

U.S. EPA's OFFICE OF EXTERNAL CIVIL RIGHTS COMPLIANCE

Civil Rights Guidance on Procedural Safeguards: Requirements and Best Practices

Introduction. EPA enforces federal civil rights laws that together prohibit discrimination on the bases of race, color, national origin (including limited-English proficiency) (Title VI of the Civil Rights Act of 1964 (Title VI)), disability (Section 504 of the Rehabilitation Act of 1973 (Section 504)), sex (Title IX of the Education Amendments of 1972 (Title IX); Section 13 of the Federal Water Pollution Control Act Amendments of 1972 (FWPCA)), and age (Age Discrimination Act of 1975 (Age Discrimination Act)).¹ All applicants for and recipients of EPA financial assistance² have an affirmative obligation to comply with EPA's implementing regulations under these laws, as do any subrecipients of the primary recipient, and any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.

EPA's Office of External Civil Rights Compliance (OECRC) enforces these civil rights laws in accordance with EPA's implementing regulations (40 C.F.R. Parts 5 and 7) through oversight and enforcement activities.³ OECRC is committed to vigorously enforcing civil rights compliance with existing statutory and regulatory requirements and understands the need to clarify the agency's interpretations of legal requirements and expectations to stakeholders.

The purpose of this Civil Rights Guidance on Procedural Safeguards ("Guidance") is to assist recipients in proactively addressing any areas for developing and improving civil rights compliance. This Guidance not only sets out EPA's understanding of existing statutory or regulatory requirements that recipients must adhere to, but also what EPA has determined are best practices for building strong and effective civil rights programs for recipients of EPA financial assistance. Best practices are not themselves legal requirements and do not modify or add to existing statutory or regulatory requirements.⁴ EPA believes that civil rights concerns may be addressed proactively by recipients if they have engaged in robust civil rights compliance efforts, in some cases reducing the need for communities to turn to the federal administrative complaint process for relief.

¹ See Title VI, 42 U.S.C. §§ 2000d *et seq.*; Section 504, as amended, 29 U.S.C. § 794; Title IX, as amended, 20 U.S.C. §§ 1681 *et seq.*; FWPCA, Pub. L. 92-500 § 13, 86 Stat. 903 (codified as amended at 33 U.S.C. §§ 1251 *et seq.* (1972)); and Age Discrimination Act, 42 U.S.C. §§ 6101 *et seq.*; 40 C.F.R. Parts 5 and 7.

² Although civil rights obligations apply generally to "applicants for and recipients of" EPA financial assistance, EPA will refer generally to "recipients" throughout this document, except in noting particular obligations of applicants, such as with respect to pre-award compliance.

³ Pursuant to a preliminary injunction issued by the U.S. District Court for the Western District of Louisiana on January 23, 2024, EPA will not impose or enforce any disparate-impact or cumulative-impact analysis requirements under Title VI against the State of Louisiana or its state agencies.

⁴ Insofar as this guidance document might be interpreted to impose any legal requirements or obligations, that interpretation is contrary to the terms of this guidance document and EPA's purpose in issuing it.

The statutory provisions and EPA regulations referenced in this document contain legally binding requirements. This Guidance does not substitute for those provisions or regulations, nor is it a regulation itself. It does not impose legally binding requirements on EPA or recipients and may not apply to a particular situation based upon the circumstances. Any civil rights compliance decision will be made based on the statute and regulations. While EPA believes that this Guidance provides critical information recipients may use to implement effective and robust nondiscrimination programs, it does not address every scenario that may arise under federal civil rights laws.

Importantly, this Guidance does not in any way change recipients' existing obligations to comply with applicable civil rights laws and implementing regulations. Notably, this Guidance discusses procedural requirements and best practices and does not create a safe harbor for recipients' compliance with the nondiscrimination mandates of those laws. For example, if a recipient implements a language access plan, and one of the recipient's programs nevertheless denies a person language access, the recipient may still be subject to a complaint and/or found in violation of civil rights laws. However, EPA believes that by complying with procedural requirements and implementing best practices, recipients are less likely to violate the law and will be in a better position to demonstrate compliance.

Statutory and Regulatory Authority. Title VI states the following:

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.

Title VI covers all of the operations of programs or activities receiving Federal financial assistance without regard to whether specific portions of the program or activity are Federally funded. The term "program or activity" means all of the operations of a department, agency, special purpose district, or government; or the entity of such State or local government that distributes such assistance and each such department or agency to which the assistance is extended, in the case of assistance to a State or local government.

Section 504⁵ states:

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

Title IX⁶ states:

⁵ 29 U.S.C. § 794(a).

⁶ 20 U.S.C. § 1681(a).

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.

The FWPCA⁷ states:

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.

The Age Discrimination Act⁸ states:

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.

Title VI and the other federal civil rights laws that EPA enforces authorize EPA to effectuate the provisions of the laws by issuing rules, regulations, or orders with respect to programs or activities receiving Federal financial assistance from the Agency. EPA's nondiscrimination regulations at 40 C.F.R. Part 5 implements Title IX,⁹ and 40 C.F.R. Part 7 implements the other federal civil rights laws described above.¹⁰ These laws and their implementing regulations create affirmative legal obligations and prohibit discrimination. This Guidance provides information on civil rights program requirements and recommends best practices concerning the above authorities. Compliance with this Guidance does not relieve a recipient from the requirements and responsibilities contained in the EPA nondiscrimination regulations at 40 C.F.R. Parts 5 and 7. As a condition of receiving EPA financial assistance, recipients are responsible for ensuring that all of their programs and activities comply with federal civil rights laws.¹¹

EPA's nondiscrimination regulations at 40 C.F.R. Parts 5 and 7 contain important "procedural safeguards," which are legal requirements for recipients of EPA financial assistance. The procedural safeguards include:

⁷ FWPCA, 33 U.S.C. §§ 1251 *et seq.* This prohibition on sex discrimination applies to recipients of EPA financial assistance under FWPCA.

⁸ 42 U.S.C. § 6102.

⁹ See 40 C.F.R. § 5.100.

¹⁰ See 40 C.F.R. 7.10 .

¹¹ See EPA General Terms and Conditions Effective October 1, 2021, at Section 41 (https://www.epa.gov/system/files/documents/2021-09/fy_2022_epa_general_terms_and_conditions_effective_october_1_2021.pdf). Also, in the Appendix is sample assurance language recipients may reference and use by way of technical assistance when extending EPA financial assistance to subrecipients.

- Designating at least one person to coordinate efforts to comply with federal civil rights laws,¹² including the substantive civil rights obligations to:
 - Take reasonable steps to provide meaningful access for persons with limited English proficiency (LEP);¹³
 - Provide qualified persons with disabilities an equal opportunity to participate in and benefit from the recipient’s programs and activities.¹⁴
 - Ensure that public participation processes are available to all persons regardless of race, color, national origin, disability, age, or sex.¹⁵
- Providing initial and continuing notice of nondiscrimination including, where appropriate, in a language(s) other than English;¹⁶
- Adopting grievance procedures that assure the prompt, equitable, and fair resolution of complaints alleging federal civil rights violations;¹⁷

¹² 40 C.F.R. § 5.135(a) (“Each recipient shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under these Title IX regulations.”); 40 C.F.R. § 7.85(g) (“If the recipient employs fifteen (15) or more employees, it shall designate at least one person to coordinate its efforts to comply with its obligations under this part.”).

¹³ See Title VI, 42 U.S.C. §§ 2000(d) *et seq.* (prohibiting discrimination on the basis of national origin); 40 C.F.R. § 7.30 (prohibiting exclusion from participation); *Lau v Nichols*, 414 U.S. 563, 568-69 (1974) (finding that the government properly required language services to be provided under a recipient’s Title VI obligations not to discriminate based on national origin).

¹⁴ See Section 504, 29 U.S.C. § 794(a); 40 C.F.R. § 7.45 – 7.75. Section 504, and EPA’s implementing regulations prohibit discrimination on the basis of disability in any programs or activities receiving federal financial assistance.

¹⁵ See, e.g., Title VI, 42 U.S.C. §§ 2000(d) *et seq.*; Section 504, as amended, 29 U.S.C. § 794; Title IX, as amended, 20 U.S.C. §§ 1681 *et seq.*; FWPCA, 33 U.S.C. §§ 1251 *et seq.*; and Age Discrimination Act, 42 U.S.C. §§ 6101 *et seq.*; 40 C.F.R. §§ 5.400(a), 7.30, 7.45 ; see also Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs, 71 Fed. Reg. 14207 (Mar. 21, 2006), at https://www.epa.gov/sites/production/files/2020-02/documents/title_vi_public_involvement_guidance_for_epa_recipients_2006.03.21.pdf.

