

Understanding Our Roles to Protect & Advance Civil Rights: EPA, Grant Recipients & Subrecipients

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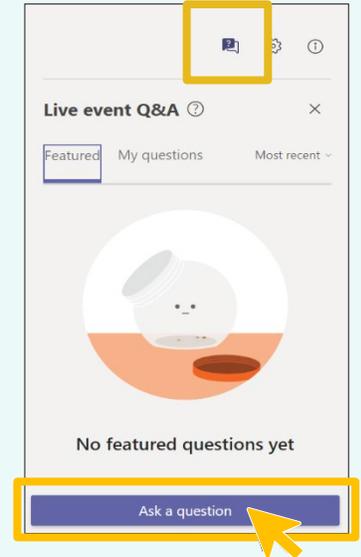
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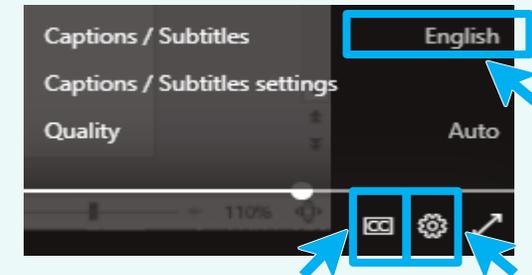


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Today's Training Objectives

By the end of this session, participants will:

- ▶ Understand civil rights laws, why they matter, and how they apply to Recipients of Federal financial assistance and their Subrecipients
- ▶ Know what to expect from the EPA Office of External Civil Rights Compliance (OECRC) in our oversight role
- ▶ Identify requirements and best practices for Recipients and their Subrecipients to implement as part of a strong and effective civil rights program

Civil Rights Laws

Background, Review of Statutes, Relationship to Environmental Justice

Title VI of The Civil Rights Act of 1964

- ▶ After years of intensive work on the part of civil rights advocates and their supporters in Congress, President Lyndon B. Johnson signed the landmark Civil Rights Act of 1964.
- ▶ Title VI, codified at 42 U.S.C. § 2000d et seq, directly addresses the then-common practice of denying certain persons access to federally funded services, programs, and activities based on their race, color, or national origin.

“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, Explained



- ▶ “No person in the United States”
 - ▶ “Person” includes citizens and noncitizens alike. Undocumented individuals in the United States are protected from discrimination by the Federal civil rights laws.
- ▶ “shall, on the ground of race, color, or national origin”
 - ▶ National origin includes an individual’s accent, ancestry, birthplace, culture, immigration status, or language

Title VI, Explained

- ▶ “Federal financial assistance” (FFA) does not have to be monetary. It includes:

Grants and loans

Grants or donation of federal property (e.g., military surplus, computers, vehicles)

Detail of federal personnel

The sale, lease, or permission to use federal property, and

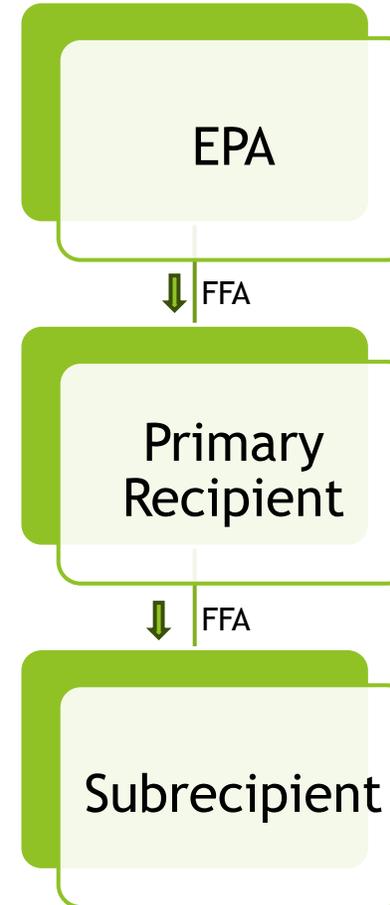
Any federal contract for the “provision of assistance”

Title VI, Explained

- ▶ “under any program or activity”
 - ▶ Generally includes all the operations of a department or agency of state or local government, educational institutions, and corporations and private organizations that receive federal financial assistance
 - ▶ Not only those directly funded by the EPA

Title VI, Explained

- ▶ “receiving federal financial assistance”
 - A Recipient is an entity or person that receives Federal financial assistance (FFA).
 - The primary Recipient directly receives the federal financial assistance. The primary Recipient may then distribute the FFA to a Subrecipient to carry out a program.
 - A Recipient also encompasses a successor, transferee, assignee, and contractor that receives the FFA (property or otherwise), under certain circumstances.



Other Prohibited Bases of Discrimination

In addition to prohibiting discrimination on the basis of race, color, and national origin, other federal civil rights laws protect different classes of people.

Protected Class	Statute
Disability	<u>Section 504 of Rehab Act of 1973</u>
Age	<u>Age Discrimination Act of 1975</u>
Sex	<u>Title IX of the Education Amendments of 1972</u> <u>Section 13 of FWPCA of 1972 programs or activities receiving financial assistance under the Clean Water Act</u>

Recipients and Subrecipients may not intimidate or retaliate against an individual for bringing a complaint that alleges a violation of civil rights laws (see [40 C.F.R. § 7.100](#)).

