

Civil Rights Compliance: Title VI of the Civil Rights Act of 1964

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- ECOS WORKSHOP
 - PART I
 - MARCH 4, 2021
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Workshop Plan

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- Part 1: Title VI 101 (March 4)
- Part II: Foundational Procedural Requirements (March 31)
- Part III: Ensuring Compliance with Anti-Discrimination Requirements -- Application to Permitting & Other Issues (April 11)

Title VI 101 Agenda

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- 3:30 Welcome
- 3:35 Requirements of the Laws and Regulations
- 4:00 Breakout Sessions & Report Out
- 4:30 Procedure: What to Expect
- 4:45 Discussion
- 4:55 Closeout/Next Steps

EPA'S EXTERNAL CIVIL RIGHTS COMPLIANCE PROGRAM



- Mission: Enforce the Federal Civil Rights Laws, Including Title VI.
- The External Civil Rights Compliance Office (ECRCO) within OGC is responsible for carrying out this Agency mission.

Civil Rights Enforcement Across the Federal Government

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- US DOJ: Coordinating Function Under EO 12250
- US Ed: By the numbers: (FY 2020)
 - Received 9,711 complaints
 - Resolved 10,185 complaints
- US DoT, FTA Circular 4702.1B, “Title VI Requirements and Guidelines for Federal Transit Administration Recipients”

Alexander v. Sandoval

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- *Alexander v. Sandoval*, 532 U.S. 275 (2001)
- Consequence: complainants rely on agency enforcement

EPA'S EXTERNAL CIVIL RIGHTS COMPLIANCE PROGRAM



- **FEDERAL CIVIL RIGHTS**
- **LAWS EPA ENFORCES**

TITLE VI AND ENVIRONMENTAL JUSTICE

COMPARE AND CONTRAST

	Title VI 8	Environmental Justice
Source of Authority	Federal civil rights statute	Executive Orders
Purpose	Ensure that federal funds are not being used to discriminate	Advance EJ through integrating EJ into federal environmental law
Who is Covered	Recipients of federal financial assistance	Federal agencies as designated by Executive Order
What is Covered	Race, Color, National Origin	Race, Color, National Origin, Income
How Enforced	Fed court (discriminatory intent only), Fed Agency (discriminatory intent and effect), Compliance Reviews	Not enforceable in court; does not create any rights, benefits, or trust responsibilities enforceable against the United States

TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

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**.

42 U.S.C. Section 2000d



SECTION 504 OF THE REHABILITATION ACT OF 1973



No otherwise qualified **individual with a disability** in the United States ... shall, solely by reason of her or his **disability**, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any **program or activity receiving federal financial assistance** or under any program or activity conducted by any Executive agency

29 U.S.C. Section 794(a)

TITLE IX OF THE EDUCATION AMENDMENTS OF 1972

No **person** in the United states shall, on the basis of **sex**, be excluded from participation in, denied the benefits of, or subjected to discrimination under any education **program or activity receiving federal financial assistance**.

20 U.S.C. Section 1681(a)

FEDERAL WATER POLLUTION CONTROL ACT AMENDMENTS OF 1972



No **person** in the United States 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 Act.**

Pub. L. 92-500 Section 13, 86 Stat. 903 (codified as amended at 33 U.S.C. Section 1251)

AGE DISCRIMINATION ACT OF 1975



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**.

42 U.S.C. Section 6102

EPA REGULATIONS

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Programs or activities receiving EPA assistance “shall not directly or through contractual, licensing, or other arrangements on the basis of race, color, or national origin...”:

- Subject a person to segregation or separate treatment;
- Deny a person or group the opportunity to participate as members of any planning or advisory body;
- Use criteria or methods of administration “which have the effect of subjecting individuals to discrimination...”;
- Restrict a person in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, aid, or benefit ...;
- “Choose a site or location of a facility that has the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination” among other things.

40 C.F.R. § 7.35

TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

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**.

42 U.S.C. Section 2000d



NO PERSON IN THE UNITED STATES . . .

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- ❖ “Person” includes citizens and noncitizens alike.
- ❖ Undocumented individuals in the United States are protected from discrimination by the Federal civil rights laws.

...SHALL ON THE GROUND OF RACE, COLOR, OR NATIONAL ORIGIN...

Beyond the obvious:

“[R]ace, color or national origin” includes any **perceived** race, color, or national origin.



National origin includes an individual's **accent, ancestry, birthplace, culture, immigration status, or language.**

RECIPIENT

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- ❖ Any state or its political subdivision,
- ❖ Any instrumentality of a state or its political subdivision,
- ❖ Any public or private agency, institution, organization, or other entity, or
- ❖ Any person to which Federal financial assistance is extended

Directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.

