

**TITLE VI OF THE CIVIL RIGHTS ACT OF 1964:  
ROLE OF COMPLAINANTS AND RECIPIENTS IN THE TITLE VI COMPLAINTS  
AND RESOLUTION PROCESS**

**I. INTRODUCTION**

EPA has made improving its civil rights program a priority and recognizes that its enforcement of Title VI of the Civil Rights Act of 1964 (Title VI), as amended, and other nondiscrimination statutes is an important tool in the Agency's efforts to address discrimination.<sup>1</sup>

The purpose of this paper is to set forth the U.S. Environmental Protection Agency's current thinking on the roles of complainants and recipients in EPA's Title VI administrative complaint processing and resolution efforts. The proposed approaches discussed below clarify and expand upon how EPA will implement its current regulations. In discussing these proposed approaches, EPA seeks to strike a balance between providing greater involvement for complainants in the complaint process while continuing to work closely with recipients, as detailed in the regulations, to address complaints filed against them and, as appropriate, in EPA's discretion, resolve complaints where possible.

A Title VI complainant is not like a plaintiff in court. Rather, a complainant's role is more like that of a tipster, who reports what he or she believes is an act violating Title VI by an entity receiving federal financial assistance (the recipient) to the associated agency providing such assistance, in this case EPA. EPA is not in an adjudicatory role, evaluating evidence produced by opposing sides, but instead investigates allegations about its recipient, and reaches a conclusion regarding whether a violation of Title VI has occurred.

EPA's regulations do not prescribe a role for the complainant once he or she has filed a complaint. Nevertheless, one of EPA's goals is to promote appropriate<sup>2</sup> involvement by complainants and recipients in the Title VI complaint process. This paper addresses how EPA will enhance the roles and opportunities for complainants and recipients to participate in the complaint and resolution process including efforts related to informal resolution and voluntary compliance.

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<sup>1</sup> EPA implements Title VI, section 504 of the Rehabilitation Act of 1973 (EPA regulations at 40 C.F.R. Part 12), section 13 of the Federal Water Pollution Control Act Amendments of 1972, Title IX of the Education Amendments of 1972 (EPA regulations at 40 C.F.R. Part 5), and the Age Discrimination Act of 1975, which prohibit discrimination based on race, color, national origin, disability, sex (in limited circumstances), and age. EPA's regulation at 40 C.F.R. Part 7, entitled "Nondiscrimination in Programs or Activities Receiving Federal Assistance from EPA," includes general and specific prohibitions against intentional and disparate effects or disparate impact discrimination by EPA's assistance recipients on the basis of race, color, national origin, sex (in limited circumstances), ~~or~~ disability, and age. Every EPA grant recipient, including each state environmental agency receiving financial assistance from EPA, is subject to the terms of 40 C.F.R. Part 7.

<sup>2</sup> All determinations about if any action described in this document is "appropriate" will be made by the EPA as part exercise of enforcement discretion, which was recognized by the Supreme Court in *Alexander v. Choate*, 469 U.S. 287, 293-294 (1985).

This document does not change or substitute for any law, regulation, or any other legally binding requirement; is not legally enforceable; and does not impose any legally binding requirements.

## II. CURRENT POSITION

A. COMPLAINANTS: EPA's *Draft Revised Guidance for Investigating Title VI Administrative Complaints Challenging Permits* (issued in June 2000) (Draft Investigation Guidance), states that complainants may play an important role in the administrative process; however, that role is determined by the nature and circumstances of the claims.<sup>3</sup> Specifically, during the jurisdictional review of Title VI complaints, OCR may seek clarification regarding the issues articulated by the complainants.<sup>4</sup> OCR may also request interviews of complainants or request additional information from the complainants during the course of an investigation. Finally, in appropriate cases, OCR may offer complainants and recipients an opportunity to participate in Alternative Dispute Resolution concerning the matters raised in the complaint.