Comparing Civil Rights & Environmental Justice

	Civil Rights	Environmental Justice (EJ)
What is the authority?	Federal civil rights statutes (see prior slides)	Executive Orders (<u>12898</u> , <u>14096</u>)
What is the purpose?	Ensure that federal funds are not being used to discriminate	Integrate EJ into federal agency missions and operations
Who must comply?	Recipients of federal financial assistance	Federal agencies as designated by Executive Order
Who is protected?	Race, Color, National Origin (Title VI) Disability (Rehab Act) Age (Age Discrimination Act) Sex (Title IX, Clean Water Act)	Race, Color, National Origin Tribal affiliation Income Disability
How is the authority enforced?	Through federal agencies and courts	Not enforceable in court; does not create any rights, benefits, or trust responsibilities enforceable against the United States

EPA Regulations Implement Federal Civil Rights Laws

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

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

See [40 C.F.R. § 7.35](#)

EPA & Office of External Civil Rights Compliance

Civil Rights Compliance Role

External Civil Rights at EPA

- ▶ The Office of External Civil Rights Compliance (OECRC) within the Office of Environmental Justice and External Civil Rights (OEJECR) is responsible for the enforcement of federal civil rights laws that apply to recipients of EPA financial assistance, including Title VI.
- ▶ OECRC carries out this work through oversight and technical assistance provided to the Recipients of Federal financial assistance.



Advancing External Civil Rights at EPA

"We are embedding environmental justice and civil rights into the DNA of EPA and ensuring that people who've struggled to have their concerns addressed see action to solve the problems they've been facing for generations."

- Administrator Michael Regan

[Read News Release](#)

Visit the OECRC [website](#) for more information.

OECRC Civil Rights Compliance Efforts

Outreach and Education

General guidance, training, and technical assistance on civil rights obligations provided to Recipients and the public

Pre-Award Review

Review of information supplied by applicant on Form 4700-4

Post-Award Audit

Post-award audit of Recipient to verify information supplied on Form 4700-4

Complaint Investigation

Conducted when EPA receives a written statement alleging civil rights violation(s) by a Recipient or Subrecipient

Proactive Compliance Review

OECRC-initiated investigation where Recipient is selected:

- Proactively, based on criteria set by [policy](#);
- or
- To address either (1) multiple complaints alleging similar issues, or (2) a single complaint alleging a systemic issue(s)

Recipients & Subrecipients

Civil Rights Compliance Role

Public Policy Requirements

41. Civil Rights Obligations

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

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

(a) Statutory Requirements

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

Terms & Conditions of Assistance

► 41. Civil Rights Obligations

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

► See [EPA General Terms and Conditions \(Oct. 1, 2023, or later\)](#)

Terms & Conditions of Assistance

8. Establishing and Managing Subawards

Ensure that subrecipients are **aware that they are subject to the same requirements** as those that apply to the pass-through entity's EPA award as required by 2 CFR 200.332(a)(2). These requirements include, among others: (a) **Title VI of the Civil Rights Act** and other Federal statutes and regulations prohibiting discrimination in Federal financial assistance programs, as applicable.

See also [EPA Subaward Policy Appendix D: Subaward Agreement Template](#)

A Recipient must take steps to ensure Subrecipient compliance. Best practices include:

- ▶ Monitor Title VI compliance for Subrecipients
- ▶ Implement procedures to receive and investigate complaints or other information indicating potential noncompliance
- ▶ Obtain compliance reports from Subrecipients
- ▶ Make efforts to ensure that Subrecipients permit access to information needed for oversight

Pre-Award Review: Form 4700-4

- ▶ Applicants for federal financial assistance must complete the Form 4700-4 to report their compliance with civil rights laws.

- ▶ OECRC will review the form. If it has not been filled out completely or the answers do not reflect compliance, OECRC will work with the applicant to ensure they come into compliance within six months.

- ▶ See [Tips for Completing EPA Form 4700-4](#)

OMB Control No. 2030-0026
Approval expires: 06/30/2024

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

Note: Read instructions before completing form.

This collection of information is approved by OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. (OMB Control No. 2030-0026). Responses to this collection of information are required to obtain an assistance agreement (40 CFR Part 38, 40 CFR Part 39, and 40 CFR Part 39) for awards made prior to December 26, 2014, and 2 CFR 200, 2 CFR 1500, and 40 CFR Part 39 for awards made after December 26, 2014. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The public reporting burden for this collection of information is estimated to average 1.5 hours per response. Send comments on this Agency's need for this information, the necessity of the provided burden estimates and any suggested methods for reducing respondent burden to the Regulatory Support Division, Office, U.S. Environmental Protection Agency (OIE), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Include the OMB control number in any correspondence. Do not send the completed form to this address.