¹⁶ 40 C.F.R. § 7.95(a) (“Methods of notice must accommodate those with impaired vision or hearing ...[and] [w]here appropriate ... notice must be in a language or languages other than English.”); 40 C.F.R. § 7.95(b) (“Recipients of assistance must provide initial notice by thirty (30) calendar days after award and continuing notice for the duration of EPA assistance.”).

¹⁷ 40 C.F.R. § 5.135(b) (“A recipient shall adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by these Title IX regulations.”); 40 C.F.R. § 7.90(a) (“Each recipient shall adopt grievance procedures that assure the prompt and fair resolution of complaints which allege violation of this part.”). This legal requirement applies generally to recipients with 15 or more full-time employees. “Recipients with fewer than fifteen (15) full-time employees need not comply with this section unless [OECR] finds a violation of this part or determines that creating a grievance procedure will not significantly impair the recipient’s ability to provide benefits or services.” 40 C.F.R. § 7.90(b).

- Collecting, maintaining, and providing civil rights compliance information.¹⁸

These elements will be discussed in further detail below.¹⁹

I. Designate at least one person to coordinate efforts to comply with federal civil rights laws and EPA’s nondiscrimination regulations

EPA’s nondiscrimination regulations require applicants and recipients, as applicable, and as a precondition for receiving EPA financial assistance, to designate a nondiscrimination coordinator. The overarching role of the nondiscrimination coordinator is to help ensure compliance with EPA regulations implementing the following federal civil rights laws:

- Title VI²⁰
- Title IX²¹
- Section 504²²
- Age Discrimination Act²³
- FWPCA²⁴

Pursuant to 40 C.F.R. Part 7, a recipient must designate at least one person as a civil rights coordinator if it employs at least 15 employees.²⁵ EPA’s Title IX regulations do not limit

¹⁸ 40 C.F.R. § 7.85(a) (“Each recipient shall collect, maintain, and on request of [OECRC], provide the following information to show compliance with this part: (1) A brief description of any lawsuits pending against the recipient that allege discrimination which this part prohibits; (2) Racial/ethnic, national origin, sex and [disability] data, or EPA Form 4700-4 information submitted with its application; (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.”). *See also* 40 C.F.R. § 7.85(b) (“If necessary, [OECRC] may require recipients to submit data and information specific to certain programs or activities to determine compliance where there is reason to believe that discrimination may exist in a program or activity receiving EPA assistance or to investigate a complaint alleging discrimination in a program or activity receiving EPA assistance.”).

¹⁹ For additional technical assistance on the procedural safeguard elements and additional best practices, *see* Procedural Safeguards Checklist for Recipients: Federal Non-Discrimination Obligations and Best Practices, at https://www.epa.gov/sites/production/files/2020-02/documents/procedural_safeguards_checklist_for_recipients_2020.01.pdf. Like this Guidance document, the Checklist is provided for the purpose of providing technical assistance to assist recipients in complying with federal non-discrimination laws. *See* 40 C.F.R. § 7.105. Neither is intended as legal advice. In the event of a conflict between the Checklist and this Guidance document, the Guidance document supersedes the Checklist.

²⁰ Title VI, 42 U.S.C. §§ 2000d *et seq.*; 40 C.F.R. Part 7.

²¹ Title IX, 20 U.S.C. §§ 1681 *et seq.*; 40 C.F.R. Part 5.

²² Section 504, 29 U.S.C. § 794; 40 C.F.R. Part 7, Subpart C.

²³ Age Discrimination Act, 42 U.S.C. §§ 6101 *et seq.*; 40 C.F.R. Part 7, Subpart F.

²⁴ FWPCA, 33 U.S.C. §§ 1251 *et seq.*; 40 C.F.R. Part 7.

²⁵ 40 C.F.R. § 7.85(g).

the coordinator requirement based on number of employees.²⁶ Therefore all recipients that operate education programs or activities²⁷ must designate a Title IX coordinator, and publish the name, office address and telephone number of the person appointed to this position.²⁸ EPA financial assistance applicants must certify compliance with these requirements.²⁹ (See Section VIII below.)

Best practices

A recipient's nondiscrimination coordinator may be an effective agent for nondiscrimination with the appropriate authority and support necessary to coordinate civil rights compliance, including having access to necessary information and resources. Therefore, as best practices, a recipient may consider giving the nondiscrimination coordinator the oversight and authority to carry out the following functions:

- Provide information externally to the public, as well as to persons inside the recipient's organization, stating that the recipient does not discriminate on the basis of race, color, national origin, disability, sex, or age in the administration of the recipient's programs or activities, and that recipient does not intimidate or retaliate against any individual or group because they have exercised their rights to participate in or opposed actions protected or prohibited by 40 C.F.R. Part 7, or for the purpose of interfering with such rights;³⁰
- Provide information to the public about how persons with LEP may participate in or obtain access at no cost to the recipient's programs and activities, including environmental decision-making processes;
- Provide information to the public about how persons with disabilities can (1) request reasonable modifications to the recipient's policies, practices, and procedures and (2) obtain access at no cost to auxiliary aids and services where needed so that persons with disabilities can access the recipient's program or activity;
- Provide notice to the public of the recipient's grievance procedures, and the ability to file a discrimination complaint;
- Establish a mechanism (*e.g.*, an investigation manual) for implementing the

²⁶ 40 C.F.R. § 5.135(a).

²⁷ For a discussion of education programs or activities, see Title IX Legal Manual, III.C., at <https://www.justice.gov/crt/title-ix#C.%C2%A0%20Covered%20Education%20Program%20or%20Activity>.

²⁸ 40 C.F.R. § 5.135(a).

²⁹ See EPA General Terms and Conditions Effective October 1, 2022, at Section 41

(https://www.epa.gov/system/files/documents/2022-09/fy_2022_epa_general_terms_and_conditions_effective_october_1_2022_or_later.pdf); EPA Form 4700-4, "Preaward Compliance Review Report for All Applicants and Recipients Requesting EPA Financial Assistance" (https://www.epa.gov/system/files/documents/2023-03/epa_form_4700_4_2023.pdf).

³⁰ EPA's nondiscrimination regulation at 40 C.F.R. § 7.100 prohibits intimidation and retaliation against any individual who exercises any right or privilege under 40 C.F.R. Part 7 or the federal civil rights laws it implements. The nondiscrimination coordinator is in the best position to take the lead role in ensuring that such conduct does not occur in the recipient's organization.

recipient's grievance procedures to ensure that all discrimination complaints filed with the recipient under federal nondiscrimination laws are processed promptly and fairly;

- Ensure that appropriate training is provided for the recipient's staff and contractors on the recipient's nondiscrimination policies and procedures, as well as the recipient's obligation to comply with federal civil rights laws; further ensure that appropriate training is provided for staff and contractors on the grievance procedures available to resolve complaints filed with the recipient pursuant to federal civil rights laws;
- Investigate nondiscrimination complaints filed with the recipient and ensure that those complaints are resolved promptly and fairly;
- Update complainants and other appropriate persons involved in the process as appropriate on the progress of the discrimination complaint filed with the recipient under federal nondiscrimination laws and promptly inform them about any determination made about their complaint;
- Track and log all discrimination complaints filed with the recipient under federal nondiscrimination laws to identify and address any patterns or systemic problems;³¹
- Conduct periodic reviews of all discrimination complaints filed with the recipient under federal nondiscrimination laws and/or any other complaints independently investigated by the recipient to identify and address any patterns or systemic problems;
- Undertake periodic evaluations of the efficacy of the recipient's efforts to provide services, aids, benefits, and participation in any programs or activities without regard to race, color, national origin, sex, disability, or age or without intimidation or retaliation against any individual who exercises any right or privilege under 40 C.F.R. Part 7 and the federal civil rights laws it implements.

EPA's nondiscrimination regulations specify that recipients with at least 15 employees shall designate at least one person to "coordinate its effort to comply with obligations" under 40 C.F.R. Part 7 but do not provide greater specificity as to what a coordinator should do to coordinate a recipient's efforts to comply with its obligations or who should undertake the tasks outlined above.³² However, given the nondiscrimination coordinator's overall responsibility to ensure compliance, the coordinator is the most likely person to

³¹ EPA's nondiscrimination regulations at 40 C.F.R. § 7.85(a)(3) requires recipients to collect, maintain and on the request of OECRC, provide "[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."

