STAs

- a. Complaints filed directly with the STA against contractors and sub-recipients will be investigated by the STA.
- b. Complaints shall be investigated by STAs utilizing procedures approved by FHWA in accordance with 23 CFR 200.9 (b)(3).
- c. Complaints filed directly with the STA against the STA shall be forwarded to the HCR for investigation.
- d. The STA will issue letters of findings for all investigations processed by the STA or develop informal settlements for all complaints processed by the STA.

3. INVESTIGATORS

- a. The assignment of a complaint for investigation shall include the authority to issue oaths and obtain affidavits, and copies of records and other evidence needed to ascertain the validity of allegations raised in the complaint.
- b. Within 60 days of the completion of information gathering, complete the analysis of evidence, coordinate with un-involved program personnel as necessary, and complete and submit a report of findings with recommendations.

B. Scope

The investigation shall be confined to the issues and facts relevant to the allegations in the complaint, unless the evidence shows the need to expand the issues.

C. Cooperation with the Investigator

All STA and contractor personnel must fully cooperate with the investigator in obtaining information necessary to the investigation.

1. Access to Sources

The investigator will have access to all records, documentation, and other sources of information pertinent to the investigation.

2. Records in Possession of Third Party

In the event any requested information is in the exclusive possession of any other agency, institution or person which refuses or fails to furnish this information, the investigator shall set forth in the report the efforts made to

obtain the information.

D. Failure to Cooperate

In the event any person, individually or as an agency organization representative, fails or refuses to furnish information to an investigator, the investigator shall inform the head of the STA or contractor that such failure may result in a finding of noncompliance. A finding of noncompliance can result in the imposition of administrative remedies pursuant to 23 CFR 1.36 or the imposition of sanctions pursuant 49 CFR 21.13. The investigator shall indicate in the Investigative Report that the contractor or agency refused to provide pertinent information, and shall set forth efforts made to obtain the information.

E. Investigative Process

1. Investigative Plan (Appendix I)

The investigator shall prepare an Investigative Plan (IP) which is a working document intended to define the issues and lay out the blueprint to complete the investigation. The IP is an internal document for use by the investigator and his/her supervisor to keep the investigation on track and focused on the issues and likely sources of evidence or corroboration. The IP should follow the outline below.

- I. COMPLAINANT(S) NAME AND ADDRESS
ATTORNEY FOR COMPLAINANT--NAME AND ADDRESS
- II. RESPONDENT(S) NAME AND ADDRESS
ATTORNEY FOR RESPONDENT--NAME AND ADDRESS
- III. APPLICABLE LAW(S)
- IV. BASIS(ES)
- V. ALLEGATION(S)/ISSUE(S)
- VI. BACKGROUND
- VII. NAME OF PERSON(S) TO BE INTERVIEWED
QUESTIONS FOR COMPLAINANT
QUESTIONS FOR RESPONDENT
QUESTIONS FOR WITNESS(ES)
- VIII. EVIDENCE TO BE OBTAINED DURING THE INVESTIGATION

2. Investigative Log (Appendix J)

An investigative log shall be maintained which documents all activity related to the complaint. (Appendix J--Investigative Log)

3. Request for Information and Cover Letter (Appendix K)

The investigator shall prepare the Request for Information (RFI) and cover letter. The RFI is taken directly from the evidence section of the IP.

The RFI and cover letter is sent to the appropriate official(s) at Respondent's facility. The investigator shall make contact with Respondent to advise them of the complaint and to determine the appropriate official(s) to interview and receive the RFI.

The cover letter shall be sent with the RFI and shall explain the process, provide the investigator's name, and provide information regarding any scheduled meetings.

A copy of the RFI should be provided to the Respondent prior to the investigator's visit to the facility.

4. Interviews

Interviews shall be conducted with the Complainant, the Respondent, and appropriate witnesses during the investigative process.

a. Preparing for the Interviews

The main objective during the interview is to obtain information from witnesses who can provide information that will either support or refute the allegations. A list of major questions should be prepared that address the issues involved in the complaint. During the course of interviews, different perceptions by witnesses will force other questions to be asked of earlier witnesses. Affidavits obtained and signed will have to be amended as necessary and changes initialed or the entire document re-cast. During the interview, the investigator should generally do the following:

1. Introduce him/herself, provide identification, purpose of the interview and outline the interviewing process--(indicate that a signed statement will be requested and whether notes will be taken);
2. Put the individual being interviewed at ease;
3. Listen actively and effectively during the interview;
4. Distinguish factual information from opinions;
5. Ask open ended questions that will get you the facts--who, what, where, when, and how;
6. Take clear and precise notes;
7. Make it clear that interviews are not to be tape recorded;
8. Review the statement with the interviewee and allow time

- for changes or corrections; and
9. Obtain a signed statement from the individual being interviewed.
(If the person interviewed refuses to sign, explain that the statement may be modified as appropriate to accurately reflect their perspective and that if they yet do not sign, that fact will be recorded and reported.)

b. Persons to be Interviewed (Appendix L--Formal Statement)

1. Complainant(s)

Complainants are interviewed to gain a better understanding of the situation outlined in the complaint of discrimination. Usually, complaints are received through the mail from complainants. The investigator should contact the complainant to make sure that he/she understands what the complainant is talking about. Sometimes the complainant's concerns may be totally different from what was written in the complaint.

It is best to interview the complainant before the IP. However, if this cannot be done, the investigator must be ready to make any changes as appropriate to the IP based on any new information provided by the complainant.

2. Respondent(s)

Respondents are interviewed to provide an opportunity for response to the issues raised by the Complainant as well as to get an understanding of the Respondent's operation or policies that the Complainant is citing in the complaint.

Respondents should always be advised that they have the right to submit a formal position statement addressing the Complainant's allegations.

The investigator should also question Respondent regarding resolution opportunities.

3. Witness(es)

Complainant or Respondent may have persons with whom they wish the investigator to contact. Interview individuals who have information relevant to the issues raised in the complaint of discrimination. The investigator will

determine whether the testimony to be provided is relevant.

The investigator will also determine when enough interviews have been conducted.
(Appendix L--Official Statement)

5. On-Site Visit

An on-site investigation should be conducted when:

- a. Personal contact with the complainant and the respondent may yield information and clarification that might not otherwise be discovered by reviewing written documents or speaking over the telephone;
- b. It is necessary to review the physical environment;
- c. More effective communication can be established with representatives and witnesses of the respondent and the complainant; and,
- d. Documentation can only be examined on-site for reasons of convenience, cost, format, or volume.