FEDERAL FINANCIAL ASSISTANCE

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***Federal financial assistance (FFA) *does not* have to be monetary**

- ❖ Grants and loans
- ❖ Grants or donation of Federal property (e.g., military surplus, computers, vehicles)
- ❖ Detail of Federal personnel
- ❖ The sale, lease, or permission to use Federal property, and
- ❖ Any Federal contract for the “provision of assistance.”

PROGRAM OR ACTIVITY



All of the operations of...

- Department or Agency of State or local government
- Educational institutions
- Corporations & private organizations

that receive federal financial assistance.”

IDENTIFYING DISCRIMINATION UNDER THE CIVIL RIGHTS LAWS, INCLUDING TITLE VI



Intentional Discrimination
(Disparate or Different Treatment)

Disparate Impact
(Discriminatory Effects)

Retaliation and Intimidation

WHAT IS DISPARATE IMPACT?

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When a recipient uses criteria or methods of administration (*i.e.*, makes a decision, like a permitting decision) that has the effect of subjecting persons to discrimination.

How do you prove a “prima facie” case of disparate impact?

1. Determine that the recipient utilized a **facially neutral policy or practice** that
2. Had an **adverse** (harmful)
3. **Disproportionate** (disparate) impact on the basis of race or ethnicity, *etc.*, and
4. Show a **causal link** between the facially neutral policy or practice (action) and the adverse disproportionate (disparate) impact.

REGULATIONS ALSO REQUIRES:

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Recipients have in place a nondiscrimination program/procedures:

- Notice of non-discrimination §7.95(a);
- Non-Discrimination Coordinator §7.85(g);
- Grievance procedures for complaints filed under the Federal non-discrimination laws §7.90;
- Access to programs and activities for persons with limited English proficiency and persons with disabilities;
- Public participation plan that is consistent with federal civil rights laws; and
- Collect and maintain data about the communities they serve §7.85(a)-(f).

Taking Action to Ensure Compliance

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- Consider procedural requirements
- Does the action, policy or practice have a disparate impact?
- Does the recipient have a substantial, legitimate justification for the action, policy or practice?
- Is there a less discriminatory impact?



RESOURCES

- [Title VI of the Civil Rights Act of 1964](#)
- EPA Non-Discrimination Regulations
 - [40 C. F. R Part 7](#)
 - [40 C.F.R. Part 5](#)

[Key EPA Title VI Guidance and Policies](#)

- Title VI Prohibition Against National Origin Discrimination Affecting LEP Persons Guidance (2004)
- Title VI Public Involvement Guidance for EPA Recipients (2006)
- Chapter 1 of Compliance Toolkit and FAQs
- [DOJ Title VI Legal Manual](#)
- [EPA September 20 Responses to the EPA OIG Audit: https://www.epa.gov/office-inspector-general/report-improved-epa-oversight-funding-recipients-title-vi-programs-could](https://www.epa.gov/office-inspector-general/report-improved-epa-oversight-funding-recipients-title-vi-programs-could)

Breakout Sessions

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- Questions about the presentation – particularly on obligations under Title VI and agency regulations?
- Are there ways in which civil rights obligations might be helpful in – or aligned with – your agency priorities? Are there opportunities?
- Based on what you've heard, what questions might you take back to your program about compliance?
- What activities might you put in place to ensure compliance?

EPA'S EXTERNAL CIVIL RIGHTS COMPLIANCE PROGRAM



- **COMPLAINT RESOLUTION**
- **And COMPLIANCE PROCEDURES**

ECRCO'S RESPONSIBILITIES

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- ❖ Conduct civil rights investigations and resolve complaints
- ❖ Initiate compliance reviews and provide proactive technical assistance; assess the pre-award review Form 4700-4
 - ❖ See ECRCO Case Resolution Manual
- ❖ Conduct technical assistance and outreach activities.

COMPLIANCE REVIEWS

- An ECRCO-initiated investigation of a particular aspect of an EPA recipient's programs or activities to determine compliance with federal civil rights laws.
- EPA regulations specify that EPA may periodically conduct compliance reviews to assess the practices of recipients to determine whether they comply with nondiscrimination statutes and regulations. *See* 40 C.F.R. §§ 7.110, 7.115; 5.605.
- ECRCO committed to increasing the number of post-award affirmative compliance reviews from today going forward.

[ECRCO Process for Prioritizing and Selecting Compliance Reviews](#)

EVALUATING COMPLAINTS

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- Four jurisdictional requirements:
 - Whether the complaint is in writing (40 C.F.R. § 7.120);
 - Whether it alleges a discriminatory act(s) that, if true, may violate EPA's nondiscrimination regulation (40 C.F.R. § 7.120) - race, color, national origin (including limited English proficiency), disability, sex, or age; or for intimidation or retaliation (40 C.F.R. § 7.100);
 - Whether it identifies an applicant for, or a recipient of, EPA financial assistance as the entity that committed the alleged discriminatory act (40 C.F.R. § § 7.15, 7.120); and
 - Whether it was received by ECRCO within 180 calendar days of the alleged discriminatory act (40 C.F.R. § 7.120).