³² Except in the context of EPA's Title IX implementing regulations pertaining to any education program or activity, where according to 40 C.F.R. § 5.135(a) "[e]ach recipient shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under these Title IX regulations, *including any investigation of any complaint* communicated to such recipient alleging its noncompliance with these Title IX regulations or alleging any actions that would be prohibited by these Title IX regulations." (Emphasis added.)

have these responsibilities or be involved with these tasks provided the coordinator has sufficient training and qualifications to perform the duties of the position – *and the coordinator does not have other responsibilities that could create a conflict of interest or the appearance of the loss of impartiality (e.g., also serving as the recipient’s legal advisor or representative on civil rights issues or also managing a recipient’s program or activity that is the subject of a nondiscrimination complaint)*. Also, a recipient may designate more than one nondiscrimination coordinator, which may be a consideration based on the size of the recipient’s organization, the reach and impact of the recipient’s programs and activities, available resources, and other relevant factors. If a recipient chooses to have more than one coordinator, a best practice to consider is designating one of the coordinators as the lead who has ultimate civil rights coordination responsibility for the recipient.

EPA recommends that a recipient provide support to its nondiscrimination coordinator in working with other staff on issues relating to a recipient’s nondiscrimination program and obligations under federal nondiscrimination laws. Because those laws prohibit discrimination in programs and activities of EPA financial assistance recipients, such support and coordination will help ensure consistent practices and compliance with the laws across the recipient’s organization.³³

Along with the nondiscrimination coordinator, implementation of the other elements discussed below, will help ensure a recipient’s compliance with federal civil rights laws and maintain an environment that is free from discrimination in all aspects of a recipient’s programs and activities.

II. Provide notice of nondiscrimination

EPA’s nondiscrimination regulations require as a condition for receiving EPA financial assistance that a recipient publish a notice stating that it does not discriminate on the basis of race, color, national origin, disability, sex, and age. Compliance with this requirement helps ensure that individuals are aware of their rights under federal civil rights laws, have contact information for the recipient’s nondiscrimination coordinator, and know how to file a civil rights complaint with the recipient.

The methods of notice must include steps to ensure that the notice is communicated to people with disabilities, including those with vision or hearing impairments, as effectively as it is communicated to others,³⁴ and, where appropriate, the notice must be in a

³³ Title IX applies to all programs and activities of educational institutions such as colleges, universities, and elementary and secondary schools. Apart from educational institutions, Title IX also applies to any education program or activity operated by any recipient of federal financial assistance.

³⁴ EPA notes that the Department of Justice (DOJ) interprets requirements under Section 504 consistently with those under Title II of the Americans with Disabilities Act (ADA). See 28 C.F.R. § 35.160(a)(1) (requiring public entities to “take appropriate steps to ensure that communications with applicants,

language or languages other than English.³⁵ The notice must also identify the nondiscrimination coordinator.³⁶ The notice is required as a precondition for receiving EPA Financial Assistance.³⁷ (See Section VIII below.)

Under the EPA regulations, this notice must be posted in a prominent place in a recipient's offices or facilities.³⁸ The content of the notice must be complete as required by the regulations and include current information.

Best practices

Although the regulations do not define the term prominent, as a best practice, EPA considers the most prominent location for posting the notice to be on a recipient's website homepage, but there may be other methods to reach various intended audiences (e.g., newspapers, magazines, and notices in internal publications or on recipient's printed letterhead).³⁹ In posting the notice and other information on a website and in other publications, recipients are reminded of their obligations to ensure that their communications with people with disabilities are as effective as their communications with others.

Given the nondiscrimination coordinator's role, the coordinator may be in the best position to ensure that the text of the notice complies with all applicable requirements, that the notice is provided and/or properly posted, and the content of the notice remains accurate, in English and any other appropriate languages.

As EPA's regulations prohibit intimidation and retaliation, EPA recommends that the notice also contain an assurance that intimidation and retaliation are prohibited.⁴⁰

participants, members of the public, and companions with disabilities are as effective as communications with others").

³⁵ 40 C.F.R. § 7.95(a).

³⁶ 40 C.F.R. § 7.95(a); 40 C.F.R. § 5.135(a). See also 40 C.F.R. § 7.85(g).

³⁷ See EPA General Terms and Conditions Effective October 1, 2022, at Section 41

([https://www.epa.gov/system/files/documents/2022-](https://www.epa.gov/system/files/documents/2022-09/fy_2022_epa_general_terms_and_conditions_effective_october_1_2022_or_later.pdf)

09/fy_2022_epa_general_terms_and_conditions_effective_october_1_2022_or_later.pdf); EPA Form 4700-4, "Preaward Compliance Review Report for All Applicants and Recipients Requesting EPA Financial Assistance" (https://www.epa.gov/system/files/documents/2023-03/epa_form_4700_4_2023.pdf).

³⁸ 40 C.F.R. § 7.95(a); see also 40 C.F.R. § 5.140 (Dissemination of Policy).

³⁹ See, e.g., Procedural Safeguards Checklist for Recipients: Federal Non-Discrimination Obligations and Best Practices ([https://www.epa.gov/sites/default/files/2020-](https://www.epa.gov/sites/default/files/2020-02/documents/procedural_safeguards_checklist_for_recipients_2020.01.pdf)

02/documents/procedural_safeguards_checklist_for_recipients_2020.01.pdf).

⁴⁰ 40 C.F.R. § 7.100 ("No applicant, recipient, nor other person shall intimidate, threaten, coerce, or discriminate against any individual or group, either: (a) For the purpose of interfering with any right or privilege guaranteed by the Acts or this part, or (b) Because the individual has filed a complaint or has testified, assisted or participated in any way in an investigation, proceeding or hearing under this part, or has opposed any practice made unlawful by this regulation.") A sample notice is provided in the Attachment to the Procedural Safeguards Checklist for Recipients: Federal Nondiscrimination Obligations

III. **Adopt grievance procedures that assure the prompt and fair resolution of complaints alleging federal civil rights violations**

EPA’s nondiscrimination regulations mandate that if a recipient has more than 15 full-time employees it must “adopt grievance procedures that assure the prompt and fair resolution”⁴¹ of discrimination complaints.⁴² EPA’s Title IX regulations, though, do not limit the grievance procedures requirement based on number of employees.⁴³ Therefore all recipients that operate education programs or activities⁴⁴ must publish Title IX grievance procedures. EPA financial assistance applicants must certify compliance with these requirements.⁴⁵ Recipients should ensure the grievance procedures are accessible to persons with LEP and persons with disabilities. Under Section 504, a recipient shall take appropriate steps to ensure that communications with individuals with disabilities are as effective as communications with others.

Best practices

Grievance procedures provide individuals with a formal means for addressing civil rights complaints, and correspondingly, a mechanism for recipients to discover incidents of discrimination as early as possible and to effectively resolve individual and systemic issues

and Best Practices (2020) (https://www.epa.gov/sites/default/files/2020-02/documents/procedural_safeguards_checklist_for_recipients_2020.01.pdf).

⁴¹ EPA’s Title IX regulation contains a similar requirement: “A recipient shall adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by these Title IX regulations.” 40 C.F.R. § 5.135(b); *see also* 40 C.F.R. § 5.135(b) (“A recipient shall adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by these Title IX regulations.”).

⁴² *See* 40 C.F.R. § 7.90(a). Nevertheless, even recipients with fewer than 15 full-time employees, as designated by 40 C.F.R. Part 7, will need to implement grievance procedures if EPA finds a violation of the nondiscrimination regulations or determines that establishing grievance procedures will not significantly impair the recipient’s ability to provide benefits or services. 40 C.F.R. § 7.90(b) (“Recipients with fewer than fifteen (15) full-time employees need not comply with this section unless the [OECRC] finds a violation of this part or determines that creating a grievance procedure will not significantly impair the recipient’s ability to provide benefits or services.”).

⁴³ 40 C.F.R. § 5.135(b).

⁴⁴ For a discussion of education programs or activities, *see* Title IX Legal Manual, III.C. (<https://www.justice.gov/crt/title-ix#C.%C2%A0%20Covered%20Education%20Program%20or%20Activity>).

⁴⁵ *See* EPA General Terms and Conditions Effective October 1, 2022, at Section 41 (https://www.epa.gov/system/files/documents/2022-09/fy_2022_epa_general_terms_and_conditions_effective_october_1_2022_or_later.pdf); EPA Form 4700-4, “Preaward Compliance Review Report for All Applicants and Recipients Requesting EPA Financial Assistance” (https://www.epa.gov/system/files/documents/2023-03/epa_form_4700_4_2023.pdf).

in their programs and activities. Accordingly, as a best practice, even recipients with fewer than 15 employees that do not operate education programs or activities and therefore are not required to adopt grievance procedures may consider adopting a process for the prompt and fair resolution of complaints alleging federal civil rights violations.

