



In Reply Refer to: HCR-20
DOT# 2020-0031

NOV 26 2019

(b) (6)

Subject: Dismissal of Complaint DOT# 2020-0031

Dear **(b) (6)**,

This letter is to inform you that the Federal Highway Administration (FHWA) Office of Civil Rights has determined that it will dismiss the above complaint, which alleges violations that may be related to Title VI of the Civil Rights Act of 1964, the U.S. Department of Transportation (USDOT) Title VI implementation regulations at 49 C.F.R. Part 21 and/or FHWA's Title VI regulations at 23 C.F.R. Part 200 (hereinafter Title VI). Title VI prohibits discrimination on the basis of race, color, or national origin in programs and activities receiving Federal financial assistance.

To be accepted for investigation, a complaint must meet the jurisdictional requirements provided by 49 C.F.R. § 21.11, as well as the legal standards discussed in the U.S. Department of Justice Title VI Legal Manual. First, complaints must be filed within 180 calendar days of the alleged discriminatory act, unless the time for filing is extended by FHWA. Second, the matters must concern recipients of federal financial assistance for a program or programs authorized under a law administered by FHWA. Finally, the complaint must describe an alleged discriminatory act or acts that, if true, would fall under FHWA's jurisdiction and potentially violate FHWA's Title VI regulations.

You allege that your current employer, the New Hampshire Department of Transportation (NHDOT), discriminated against you and similarly situated employees on the basis of age. Specifically, you allege the NHDOT's application of the state's holiday pay rules will mean that employees retiring at the end of November may be either denied holiday pay or be forced to postpone retirement until the next month. You allege this policy will have a disparate impact on employees on the basis of age, as retiring employees will be disparately harmed by these policies.

After careful consideration, FHWA has determined the allegations and facts in your complaint do not meet the minimum criteria under which FHWA could establish a case of disparate treatment or disparate impact under Title VI. The available information is insufficient to show that your allegations—which appear to concern employment—would fall into a category of employment practice that is covered by Title VI, pursuant to 49 C.F.R. § 21.5(c). The primary objective of the Federal financial assistance involved is not for the purpose of providing employment. Likewise, these employment practices are unlikely to affect ultimate beneficiaries of the Federal assistance from FHWA. Finally, age discrimination is not a covered basis under

Title VI of the Civil Rights Act of 1964 or the implementing regulations for the USDOT or the FHWA. For these reasons, this complaint will be dismissed by FHWA and closed with no further action.

If you have any questions, please contact Nichole McWhorter at (202) 366-1396.

Sincerely,



Nichole McWhorter
Title VI Team Leader
Office of Civil Rights

cc: Patrick Bauer, Division Administrator, FHWA NH Division Office
Cindy Vigue, Assistant Division Administrator, FHWA NH Division Office
Wanda Hughley-Culbertson, Civil Rights Specialist, FHWA NH Division Office
Jim Esselman, Senior Attorney-Advisor, FHWA Office of Chief Counsel
Yvette Rivera, Associate Director, Equal Employment Opportunity Programs Division,
Departmental Office of Civil Rights
Kevin Resler, National Title VI Program Coordinator, FHWA Office of Civil Rights