B. RECIPIENTS: EPA's *Draft Investigation Guidance* states that OCR may work closely with recipients to ensure that the Agency has a complete and accurate record of all relevant information pertaining to the complaint, and a full understanding of the recipient's position relating to the allegations.<sup>5</sup> In order for OCR to perform the appropriate analyses, one of the most important things recipients may do as early as possible is to provide OCR with all of the information relevant to the complaint, including, but not limited to, background information, the permit application(s), monitoring data, computer modeling, other aspects of the recipient's analysis of the application(s), and any information relating to steps the recipient took to address potential Title VI concerns. Moreover, under EPA's Title VI regulations, OCR has the authority to obtain information from recipients and interview recipient staff.<sup>6</sup> Full and expeditious disclosure of such information helps to facilitate resolution of Title VI complaints.<sup>7</sup>

EPA's Title VI regulations provide the recipient with several opportunities to respond to the complaint and to any OCR finding. First, the recipient may make a written submission responding to, rebutting, or denying the allegations raised in a complaint.<sup>8</sup> Second, OCR may attempt to resolve the complaint informally, during which time the recipient will be able to state its position. Third, if OCR makes a preliminary finding of noncompliance with the regulations, the recipient may submit a written response within 50 calendar days of receiving the preliminary finding, demonstrating that the preliminary finding is incorrect or that compliance may be achieved through steps other than those recommended by OCR.<sup>9</sup>

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<sup>3</sup> See *Draft Revised Investigation Guidance*, 65 Fed. Reg. 39,650, 39,671 (proposed June 27, 2000).

<sup>4</sup> 40 CFR 7.120(d)(1).

<sup>5</sup> See *Draft Revised Investigation Guidance*, 65 Fed. Reg. at 39,671.

<sup>6</sup> 40 CFR 7.85(b), (f).

<sup>7</sup> In addition to considering information supplied by recipients, OCR will also evaluate information provided by complainants.

<sup>8</sup> 40 CFR 7.120(d)(1)(iii).

<sup>9</sup> 40 CFR 7.115(d)(2).

Finally, if OCR begins the procedure to deny, annul, suspend, or terminate EPA assistance, recipients may request a hearing before an Administrative Law Judge (ALJ)<sup>10</sup> and, if the ALJ's decision upholds a finding of noncompliance, the recipient may then file exceptions with the Administrator.<sup>11</sup>

### **III. PROPOSED POSITION**

EPA has evaluated its current policy and practices on the role and opportunities of complainants and recipients in complaint processing and resolution efforts. The following is intended to clarify and expand on EPA's existing policy and practices in this regard.

EPA intends to follow these principles in the processing and resolution of Title VI complaints, as applicable and appropriate:

#### **A. COMPLAINT PROCESS:**

1. EPA may seek clarification from the complainants during its initial review of the administrative complaint. At the time they file a complaint, complainants should provide EPA any relevant information available to them which supports their claim(s).
2. Upon acceptance of a complaint, but prior to the initiation of an investigation, EPA will offer in appropriate cases, at EPA expense, complainants and recipients the opportunity to engage in Alternative Dispute Resolution efforts. EPA considers the ADR process to be a viable option for complainants and recipients to address some, if not all, of the issues raised in a complaint.
3. EPA will continue its present practice of requesting additional information (e.g. interviews) from the complainants and recipients during the course of an investigation.
4. EPA will make information in its case tracking system available.

#### **B. INFORMAL RESOLUTION AND/OR VOLUNTARY COMPLIANCE**

EPA may, at any point prior to a preliminary finding of compliance, seek to informally resolve complaints of discrimination.

Following issuance of a preliminary determination of noncompliance, EPA may enter into a voluntary compliance agreement with a recipient to resolve a complaint. Where EPA issues a preliminary finding of noncompliance, in addition to notifying the recipient, per the regulations, EPA intends to notify complainant of said finding.<sup>12</sup> EPA will also, at the

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<sup>10</sup> 40 CFR 7.130(b)(2).

<sup>11</sup> 40 CFR 7.130(b)(3).

<sup>12</sup> When preliminary finding has been made and the EPA is engaging in voluntary compliance in accordance with 7 CFR §7.115(d), EPA retains the discretion to contact the Recipient first.

appropriate time, notify the public of a preliminary finding of noncompliance by posting its decision on its public access websites.

If resolution discussions are occurring between EPA and the recipient, EPA will use its discretion, when appropriate, to engage complainants who want to provide input on potential remedies, and EPA will determine based on its discretion when such engagement may occur during the process. For instance, EPA, in appropriate cases, may request and consider complainant's input on potential remedies for the complaint and may forward the suggested remedies to the recipient for further discussion with EPA. Alternatively, depending on the complaint, EPA may seek and consider complainant's input on potential terms of a settlement agreement.

### C. ALTERNATIVE DISPUTE RESOLUTION

As stated above, EPA considers the ADR process to be a viable option for complainants and recipients to address some, if not all, of the issues raised in Title VI complaints. As appropriate, EPA may offer the complainant and the recipient an opportunity to engage in the ADR process at any stage in the complaint process, even if an investigation has started.