OTHER FACTORS ECRCO CONSIDERS IN EVALUATING COMPLAINTS

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Not
grounded in
fact

Pending
litigation

Lacks
sufficient
detail

Moot

Unripe

JURISDICTIONAL DETERMINATION

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- In General, ECRCO will:
 - Accept
 - Reject
 - Reject and Refer
 - Possibility of Coordination with Another Agency

RESOLUTION PATHS FOR COMPLAINTS ACCEPTED FOR INVESTIGATION

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- ❖ Once ECRCO accepts a complaint for investigation, 40 C.F.R. § 7.115(c)(1) provides that
 - ❑ within 180 calendar days of accepting a complaint for investigation, ECRCO will issue “preliminary findings.”
- ❖ Correspondingly, however, ECRCO is required by regulation to attempt to resolve complaints informally whenever possible.
- ❖ The 180-day time period is tolled:
 - ❑ when the complainant and recipient agree to pursue ADR pursuant to 40 C.F.R. § 7.120; or
 - ❑ when the recipient agrees to engage in informal resolution agreement process under 40 C.F.R. § 7.120(d)(2)(i).

INFORMAL RESOLUTION

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- ❖ Informal Resolution Agreement (IRA) Process
- ❖ Alternative Dispute Resolution (ADR) Process

INFORMAL RESOLUTION: IRA

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- ✓ ***ECRCO and the recipient*** attempt to informally resolve a complaint through an Informal Resolution Agreement (IRA).
- ✓ Fact-finding may continue.
- ✓ ECRCO seeks to obtain an agreement with recipient to engage in IRA process ASAP after acceptance.
- ✓ ECRCO ***seeks input from the complainant*** regarding potential complaint resolution issues.
- ✓ Once IRA is signed, ECRCO issues letters to the recipient and complainant resolving the complaint.
- ✓ ECRCO monitors the implementation of the IRA until the recipient has fulfilled the terms of the Agreement.

INFORMAL RESOLUTION: ADR

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- ✓ Formal mediation of complaint issues accepted for investigations between the **recipient and the complainant using a professionally trained mediator.**
- ✓ ECRCO has discretion to determine, on a case-by-case basis, whether to offer ADR as a possible resolution path.
- ✓ Completely voluntary process for both the recipient and the complainant.
- ✓ ECRCO suspends its investigation.
- ✓ If agreement is reached, ECRCO determines if terms reasonably address the issues accepted for investigation.
- ✓ If so, ECRCO issues letters to recipient and complainant that ADR Agreement serves to resolve the complaint fully and that ECRCO will close the complaint as of the date of the letter.
- ✓ ECRCO does not monitor the implementation of the ADR Agreement.

FAILURE OF IRA PROCESS

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- ❖ If an Informal Resolution Process fails, the 180-day clock for preliminary findings resumes.
- ❖ ECRCO will issue Notice to Recipient and Complainant.

PRELIMINARY FINDINGS

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- ❖ EPA's nondiscrimination regulation requires ECRCO to notify the recipient of:
 - preliminary findings within 180 days after acceptance of the complaint for investigation, – excluding any time spent in any failed IRA process;
 - recommendations, if any, for achieving voluntary compliance; and
 - the recipient's right to engage in voluntary compliance negotiations where appropriate.
- ❖ Preliminary findings may include partial findings and may range from preliminary findings of fact to preliminary findings of law, including a finding of insufficient evidence, on one or more issues under investigation.

ENFORCEMENT ACTIONS

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- ❖ If a recipient fails to come into voluntary compliance after Preliminary Findings, ECRCO will issue a Notice of Impending Enforcement Action.
- ❖ When ECRCO issues a Notice of Impending Enforcement Action to a recipient, it will include notice to the recipient that EPA will:
 - (1) initiate administrative proceedings to terminate, or refuse to grant or continue financial assistance to the recipient; or
 - (2) use any other means authorized by law, including referring the matter to the Department of Justice (DOJ). (See 40 C.F.R. § 7.130).



RESOURCES

- [Case Resolution Manual](#)
- EPA Non-Discrimination Regulations
 - [40 C. F. R Part 7](#)
 - [40 C.F.R. Part 5](#)
- [Key EPA Title VI Guidance and Policies](#)
- [DOJ Title VI Legal Manual](#)
- [ECRCO Process for Prioritizing and Selecting Compliance Reviews](#)