

Civil Rights Compliance: Civil Rights Procedural Requirements and Best Practices

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- ECOS WORKSHOP
 - PART II
- MARCH 31, 2022
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Workshop Plan

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- Part 1: Title VI 101 (March 4) **v**
- Part II: Civil Rights Procedural Requirements and Best Practices (March 31)
- Part III: Ensuring Compliance with Anti-Discrimination Requirements -- Application to Permitting & Other Issues (April 11)

Part II Agenda

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12:30 Welcome

12:35 Legal Requirements and Best Practices

1:15 Breakout Sessions

1:30 Report Out & Discussion

1:55 Closeout/Next Steps

EPA'S EXTERNAL CIVIL RIGHTS COMPLIANCE PROGRAM



Mission: Enforce Federal Civil Rights Laws, Including Title VI.

The External Civil Rights Compliance Office (ECRCO) within OGC is responsible for carrying out this Agency mission.

PURPOSE OF THIS TRAINING

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- Address the procedural requirements that recipients must adhere to in developing and maintaining their civil rights programs
- Outline the procedural safeguards and promising practices for building strong and effective civil rights programs.

EPA believes that civil rights complaints and concerns that are filed with EPA may also be addressed proactively by recipients through robust civil rights compliance.

RECIPIENT CIVIL RIGHTS PROGRAMS



Procedural Requirements and Best Practices

Title VI of the Civil Rights Act of 1964

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"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



Sec. 504 of the Rehab. Act

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"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."

29 U.S.C. Section 794

40 C.F.R. PARTS 5 AND 7

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Legal requirements for applicants and recipients of EPA financial assistance include:

- Designating at least one person to coordinate efforts to comply with federal civil rights laws §7.85(g);
- Providing initial and continuing notice of nondiscrimination §7.95(a);
- Adopting grievance procedures that assure the prompt and fair resolution of complaints alleging federal civil rights violations §7.90;
- Collecting, maintaining and providing civil rights compliance information §7.85(a)-(f).

ADDITIONAL OBLIGATIONS UNDER CIVIL RIGHTS LAWS

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- Taking reasonable steps to provide meaningful access for persons with limited English proficiency (LEP) - Title VI;
- Providing persons with disabilities the opportunity for full participation in the recipient's programs and activities - Section 504.
- Implementing public participation policies and processes that ensure meaningful public involvement

Pre-Award Review

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Form 4700-4

-Notice

-Identify coordinator

-Demographic data

-Policy/procedure for LEP

-Grievance procedure

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Preaward Compliance Review Report for All Applicants and Recipients Requesting EPA Financial Assistance

Note: Read Instructions before completing form.

This collection of information is approved by OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. (OMB Control No. 2030-0020). Responses to this collection of information are required to obtain an assistance agreement (40 CFR Part 30, 40 CFR Part 31, and 40 CFR Part 33 for awards made prior to December 26, 2014, and 2 CFR 200, 2 CFR 1500, and 40 CFR Part 33 for awards made after December 26, 2014). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The public reporting burden for this collection of information is estimated to be 0.5 hours per response. Send comments on the Agency's need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden to the Regulatory Support Division Director, U.S. Environmental Protection Agency (2821T), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Include the OMB control number in any correspondence. Do not send the completed form to this address.

I. A. Applicant/Recipient (Name, Address, City, State, Zip Code)

Name:
Address:
City:
State: Zip Code:

B. Unique Entity Identifier (UEI):

C. Applicant/Recipient Point of Contact

Name: Phone: Email:
Title:

II. Is the applicant currently receiving EPA Assistance? ☐ Yes ☐ No

III. List all pending civil rights lawsuits and administrative complaints filed under federal law against the applicant/recipient that allege discrimination based on race, color, national origin, sex, age, or disability. (Do not include employment complaints, unless covered by 40 C.F.R. Parts 5 and 7.)

IV. List all civil rights lawsuits and administrative complaints decided against the applicant/recipient within the last year that alleged discrimination under federal law based on race, color, national origin, sex, age, or disability and enclose a copy of all decisions. Please describe all corrective actions taken. (Do not include employment complaints, unless covered by 40 C.F.R. Parts 5 and 7.)