There are several best practice steps that a recipient can consider when developing its grievance procedures:

- Provide the name and contact information for the nondiscrimination coordinator in the grievance procedures;
- Explain the role of the nondiscrimination coordinator relative to the coordination and oversight of the grievance procedures;
- State who may file a complaint under the procedures and describe the appropriate bases for filing a complaint;⁴⁶
- Describe the grievance processes available to complainants;
- Describe the standard of review to be applied during the analysis of the complaint or any applicable appeal process;
- Include assurances that intimidation and retaliation are prohibited and that claims of intimidation and retaliation will be handled promptly and fairly pursuant to the recipient's grievance procedures in the same manner as other claims of discrimination;
- State that written notice will be promptly provided about the outcome of the investigation, including whether discrimination is found, a description of the investigation process undertaken, and any remedy or sanction that may apply, or other actions taken as a result of the investigation;
- Review grievance procedures on an annual basis, and revise as necessary, to ensure prompt and fair resolution of discrimination complaints;
- Publish grievance procedures prominently on the recipient's website and in appropriate publications distributed to the public, and review both in-print and online materials on an annual basis to ensure they accurately reflect any revisions in the grievance procedures; and
- Include information for the public about the right to file a complaint with OECRC, including contact information for OECRC.⁴⁷

IV. Collect, maintain, and provide data to EPA upon request

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. With this Guidance, EPA is emphasizing the importance of recipient data collection practices as

⁴⁶ 40 C.F.R. § 7.120(a). For consideration of who may file a complaint under Title IX, refer to U.S. Department of Education regulations. See 85 FR 30026.

⁴⁷ See Filing a Discrimination Complaint Against a Recipient of EPA funds (<https://www.epa.gov/external-civil-rights/filing-discrimination-complaint-against-recipient-epa-funds>).

required by EPA's nondiscrimination regulation, and in doing so, is also responding to interest from recipients and other stakeholders in receiving greater clarity about having a strong data collection practice in compliance programs to meet federal civil rights obligations.

EPA's nondiscrimination regulations require that every recipient collect and maintain, and if requested by OECRC, provide the following data to show compliance with 40 C.F.R. Part 7:⁴⁸

- (1) A brief description of any lawsuits pending against the recipient that allege discrimination prohibited by EPA's nondiscrimination regulations;
- (2) Racial/ethnic, national origin, age, sex, and disability data, or EPA Form 4700-4 information⁴⁹ submitted with its application;⁵⁰
- (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.⁵¹

In addition, OECRC may also require a recipient to submit data and information specific to certain of its programs or activities to determine compliance if OECRC has reason to believe that discrimination may exist in a program or activity receiving EPA assistance or to investigate a complaint alleging discrimination in a recipient program or activity receiving EPA assistance.⁵² Recipients are further required to: 1) give OECRC access during normal business hours to a recipient's books, records, accounts, and other sources of information, including its facilities, as may be pertinent to determine compliance; 2) make compliance information available to the public upon request; and 3) assist in obtaining other required information that is in the possession of other agencies, institutions, or

⁴⁸ 40 C.F.R. § 7.85. EPA's nondiscrimination regulations also contain other provisions relating to OECRC's authority to collect information from recipients. *See, e.g.*, 40 C.F.R. § 7.80 ("Applicants for EPA assistance shall submit an assurance . . . and any other information that [OECRC] determines is necessary for pre-award review"); 40 C.F.R. § 7.110 (during EPA's Preaward review of compliance information, "additional information will be requested from an applicant," if necessary, to determine applicant compliance in conjunction with assurances made for purposes of obtaining EPA financial assistance); 40 C.F.R. § 7.115 ("The [OECRC] may periodically conduct compliance reviews of any recipient's programs or activities receiving EPA assistance, including the request of data and information . . .").

⁴⁹ EPA Form 4700-4, "Preaward Compliance Review Report for All Applicants and Recipients Requesting EPA Financial Assistance" (https://www.epa.gov/system/files/documents/2023-03/epa_form_4700_4_2023.pdf).

⁵⁰ *See* 40 C.F.R. § 7.85(d) ("In preparing compliance information, a recipient must ... [u]se the racial classifications set forth in § 7.25 in determining categories of race, color or national origin.").

⁵¹ 40 C.F.R. § 7.85(a).

⁵² 40 C.F.R. § 7.85(b) ("Requests shall be limited to data and information which is relevant to determining compliance and shall be accompanied by a written statement summarizing the complaint or setting forth the basis for the belief that discrimination may exist.").

persons not under the recipient's control.⁵³

The data collection and reporting provisions in 40 C.F.R. § 7.85 apply to all EPA recipients as a condition for receiving financial assistance and provide authority and notification to recipients that data should be provided to OECRC upon its request under 40 C.F.R. § 7.85(a) to ensure recipient accountability and adherence to federal civil rights requirements. Geographic Information Systems (GIS), such as EPA's EJScreen⁵⁴ makes a range of demographic data layers readily available for review. State databases or GIS tools may also include similar data.⁵⁵

EPA's regulations require that recipients keep data records identified in 40 C.F.R. § 7.85(a) and (b) for three years after completing a project (*e.g.*, a specific permitting project). When any complaint or other action for alleged failure to comply with EPA's nondiscrimination regulations is brought before the three-year period ends (*e.g.*, a civil rights complaint about a specific permitting project), the recipient is to keep the data records until the complaint is resolved.⁵⁶

Best practices

As a best practice, the demographic data to be collected and maintained under 40 C.F.R. § 7.85(a)(2) should relate not only to the population that the recipient serves, generally, but also the relevant demographic data of the populations that are affected by a recipient's specific programs or activities (*e.g.*, environmental permitting decisions).⁵⁷ Recipients may consider the following best practices as they develop strategies for incorporating data analysis into their non-discrimination programs:

- (1) The population served by recipient's programs and activities, by race and national origin (including LEP⁵⁸), sex, if applicable, disability status,⁵⁹ and

⁵³ 40 C.F.R. § 7.85(f).

⁵⁴ EPA, EJScreen: Environmental Justice Screening and Mapping Tool (<https://www.epa.gov/ejscreen>).

⁵⁵ Several state EJ mapping tools are linked at <https://www.epa.gov/ejscreen/additional-resources-and-tools-related-ejscreen#othermaps>.

⁵⁶ 40 C.F.R. § 7.85(e).

⁵⁷ *See, e.g.*, Environmental Protection Agency Interim Environmental Justice and Civil Rights in Permitting Frequently Asked Questions, FAQ 9, at 10 (Aug. 2022).

https://www.epa.gov/system/files/documents/2024-01/ej_and_cr_permitting_faqs.pdf. *But see*, FN 3.

⁵⁸ LEP data could consist of the number/proportion and location of persons with LEP eligible to be served or likely to be encountered by recipient's programs and activities, as well as the frequency with which persons with LEP encounter the programs and activities. Additionally, the data could be segregated by each non-English language used by the population eligible to be served.

⁵⁹ *See also* 40 C.F.R. § 7.85(c)(1) (stating that each recipient must conduct a self-evaluation of its administrative policies and practices within 18 months of the effective date of the EPA's regulations, to

age,⁶⁰

- (2) The present or proposed membership, by race, color, and national origin, sex (if applicable), disability, and age in any planning or advisory body which is an integral part of the program or activity (such as a local sanitation board or sewer authority).⁶¹
- (3) The location of a recipient's existing or proposed offices/facilities and any related information adequate for determining whether a location has or will unnecessarily deny access (*e.g.*, office/facility physical accessibility, location of public hearings and meetings, etc.), services or benefits to any persons based on race, color, national origin, disability, sex, or age.⁶²
- (4) With respect to any permitting activity, the populations affected⁶³ by the permitted project or projects (including by race, color, and national origin (including LEP)).
 - In identifying persons affected by the permitted project or projects, recipients may consider the following demographic data relevant:
 - (i) Those populations/community members likely to be served (*e.g.*, the beneficiaries) by the permitted project or projects;
 - (ii) Those populations/community members likely to be affected by the proposed project or projects (*e.g.*, by higher emissions levels or releases, exposure to multiple pollutants, increased exposure to odors or irritants, *etc.*);

consider whether such policies and practices may involve disability discrimination, and in doing so the recipient shall consult with interested and involved persons including persons with disabilities or organizations representing persons with disabilities). As a best practice, recipients could periodically revisit this self-evaluation process.

