



**U.S. Department of
Transportation**

Departmental Office of Civil Rights
1200 New Jersey Avenue, S.E., W76-401
Washington, DC 20590

Via Email and Overnight Mail

January 19, 2017

The Honorable Larry Hogan
Governor
State of Maryland
100 State Circle
Annapolis, MD 21401

The Honorable Pete K. Rahn
Secretary
Maryland Department of Transportation
7201 Corporate Center Drive
Hanover, MD 21076

Dear Governor Hogan and Secretary Rahn:

In response to two separate complaints filed in December 2015, the U.S. Department of Transportation (DOT), specifically the Federal Highway Administration's (FHWA) Office of Civil Rights and the Federal Transit Administration's (FTA) Office of Civil Rights, has been investigating whether the cancellation of the Baltimore Red Line Project and subsequent reallocation of the funding provided for that project violated Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d et seq., which requires that programs or activities receiving Federal financial assistance may not discriminate on the basis of race, color, or national origin. As recipients of DOT Federal financial assistance, the Maryland Department of Transportation (MDOT), the Maryland Transit Administration (MTA), and the Maryland State Highway Administration (SHA) (collectively, the Respondents) must comply with the DOT Title VI implementing regulations.

The two complaints allege discrimination on the basis of race by the Respondents in violation of Title VI. One complaint was filed on behalf of the Baltimore Regional Initiative Developing Genuine Equality (BRIDGE), a local community organization, and Earl Andrews, an individual living in Baltimore, Maryland.¹ The second complaint was filed by Samuel Jordan, another individual living in Baltimore, Maryland. Both the BRIDGE/Andrews and Jordan parties (Complainants) alleged that the Respondents violated Title VI when they cancelled construction of the Baltimore Red Line project and redirected the project's funding to the Highways, Bridges,

¹ The BRIDGE/Andrews parties are represented by counsel: the NAACP Legal Defense and Educational Fund, Inc., the Civil Rights Education and Enforcement Center.

and Roads Initiative, causing an adverse and disparate impact on African-American residents in Baltimore.

On January 7, 2016, DOT combined both complaints and, based on our authority under Title VI and the DOT Title VI implementing regulations at 49 C.F.R. § 21.11(e), accepted them for investigation.

To date, our investigation has revealed that when the Red Line Project was cancelled on June 25, 2015, \$1.35 billion in funding that had been dedicated to the project was reallocated into the Highway User revenue account, to be distributed by MDOT. The Transportation Trust Fund (TTF) budget changed to reflect the cancellation and the new Highways, Bridges, and Roads Initiative, and Baltimore City received its state-mandated 7.7% for its road and highway projects in accordance with the statutory formula from the reallocated funds.

In addition to reallocating funding for the Red Line Project, the Governor rebranded the prior administration's Bus Network Improvement Project (BNIP) – which would have made improvements to the city's bus system – as the "BaltimoreLink." According to the Governor, the BaltimoreLink would increase the frequency of bus service to areas throughout Baltimore, add high-frequency lines to reduce overcrowding, and improve reliability with a more aggressive timeline for implementation than the BNIP.

Pursuant to 49 C.F.R. § 21.5(b)(7) of DOT's Title VI regulation, a recipient is expected to affirmatively ensure that "no person is excluded from participation in or denied the benefits of the program or activity on the grounds of race, color or national origin" whether or not there is a history of exclusion. In allocating Federal highway and transit funding, Federal law requires State and local agencies to carry out a planning process that identifies which projects are to be funded with Federal funds. 23 U.S.C. §§ 134 & 135; 49 U.S.C. §§ 5303 & 5304. In addition, DOT's planning regulations for highway and transit projects require each recipient to carry out a comprehensive statewide transportation planning process that it certifies complies with Title VI, including during the consideration and implementation of transportation projects. 23 C.F.R. § 450.220(a)(2); 23 C.F.R. § 450.218(a)(2).

Based upon the evidence gathered so far, we cannot determine whether the Governor's decision-making process included any effort to ensure Respondents' compliance with their obligations under the DOT planning regulations and Title VI. For example, our investigation determined that all of the decisions regarding the Red Line cancellation and reallocation of funding were made unilaterally by the Office of the Governor, without any consultation with the Maryland Department of Transportation. Respondents have offered no evidence to date that they or the Governor considered any Title VI impacts that might have resulted from the reallocation of funding previously associated with the Red Line Project in their overall statewide transportation planning process, as required by DOT's transportation planning regulations and Title VI regulations. 23 C.F.R. § 450.220; 49 C.F.R. § 21.

Moreover, DOT's investigation has revealed that the Respondents administered their programs and services in a manner that calls into question whether the Respondents violated DOT's regulations governing the planning process, including Title VI. As a general rule, a pattern of cancelling projects or a pattern by a state of underserving communities in the provision of transportation services, in a way that disproportionately affects minority communities, may be a prima facie Title VI violation.

Accordingly, pursuant to 49 C.F.R. § 21.9(c), DOT will conduct a comprehensive compliance review of the Respondents' programs and activities in order to ensure Title VI compliance through all stages of the Respondents' programs and activities, including the allocation of funding. The DOT will work with the Respondents to schedule this review. This review may require the development of a compliance action plan and a corrective action plan to remedy any areas of noncompliance. Until the compliance review is complete, the complaints will remain open and the investigation will continue to determine whether the cancellation of the Red Line and reallocation of the project's funding to the Highways, Bridges, and Roads Initiative violated Title VI.

We look forward to working with you to resolve this matter. If you have any questions regarding this letter, please contact me at 202.366.5131.

Sincerely,



Yvette Rivera
Associate Director
Departmental Office of Civil Rights
U.S. Department of Transportation

cc: Via Overnight Mail

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