6. Evidence

Evidence requested shall be related to the issues raised in the complaint. An evidence request shall contain some or all of the following:

- a. The policies and procedures regarding the practice about which the Complainant is concerned;
- b. All documents pertaining to the Respondent's dealings with the Complainant in the situation complained of;
- c. Documents which show how others, both similarly situated and not were treated;
- d. Respondent's reason for the action taken; and,
- e. Statistical data related to the issues involving the complainant and similar and dissimilar individuals or groups.

7. Analysis of Data

Data must be analyzed to determine whether a violation has occurred. When analyzing data, the investigator must:

- a. Review what happened to complainant;
- b. Compare complainant's treatment with the appropriate policies and procedures;
- c. Compare complainant's treatment with others in the same situation;

- d. Review respondent's reason for the treatment afforded complainant; and
- e. Compare respondent's treatment of complainant with the treatment afforded others.
(Both the respondent and the complainant must be contacted for additional information to allow each of them to confirm or rebut the assertions of the other party.)

8. Writing the Investigative Report (Appendix M)

The investigator shall prepare an investigative report setting forth all of the relevant facts obtained during the investigation. The investigative report shall include a finding for each issue and recommendations where necessary. The investigative report shall include:

- a. COMPLAINANT(S) NAME AND ADDRESS
- b. RESPONDENT(S) NAME AND ADDRESS
- c. APPLICABLE LAWS/REGULATIONS
- d. BASIS(ES)
- e. ISSUE(S)
- f. FINDINGS FOR EACH ISSUE
- g. CONCLUSION FOR EACH ISSUE
- h. RECOMMENDED DECISION
- i. RECOMMENDATIONS (IF APPLICABLE)

The investigative report shall be reviewed and approved by HCR or in the case of a complaint filed against the STA sub-recipients, by the appropriate STA official. A copy of the investigative report shall be provided to the complainant and to the respondent.

F. Findings of Non-Compliance/Compliance

1. Finding of Non-Compliance (Appendix N-O)

In the event the agency concludes there is non-compliance with the laws/regulations as alleged, the investigative report will outline the recommendations for corrective action. The respondent will be provided adequate time to comply with the recommendations in accordance with the guidelines in 23 CFR 200.11.

2. Finding of Compliance (Appendix P-Q)

In the event the agency concludes that the respondent is in compliance with laws/regulations and the complainant disagrees, the complainant may file an action in the appropriate U.S. Federal District Court.

- G. Appeal Rights:
Complaints investigated by the STA may be appealed to the FHWA.
Complaints investigated by the FHWA are administratively final.
- H. Records:
1. FHWA:
 - a. The FHWA shall maintain a case file for each complaint investigated. The case file shall be tabbed and shall contain the following:
 1. A table of contents;
 2. The investigative report;
 3. All correspondence to and from the complainant and respondent;
 4. All official statements taken;
 5. All documents used to make the determination;
 6. All investigator's notes;
 7. The investigative plan;
 8. Any and all documents pertaining to the complaint; and
 9. A copy of the final agency decision.
 - b. All case files which are to leave the possession of the FHWA are to be sanitized/redacted in accordance with the Privacy Act.
 - c. Investigative files shall be maintained for 5 years.
 2. STAs:

The STAs and their sub-recipients shall maintain records of external complaints filed with them, identifying each complaint by race, color, sex, age, religion/creed, disability, national origin or retaliation. The record should indicate:

 - a. The nature of the complaint;
 - b. The recipient agency with which the complaint was filed;
 - c. The date the complaint was filed;
 - d. The investigative report;
 - e. The complaint disposition and date; and
 - f. Other pertinent information.
- I. Investigative Reference Material:
Appendix R contains information regarding theories of discrimination, elements of proof, and types of evidence.

APPENDICES

A-R

LIST OF APPENDICES

APPENDIX

A.....Authorities

B.....Complaint Form

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E-1.....Acknowledgment Letter to Complainant

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O.....Notice of Non-Compliance to Respondent

P.....Notice of Compliance to Complainant

Q.....Notice of Compliance to Respondent

R.....Investigative Reference Material

 Theories of Discrimination

 Elements of Proof

 Examples of Elements of Proof for each Theory

 Types of Evidence

APPENDIX A--AUTHORITIES

NONDISCRIMINATION

NONDISCRIMINATION STATUTES

Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000, provides in section 601 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.”

Section 504 of the Rehabilitation Act of 1973, 29U.S.C. 790, 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, 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.”

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 Educations Amendments of 1972, the Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973. Restores the broad, institution-wide scope and coverage of the non-discrimination 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, P.L. 101-336, 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.”

NONDISCRIMINATION EXECUTIVE ORDERS

E.O. 12250 DOJ Leadership and Coordination of Non-discrimination Laws

E.O. 12898 Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

NONDISCRIMINATION REGULATIONS

28 CFR 35 DOJ regulations governing Nondiscrimination on the basis of disability in State and Local Government Services.

28 CFR 36 DOJ regulations governing nondiscrimination on the basis of disability in public accommodations and commercial facilities.

28 CFR 41 Implementation of Executive Order 12250, Nondiscrimination on the basis of handicap in federally assisted programs.

28 CFR 42, Subpart C DOJ's regulation implementing Title VI of the Civil Rights Act of 1964.

28 CFR 50.3 DOJ's Guidelines for the enforcement of Title VI of the Civil Rights Act of 1964.

49 CFR 21 DOT's Title VI regulation.

49 CFR 27 DOT's regulation implementing Section 504 of the Rehabilitation Act of 1973.

23 CFR 200 FHWA's Title VI regulation.

23 CFR 1235 FHWA and NHTSA joint regulation governing Uniform System for Parking for People with Disabilities.

NONDISCRIMINATION DIRECTIVES

DOT ORDER 1000.12 Implementation of the DOT Title VI Program.

DOT ORDER 1050.2 Standard Title VI Assurances.

APPENDIX B-COMPLAINT FORM

Discrimination Complaint

Name	Phone	Name of Person(s) That Discriminated Against You
Address (Street No., P.O. Box, Etc.)		Location and Position of Person (If Known)
City, State, Zip		City, State, Zip
Discrimination Because Of: <input type="checkbox"/> Retaliation	<input type="checkbox"/> Race/Color <input type="checkbox"/> Sex <input type="checkbox"/> Disability <input type="checkbox"/> Age <input type="checkbox"/> National Origin	Date of Alleged Incident
Explain As Briefly And Clearly As Possible What Happened And How You Were Discriminated Against. Indicate Who Was Involved. Be Sure To Include How Other Persons Were Treated Differently Than You. Also Attach Any Written Material Pertaining To Your Case.		
Signature	Date	

APPENDIX E--ACKNOWLEDGMENT LETTERS

E-1

ACKNOWLEDGMENT LETTER TO COMPLAINANT

LETTERHEAD

Complainant

Address

City, State, Zipcode

Dear

This acknowledges receipt of your complaint of discrimination filed against _____. In your complaint, you allege _____. Your complaint has been assigned to _____ of my staff who will contact you in the next few days to discuss the procedures for the investigation of your complaint. _____ can be reached at _____.