⁶⁰ See also 40 C.F.R. § 7.85(c)(2) ("Each recipient employing the equivalent of 15 or more full time employees may be required to complete a written self-evaluation of its compliance under the Age Discrimination Act as part of a compliance review or complaint investigation. This self-evaluation will pertain to any age distinction imposed in its program or activity receiving Federal assistance from EPA. If required, each recipient's self-evaluation shall identify and justify each age distinction imposed by the recipient and each recipient shall take corrective and remedial action whenever a self-evaluation indicates a violation of the Age Discrimination Act.").

⁶¹ See 40 C.F.R. §§ 7.35(a)(5), 7.50(a)(4).

⁶² See 40 C.F.R. §§ 7.50(b), 7.55, 7.65 and 7.35(a)(3).

⁶³ See U.S. EPA's External Civil Rights Compliance Office Compliance Toolkit (Toolkit), at 5 (Jan. 18, 2017), (https://www.epa.gov/sites/default/files/2020-02/documents/toolkit_ecrco_chapter_1-letter-faqs_2017.01.18.pdf) ("disparate treatment can be shown based on evidence of a substantial disparate impact on a protected group, together with other evidence of motive"); DOJ Title VI Legal Manual, Sec. VI, at 12 (statistics demonstrating a clear pattern of discriminatory effect are probative of intent under the *Arlington Heights* framework).

- (iii) Where applicable and available, the owners of property to be taken by eminent domain or other legal process, and persons or businesses to be displaced, relocated, or adversely affected, because of the proposed project or projects currently and/or at some foreseeable time in the future; and
- (iv) Where applicable, demographic data of populations/community members near the proposed location, and alternative locations, of any facilities to be constructed or used in connection with the proposed project or projects.

A recipient could collect disability data in the population served by recipient programs and activities, including disability data relevant to specific recipient activities (*e.g.*, permitting) to assist the recipient's compliance efforts and to assist EPA in determining compliance with Section 504.⁶⁴

While recipients are required to collect and maintain data under 40 C.F.R. § 7.85(a)(2),⁶⁵ EPA at this time is not requiring that recipients provide EPA with information about their data collection, except as required by Form 4700-4 as part of a request for EPA financial assistance⁶⁶ (*see* Section VIII below) and as noted in the previous paragraph, for OEERC to determine compliance under 40 C.F.R. § 7.85(b) (*e.g.*, through a request for information during an investigation).⁶⁷ As a best practice, however, recipients could consider making the data publicly available. For purposes of public transparency, recipients could make their data available through posting of annually updated data on the recipient's website,⁶⁸ or they may do so in an alternative manner.⁶⁹

In sum, EPA is authorized by its nondiscrimination regulations to determine both pre- and

⁶⁴ *See, e.g.*, U.S. Census Guidance for Disability Data Users (<https://www.census.gov/topics/health/disability/guidance.html>) (U.S. Census collects and provides information through the American Community Survey on disability).

⁶⁵ 40 C.F.R. § 7.85(a)(2).

⁶⁶ *See* EPA Form 4700-4, at VII.

⁶⁷ 40 C.F.R. § 7.85(b) ("If necessary, the [OEERC] may require recipients to submit data and information specific to certain programs or activities to determine compliance where there is reason to believe that discrimination may exist in a program or activity receiving EPA assistance or to investigate a complaint alleging discrimination in a program or activity receiving EPA assistance.").

⁶⁸ *See* 28 C.F.R. § 42.406(b) (Department of Justice coordinating regulations providing examples of data and information that may be necessary and appropriate for determining compliance with Title VI). Web posting of civil rights compliance data provides a relatively less burdensome and transparent way for recipients to produce that data to EPA and the public. *See* 40 C.F.R. §§ 7.85(a), (f).

⁶⁹ The posted data must be accessible to persons with limited English proficiency and persons with disabilities. *See* Title VI, 42 U.S.C. §§ 2000d *et seq.*; Section 504, 29 U.S.C. § 794; 40 C.F.R. Part 7.

post-award compliance, by recipients of EPA financial assistance through data collection, among other methods. Further, the regulations evidence EPA's expectation that recipients will cooperate with OECRC's efforts to ascertain compliance. Failure to maintain and/or provide data to EPA upon request may adversely impact a recipient's ability to show compliance with civil rights obligations during a civil rights investigation or compliance review.

Also, as a reminder, civil rights obligations are separate and distinct from recipients' other obligations, including obligations to comply with federal, state, and local environmental laws. Therefore, it is a best practice for recipients to evaluate data collected and assess whether actions, policies or practices are in violation of Title VI and/or other federal civil rights laws and take steps to correct any such violations.

EPA will continue to review and consider data collection and reporting requirements and best practices, considering what information is necessary for compliance and enforcement activities as well as considerations of feasibility and resource issues experienced by recipients, and subrecipients.

V. Take reasonable steps to provide meaningful access to recipient's programs and activities to persons with limited English proficiency (LEP)

Under Title VI, as part of the obligation to ensure nondiscrimination based on national origin, recipients have an affirmative obligation to take reasonable steps to provide persons with limited English proficiency (LEP) meaningful access to all of the recipients' programs and activities.⁷⁰ Individuals who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English are considered to have limited English proficiency.⁷¹ Indeed, in requesting and receiving EPA financial assistance, recipients agree to provide access to persons with LEP as required by Title VI.⁷² This means that persons with LEP must have meaningful access to information about a

⁷⁰ Title VI, 42 U.S.C. 2000(d) (prohibiting discrimination on the basis of national origin); *Lau v Nichols*, 414 U.S. 563, 568-69 (1974) (finding that San Francisco Unified School District's failure to provide language services violated a recipient's Title VI obligations not to discriminate based on national origin); 40 C.F.R. § 7.35(a) (prohibiting discrimination on the basis of national origin in the programs or activities of a recipient of EPA assistance).

⁷¹ In fulfilling their responsibilities to provide meaningful access to persons with LEP under existing law, recipients may refer to EPA's Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (LEP Guidance), 69 FR 35602 (June 25, 2004) (https://www.epa.gov/sites/production/files/2020-02/documents/title_vi_lep_guidance_for_epa_recipients_2004.06.25.pdf).

⁷² EPA General Terms and Conditions Effective October 1, 2022, Section 41 (https://www.epa.gov/system/files/documents/2022-09/fy_2022_epa_general_terms_and_conditions_effective_october_1_2022_or_later.pdf).

recipient's programs, activities, services or benefits that is on par with the information provided to English speakers or persons without LEP.

In certain circumstances, the failure to ensure that people with LEP have access to, can participate in, or benefit from, programs or activities that receive EPA financial assistance may violate the prohibition under Title VI against national origin discrimination.⁷³

Best practices

A best practice is for recipients to use a flexible and fact-dependent analysis that uses four factors to assist in determining the reasonable steps for recipients to take to comply with statutory and regulatory obligations to ensure that meaningful access to recipients' programs and activities for persons with LEP.⁷⁴ Those four factors are:

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

Recipients, commensurate with their size and structure, may consider how best to operationalize these four-factors. For instance, it would be reasonable for a state, regional or larger local entity (*e.g.*, state environmental agency, regional air quality management district, mid- to large size city government agency) to evaluate these four factors differently than smaller businesses and local governments, or smaller non-profits that receive Federal financial assistance. For state, regional and larger local entities, the four factors (*i.e.*, number or proportion, frequency of contact, importance of programs and activities, and resources) may, as a best practice, militate toward implementing a well-developed and periodically updated written language access policy/procedure or plan that incorporates a detailed framework for the provision of accurate, timely, and effective language assistance, including how staff is expected to utilize language assistance services

⁷³ See *Reyes v. Clark*, No. 3:18CV611, 2019 WL 4044316, *25 (E.D. Va. Aug. 27, 2019) (claim of prisoner denied language services cognizable under Title VI as intentional discrimination and survived motion to dismiss); *cf. Murguia v. Childers*, 81 F.4th 770 (8th Cir. 2023) (Spanish-speaking applicant for unemployment insurance benefits claiming violation of Title VI for failure to provide interpretation and translation services failed to state a prima facie case of intentional discrimination).

