

National Environmental Justice Advisor Council (NEJAC)

Civil Rights, Title VI Charge

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Client Office

EPA's Office of Environmental Justice and External Civil Rights (OEJECR)

Context

Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, or national origin by programs and activities that receive Federal financial assistance. Specifically, Title VI provides:

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.¹

Title VI further empowers each Federal department and agency that extends Federal financial assistance to effectuate the provisions of the law.²

Historically, the NEJAC has provided recommendations to EPA on its enforcement of Title VI, including through the NEJAC's Title VI Task Force, a cross-subcommittee body comprised of representatives of non-governmental, labor, community, Tribal/Indigenous, environmental, and state government stakeholders from each of the NEJAC's then existing subcommittees.³ OEJECR now seeks the advice and expertise of the NEJAC to provide recommendations as it continues to strengthen its civil rights enforcement program.

Executive Order 14096 charges all agencies to advance environmental justice by enforcing Title VI and agency regulations to ensure that programs or activities receiving Federal financial assistance "do not directly, or through contractual or other arrangements, use criteria, policies, practices or methods of administration that discriminate on the basis of race, color, or national origin,"⁴ and in recognition that "vigorous enforcement of civil rights is also key to addressing historical and systemic barriers," EPA committed to strengthen external civil rights enforcement in EPA's <https://www.epa.gov/system/files/documents/2022-03/fy-2022-2026-epa-strategic-plan.pdf>. EPA further prioritized external civil rights enforcement in its [2022 Equity Action Plan](#) and [2023 Equity Action Plan](#).

¹ 42 U.S.C. § 2000d.

² 42 U.S.C. § 2000d-1.

³ See, e.g., *Comments on Draft Revised Guidance for Investigating Title VI Administrative Complaints Challenging Permits and Draft Title VI Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs* (August 26, 2000), https://archive.epa.gov/civilrights/docs/t6com/web/pdf/t6com2000_021.pdf.

⁴ EO 13985: Advancing Racial Equity and Support For Underserved Communities; EO 14091: Further Advancing Racial Equity and Support for Underserved Communities, sec. 3(a)(x) (April 26, 2023).

EPA's 2023 Equity Action recognizes progress made by the Office of External Civil Rights Compliance (OECRC), including by taking the following actions:

- initiating its first compliance review to evaluate impacts of potentially discriminatory activities,
- revising and implementing its pre-award compliance review process and entering into approximately 90 agreements with recipients to come into compliance with obligations,
- completing jurisdictional review of an unprecedented number of new complaints,
- providing technical assistance,
- engaging stakeholders, and
- increasing transparency, including through its [External Civil Rights Docket](#), among other things.

The 2023 Equity Action Plan identified additional priorities, which include conducting timely and effective civil rights complaint investigations and resolutions, even while the Agency reviews a record number of new complaints; increasing transparency; and enhancing engagement with environmentally overburdened communities. EPA is seeking opportunities for engagement to inform these vital priorities and is committed to engagement with the NEJAC to discuss areas of concern and identify actions that may take the Agency further to address these concerns. All questions are intended to address the interest of stakeholders in ensuring that EPA enforces civil rights laws and that recipients of EPA financial assistance are held accountable.

Charge

Provide recommendations on the following:

- (1) How can EPA improve opportunities for stakeholder engagement in the civil rights complaint process generally and, particularly in the complaint resolution process?

As EPA's External Civil Rights [Case Resolution Manual](#) outlines, EPA seeks "to promote appropriate involvement by both complainants and recipients in the complaint investigation and informal resolution processes."⁵ EPA regulations require that OECRC "attempt to resolve complaints informally whenever possible,"⁶ and OECRC offers a number of processes for informal resolution, including the Informal Resolution Agreement Process, and Alternative Dispute Resolution.⁷ Recently OECRC has also piloted "Informal Resolution Plus," an opportunity for complainants, recipients, and OECRC to discuss issues raised by a complaint and options to address the issues that can inform resolution. OECRC seeks feedback on these approaches to informal resolution and how, consistent with the law, to promote meaningful engagement in the complaint resolution process.

⁵ Case Resolution Manual, Sec. 2.1.

⁶ 40 CFR § 7.120(d)(2).

⁷ Case Resolution Manual, Ch. 3.

- (2) How can EPA improve enforcement of and compliance with Title VI through data collection, analysis, and dissemination?

Data analysis is critically important to ensure compliance with Title VI and nondiscrimination requirements. EPA's Title VI regulations include provisions that together require recipients to collect, maintain, and provide information to show compliance.⁸ Among other things, the regulations require that each recipient collect, maintain, and on request of OECRC "racial/ethnic, national origin, age, sex, and handicap data, or EPA Form 4700-4 information submitted with its application."⁹ EPA seeks information for awareness and to inform policy and practice, on best practices in data collection, analysis and dissemination and, particularly, what data would promote transparency, compliance and enforcement while also addressing concerns about privacy and the effective use of resources.

- (3) How can EPA strengthen its complaint investigation practice in light of time constraints in EPA's regulations?

EPA's nondiscrimination regulations currently require that EPA complete jurisdictional reviews within 20 days of acknowledging a complaint and issue preliminary findings and recommendations for achieving voluntary compliance, if any recommendations are appropriate, within 180 days from the date on which EPA accepts a claim for investigation or initiates compliance review.¹⁰ A strong enforcement program must balance commitments to timely and, also, effective and thorough investigations. EPA seeks input on potential action to ensure investigations are timely, effective, and thorough.

- (4) How can EPA enhance its civil rights-related technical assistance, training, and education efforts to strengthen capacity across regions, increase transparency and engagement with communities, local and state government, Tribes, and other partners and stakeholders, and support compliance by recipients of EPA funding?

OECRC engages in an array of technical assistance, training, and education efforts internally, within EPA, and externally, with partners and stakeholders, including but not limited to recipients of EPA financial assistance. EPA seeks input on how, particularly with resource constraints, EPA can enhance current activities to leverage opportunities for technical assistance, training, and education.

Deliverable

A set of recommendations addressing the questions above.

⁸ 40 C.F.R. § 7.85 (a), (b); *see generally* 40 C.F.R. Parts 5, 7 (including provisions for collection, maintaining and providing data on compliance with prohibitions against discrimination on the basis of race, color, national origin, disability, age, and sex).

⁹ 40 C.F.R. § 7.85 (a)(2).

¹⁰ 40 C.F.R. §§ 7.115(c), 1.20(d).