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 laws we enforce. Any individual alleging such harassment or intimidation may file a complaint with the Federal Highway Administration. We would investigate such a complaint if the situation warrants. Any questions or concerns you have regarding the investigative process and your rights can be discussed with the investigator.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. Therefore, enclosed for your information are the "Complainant Consent/Release Form" and the "Notice of Investigatory Uses of Personal Information" fact sheet. Please sign and date the "Complainant Consent/Release Form" and return it to this office in the enclosed self addressed envelope. In the event that we receive such a request, we will seek to protect, to the extent provided by law, personal information which, if released, could constitute an unwarranted invasion of privacy.

Sincerely,

FHWA Official

ACKNOWLEDGMENT LETTER TO COMPLAINANT--ADA COMPLAINT

LETTERHEAD

Complainant
Street Address
City, State, Zipcode

Dear

The Federal Highway Administration (FHWA), Office of Civil Rights is in receipt of your letter dated _____ in which you allege violations of Title II of the Americans with Disabilities Act of 1990 and/or Section 504 of the Rehabilitation Act of 1973.

Your complaint has been transferred to the FHWA Division Office located in _____ for investigation. Future correspondence should be forwarded to the following address:

Division Administrator
FHWA
Street Address
City, State, Zipcode
Phone Number

If the issue identified in the complaint has been resolved or you are no longer interested in pursuing the matter, please contact _____ of my staff at _____.

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 laws we enforce. Any individual alleging such harassment or intimidation may file a complaint with the Federal Highway Administration. We would investigate such a complaint if the situation warrants. Any questions or concerns you have regarding the investigative process and your rights can be discussed with the investigator.

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

Sincerely,

FHWA Official

REJECTION LETTER TO COMPLAINANT

LETTERHEAD

Complainant

Address

City, State, Zipcode

Dear

This acknowledges receipt of your complaint of discrimination filed against _____. After thorough review of your complaint, it has been determined that the matters raised in your complaint are not related to the laws or statutes for which this agency has jurisdiction. Therefore, we have closed your case and will take no further action in this matter.

ADD THE FOLLOWING STATEMENT, IF APPROPRIATE:

However, we have referred your complaint to _____ since it appears that agency may have jurisdiction over the matter.

Sincerely,

FHWA Official

ACKNOWLEDGMENT AND REQUEST FOR ADDITIONAL
INFORMATION FROM COMPLAINANT

LETTERHEAD

Complainant
Address
City, State, Zipcode

Dear

This acknowledges receipt of your complaint of discrimination filed against_____.
After a preliminary review of your complaint, it has been determined that additional information
is needed from you in order to more fully understand the issues raised in your complaint. Please
provide _____to this office by (Date).

Anyone who intimidates, threatens, coerces, or engages in other discriminatory conduct against
you or any witness because of actions taken or participation in, to secure rights protected by civil
rights laws may be found in violation of these laws. Any individual who believes he or she has
been subjected to harassment or intimidation may file a complaint with the Federal Highway
Administration. Any questions or concerns you have regarding the investigative process and
your rights can be discussed with the investigator.

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

If you have any questions regarding this request or any of the information contained in this letter,
you may contact _____ of my staff at_____.

Sincerely,

FHWA Official

ACKNOWLEDGMENT LETTER TO RESPONDENT

LETTERHEAD

Respondent

Address

City, State, Zipcode

Dear

A complaint of discrimination has been filed by _____ against _____. The complaint alleges _____.

The complaint has been assigned to _____ of my staff for investigation. _____ will contact you at a later date with more detailed information about the investigative process. If you have any questions, you may contact _____ at _____.

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

Sincerely,

FHWA Official

F-1

REFERRAL LETTER TO STA FOR INVESTIGATION

LETTERHEAD

State Department of Transportation

Address

City, State

Dear

This office is in receipt of a complaint of discrimination filed by _____ against _____.
The complainant alleges _____.

We are forwarding this complaint to your office for investigation, in accordance with the regulations at 23 Code of Federal Regulations, Part 200.9 which require assurances that all recipients of Federal assistance do not discriminate on the grounds of race, color, or national origin, in any program or activity for which the recipient receives Federal assistance from the Department of Transportation, including the Federal Highway Administration.

Since the respondent may be one of your sub-recipients, we are requesting that your office conduct an investigation of this complaint, issue appropriate findings to the complainant and respondent and provide a copy of the findings to this office. The complainant has been advised of this referral.

If you have any questions regarding this referral, you may contact _____ of my staff at telephone number.

Sincerely yours,

Edward W. Morris, Jr.
Director, Office of Civil Rights

Enclosure

F-2

**ACKNOWLEDGMENT LETTER TO COMPLAINT FOR STA INVESTIGATION
REFERRAL**

LETTERHEAD

Complainant
Address
City, State, Zipcode

Dear

This office is in receipt of your complaint against the _____. In your complaint, you allege _____.

In accordance with FHWA complaint processing procedures, your complaint has been forwarded to the _____ Department of Transportation for investigation.

If this office can be of further assistance to you or you wish to discuss this matter prior to being contacted by the State Department of Transportation, you may contact _____ of my staff at _____.

Sincerely yours,

Edward W. Morris, Jr.
Director, Office of Civil Rights

**APPENDIX G--RECORD OF COMPLAINTS for the DIVISION OFFICE and
the STATE DOTs**

RECORD OF COMPLAINTS

CASE NO.	COMPLAINANT	RESPONDENT	AGENCY FILED WITH	DATE FILED	BASIS	DATE OF REPORT	DECISION

APPENDIX H--INFORMAL SETTLEMENT AGREEMENT

FEDERAL HIGHWAY ADMINISTRATION
U.S. DEPARTMENT OF TRANSPORTATION

Complainant

Case Number:

Respondent
_____.

INFORMAL RESOLUTION AGREEMENT

IT IS HEREBY AGREED by and between **(NAME)** hereinafter referred to as the Complainant, and the _____, herein after referred to as the Respondent as follows:

Section One: Purpose

This agreement is made between the parties for the complete and final settlement of their claims, differences, and actions with respect to the matters described below.

Section Two: Description of Allegation

The Aggrieved Person initiated the complaint of discrimination by a complaint filed on **(Date)**. The Complainant alleged that **(STATEMENT OF ALLEGATION)**.