V. List all civil rights compliance reviews of the applicant/recipient conducted under federal nondiscrimination laws by any federal agency within the last two years and enclose a copy of the review and any decisions, orders, or agreements based on the review. Please describe any corrective action taken. (40 C.F.R. § 7.80(c)(3))

VI. Is the applicant requesting EPA assistance for new construction? If no, proceed to VII; if yes, answer (a) and/or (b) below.

☐ Yes ☐ No

a. If the grant is for new construction, will all new facilities or alterations to existing facilities be designed and constructed to be readily accessible to and usable by persons with disabilities? If yes, proceed to VII; if no, proceed to VI(b).

☐ Yes ☐ No

b. If the grant is for new construction and the new facilities or alterations to existing facilities will not be readily accessible to and usable by persons with disabilities, explain how a regulatory exception (40 C.F.R. 7.70) applies.

VII. Does the applicant/recipient provide initial and continuing notice that it does not discriminate on the basis of race, color, national origin, sex, age, or disability in its program or activities? (40 C.F.R. 5.140 and 7.95)

☐ Yes ☐ No

a. Do the methods of notice accommodate those with impaired vision or hearing?

☐ Yes ☐ No

b. Is the notice posted in a prominent place on the applicant's/recipient's website, in the offices or facilities or, for education programs and activities, in appropriate periodicals and other written communications?

☐ Yes ☐ No

c. Does the notice identify a designated civil rights coordinator?

☐ Yes ☐ No

EPA Form 4700-4

Terms & Conditions of Assistance

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"... obligate the recipient to comply fully with applicable civil rights statutes and implementing federal and EPA regulations."

- LEP
- Public involvement

Public Policy Requirements

39. Civil Rights Obligations

This term and condition incorporates by reference the signed assurance provided by the recipient's authorized representative on: 1) EPA Form 4700-4, "Preaward Compliance Review Report for All Applicants and Recipients Requesting EPA Financial Assistance"; and 2) Certifications and Representations in Sam.gov or Standard Form 424D, as applicable.

These assurances and this term and condition obligate the recipient to comply fully with applicable civil rights statutes and implementing federal and EPA regulations.

a. Statutory Requirements

- i. In carrying out this agreement, the recipient must comply with:
 1. Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin, including limited English proficiency (LEP), by entities receiving Federal financial assistance.
 2. Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities by entities receiving Federal financial assistance; and
 3. The Age Discrimination Act of 1975, which prohibits age discrimination by entities receiving Federal financial assistance.
- ii. If the recipient is an education program or activity (e.g., school, college or university) or if the recipient is conducting an education program or activity under this agreement, it must also comply with:
 1. Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in education programs and activities operated by entities receiving Federal financial assistance. For further information about your compliance obligations regarding Title IX, see 40 CFR Part 5 and <https://www.justice.gov/crt/title-ix>
- iii. If this agreement is funded with financial assistance under the Clean Water Act (CWA), the recipient must also comply with:
 1. Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination on the basis of sex in CWA-funded programs or activities.

b. Regulatory Requirements

- i. The recipient agrees to comply with all applicable EPA civil rights regulations, including:
 1. For Title IX obligations, 40 C.F.R. Part 5; and
 2. For Title VI, Section 504, Age Discrimination Act, and Section 13 obligations, 40 CFR Part 7.

CIVIL RIGHTS COORDINATOR

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- Having a civil rights coordinator in place is a requirement for receiving EPA Financial Assistance;
- Overarching role is to help ensure compliance with the federal civil rights laws and regulations;
- Must designate at least one person as a civil rights coordinator if recipient employs at least 15 employees*;
- Effectiveness of role depends on recipient providing coordinator with the authority and support necessary to coordinate civil rights compliance, including having access to all relevant information and resources.

COORDINATOR'S ROLES

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- Providing information to the public, as well as internally about its commitment to civil rights compliance;
- Providing information to the public about how persons with LEP and persons with disabilities may participate in recipient's programs and activities;
- Provide notice to the public of grievance procedures and the ability to file a discrimination complaint;
- Ensure that all civil rights complaints filed with the recipient under federal civil rights laws are processed promptly and fairly.

