

OVERVIEW OF THE TITLE VI COMPLAINT AND COMPLIANCE REVIEW PROCESSES

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- **ECOS WORKSHOP PT.1**
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 - EPA OFFICE OF EXTERNAL CIVIL RIGHTS COMPLIANCE
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GOALS

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- PART I

- DEMYSTIFY COMPLAINT AND
- COMPLIANCE REVIEW PROCESS

- PART II

- DEMYSTIFY PRE-AWARD REVIEW PROCESS

EPA'S EXTERNAL CIVIL RIGHTS COMPLIANCE PROGRAM

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Mission: Enforce the Federal Civil Rights Laws, including Title VI.

The Office of External Civil Rights Compliance (OECRC) within the Office of Environmental Justice and External Civil Rights (OEJECR): Responsible for carrying out this Agency mission.

COMPLAINTS

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- A complaint is a written statement to the agency alleging that the federal civil rights of one or more persons have been violated by a recipient of financial assistance from EPA and requesting that the agency investigate the alleged discrimination.
- Complaints may be filed by electronic mail, regular mail, fax, or in person.
- The following are not considered to be complaints:
 - Oral allegations that are not reduced to writing;
 - Anonymous correspondence;
 - Courtesy copies of correspondence or a complaint filed with or otherwise submitted to another person or other entity;
 - Inquiries that seek advice or information but do not seek action or intervention from the agency; or
 - Correspondence expressing general concerns about the environment.

ACKNOWLEDGING RECEIPT OF COMPLAINTS

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- Once OECRC determines that a correspondence constitutes a complaint, OECRC will promptly issue a letter to the individual (or group) who filed the complaint as well as to any named entity (potential/alleged recipient) to acknowledge receipt. [40 C.F.R. 7.120\(c\)](#)
- After acknowledging receipt, OECRC will commence a jurisdictional review to determine whether to accept the complaint for investigation or to reject or reject/refer the complaint. [40 C.F.R. 7.120\(d\)\(1\)\(i\)](#)

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. § § [7.115](#), 7.120) and
 - Whether it was received by OECRC within 180 calendar days of the alleged discriminatory act (40 C.F.R. § 7.120)

OTHER FACTORS OECRC CONSIDERS IN EVALUATING COMPLAINTS

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Not grounded
in fact

Pending
litigation
of the same
issue

Lacks
sufficient
detail

Moot

Unripe

JURISDICTIONAL DETERMINATION

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- In General, OECRC will:
 - Accept
 - Reject
 - Reject and Refer
 - Explore Coordination with Another Federal Agency

ACCEPTANCE OF COMPLAINT FOR INVESTIGATION

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- If the complaint is accepted for investigation, letters of acceptance will be issued to recipients and complainants setting forth the following, among other things:
 - The issue(s) to be investigated;
 - That a copy of the complaint is being provided to the recipient for an “opportunity to make a written submission responding to, rebutting, or denying the allegations raised in the complaint.” (*See* 40 C.F.R. § 7.120(d)(1)(ii-iii));
 - Information about the informal resolution agreement process. (*See* 40 C.F.R. § 7.115);

***OECRC’s decision to accept a complaint IS NOT a decision on the merits of the complaint.**

COMPLIANCE REVIEWS

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- An OECRC-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, including the request of data and on-site 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](#).

INITIATION OF COMPLIANCE REVIEWS

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OECCRC will consider a number of factors and sources when prioritizing and selecting compliance reviews, including:

- previous complaints filed
- data regarding violations of environmental laws
- scientific and other studies
- input and information from communities
- input from EPA regional and program offices
- anonymous correspondence, etc.

The scope of a compliance review is defined on a case-by-case basis. See [40 C.F.R. § 7.115](#); [Case Resolution Manual \(CRM\) Chapter 8. Process and Criteria for Selecting Compliance Reviews](#)

NOTICE OF COMPLIANCE REVIEWS

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After selecting a recipient for a compliance review, a notice will be sent with information on the nature and schedule for the review and the opportunity to make a written submission to respond to any allegations in the review before any determination is made. See [40 C.F.R. § 7.115\(b\)](#).

The processes for compliance reviews and complaint investigations are similar.

QUESTIONS/DISCUSSION

RESPECTIVE ROLES POST ACCEPTANCE

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- OECRC is not in an adjudicatory role, ruling on a disputed issue or claim between parties. OECRC investigates potential discrimination by its recipients, and generally either resolves the discrimination issues through voluntary informal resolution or issues preliminary findings.
- It is an EPA goal is to promote appropriate involvement by both complainants and recipients in the complaint investigation and informal resolution processes. (See, e.g., [Role of Complainants and Recipients in the Title VI Complaints and Resolution Process](#) (2015))
- OECRC has implemented internal procedures for its investigation and informal resolution processes that provide for check-ins with both recipients and complainants to ensure transparency, efficiency, and effectiveness through appropriate sharing of information and status updates.

RESOLUTION PATHS

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- ❖ Once OECRC 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, OECRC will issue “preliminary findings.”
- ❖ Correspondingly, however, OECRC is required by regulation to attempt to resolve complaints informally whenever possible.
- ❖ The preliminary findings 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).

*Resolution paths also apply to Compliance Reviews

INFORMAL RESOLUTION

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

INFORMAL RESOLUTION: IRA AND IRA+

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IRA: OECRC and the recipient attempt to informally resolve a complaint through an Informal Resolution Agreement (IRA).