Section Three: Terms of Settlement

The Complainant and the Respondent enter into this agreement without any finding of discrimination having been determined. The parties agree to the following, which will resolve and settle all claims and issues arising from the above-mentioned allegation:

1. _____

2. _____

APPENDIX I--SAMPLE INVESTIGATIVE PLAN

INVESTIGATIVE PLAN

I. COMPLAINANT

People's Action Committee
123 South Street
Anywhere, USA 14456

Ms. Jane Doe, President

II. RESPONDENTS

State Department of Transportation
1409 ABE Boulevard
Anywhere, USA 14457

Mr. James Doe
Transportation Director

III. APPLICABLE LAW

Title VI of the Civil Rights Act of 1964
ISTEA, 1991
49 CFR, Part 26
ADA of 1990

IV. BASIS

Race -African American

V. ISSUES

1. Complainants allege that the State Department of Transportation (DOT) has not always followed the requirements of 49 CFR Part 26, relative to the DBE program eligibility standards for certification.
2. Complainants allege that DOT has not sufficiently publicized the third party challenge procedure.

3. Complainants allege that the DOT has provided slow payments to minority contractors.
4. Complainants allege that the DOT arbitrarily assigns DBE goals to contracts.
5. Complainants allege the DOT has not adequately monitored the prime contractors to ensure DBEs are performing a commercially useful function.
6. Complainants allege the DOT has not implemented Title VI in its DBE program.
7. Complainants allege the DOT has systemically failed to review its certification list to remove ineligible DBE firms or firms which are no longer in existence.
8. Complainants allege that there are only six African American contractors participating in the highway construction industry in the State of Tennessee and their contract awards are very small.
9. Complainants allege that DOT has not recognized the steady decline of African American participation which could raise issues of Title VI violations.

VI. **BACKGROUND**

VII. **INTERVIEWS**

On-site interviews will be conducted with appropriate representatives for Complainants, Respondent, and the FHWA Division Office.

Questions for Complainant

The issues outlined in the complaint will be discussed with the Complainants.

Questions for DOT Representatives

1. Has DOT had problems with fraudulent firms entering the program?
2. Have there been complaints about slow payment from DBE firms?
3. How is the DBE certification list processed and maintained?
4. The number of firms in the DBE program? Racial breakdown.
5. The number of firms seeking certification each year?
6. The number of third party challenges received during the course of a year?
7. Procedure for handling third party challenges?
8. Procedure for payments to DBE firms?
9. Procedures for assigning DBE goals to contracts?
10. Procedures for monitoring the DBE program.

Questions for FHWA Division Office Representatives

1. Have you had problems with DOT certifying fraudulent firms?
2. Have you had problems with DBE firms complaining about slow payment?

3. Has there been a decline in African American participation in the DBE program? If so, has your office made any determinations regarding the decline?

VIII. EVIDENCE TO BE OBTAINED DURING THE INVESTIGATION

Issue #1

Complainants allege that the DOT has not always followed the requirements of 49 CFR Part 26 relative to the DBE program eligibility standards for certification.

Documents Needed

1. Policies and procedures regarding the DBE certification process;
2. Copies of all documents used in the certification process.
3. Documents which show the number of certifications and certification denials processed anytime during the period January 1, 1996 to the present. Indicate the reason for any certification denial.

Issue #2

Complainants allege that DOT has not sufficiently publicized the third party challenge procedure.

Documents Needed

Provide a response to this allegation.

Issue #3

Complainants allege that the department has provided slow payments to minority contractors.

Documents Needed

1. Policies and procedures regarding payment to DBE firms and other subcontracting firms;
2. Documents which show any complaints that were received anytime during the period January 1, 1996 to the present regarding slow payment. Include the following information for each complaint.
 - a. Name and race of complainant;
 - b. Name of firm involved;
 - c. Name and race of prime contractor involved; and,
 - d. Indicate how the complaint was resolved. Include the date and type of action taken.

Issue #4

Complainants allege that the DOT arbitrarily assigns DBE goals to contracts.

Documents Needed

Policies and procedures regarding establishing DBE goals on all types of construction contracts.

Issue #5

Complainants allege the DOT has not adequately monitored the prime contractors to ensure DBEs are performing a commercially useful function.

Documents Needed

1. Policies and procedures regarding monitoring the DBE program;
2. Documents which show the contracts that were monitored anytime during the period January 1, 1996 to the present. Include the following information for each contract that was monitored.
 - a. Name and race of prime contractor;
 - b. Type of contract;
 - c. Dollar value of contract;
 - d. Name and race of DBEs working on the contract;
 - e. Dollar value of each DBE contract;
 - f. Type of work being performed by the DBE; and,
 - g. Indicate whether any violations were found. If so, indicate how they were handled.

Issue #6

Complainants allege the DOT has not implemented Title VI in its DBE program.

Documents Needed

Provide a response to this allegation.

Issue #7

Complainants allege the DOT has systemically failed to review its certification list to remove ineligible DBE firms or firms which are no longer in existence.

Documents Needed

1. Policies and procedures regarding management of the DBE certification list.
2. Documents which show how firms are removed from the list.
3. Copy of the current DBE list.
4. Documents which show how often the DBE list is updated.

Issue #8

Complainants allege that there are only six African American contractors participating in the highway construction industry in the State and their contract awards are very small.

Documents Needed

1. Documents which show all DBE firms which currently have contracts. Include the

following information for each.

- a. Name and race of DBE firm;
- b. Date of initial certification into the DBE program;
- c. Type of business;
- d. Contracts awarded anytime during the period January 1, 1995 to the present; and,
- e. Dollar value of contract.

Issue #9

Complainants allege that DOT has not recognized the steady decline of African American participation which could raise issues of Title VI violations.

Documents Needed

Provide a response to this allegation.

SAMPLE
APPENDIX K--REQUEST FOR INFORMATION

Refer to: HCR-20

Mr/Ms.
Administrator
State Highway Administration
P.O. Box 000
Anywhere, USA 00000

Dear Mr./Ms. _____:

This is in reference to the complaint of discrimination filed by the **Complainant against Respondent**. The complaint of discrimination cites several alleged violations of Title VI of the Civil Rights Act of 1964. In accordance with Title 49, Code of Federal Regulations 21.11 and the Department of Transportation's Interim Procedures for Processing External Civil Rights Complaints, the Federal Highway Administration is required to investigate complaints of discrimination to determine whether the recipient has failed to comply with Title VI requirements.

As part of the investigative process, Mr/Ms. Name of my staff will be meeting with Mr/Ms. Name of your staff on Thursday, March 7 at 9:00 A.M. to review the documents requested in the enclosed request for information.

Anyone who intimidates, threatens, coerces, or engages in other discriminatory conduct against you or any witness because of actions taken or participation in, to secure rights protected by civil rights laws may be found in violation of these laws. Any individual who believes he or she has been subjected to harassment or intimidation may file a complaint with the Federal Highway Administration. Any questions or concerns you have regarding the investigative process and your rights can be discussed with the investigator.