COORDINATOR'S ROLES (CONT.)

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- Ensure that appropriate training is provided for the recipient's staff and contractors;
- Investigate civil rights complaints filed with the recipient and ensure that those complaints are resolved promptly and fairly;
- Update complainants on the progress of their complaints and promptly inform them about any determination made about their complaint;
- Track all discrimination complaints filed with the recipient and conduct periodic reviews of those complaints;
- Undertake periodic evaluations of the efficacy of the recipient's civil rights compliance efforts.

COORDINATOR (CONT.)

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- Should not have other responsibilities that create a conflict of interest (*e.g.*, also serving as the recipient's legal advisor on discrimination claims or engaged in oversight and review of recipient permitting activities);
- Recipient may designate more than one coordinator;
- Recipient should provide support to its coordinator in working with other staff on issues relating to a recipient's civil rights program and obligations - such support and coordination will help ensure consistent practices and enforcement of the laws across the recipient's organization.

NOTICE OF NONDISCRIMINATION

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- Having a notice of nondiscrimination is a requirement for receiving EPA financial assistance.
- EPA regulation, 40 C.F.R. § 7.95, requires recipient to:
 - Publish a notice stating that it does not discriminate on the basis of race, color, national origin, sex, disability and age in a program or activity receiving EPA financial assistance.
 - Provide methods of notice that accommodate those with vision or hearing impairments and in a language or languages other than English, as appropriate.
 - Identify the nondiscrimination coordinator.
- EPA regulation, 40 C.F.R. § 7.100, prohibits intimidation and retaliation - EPA recommends that the notice contain an assurance that intimidation and retaliation is prohibited.

NOTICE (CONT.)

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- At a minimum, notice must be posted in a prominent place in a recipient's offices or facilities.
- Although the regulation does not define the term prominent, EPA considers the most prominent location for posting notice to be on a recipient's website homepage.
- Methods of notice may also include publishing in newspapers and magazines and placing notices in internal publications or on recipient's printed letterhead.
- Sample notice [Procedural Safeguards Checklist](#).

GRIEVANCE PROCEDURES

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- Having a grievance procedures is a requirement for receiving EPA financial assistance.
- Grievance procedures:
 - provide individuals with a formal means for addressing civil rights complaints and
 - a mechanism for recipients to discover incidents of discrimination as early as possible and to effectively resolve individual and systemic issues in their programs and activities.
- EPA's regulation, 40 C.F.R. § 7.90(a), mandates that if a recipient has more than 15 full-time employees,* it must "adopt grievance procedures that assure the prompt and fair resolution" of discrimination complaints.

GRIEVANCE PROCEDURES (CONT.)

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GRIEVANCE PROCEDURES (CONT.)

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Among other things, grievance procedures should:

- Clearly identify the nondiscrimination coordinator by name, with contact information;
- State who may file a complaint and the appropriate bases for filing a complaint;
- Describe the grievance processes available to complainants;
- State that the preponderance of the evidence standard will be applied during the analysis of the complaint;
- Contain assurances that intimidation and retaliation are prohibited
- Assure the prompt and fair resolution of complaints; and
- State that written notice will be promptly provided about the outcome of the investigation, including whether discrimination is found, and the description of the investigation process undertaken.

DATA COLLECTION

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- Data collection and reporting provision, 40 C.F.R. § 7.85 applies to all EPA recipients and is a pre-requisite for receiving EPA financial assistance.
- Data collection is the cornerstone of civil rights compliance and federal agencies have a mandate to collect the data necessary to ensure federal financial assistance recipients are complying with Title VI and other federal civil rights laws.
- Data collection is necessary to inform recipients' compliance activities, to ensure that EPA has sufficient information to inform its civil rights compliance and enforcement activities, and to ensure accountability and adherence to federal civil rights requirements.