IRA+: Facilitated **joint meetings** with both complainants and recipients (confidentiality forum – OECRC is present).

- ✓ Fact-finding may continue.
- ✓ OECRC seeks to obtain an IRA with recipient to engage in informal resolution process ASAP after acceptance.
- ✓ **Input from complainant(s)** regarding potential resolution issues.
- ✓ Once IRA is signed, OECRC issues letters to the recipient and complainant resolving the complaint.
- ✓ OECRC monitors the implementation of the IRA until the recipient has fulfilled the terms of the IRA.

INFORMAL RESOLUTION: ADR

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- ✓ Formal mediation of complaint issues accepted for investigation between the **recipient and the complainant using a professionally trained mediator.**
- ✓ OECRC has discretion in each case to determine whether to offer ADR as a possible resolution path.
- ✓ Voluntary process for recipient and complainant.
- ✓ OECRC suspends its investigation.
- ✓ If agreement is reached, OECRC determines if terms reasonably address the issues accepted for investigation.
- ✓ If so, OECRC issues resolution letters to recipient and complainant
- ✓ OECRC does not monitor the implementation of the ADR Agreement.

FAILURE OF IRA PROCESS

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- ❖ If an Informal Resolution Process fails, OECRC will issue Notice to Recipient and Complainant.
- ❖ EPA will continue to process complaints consistent with EPA's regulation at 40 C.F.R. Part 7 and OECRC's Case Resolution Manual, which may include issuance of preliminary findings or other appropriate resolution of the complaints.

QUESTIONS/DISCUSSION

THE INVESTIGATORY PROCESS

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- The investigatory process begins upon acceptance of the complaint.
- Fact-finding will continue during IRA, as needed.
- Investigations may include:
 - Gathering and analyzing documentary and statistical information
 - Requests for information (RFIs)
 - Interviews with experts, community residents, complainants, third parties
 - Site visit(s)

PRELIMINARY FINDINGS

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- ❖ EPA's nondiscrimination regulation requires OECRC to notify the recipient of:
 - preliminary findings;
 - recommendations, if any, for achieving voluntary compliance;
 - the recipient's right to engage in voluntary compliance negotiations where appropriate. *See* [40 C.F.R. § 7.115](#)
- ❖ 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.

DUE PROCESS RIGHTS

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After receiving the notice of the preliminary finding of noncompliance, the recipient has 50 calendar days to:

- 1) agree to a Voluntary Compliance Agreement (VCA) or
- 2) submit a written response sufficient to demonstrate that the findings are incorrect, or that compliance may be achieved through steps other than those recommended by OECRC. See [40 C.F.R. § 7.115\(d\)](#).

If the recipient does not take one of the above actions within 50 calendar days after receiving the preliminary notice, OECRC shall send within 14 calendar days a formal written Final Letter of Non-Compliance:

- 1) notifying the recipient of the finding,
- 2) the action proposed to be taken and
- 3) the opportunity for an evidentiary hearing. See [40 C.F.R. §7.130\(b\)\(1\)](#).

*The recipient will have 10 calendar days from receipt of the final determination of noncompliance in which to agree to come into voluntary compliance. See [40 C.F.R. § 7.115\(e\)](#).

ENFORCEMENT ACTIONS

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- ❖ If a recipient fails to come into voluntary compliance after Preliminary Findings, OECRC will issue a Notice of Impending Enforcement Action.
- ❖ When OECRC 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.](#))

DUE PROCESS RIGHTS AFTER FINDING

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In response to the notice, the recipient has 30 days to file a written answer and request a hearing.

- Failure to request a hearing waives the right to a hearing.
- Hearings are before an Administrative Law Judge (ALJ).
- Within 30 days of receipt of the ALJ determination, recipients may file exceptions with the Administrator.
- Process for review by the Administrator.
- The decision of the Administrator becomes effective 30 days after the Administrator issues a report.
- This decision is judicially reviewable.

RESOURCES

- Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000(d)
- EPA Non-Discrimination Regulations
 - [40 C.F.R. Part 7](#)
 - [40 C.F.R. Part 5](#)

[Case Resolution Manual](#)

[Process and Criteria for Selecting Compliance Reviews](#)

QUESTIONS/DISCUSSION



рахмат
Баярлалаа
спасибо
faafetai lava
nanni
nandri
kiitos
dankie
dhanyavad
hvala
mauruuru
koszonom
nami
bayarlalaa
gracie

danke

merisi
kia ora
barka
welalin
tack
spas

謝謝

ngiyabonga

teşekkür ederim

спасибо

vinaka
спасиби
blagodaram
dank je
misaoira
matondo
akun
dankon
aciü

thank you

paldies
grazzi
mahalo

gracias

tapadh leat

enkosi
bedankt

dziękuję

sagolun

chnorakaloutioun
gracias ago
gracies

sukriya

kop khun krap

sulpáy
takku
grazie

go raibh maith agat

sobodi
dekuji
mesü
didi madloba

obrigado

kam sah hamnida
rahmat

najis tuke
merci

terima kasih

ありがとうございます
tanemirt
rahmet

arigatô

takk

dakujem

trugarez

তোসাকে ধন্যবাদ

감사합니다

xiexie

ευχαριστώ

mercü

djere dieuf
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mochchakkeram
mamnun

хвала
asante
manana

obrigada

murakoze

tenki

chokrame