⁷⁴ LEP Guidance, 69 FR at 35606 (https://www.epa.gov/sites/production/files/2020-02/documents/title_vi_lep_guidance_for_epa_recipients_2004.06.25.pdf).

to provide meaningful access and participation and to ensure that persons with LEP are aware of and can access language assistance services at no cost.⁷⁵

Similarly, based on the four factors, 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 not have developed nor considered developing a written language access policy/procedure or plan. EPA's Preaward Compliance Review Report for All Applicants and Recipients Requesting EPA Financial Assistance ("Form 4700-4" or "Form") asks whether the applicant/recipient has "a policy/procedure for providing meaningful access to services for persons with limited English proficiency? (Title VI, 40 C.F.R. Part 7, *Lau v Nichols*, 414 U.S. 563 (1974))."⁷⁶

In sum, to facilitate compliance with Title VI, a recipient, as a best practice, could develop and implement a policy/procedure or plan for complying with the legal requirements outlined above. If a recipient elects not to develop a written language access policy/procedure or plan, it should still be able to demonstrate that it is complying with the legal standard to ensure meaningful access to a recipient's program or activities for persons with LEP.⁷⁷

VI. Provide equal opportunity to persons with disabilities

Section 504 and EPA's nondiscrimination regulations prohibit discrimination on the basis of disability in programs or activities of any recipient receiving EPA financial assistance.⁷⁸ Recipients agree to abide by Section 504 as a prerequisite to receiving EPA financial assistance.⁷⁹

Section 504 requires recipients to:

⁷⁵ *Id.* at 35611 (stating further that "such written plans would likely provide additional benefits to a recipient's managers in the areas of training, administration, planning, and budgeting").

⁷⁶ Preaward Compliance Review Report for All Applicants and Recipients Requesting EPA Financial Assistance, Question VIII (https://www.epa.gov/system/files/documents/2023-03/epa_form_4700_4_2023.pdf).

⁷⁷ See LEP Guidance, 69 FR at 35607.

⁷⁸ Section 504, as amended, 29 U.S.C. § 794(a); 40 C.F.R. §§ 7.45 – 7.75. EPA's nondiscrimination regulations also required recipients to self-evaluate, within 18 months of the effective date of the EPA's regulations, their administrative policies, and practices in their programs to consider whether such policies and practices may involve disability discrimination. 40 C.F.R. § 7.85(c).

⁷⁹ See EPA General Terms and Conditions Effective October 1, 2022, Section 41 (https://www.epa.gov/system/files/documents/2022-09/fy_2022_epa_general_terms_and_conditions_effective_october_1_2022_or_later.pdf); EPA Form 4700-4, "Preaward Compliance Review Report for All Applicants and Recipients Requesting EPA Financial Assistance" (https://www.epa.gov/system/files/documents/2023-03/epa_form_4700_4_2023.pdf).

- Ensure that communications with people with disabilities are as effective as communications with others, including providing at no cost appropriate auxiliary aids and services; and
- Make reasonable modifications to policies, practices, and procedures where necessary to avoid discrimination.⁸⁰

To facilitate compliance with disability nondiscrimination laws, a recipient, as a best practice, could develop and implement a policy/procedure or a plan for complying with the legal requirements outlined above.

VII. Ensure nondiscrimination in public participation processes

Federal civil rights laws generally mandate that “[n]o person . . . [on the basis of a protected class] be excluded from participation in . . . any program or activity” receiving EPA assistance.⁸¹ This provision cuts across all of the federal civil rights laws and implementing regulations and applies to all recipients. Thus, all recipients must ensure that they do not discriminate in the public participation processes of their programs and activities. Ultimately, recipients must ensure that their public participation processes are available to all persons, regardless of race, color, national origin, sex (if applicable), disability, and age. In doing so, recipients must continuously comply with their obligation to provide meaningful access to their programs and activities for persons with LEP.⁸² Recipients also must ensure that their programs and activities are readily accessible and usable by people with disabilities.

Under the EPA financial assistance General Terms and Conditions, recipients administering permitting programs agree to use as a guide EPA Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs (Public Involvement Guidance)⁸³ as a condition for receiving EPA financial assistance.⁸⁴ The Public Involvement Guidance discusses various approaches and suggests tools that

⁸⁰ Attached in the Appendix is a Sample Disability Nondiscrimination Policy for the purpose of providing technical assistance to assist recipients in complying with federal civil rights laws and EPA’s nondiscrimination regulations.

⁸¹ Title VI, 42 U.S.C. §§ 2000d *et seq.*; Section 504, 29 U.S.C. § 794) Title IX (20 U.S.C. §§ 1681 *et seq.*); the FWPCA, 33 U.S.C. §§ 1251 *et seq.*; and the Age Discrimination Act, 42 U.S.C. §§ 6101 *et seq.*; 40 C.F.R. § 7.30.

⁸² See Title VI, 42 U.S.C. §§ 2000d *et seq.*, and 40 C.F.R. Part 7.

⁸³ EPA’s Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs (Public Involvement Guidance), 71 FR 14207 (March 21, 2006) (https://www.epa.gov/sites/production/files/2013-09/documents/title6_public_involvement_guidance.3.13.13.pdf).

⁸⁴ See EPA General Terms and Conditions Effective October 1, 2022, at Section 41, at https://www.epa.gov/system/files/documents/2022-09/fy_2022_epa_general_terms_and_conditions_effective_october_1_2022_or_later.pdf; EPA Form 4700-4, “Preaward Compliance Review Report for All Applicants and Recipients Requesting EPA Financial Assistance”, at https://www.epa.gov/system/files/documents/2023-03/epa_form_4700_4_2023.pdf.

recipients administering environmental permitting programs may use to ensure they do not discriminate in public participation processes and to enhance public involvement aspects of their current permitting programs.

However, the Public Involvement Guidance is relevant for all recipients because it describes tools and approaches that may be effective in contexts other than permitting. Thus, recipients may consult the Public Involvement Guidance to identify best practices for their public participation processes.⁸⁵

Best practices

A best practice for all recipients to ensure compliance is to have in place a public involvement plan (PIP).⁸⁶ Yet EPA recognizes that a recipient's 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. For instance, state, regional or larger local entities (*e.g.*, state environmental agency, regional air quality management district, mid- to large size city government agency) that regularly engage in public participation activities, could have written, published, and posted PIPs available to the public. On the other hand, as with the LEP Guidance document, discussed above, EPA recognizes that smaller entities such as small businesses and non-profits may not create as robust, written PIPs. EPA recommends as a best practice that state recipients publicly post their PIPs.

VIII. Pre-award commitment to nondiscrimination program requirements

As a prerequisite for receiving EPA financial assistance, applicants are required to submit EPA Form 4700-4. On this Form, applicants certify that they have in place many of the procedural safeguard elements that are also covered in this Guidance.⁸⁷ EPA requires that the applicant disclose on the Form that it:

⁸⁵ See Public Involvement Guidance, 71 FR at 14210 (“This guidance offers a flexible framework of public involvement approaches.”).

⁸⁶ See *id.* at 14211 (“A Public Involvement Plan (PIP) is a document that serves as the basic foundation of any good public involvement program. PIPs serve as early involvement tools to identify community concerns and lay out approaches recipients plan to take to address those concerns through various outreach activities.”).

⁸⁷ EPA Form 4700-4 (https://www.epa.gov/system/files/documents/2023-03/epa_form_4700_4_2023.pdf). For more information about completing the Form see Tips for Completing Form 4700-4 (<https://www.epa.gov/grants/tips-completing-epa-form-4700-4#:~:text=Be%20sure%20to%20answer%20every,Do%20not%20leave%20questions%20blank:>). All applicants for EPA financial assistance are required to submit the Form, including federally recognized Tribal applicants. However, for purposes of the pre-award review or any post-award audits of 4700-4 responses, OECRC will not review whether federally recognized Tribes are complying with these procedural safeguard requirements. Nevertheless, OECRC would welcome the opportunity to provide technical assistance should federally recognized Tribes wish to develop a civil rights program. OECRC will review compliance with procedural safeguard requirements by Tribal education programs. See 42 U.S.C. 2000d 4a (2) (Title VI covers all the operations of federally funded schools and universities).

- Has designated a nondiscrimination coordinator, as applicable, and identifies that person on its nondiscrimination notice (see Section I above);
- Provides initial and continuing notice that it does not discriminate on the basis of race, color, national origin, sex, age, or disability in its programs or activities, and that those methods of notice are accessible to individuals with impaired vision or hearing (see Section II above);
- Has adopted grievance procedures, as applicable, that assure the prompt and fair resolution of complaints that allege a violation of 40 C.F.R. Parts 5 and 7 (see Section III above);
- Maintains demographic data on the race, color, national origin, sex, age, and disability status of the population it serves (see Section IV above);
- Has a policy/procedure for providing meaningful access to services for persons with limited English proficiency (see Section V above); and
- If the grant is for new construction, whether all new facilities or alterations to existing facilities will be designed and constructed to be readily accessible to and usable by people with disabilities; and if not, how a regulatory exception applies.