DATA COLLECTION

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- EPA regulation, 40 C.F.R. § 7.85, obligates every recipient to collect and maintain, and if requested by ECRCO, to provide the following data:
 - (1) A brief description of any lawsuits pending against the recipient that allege discrimination prohibited by EPA's nondiscrimination regulation;
 - (2) Racial/ethnic, national origin, age, sex, and disability data;
 - (3) A log of discrimination complaints which identifies the complaint, the date it was filed, the date the recipient's investigation was completed, the disposition, and the date of disposition; and
 - (4) Reports of any compliance reviews conducted by any other agencies.
- EPA may require a recipient to submit data specific to certain programs or activities if EPA has reason to believe that discrimination may exist or to investigate a complaint alleging discrimination.

DATA COLLECTION – STATE AGENCIES

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- State agency recipients must collect and maintain appropriate data, and as a best practice:
 - review and update the data collected at least annually to determine whether actions, policies and practices comply with federal civil rights laws and agency regulations;
- Consistent with EPA regulation to provide data at the request of EPA, State agency recipients should make this data available through the prominent posting of regularly updated data on the recipient's website in a manner that is consistent with federal civil rights laws.

DATA COLLECTION – TYPES OF DATA

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- (1) The population eligible to be served by recipient's programs and activities, by race, color, and national origin (including LEP), sex, if applicable, and age; as well as any related data utilized for determining whether any persons are or will be denied such services on the basis of prohibited discrimination (race, color, national origin, sex, if applicable, and age);
- (2) The present or proposed membership, by race, color, and national origin, sex, where appropriate, and age in any planning or advisory body which is an integral part of the program or activity (such as a local sanitation board and sewer authorities).
- (3) The location of existing or proposed recipient's offices/facilities and any related information adequate for determining whether a location has or will have the effect of unnecessarily denying access to any persons on the basis of prohibited discrimination (*e.g.*, office/facility physical accessibility, location of public hearings and meetings, etc.).

DATA COLLECTION – TYPES OF DATA (CONT.)

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Best practice to inform a disparate impact analysis:

With respect to any permitting activity, the populations affected by the permitted project (including by race, color, and national origin (including LEP)).

The population affected by a permit may be determined by, for example,

- the distribution of adverse impacts taking into account the pathway of impact; or
- people living in proximity to the site.

MEANINGFUL ACCESS – PERSONS WITH LEP

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Recipients have an affirmative obligation to provide persons with limited English proficiency (LEP) ***meaningful access to all of the recipients' programs and activities.*** Title VI; *Lau v. Nichols*

- In requesting and receiving EPA financial assistance, recipients agree to provide meaningful access to persons with LEP at no cost as required by Title VI, and in implementing that requirement, further agree to use [EPA's LEP Guidance](#).
- **Persons with LEP:** Individuals who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English can be limited English proficient and are entitled to language assistance.



MEANINGFUL ACCESS – EPA'S LEP GUIDANCE

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[EPA's LEP Guidance](#) provides a flexible and fact-dependent analysis using four factors to in determining the reasonable steps to comply with the obligations to ensure meaningful access to recipients' programs and activities.

1. The number or proportion of individuals with LEP encountered in the impacted population.
2. The frequency with which individuals with LEP come in contact with the program or activity.
3. The nature and importance of the program, activity, or service provided.
4. Resources and costs.

MEANINGFUL ACCESS – EPA’S LEP GUIDANCE

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All recipients of EPA financial assistance have an obligation to ensure meaningful access to a recipient’s program or activities for LEP persons.

- ***For state, regional and larger local entities***, the four factors will militate toward implementing a *well-developed and periodically updated LEP plan and/or policies and procedures*.
- ***For smaller businesses and local governments, or smaller non-profits***, particularly those with a low number and frequency of encounters with individuals who are LEP, may choose not to develop a written LEP plan.

MEANINGFUL ACCESS – PERSONS WITH DISABILITIES

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- Recipients agree to abide by Section 504 as a prerequisite to receiving EPA financial assistance.
- Section 504 and EPA's nondiscrimination regulation prohibit discrimination on the basis of disability in the programs or activities of any recipient receiving EPA financial assistance.
- EPA's nondiscrimination regulation also requires recipients to self-evaluate administrative policies and practices in its program to consider whether such policies and practices may involve disability discrimination. 40 C.F.R. § 7.85(c).