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

If you have any questions regarding this matter, you may contact Ms. _____ at 202-366-

0000.

Sincerely yours,

Director, Office of Civil Rights

Enclosure

SAMPLE
REQUEST FOR INFORMATION
CASE NAME

Issue #1

The State Highway Administration engages in and/or facilitates intentional adverse impact discrimination against Black and Hispanic-owned businesses by administering their Federal Highway Administration (FHWA) Federal-Aid Highway Construction program in such a manner that Black and Hispanic-owned businesses are excluded from participation based on their race and national origin, in violation of Title VI of the Civil Rights Act of 1964 and 49 C.F.R. Parts 21 and 26.

Documents Needed

Information on hand indicates that The County may have enough DBE firms to provide the sampling needed to retrieve the necessary information for analysis of this issue. It appears that there are a 100 or more firms in the County. All information will be for 1991 through fiscal year 1995.

1. A list of all DBE firms in the County. The listing should contain the following information.
 - a. Name, address, and telephone number,
 - b. Name of firm president,
 - c. Ethnic code,
 - d. Type of business,
 - e. How long certified in the DBE program,
 - f. List of all contracts received, including contract number, and the dollar value,
 - g. Prime contractor involved in the contract award.

Issue #2

SHA's Disadvantaged Business Enterprise-Minority Business Enterprise (DBE-MBE) program, submitted to and approved by FHWA in 1989, was deficient and not in full compliance with the requirements of 49 C.F.R. Part 26, which has adversely affected Black and Hispanic DBE program beneficiaries.

Documents Needed

1. Copies of any procedures used by FHWA to approve DOT's DBE Manual.
2. Copies of DOT's DBE Manual and any updates, including the 1993 Manual and

documents showing approval.

Issue #3

Since 1989, SHA has not submitted its revised DBE program to FHWA for reevaluation and approval on a yearly basis, in violation of 49 C.F.R. Part 26, which adversely affected Black and Hispanic DBE program beneficiaries.

Documents Needed

Copies of policies and procedures provided to recipients regarding annual DBE updates, if the procedures are separate and apart from the provisions outlined in 49 C.F.R. Part 26.

Issue #4

SHA has engaged in unlawful employment discrimination against Blacks and other racial minority persons managing their DBE program which has caused an adverse effect on certain Black and Hispanic DBE program beneficiaries.

Documents Needed

1. Policies and procedures regarding hiring for all positions related to managing and administering the DBE program.
2. Organizational chart for the positions involved in managing the DBE program.
3. Documents which show all positions involved in administering the DBE program. Include the following information for each position.
 - a. Position description
 - b. Name, race, date of hire of incumbent of the position,
 - c. Indicate how the employee and his/her duties are involved in the DBE program.
4. Documents which show the awards to DBE firms before and after the reorganization. Provide a detailed explanation for any significant changes in the awards before and after reorganization.

Issue #5

In 1990, when DOT became the sole MBE-DBE certification body, it accepted and “grandfathered” over 600 firms owned and operated by non-minority males into the Directory of Certified MBE-DBE firms without on-site visits and personal interviews, in violation of 49 C.F.R. Part 26 and the Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA).

Documents Needed

1. Documents which show all of the firms that were “grandfathered” into the DBE program.
2. Documents which show which of these firms received contracts. If contracts received,

provide the following information:

- a. Name, address, and telephone number of firm,
- b. Name of firm president,
- c. Ethnic code,
- d. Type of business,
- e. How long certified in the DBE program,
- f. List of all contracts received, including contract number and date, and the dollar value,
- g. Prime involved in the contract award,
- h. Copy of on-site review report.

APPENDIX L-FORMAL STATEMENT

FORMAL STATEMENT

Name _____

Address _____

Telephone Number: Day _____ **Evening** _____

Place of Employment _____

Position _____ **Date of Hire** _____

STATEMENT

Page _____ **of** _____

Signature _____ **Date** _____

Investigator _____ **Date** _____

APPENDIX M--INVESTIGATIVE REPORT

WRITING THE INVESTIGATIVE REPORT

COMPLAINANT(S) NAME AND ADDRESS

RESPONDENT(S) NAME AND ADDRESS

APPLICABLE LAW/REGULATION

BASIS(ES)

ISSUES

THEORIES OF DISCRIMINATION

FINDINGS FOR EACH ISSUE

CONCLUSION FOR EACH ISSUE

RECOMMENDED DECISION

RECOMMENDATIONS (IF APPLICABLE)

SAMPLE
INVESTIGATIVE REPORT

I. COMPLAINANT

Minority Contractors Group
2000 South Street
Anywhere, USA 00000
555-111-1234

II. CLASS MEMBERS

Mr. John Doe
Mr. Jim Doe
Mr. James Doe

III. RESPONDENT

State Department of Transportation
125 East Anywhere Street
Anywhere, USA

Mr. State DOT
Executive Director

IV. ATTORNEY FOR RESPONDENT

Ms. State's Attorney
Assistant Attorney General
Office of the Attorney
State of Anywhere
P.O. Box 11111
Anywhere, USA

555-123-4567

V. APPLICABLE LAW

Title VI of the Civil Rights Act of 1964

VI. BASIS

Race - African American

VI. LEGAL THEORIES AND ELEMENTS OF PROOF FOR TITLE VI COMPLAINT

Title VI provides 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.

Title VI and regulations promulgated thereunder bar (1) intentional discrimination and (2) policies and practices that have a discriminatory impact.

Intentional Discrimination

Under intentional discrimination, the recipient, in violation of the statute, engages in intentional discrimination based on race, color, or national origin. An intent claim alleges that similarly situated persons are treated differently because of their race, color, or national origin. To prove intentional discrimination, one must show that a challenged action was motivated by an intent to discriminate. This requires a showing that the decisionmaker was not only aware of the complainant's race, color or national origin, but that the recipient acted, at least in part, because of the complainant's race, color, or national origin.

Direct proof of discriminatory motive is often unavailable. In the absence of such evidence, claims of intentional discrimination under Title VI may be analyzed using the Title VII burden shifting analytic framework established by the Supreme Court in McDonnell Douglas v. Green, 411 U.S. 792 (1973).

Applying the McDonnell Douglas principles to a Title VI claim, the investigating agency must first determine if the complainant can raise an inference of discrimination by establishing a prima facie case.

If the record contains sufficient evidence to establish a prima facie case of discrimination, the investigating agency must then determine if the recipient can articulate a legitimate, nondiscriminatory reason for the challenged action. If the recipient can articulate a nondiscriminatory explanation for the alleged discriminatory action, the investigating agency must determine whether the record contains sufficient evidence to establish that the recipient's stated reason was a pretext for discrimination. In other words, the evidence must support a finding that the reason articulated by the recipient was not the true reason for the challenged action, and that the real reason was discrimination based on race, color, or national origin.