When submitting the EPA financial assistance application, including the Form, an applicant assures that it will comply with all federal civil rights laws and EPA's nondiscrimination regulations, and further certifies that its Form responses "are true, accurate and complete" and that "any knowingly false or misleading statement may be punishable by fine or imprisonment or both under applicable law."⁸⁸ To verify the accuracy of information provided by applicants on the Form, EPA audits a sample of submitted Forms to determine compliance with the procedural safeguards.⁸⁹ EPA's goal is to maintain a robust pre-award review process to bring all recipients into compliance with civil rights procedural safeguards, address noncompliance through voluntary means whenever possible, take appropriate action when voluntary means are not possible, and to further ensure that EPA financial assistance is not being used to discriminate.⁹⁰

⁸⁸ EPA Form 4700-4 (https://www.epa.gov/system/files/documents/2023-03/epa_form_4700_4_2023.pdf).

⁸⁹ See Process and Criteria for Selecting Form 4700-4 for Audit (https://www.epa.gov/system/files/documents/2023-04/Post-award%20audit%20process%20FINAL%2012.21.22_.pdf).

⁹⁰ Within EPA's nondiscrimination regulations and its guidance documents is a recognition that there is not a "one-size fits all" approach to compliance with the procedural safeguard requirements. For example, the regulatory requirements for nondiscrimination coordinator and grievance procedures do not generally apply to applicants/recipients with fewer than 15 employees. See 40 C.F.R. §§ 7.85(g), 7.90(a). Similarly, EPA's LEP Guidance discussed in Section V of this guidance document provides a flexible and fact-dependent analysis that uses four factors to assist in determining the reasonable steps recipients must take in providing meaningful access for persons with LEP to their programs and activities. The starting point is an *individualized assessment*, based on the particular recipient, that balances four factors. Also, EPA's Public Involvement Guidance was developed for EPA recipients who implement environmental permitting programs, though its tools and approaches are equally applicable to all EPA recipients.

Further, recipients are reminded that their subrecipients (along with any successor, assignee, or transferee of a recipient) are also required to comply with the applicable EPA grant terms and conditions, including all federal civil rights obligations. Accordingly, to ensure compliance, if a recipient distributes EPA financial assistance to subrecipients or other entities, as a best practice, recipients should monitor federal civil rights compliance by those entities.⁹¹ To do this, recipients may implement procedures to monitor their subrecipients, including receiving information about their potential noncompliance, investigate complaints against them, and address violations or take other actions a result of an investigation.

IX. Definitions

***Disclaimer:** This Definitions section is provided as a resource to assist recipients in their review and understanding of this Guidance. In the event of a conflict between any of the definitions in this section and the same definition in any federal statute or regulation, the definition in those authorities will control.⁹²

Applicant means any entity that files an application or unsolicited proposal or otherwise requests EPA assistance.⁹³

EPA financial assistance means any grant or cooperative agreement, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which EPA provides or otherwise makes available assistance in the form of:

- (1) Funds;
- (2) Services of personnel; or
- (3) Real or personal property or any interest in or use of such property, including:
 - (i) Transfers or leases of such property for less than fair market value or for reduced consideration; and
 - (ii) Proceeds from a subsequent transfer or lease of such property if EPA's share of its fair market value is not returned to EPA.⁹⁴

Intimidation and Retaliation means to intimidate, threaten, coerce, or discriminate against any individual or group, either:

Accordingly, EPA in law and practice takes into consideration the nature and size of particular applicants/recipients in assessing compliance with the procedural safeguard requirements discussed in this guidance document.

⁹¹ See 40 C.F.R. § 7.35(a) (“[A] recipient shall not directly or through contractual, licensing, or other arrangements...” take prohibited actions); DOJ Title VI Legal Manual, Section V, at 14.

⁹² See 40 C.F.R. § 7.25.

⁹³ *Id.*; see also 40 C.F.R. § 5.105 (“*Applicant* means one who submits an application, request, or plan required to be approved by an official of the Federal agency that awards Federal financial assistance, or by a recipient, as a condition to becoming a recipient.”).

⁹⁴ See 40 C.F.R. § 7.25.

- (a) For the purpose of interfering with any right or privilege guaranteed by the Acts or this part,⁹⁵ or
- (b) Because the individual has filed a complaint or has testified, assisted, or participated in any way in an investigation, proceeding or hearing under this part, or has opposed any practice made unlawful by this regulation.⁹⁶

Persons with Limited English Proficiency (LEP) refers to persons who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English. Persons with LEP may be entitled to language assistance with respect to a particular type of service, benefit, or encounter.⁹⁷

Qualified individual with a disability means

- (1) Except as provided in paragraph (2) of this definition, an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a recipient;⁹⁸ and
- (2) With respect to employment, an individual with a disability who meets the definition of “qualified” in the Equal Employment Opportunity Commission’s regulation implementing title I of the Americans with Disabilities Act of 1990⁹⁹.

Noncompliance refers to an EPA determination that the recipient has failed to meet the requirements of federal civil rights laws (*e.g.*, Title VI, Section 504, *etc.*) and/or EPA’s nondiscrimination regulations at 40 C.F.R. Parts 5 and 7.

Nondiscrimination Program means a program developed and implemented by an applicant for or recipient of EPA financial assistance with the responsibility to ensure nondiscrimination in its programs and activities, including developing and implementing procedural safeguards, *i.e.*, baseline legal requirements pursuant to EPA’s nondiscrimination regulations at 40 C.F.R. Parts 5 and 7, or that otherwise emanate from federal civil rights laws (*e.g.*, Title VI, Section 504).

Primary recipient means any EPA recipient that extends EPA financial assistance to a subrecipient.

⁹⁵ “This part” refers to 40 C.F.R. Part 7.

⁹⁶ 40 C.F.R. § 7.100.

⁹⁷ LEP Guidance, 69 FR at 35606 (https://www.epa.gov/sites/production/files/2020-02/documents/title_vi_lep_guidance_for_epa_recipients_2004.06.25.pdf).

⁹⁸ 42 U.S.C § 12131. *See supra* fn 34. EPA interprets this definition to be consistent with the definition of a qualified individual with a disability in its nondiscrimination regulation. 40 C.F.R. § 7.25.

⁹⁹ 29 C.F.R. § 1630.2(m).

Program or activity is defined as all of the operations of any entity described in paragraphs (1) through (4) of this definition, any part of which is extended Federal financial assistance:

(1) (i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or (ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2) (i) A college, university, or other postsecondary institution, or a public system of higher education; or (ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3) (i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship— (A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or (B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or (ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3) of this definition.¹⁰⁰

Recipient means 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 EPA 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.¹⁰¹

Subrecipient means an entity that receives financial assistance from EPA through a primary recipient.

If you have any questions about the information contained in this Guidance, or wish to provide any comments, please submit them to:

Kurt T. Temple
Senior Advisor
EPA Office of Environmental Justice and External Civil Rights

¹⁰⁰ 40 C.F.R. § 7.25.

¹⁰¹ *Id.*; see also 40 C.F.R. § 5.105 (“*Recipient* means any State or political subdivision thereof, or any instrumentality of a State or political subdivision thereof, any public or private agency, institution, or organization, or other entity, or any person, to whom Federal financial assistance is extended directly or through another recipient and that operates an education program or activity that receives such assistance, including any subunit, successor, assignee, or transferee thereof.”).

Office of External Civil Rights Compliance
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460
Temple.Kurt@epa.gov

APPENDIX

***The sample documents in this Appendix are for the purpose of assisting recipients in complying with federal civil rights laws and EPA's nondiscrimination regulations. See 40 C.F.R. § 7.105. They are sample documents which recipients could use as a best practice and are not intended as legal advice or requirements. The relevant statutes, regulations, and other legally binding requirements referenced within the sample documents ultimately determine a recipient's legal obligations. In the event there is a conflict between the sample documents in the Appendix and any statute or regulation, the legal authorities, and not the sample documents, are controlling.**

**Federal Civil Rights Assurance Agreement for Subrecipient
(Or any Successor, Assignee, or Transferee of a Primary Recipient)**

**Pursuant to a preliminary injunction issued by the U.S. District Court for the Western District of Louisiana on January 23, 2024, EPA will not impose or enforce any disparate-impact or cumulative-impact-analysis requirements under Title VI against the State of Louisiana or its state agencies.*

This Assurance Agreement (“Agreement”) obligates [NAME], as [subrecipient, successor, assignee, or transferee] of EPA financial assistance through the primary recipient of such assistance, [NAME of Primary Recipient], to comply fully with applicable civil rights laws and implementing federal and EPA regulations.