MEANINGFUL ACCESS – PERSONS WITH DISABILITIES (CONT.)

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To facilitate compliance with disability nondiscrimination laws, a recipient should:

- make communities it serves aware that services for persons with disabilities are available, at no cost;
- develop and implement a policy and procedure for providing persons with disabilities the opportunity for meaningful access and opportunity for full participation in its programs and activities that meets the legal requirements to:
 - provide at no cost appropriate auxiliary aids and services;
 - ensure that persons with disabilities can exercise their right to request accommodations appropriate to their needs in order to fully participate in or benefit from recipient's programs and activities in an accessible, non-discriminatory, and integrated setting.

PUBLIC INVOLVEMENT

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- Federal civil rights laws generally mandate that “[n]o person . . . be excluded from participation in . . . any program or activity” receiving EPA assistance. *See, e.g.*, Title VI, Section 504.
- Thus, all recipients must ensure that they do not discriminate in their public participation processes in all of their various programs and activities.
- In addition, all recipients agree to use as a guide EPA Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs (Public Involvement Guidance) as a condition for receiving EPA financial assistance.

PUBLIC INVOLVEMENT – EPA PUBLIC INVOLVEMENT GUIDANCE

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- [EPA Title VI Public Involvement Guidance](#) - not limited to the environmental permitting context - addresses potential civil rights issues that could arise generally with public participation and tools and approaches that are equally effective beyond permitting.
- Best practice for all recipients to affirmatively demonstrate compliance is to have in place a public involvement plan (PIP) - staff size, available resources, and the nature of its programs and activities may dictate the type and scope of written public involvement policies and procedures.
 - EPA expects all governmental entities employing more than 15 full-time staff members to have written and published public involvement plans.
 - Such a robust, written public involvement plan may not be reasonably expected of smaller entities such as small businesses and non-profits that employ fewer than 15 full-time employees.

PRE-AWARD COMMITMENT TO PROCEDURAL SAFEGUARDS

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- As a prerequisite for receiving EPA financial assistance, applicants are required to certify on [EPA's Form 4700-4](#) (“Form”) that they have in place the procedural safeguards elements covered in this presentation.
- Applicant for EPA financial assistance certifies that:
 - it will comply with all federal civil rights laws and EPA’s nondiscrimination regulation;
 - its Form responses “are true, accurate and complete”; and
 - “any knowingly false or misleading statement may be punishable by fine or imprisonment or both under applicable law.”
- EPA to launch affirmative audits of submitted Forms to verify accuracy and determine compliance with the procedural safeguards beginning in FY2022.



RESOURCES

EPA Non-Discrimination Regulations

- [40 C. F. R Part 7](#)
- [40 C.F.R. Part 5](#)
- [Key EPA Title VI Guidance and Policies](#)
 - Procedural Safeguards Checklist for Recipients
 - Title VI Prohibition Against National Origin Discrimination Affecting LEP Persons Guidance (2004)
 - Title VI Public Involvement Guidance for EPA Recipients (2006)

[EPA's Form 4700-4](#)

[EPA General Terms & Conditions](#)

Scenario

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This case study focuses on Clean Air Act permitting programs, some of which are directly implemented by EPA but most of which are carried out by states, local agencies and approved Tribes. Your agency administers the Title V air permitting program and, notably, residents in at least some communities have raised longstanding concerns about both whether they have an opportunity for meaningful involvement in decisions affecting them and, ultimately, about pollution from sources that, at least arguably, disproportionately affect low-income communities of color.

Questions for Discussion

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- What procedural obligations does the state have under Title VI?
- What plans to ensure compliance with procedural requirements should the agency have in place in advance of any particular permitting process?
- What steps should the permitting program take to comply with the procedural requirements during the permitting process?
- What challenges would the agency face in fulfilling these obligations?
- Are there ways in which this aligns with processes your agency has already undertaken?
- Do you have any suggestions for how to operationalize procedural requirements in air permitting programs?