Disparate Impact

Under the disparate impact theory, a recipient, in violation of agency regulations, uses a neutral procedure or practice that has a disparate impact on protected individuals, and such practice lacks a substantial legitimate justification.

In a disparate impact case, the focus of the investigation concerns the consequences of the recipient's practices, rather than the recipient's intent. To establish liability under disparate impact, the investigating agency must first ascertain whether the recipient utilized a facially neutral practice that had a disproportionate impact on a group protected by Title VI.

If the evidence establishes a prima facie case, the investigating agency must then determine whether the recipient can articulate a substantial legitimate justification for the challenged practice. To prove a substantial legitimate justification, the recipient must show that the challenged policy was necessary to meeting a goal that was legitimate, important, and integral to the recipient's mission.

If the recipient can make such a showing, the inquiry must focus on whether there are any equally effective alternative practices that would result in less adverse impact or whether the justification proffered by the recipient is actually a pretext for discrimination.

If a substantial legitimate justification is identified, the third stage of the disparate impact analysis is the complainant's demonstration of a less discriminatory alternative.

VII. FINDINGS

Issue # 1

The Minority Contractors Group (MCG) alleges that the State DOT discriminates against African American Disadvantaged Business Enterprise (DBE) firms with regard to the acquisition of contracts through the DBE program administered by DOT.

Issue #2

MCG further alleges that zero percent of federally funded contracts are being let to African American DBEs.

Analysis

In accordance with the policy of the U.S. Department of Transportation (DOT) as defined in 49 Code of Federal Regulations (CFR), Part 26, the State DOT administers a DBE Program which requires that minority business enterprises as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds. The DOT requires that not less than 10 percent of the funds authorized for Federal programs be expended with DBEs.

Record evidence shows that State DOT has consistently met its 10 percent DBE goal. The 10 percent goal can be met by using any certified DBE. There is no separate goal for individual minority or women owned firms. A review of State DOT's records shows that African white women owned firms are awarded a greater number of contracts than are African American

owned firms, although African American firms represent a greater number of DBE firms in the State DOT DBE program.

The statistical data reviewed for this investigation focused on District 12 of the State DOT DBE Program. A review of the DBE firms in Area 00 shows the following information.

DBE FIRMS AND COMMITMENTS FOR 1994

for

AREA 00

	AFRICAN AMERICAN	AMERICAN WHITE WOMEN	HISPANICS	TOTAL
# of FIRMS	314 34%	166 18%	439 48%	919 100%
# of Firms Used/ Dollar Value of contracts	6 \$1,691,918	18 \$22,111,793	17 \$47,720,267	41 \$71,523,978
% of Dollar value to total contract dollars	2%	31%	67%	100%

DBE FIRMS AND COMMITMENTS FOR 1995

for

AREA 00

	AFRICAN AMERICAN	AMERICAN WHITE WOMEN	HISPANICS	TOTAL
# of FIRMS	314 34%	166 18%	439 48%	919 100%
# of Firms Used/ Dollar Value of Contracts	6 \$924,555	20 \$24,835,197	18 \$65,903,997	44 \$91,663,749
% of Dollar value to total contract dollars	1%	27%	72%	100%

DBE FIRMS AND COMMITMENTS FOR 1996
for
AREA 00

	AFRICAN AMERICAN	AMERICAN WHITE WOMEN	HISPANICS	TOTAL
# of FIRMS	314 34%	166 18%	439 48%	919 100%
# of Firms Used/ Dollar Value of contracts	7 \$1,600,844	23 \$22,702,882	17 \$30,388,868	44 \$54,692,594
% of Dollar value to total contract dollars	3%	42%	55%	100%

DBE FIRMS AND COMMITMENTS FOR 1997
for
AREA 00

	AFRICAN AMERICAN	AMERICAN WHITE WOMEN	HISPANICS	TOTAL
# of FIRMS	314 34%	166 18%	439 48%	919 100%
# of Firms Used/ Dollar Value of Contracts	2 \$108,441	12 \$26,289,033	9 \$30,510,767	23 \$56,908,241
% of Dollar value to total contract dollars	.1%	46%	54%	100%

NOTE:

Respondent indicated that State DOT's submittal of all DBE firms in Area 00 (314) is accurate for all of the years cited.

Record evidence shows and the Complainants verified that State DOT provides the DBE firms with relevant contracting information regarding the availability of highway construction projects.

Record evidence shows that DBE firms are accepted or rejected for highway construction projects by the prime contractor. The prime contractor is required to submit the name, work to be performed, and the amount of the subcontract for every DBE firm that will be used to meet the DBE goal assigned to the project.

The State DOT Business Opportunity Programs (BOP) Office is responsible for reviewing the DBE commitment information that is provided by the prime contractor. The BOP Office reviews the DBE commitment information to ensure that the DBE firm submitted is certified as a DBE; that the DBE firm is certified in the appropriate category of work; that the contract amount is consistent with the Engineer's estimate and the prime contractor's bid; and, that the DBE goal will be met.

There is no evidence available regarding the DBEs which may have submitted bids and were not selected. There is no requirement by State DOT that this information be maintained.

The record shows that State DOT is following the regulations as outlined in 49 CFR Part 26, regarding meeting the 10 percent DBE goal. The charts show that African Americans are not awarded DBE contracts in proportion to the number of African American DBE firms in the DBE Program.

Issue #3

Complainant James Doe alleges that he has submitted 30 bids to prime contractors in the State DOT for highway contracts during the past 2 years. Complainant James Doe alleges that he has not received a telephone call or any other communication from these contractors since he started filing complaints of race discrimination.

Analysis

The State DOT stated that it does not receive bids submitted to the prime contractors. The State DOT further stated it does not require prime contractors to document how they process bids that are received from DBE firms or identify all DBE bidders and provide reasons for how they chose the successful DBE bidder.

The record shows that Complainant James Doe was not awarded any contracts anytime during the period reviewed for this investigation.

There is no evidence available to determine whether Complainant James Doe's lack of contract awards was a form of retaliation. However, since the record shows that African American DBEs are not awarded contracts in accordance with their representation in the DBE Program, then it is reasonable to infer that Complainant James Doe has been discriminated against with regard to the

award of DBE contracts. However, the record is not clear regarding whether the exclusion is a form of retaliation.