- I. Statutory Requirements - [NAME] must comply with:
 - A. 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.
 - B. Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities by entities receiving Federal financial assistance; and
 - C. The Age Discrimination Act of 1975, which prohibits age discrimination by entities receiving Federal financial assistance.

If [NAME] is an educational institution (*e.g.*, school, college, or university) or if [NAME] is conducting an education program or activity under this agreement, it must also comply with:

- D. 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 C.F.R. Part 5 and <https://www.justice.gov/crt/title-ix>.

If this Agreement is based on EPA financial assistance under the Clean Water Act (CWA), [NAME] must also comply with:

- E. 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.
- II. Regulatory Requirements – [NAME] agrees to comply with all applicable EPA civil rights regulations, including:
 - A. For Title IX obligations, 40 C.F.R. Part 5; and

- B. For Title VI, Section 504, Age Discrimination Act, and FWPCA obligations, 40 C.F.R. Part 7.

In addition to prohibiting discrimination in your programs and activities, these regulations establish specific civil rights requirements, which are required for federal civil rights compliance, including:

- i. Designating a nondiscrimination coordinator (40 C.F.R. § 7.85(g));
- ii. Establishing grievance procedures (40 C.F.R. § 7.90(a));
- iii. Providing a notice of nondiscrimination (40 C.F.R. § 7.95(a)); and
- iv. Collecting, maintaining, and reporting federal civil rights compliance data (40 C.F.R. § 7.85(a), (b)).

III. TITLE VI – LEP

- A. [NAME] is required by Title VI to take reasonable steps to provide access to individuals with limited English proficiency (LEP) as required by Title VI.

IV. AFFIRMATIVE COMPLIANCE OBLIGATION

In accepting this Agreement, [NAME] acknowledges it has an affirmative obligation to implement an effective nondiscrimination program and to ensure that its actions comply with civil rights laws and EPA nondiscrimination regulations. [NAME] must be prepared to demonstrate to [NAME of Primary Recipient] and to EPA that such a program exists and is being implemented or to otherwise demonstrate how it is meeting its federal civil rights obligations.

Disability Nondiscrimination Policy Sample¹⁰²

(Revised Version: August 12, 2024)

Recipient is committed to providing persons with disabilities equal opportunity to participate in or benefit from its programs, services, and activities through its compliance with Section 504 of the Rehabilitation Act of 1973.¹⁰³

Recipient recognizes that persons with disabilities may need reasonable modifications to have equal opportunities to participate in or benefit from Recipient's programs, services, and activities.

It is Recipient's policy that no qualified person with a disability will be denied access to or participation in any program, service, or activity offered by Recipient. Recipient will administer programs, services, and activities in the most integrated setting appropriate to the needs of qualified persons with disabilities.¹⁰⁴

Recipient will provide at no cost appropriate auxiliary aids and services where necessary to afford persons with disabilities an equal opportunity to participate in and benefit from the programs, services, and activities provided by Recipient. Auxiliary aids and services may include qualified interpreters to individuals who are deaf or hard of hearing and must be provided in a timely manner and in such a way as to protect the privacy and independence of the individual.

Recipient will make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the recipient can demonstrate that making the modifications would fundamentally alter the nature of the program or activity.

Recipient and any of its agents will not coerce, intimidate, threaten, retaliate against, or discriminate against any individual for exercising a right under Section 504, or for assisting or supporting another to exercise a right under Section 504.

This Program and Policy applies to all Recipient subrecipients, agents and contractors.

¹⁰² This sample policy is for the purpose of providing technical assistance to assist Recipient in complying with federal civil rights laws and EPA's nondiscrimination regulations. See 40 C.F.R. § 7.105. The sample policy is not intended as legal advice, nor is its implementation by Recipient, in whole or in part, to be construed as a safe harbor from potential litigation or civil rights complaint. Also, while EPA has made every effort to ensure the accuracy of the information discussed in this sample policy, the relevant statutes, regulations, and other legally binding requirements determine Recipient's obligations as a Recipient. In the event of a conflict between the sample policy and any statute or regulation, the legal authorities are controlling.

¹⁰³ Recipient also prohibits discrimination in employment, including based on disability. For Recipient's employment discrimination policy, see Recipient Policy #####.

¹⁰⁴ See 40 C.F.R. § 7.55.

Definitions

A. Disability means, with respect to an individual:

1. a physical or mental impairment that substantially limits one or more of the person's major life activities;
2. a history of such an impairment; or
3. being regarded as having such an impairment.

The definition of “disability” shall be construed broadly in favor of expansive coverage, to the maximum extent permitted by the terms of Section 504. The question of whether an individual meets the definition of “disability” should not demand extensive analysis.

B. Qualified Individual with a Disability is an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by Recipient.

Nondiscrimination Coordinator

The Nondiscrimination Coordinator will coordinate Recipient’s efforts to comply with Section 504,¹⁰⁵ including ensuring the following:

- A. Recipient will adopt and make readily available in suitable formats (*e.g.*, enlarged, Braille, audio-taped, accessible website information when information is offered on the web):
 1. a procedure that allows an individual to request reasonable modifications or auxiliary aids or services needed to obtain equal access to and enable participation in Recipient programs, services, and activities;
 2. a procedure for maintaining personal information in a manner that protects the privacy and independence of the individual; and
 3. a procedure for providing reasonable modifications and auxiliary aids or services.
- B. Recipient will maintain data on the nature and extent of the services provided to persons with disabilities and develop data collection requirements as part of the operational guidelines for implementing this policy.
- C. Recipient will administer its programs, services, and activities in accessible locations and in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

¹⁰⁵ See 40 C.F.R. § 7.85(g): “If the recipient employs fifteen (15) or more employees, it shall designate at least one person to coordinate its efforts to comply with its obligations under [40 C.F.R. Part 7].”

- D. Recipient will utilize the grievance procedures set forth in its nondiscrimination program and policy for providing prompt and equitable resolution of complaints alleging any action that would violate Section 504. These procedures should be applicable to any anticipated complaint, including an appeal of a denied request for reasonable modifications or auxiliary aids or services.
- E. Recipient will provide auxiliary aids or services that are required to comply with Section 504 free of charge.
- F. Recipient will provide periodic in-service training for faculty and staff to develop their awareness and understanding of the needs of persons with disabilities and legal compliance issues.

Program Accessibility

Recipient will operate its programs and activities consistent with 40 C.F.R. § 7.65 so that, when each program or activity is viewed in its entirety, it is readily accessible to and usable by persons with disabilities.

A. Existing Facilities:

- 1. Structural changes in existing facilities are not required when other methods provide program accessibility. Such methods may include:
 - a. Redesigning equipment or the facility.
 - b. Reassigning staff, or services to accessible sites.
- 2. Evacuation procedures will be developed by Recipient for persons with disabilities.

B. New Construction and Alterations:

Each facility or part of a facility constructed by, on behalf of, or for the use of Recipient must be designed and constructed in such a manner that the facility or part of the facility is readily accessible to and usable by persons with disabilities. Alterations to existing facilities shall, to the maximum extent feasible, be designed and constructed to be readily accessible to and usable by persons with disabilities.

C. Off Campus:

Contractual or lease agreements for the use of non-Recipient facilities should ensure that any program, service, or activity of Recipient in that facility is accessible.

Reasonable Modifications and Auxiliary Aids and Services:

No participant with a disability in a Recipient program, service or activity will be denied the benefits of, be excluded from participation in, or be otherwise discriminated against in the provision of services available to all individuals in general.

Recipient will make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless Recipient can demonstrate that making the modifications would fundamentally alter the nature of the program or activity.

Recipient will take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others, including by furnishing appropriate auxiliary aids and services where necessary to afford qualified individuals with disabilities an equal opportunity to participate in, and enjoy the benefits of, a program or activity of a Recipient.

A Recipient does not need to provide a requested modification or auxiliary aid or service that would fundamentally alter the nature of a program, service, or activity. A Recipient also does not need to provide an auxiliary aid or service that would pose undue financial and administrative burdens on Recipient.

In determining what types of auxiliary aids and services are necessary, Recipient shall give primary consideration to the requests of individuals with disabilities. Recipient will not require an individual with a disability to accept a modification, aid, service, opportunity, or benefit under any circumstances.