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

Name:
Address:
City:
State: Zip Code:

B. Unique Entity Identifier (UEI):

C. Applicant/Recipient Point of Contact

Name: Phone: Email:
Title:

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

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

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

V. List all civil rights compliance reviews of the applicant/recipient conducted under federal nondiscrimination laws by any federal agency within the last two years and enclose a copy of the review and any decisions, orders, or agreements based on the review. Please describe any corrective action taken. (40 C.F.R. § 7.400(c)(1)).

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

Yes No

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

Yes No

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

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

Yes No

a. Do the methods of notice accommodate those with impaired vision or hearing? Yes No

b. Is the notice posted in a prominent place on the applicant's/recipient's website, in the offices or facilities or, for education programs and activities, in appropriate periodicals and other written communications? Yes No

c. Does the notice identify a designated civil rights coordinator? Yes No

EPA Form 4700-4

Civil Rights Procedural Safeguards

Civil Rights Guidance on Procedural Safeguards

On August 22, 2024 the EPA's Office of External Civil Rights Compliance, within the [Office of Environmental Justice and External Civil Rights](#), released the *Civil Rights Guidance on Procedural Safeguards: Requirements and Best Practices*. This guidance document was created to assist recipients of EPA financial assistance (such as grantees) when developing and improving their legally required civil rights compliance efforts.

It also advances transparency by providing information to all stakeholders about obligations under civil rights laws and EPA's nondiscrimination regulations, and represents another step toward delivering on EPA's commitment to strengthening its external civil rights enforcement program.

The *Civil Rights Guidance on Procedural Safeguards: Requirements and Best Practices* provides information about the civil rights laws administered by the Agency, and outlines best practices for building strong and effective civil rights programs for recipients of EPA financial assistance.

[Read the Civil Rights Guidance on Procedural Safeguards: Requirements and Best Practices](#)

[Guía de derechos civiles sobre garantías procesales: requisitos y mejores prácticas](#)

- ▶ These include legal requirements and best practices for Recipients and Subrecipients to protect and advance civil rights
- ▶ EPA believes that civil rights concerns may be addressed proactively by Recipients and Subrecipients 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

See [Civil Rights Guidance on Procedural Safeguards](#)

Procedural Safeguards: Required

All applicants for and Recipients/Subrecipients of EPA financial assistance must, as applicable:

- ▶ Designate at least one person to coordinate efforts to comply with federal civil rights laws*, including the substantive civil rights obligations to:
 - Take reasonable steps to provide meaningful access for persons with limited English proficiency (LEP);
 - Provide qualified persons with disabilities an equal opportunity to participate in and benefit from the recipient's programs and activities.
 - Ensure that public participation processes are available to all persons regardless of race, color, national origin, disability, age, or sex.
- ▶ Adopt grievance procedures that assure the prompt and fair resolution of complaints alleging federal civil rights violations*
- ▶ Provide initial and continuing notice of nondiscrimination
- ▶ Collect, maintain and provide civil rights compliance information

*If the entity employs at least 15 employees



OFFICE OF EXTERNAL CIVIL RIGHTS COMPLIANCE
WASHINGTON, D.C. 20460

Participation in Compliance Reviews & Complaint Investigations

- ▶ OECRC will notify the Recipient if it is the subject of a post-award audit, affirmative compliance review or complaint investigation. Specific procedures for each process are explained in the [Case Resolution Manual](#).
- ▶ The Recipient and any Subrecipient(s) must collect, maintain, and on request of the OECRC, provide information to show compliance (see [40 C.F.R. § 7.85](#)).

Additional Compliance Consideration: Distributing Program Benefits & Subawards

- ▶ To promote equity, Recipients and Subrecipients may use factors that are indicative of community-level disadvantage, such as:
 - ▶ Environmental burdens, including pollution and proximity to polluting facilities
 - ▶ Health statistics and life expectancy
 - ▶ Socioeconomic indicators (e.g., education, healthcare access, income, employment, housing)
 - ▶ Lack of prior investment or grant awards
- ▶ Consult with your legal counsel to ensure that program design and implementation do not discriminate based on a protected status.

Next Steps

Actions for Recipients & Subrecipients

Recap of Civil Rights Obligations

Civil Rights Requirement	Recipients	Subrecipients
1) Review programs and activities to ensure they comply with civil rights statutes that prohibit discrimination on the basis of race, color, national origin, sex, age, and disability, and retaliation.	Yes	Yes
2) Complete the <u>Form 4700-4</u> at time of financial assistance application to provide compliance assurances.	Yes	No
3) Adopt the required procedural safeguards under 40 C.F.R. Parts 5 and 7, as applicable, and may consider incorporating additional best practices as described in the <u>Guidance</u> .	Yes	Yes
4) Manage subrecipient compliance - for example, through active monitoring and procedures to investigate complaints.	Yes	Yes, if contracting with additional Subrecipients
5) Collect, maintain, and provide data and information to EPA, including in response to complaint investigations, pre-award Form 4700-4 reviews, post-award audits and affirmative compliance reviews.	Yes	Yes

Questions?

Contact Megan Cunningham, Special Advisor for Implementation, at Cunningham.Megan@epa.gov.