The record further shows that State DOT does not have a procedure in place to monitor the selection practices of its prime contractors. The regulations at 49 CFR 21.7 and the Federal-aid project agreements require that the recipient of Federal financial assistance provide assurances that all programs will be conducted in compliance with all the requirements of Title VI of the Civil Rights Act of 1964 and other related statutes. The record shows that State DOT is not carrying out this requirement with regard to the prime contractors selection of DBEs.

VII. DECISION

Based on the foregoing, it is reasonable to conclude that the Complainants have been discriminated against because of race with regard to the lack of contract participation in the DBE Program administered by State DOT.

Having determined that there is reasonable cause to believe that the allegations raised by the Complainants are true, the Federal Highway Administration requires State DOT, to take action sufficient to address and prevent a recurrence of the situation which led to the probable cause finding by taking the actions outlined in the following recommendations. The actions taken may be different from, but must be at least as effective as those outlined in the Recommendations section of this report. The State DOT is required to take the necessary action with 90 days of receipt of this report.

RECOMMENDATIONS

1. Review the DBE Program to determine the causes for the imbalance between the number of African American DBE firms and the number of contracts awarded.
2. Identify procedures to remedy the imbalance which will ultimately create an increase in the number of contract awards to African American DBEs.
3. Develop a process to ensure that prime contractors are making DBE selections in accordance with the requirements of Title VI and related statutes.

MINORITY CONTRACTORS ALLIANCE

vs.

STATE DEPARTMENT OF TRANSPORTATION APPROVED BY:

DIRECTOR, OFFICE OF CIVIL RIGHTS

DATE

APPENDIX N--NOTICE OF NON-COMPLIANCE COVER LETTER TO COMPLAINANT

LETTERHEAD

Complainant
Address
City, State, Zipcode

Dear

The FHWA has completed the investigation of the complaint of discrimination which you filed against the_____. Based on the evidence reviewed during the investigation, the FHWA has concluded that the evidence supports the allegation(s) raised in your complaint of discrimination. A copy of the Investigative Report is enclosed. The FHWA has outlined a list of recommendations that the (name respondent) must implement to correct the deficiencies found. You will be advised at a later date regarding the actual implementation of the recommendations.

Anyone who intimidates, threatens, coerces, or engages in other discriminatory conduct against you or any witness because of actions taken to secure rights protected by civil rights laws may be found in violation of these laws. Any individual who believes he or she has been subjected to harassment or intimidation may file a complaint with the Federal Highway Administration. Any questions or concerns you have regarding the investigative process and your rights can be discussed with the investigator.

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

Sincerely,

FHWA Official

APPENDIX O--NOTICE OF NON-COMPLIANCE COVER LETTER TO RESPONDENT

LETTERHEAD

Respondent

Title

Address

City, State, Zipcode

Dear

The FHWA has completed the investigation of the complaint of discrimination which was filed by _____ against the _____. The FHWA has concluded that the evidence supports the allegation(s) raised in the complaint of discrimination. A copy of the Investigative Report is enclosed. The FHWA has outlined a list of recommendations that must be implemented for your agency to be determined in compliance. In accordance with the regulations at 23 CFR 200.9 (a)(3), which provides that the State highway agency shall take affirmative action to correct any deficiencies found by the FHWA within a reasonable time period, not to exceed 90 days, in order to implement Title VI compliance in accordance with State-signed assurances and required guidelines.

Anyone who intimidates, threatens, coerces, or engages in other discriminatory conduct against individuals witness because of actions taken to secure rights protected by civil rights laws may be found in violation of these laws. Any individual who believes he or she has been subjected to harassment or intimidation may file a complaint with the Federal Highway Administration. Any questions or concerns you have regarding the investigative process and your rights can be discussed with the investigator.

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

Sincerely,

FHWA Official

APPENDIX P--NOTICE OF COMPLIANCE COVER LETTER TO COMPLAINANT

LETTERHEAD

Complainant

Address

City, state, zipcode

Dear

The FHWA has completed the investigation of the complaint of discrimination which you filed against the _____. The FHWA has concluded that the evidence obtained during the investigation does not support the allegation(s) raised in your complaint of discrimination. A copy of the Investigative Report is enclosed.

Anyone who intimidates, threatens, coerces, or engages in other discriminatory conduct against you or any witness because of actions taken or participation in, to secure rights protected by civil rights laws may be found in violation of these laws. Any individual who believes he or she has been subjected to harassment or intimidation may file a complaint with the Federal Highway Administration. Any questions or concerns you have regarding the investigative process and your rights can be discussed with the investigator.

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

This concludes the FHWA's processing of this matter and no further action will be taken.

Sincerely,

FHWA Official

APPENDIX Q--NOTICE OF COMPLIANCE COVER LETTER TO RESPONDENT

LETTERHEAD

Respondent

Title

Address

City, State, Zipcode

Dear

The FHWA has completed the investigation of the complaint of discrimination filed by _____ against the _____. Based on the evidence reviewed during the investigation, the FHWA has concluded that the evidence does not support the allegation(s) raised in the complaint of discrimination. A copy of the Investigative Report is enclosed.

Anyone who intimidates, threatens, coerces, or engages in other discriminatory conduct against you or any witness because of actions taken or participation in, to secure rights protected by civil rights laws may be found in violation of these laws. Any individual who believes he or she has been subjected to harassment or intimidation may file a complaint with the Federal Highway Administration. Any questions or concerns you have regarding the investigative process and your rights can be discussed with the investigator.

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

This concludes the FHWA's processing of this matter and no further action will be taken.

Sincerely,

FHWA Official

APPENDIX R--INVESTIGATIVE REFERENCE MATERIAL

THEORIES OF DISCRIMINATION

A THEORY OF DISCRIMINATION REFERS TO THE TYPE OR METHOD OF DISCRIMINATE. EXAMPLES:

DISPARATE TREATMENT

Whenever similarly situated individuals of a different race, sex, national origin, etc., are accorded different treatment in the context of a similar situation, it is reasonable to infer, absent other evidence, that discrimination occurred.

ADVERSE IMPACT

Discrimination which occurs when a neutral policy or procedure has a disproportionate negative impact on a member of a protected class.

ACCOMMODATION

The failure to accommodate a disability.

RETALIATION

Adverse action taken against a person because of the filing of a complaint, participation in an investigation, or opposing an unlawful practice.

INTENTIONAL DISCRIMINATION

The decision maker was aware of the complainant's race, color, or national origin and acted at least in part because of that information. The action was taken because of complainant's race, color, national origin, etc.

ELEMENTS OF PROOF

HOW DO YOU PROVE DISCRIMINATION?

In a complaint of discrimination, each party has responsibility for proving or disproving that discrimination occurred. The Complainant has the responsibility of initially establishing a prima facie (at first view; before further examination) case of discrimination. This requires having evidence that shows the following:

- that the complainant is a member of a protected group;
- that the complainant was harmed by some decision;
- that similarly situated persons of a different group were not or would not have been harmed under similar circumstances.

The burden then shifts to the respondent. The respondent has to articulate a legitimate non-discriminatory reason for its actions. This is respondent's defense.

HOW TO DETERMINE WHETHER RESPONDENT'S REASON IS PRETEXT

The investigator can determine whether the respondent's reasons are a pretext to discriminate by:

- reviewing comparative data;
- showing that others, not in complainant's group, were treated differently in comparable situations;
- showing that normal policies and procedures were not followed in making the decision involving complainant;
- showing that policies normally followed for similarly situated persons were not followed for complainant.

EXAMPLES OF ELEMENTS OF PROOF

DISPARATE TREATMENT

- Whether complainant belongs to a protected group;
- Whether complainant was harmed by a decision;
- Whether similarly situated employees were not harmed under similar circumstances;
- Whether there was a legitimate, non-discriminatory reason for the decision;
- Whether the stated reason for the decision was pretext.

RETALIATION

- Whether complainant opposed any practice made unlawful or participated in any manner in an activity pursuant to the laws against discrimination;
- Whether the individual who allegedly retaliated against complainant knew or should have known of the opposition or participation;
- Whether an adverse action was taken against complainant subsequent to the protected activity;
- Whether there was a causal connection (time frame) between the opposition or participation and the decision made involving complainant;
- Whether there was a legitimate, non-discriminatory reason for the employment action;
- Whether the articulated reason is a pretext for retaliatory discrimination.

ADVERSE IMPACT

- Whether the respondent has a facially neutral policy or practice that has affected the complainant;
- Whether the policy or practice operates to disproportionately exclude members of the protected group;
- Whether the policy or practices is a business necessity;
- Whether there is an effective business alternative with less adverse impact;

ACCOMMODATION

- Whether complainant requested accommodation for a disability;
- Whether the respondent did not grant the request for accommodation;
- Whether the respondent could reasonably make the accommodation without undue hardship.

INTENTIONAL DISCRIMINATION

- Whether the complainant is a member of a protected group;
- Whether the complainant applied for and was eligible for a federally assisted program that was accepting applicants;
- Whether despite the complainant's eligibility, he or she was rejected; and,
- Whether the respondent selected applicants of a different race, color, or national origin than the complainant--or that the program remained open and the respondent continued to accept applications from applicants of a different race, color, or national origin.

TYPES OF EVIDENCE

CIRCUMSTANTIAL EVIDENCE

Includes facts from which one may infer intent or discriminatory motive.
Circumstantial evidence proves intent by using objectively observable data.

EXAMPLE: Historical information on how members of the protected group at issue have been treated by the recipient, and the extent of similar complaints and corrective action taken can aid in developing an inference of discriminatory intent.

COMPARATIVE EVIDENCE

A comparison between similarly situated individuals.

DIRECT EVIDENCE

Related to the respondent's motive. It is defined as any statement or action by an official of the respondent that indicates a bias for or against members of particular groups.

DOCUMENTARY EVIDENCE

Written material which is generated during the course of normal business activity.

STATISTICAL EVIDENCE

Statistics--facts or data of a numerical kind; assembled, classified and tabulated to present significant information about a given subject.

Statistical evidence can indicate the presence of a discriminatory motive in an individual case of disparate treatment or it can demonstrate a pattern and practice of disparate treatment.

Statistics alone will not normally prove an individual case of disparate treatment.

Statistical evidence is necessary to establish an adverse impact case.

Statistical evidence may indicate that certain policies of the respondent have an adverse impact on members of a protected class or have not been equally applied.

TESTIMONIAL EVIDENCE

Evidence which is given orally. Witness testimony is an integral part of all investigations. It assists in obtaining information regarding alleged discriminatory statements, events, policies, or practices; in ascertaining the qualification and job performance of class and non-class members; in testing the validity of respondent defenses; in resolving job equality issues in EPA investigations, in understanding records maintained by respondent, and in testing the accuracy and validity of those records.

APPENDIX C

COMPLAINANT CONSENT/RELEASE FORM

Your Name:

Address:

Complaint number(s): (if known)

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

APPENDIX D

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."

**COMPLAINTS INVESTIGATION REFERENCE
NOTBOOK**

Tab 7

Case Studies

COMPLAINTS INVESTIGATIONS REFERENCE NOTEBOOK
Case Study 3-1

COMPLAINANT ALLEGES THAT BLACK CONTRACTORS WERE DENIED THE OPPORTUNITY TO BID ON CONTRACTS ASSOCIATED WITH A SCENIC BY-WAY PROJECT THAT IS OF SPECIAL INTEREST TO THE BLACK COMMUNITY. COMPLAINANT ALLEGES THAT A WHITE CONTRACTOR WAS AWARDED THE CONTRACT.

ELEMENTS OF PROOF

ESTABLISHMENT OF PRIMA FACIE CASE

RESPONDENT'S LEGITIMATE NON-DISCRIMINATORY REASON

IS RESPONDENT'S REASON A PRETEXT TO DISCRIMINATE?

COMPLAINTS INVESTIGATIONS REFERENCE NOTEBOOK
Case Study 3-2

COMPLAINANT APPLIED FOR AND WAS NOT SELECTED FOR A PROMOTIONAL POSITION. COMPLAINANT ALLEGES THAT SHE WAS NOT SELECTED BECAUSE OF HER SEX, FEMALE. COMPLAINANT ALLEGES THAT A LESS QUALIFIED MALE WAS SELECTED FOR THE POSITION.

ELEMENTS OF PROOF

ESTABLISHMENT OF PRIMA FACIE CASE

RESPONDENT'S LEGITIMATE NON-DISCRIMINATORY REASON

IS RESPONDENT'S REASON A PRETEXT TO DISCRIMINATE?

COMPLAINTS INVESTIGATIONS REFERENCE NOTEBOOK
Case Study 3-3

COMPLAINANT, A FEMALE CONTRACTOR, WAS SELECTED AS THE SOLE DBE FIRM TO MEET RESPONDENT'S 12% DBE GOAL. COMPLAINANT WAS TERMINATED FROM THE CONTRACT PRIOR TO COMPLETION OF THE WORK AND REPLACED BY ANOTHER DBE FIRM. COMPLAINANT ALLEGES THAT SHE WAS REPLACED BECAUSE RESPONDENT FOUND A CHEAPER DBE FIRM TO COMPLETE THE WORK.

ELEMENTS OF PROOF

ESTABLISHMENT OF PRIMA FACIE CASE

RESPONDENT'S LEGITIMATE NON-DISCRIMINATORY REASON

IS RESPONDENT'S REASON A PRETEXT TO DISCRIMINATE?