

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

I. PREAMBLE

The U.S. Environmental Protection Agency's (EPA) Office of Civil Rights (OCR) is publishing the Role of Complainants and Recipients in the Title VI Complaint and Resolution Process policy paper as final. The revisions made to the final document reflect and include considerations and suggestions received through public outreach. This policy discusses approaches the OCR may employ during the Title VI investigation process.

On January 29, 2013, the EPA's OCR released a draft policy paper for public comment entitled Role of Complainants and Recipients in the Title VI Complaint and Resolution Process, and clarified the roles of complainants and recipients in the Title VI complaint process. Today's Federal Register document contains the final version of the policy paper, Role of Complainants and Recipients in the Title VI Complaints and Resolution Process. This final policy will replace the draft policy paper issued January 29, 2013.

The purpose of the Role of Complainants and Recipients in the Title VI Complaint and Resolution Process policy is to establish the EPA's understanding of participatory roles of the complainant and recipient. Furthermore, this policy clarifies EPA's approach to providing appropriate involvement of complainants in the complaint process, which may enhance the investigation of allegations about a recipient and the ability to reach a conclusion regarding whether a violation of Title VI has occurred. The issuance of this policy is not intended to nor does it modify or alter EPA's implementing regulations in 40 Code of Federal Regulations Parts 5 and 7. Moreover, any inadvertent omission of a reference to actions, processes or rights described in EPA's implementing regulations and not in this policy is not intended to nor does it modify, limit or supersede any regulatory provisions.

The EPA received comments regarding the draft Role of Complainants and Recipients in the Title VI Complaint and Resolution Process. Most of the commenters responded in a companion draft document and did not provide commentaries for the Role of Complainants and Recipients in the Title VI Complaint and Resolution Process. Some of the comments received made inquiries with respect to previously issued draft policy guidance documents currently implemented by the EPA and the mode of publishing guidance and policies for public comment. Other commenters made inquiries related to the Agency's approach for finalizing the draft guidance documents and their relationship to the two draft policy papers and previously established environmental justice positions.

In finalizing the draft policy paper, the EPA only considered comments that directly pertained to the focus of this draft policy paper. Several of the comments affirmed the proposed policy paper's position and welcomed participation of the complainant in the investigation process. Commenters applauded the EPA's proposed approach to consider public involvement and continued dialogue with the complainant throughout the process. Others raised concerns on the need for this policy paper and the degree of involvement in the approval of formal settlement agreements that complainants would have under the proposed policy. Some commenters were concerned that the proposed policy would encourage the proliferation of more filings, which could

lead to recipients conceding simply to close complaints or participating in Alternative Dispute Resolution (ADR) for meritless complaints.

The EPA considered all comments received and as a result of some of the comments received, made revisions to the Role of Complainants and Recipients in the Title VI Complaint and Resolution Process policy paper in an effort to clarify its intent. For example, the final policy removes the word “tipster” because some commenters believed the description did not accurately describe the role of the complainant nor their actions. By reference, the final policy clarifies the ADR process, identifies how the cost of ADR will be paid, and reaffirms that both parties must agree to participate in the ADR process if it is selected as a viable resolution option. Lastly, the final policy clarifies that EPA may request information from other stakeholders as it deems necessary and appropriate to assist in the investigation process. The final policy paper, however, does not amend the proposed position of notifying complainants, at the appropriate time, of preliminary findings.

II. INTRODUCTION

The 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.¹

The purpose of this paper is to set forth the EPA’s current thinking on the roles of complainants and recipients in the EPA’s Title VI administrative complaint processing and resolution efforts. The proposed approaches discussed below clarify how the 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 the EPA’s discretion, resolve complaints where possible.

A Title VI complainant is not like a plaintiff in court. Rather, a complainant’s role is to report 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 the EPA. The 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.

The EPA’s regulations do not prescribe a role for the complainant once he or she has filed a complaint. Nevertheless, one of the EPA’s goals is to promote appropriate² involvement by complainants and recipients in the Title VI complaint process. This policy addresses how the EPA

¹ The 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. The EPA’s regulation at 40 C.F.R. Part 7, entitled “Nondiscrimination in Programs or Activities Receiving Federal Assistance from the EPA,” includes general and specific prohibitions against intentional and disparate effects or disparate impact discrimination by the EPA’s assistance recipients on the basis of race, color, national origin, sex (in limited circumstances), disability, and age. Every EPA grant recipient, including each state environmental agency receiving financial assistance from the EPA, is subject to the terms of 40 C.F.R. Part 7.

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

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.

III. CURRENT POSITION

A. COMPLAINANTS

The 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.³ Specifically, during the jurisdictional review of Title VI complaints, OCR may seek clarification regarding the issues articulated by the complainants.⁴ 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 ADR concerning the matters raised in the complaint.

B. RECIPIENTS

The 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.⁵ 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 the EPA's Title VI regulations, OCR has the authority to obtain information from recipients and interview recipient staff.⁶ Full and expeditious disclosure of such information helps to facilitate resolution of Title VI complaints.⁷

Once a complaint is accepted for investigation, the 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.⁸ Second, OCR may attempt to resolve the complaint informally, during which time the recipient will be able to state its position.⁹ 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 pursuant to 40 CFR 7.115(d)(2), demonstrating that the preliminary finding is incorrect or that compliance may be achieved through steps other than those recommended by OCR.¹⁰

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

⁴ 40 CFR 7.120(d)(1).

⁵ See *Draft Revised Investigation Guidance*, 65 Fed. Reg. at 39,671.

⁶ 40 CFR 7.85(b), (f).

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

⁸ 40 CFR 7.120(d)(1)(iii).

⁹ 40 CFR 7.120(d)(2).

¹⁰ 40 CFR 7.120(d)(1)(iii).

Finally, if OCR begins the procedure to deny, annul, suspend, or terminate the EPA assistance, recipients may request a hearing before an Administrative Law Judge (ALJ)¹¹ and, if the ALJ's decision upholds a finding of noncompliance, the recipient may then file exceptions with the Administrator.¹²

IV. PROPOSED POSITION

The 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 the EPA's existing policy and practices in this regard. Any rights, processes, concepts or definitions identified in the current position that are not specifically addressed below remain in effect.

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

A. COMPLAINT PROCESS

1. When a complaint is accepted, the EPA will notify the complainants, recipients, and where appropriate, the applicable facility(ies).
2. The 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 the EPA any relevant information available to them which supports their claim(s).
3. Upon acceptance of a complaint, at any time prior to the initiation of an investigation, and process at any stage in the complaint or investigation process, the EPA will offer where appropriate, at the EPA's expense, complainants and recipients the opportunity to engage in ADR efforts. The 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. Both parties must agree to ADR (for additional information, see [EPA's Website at http://www.epa.gov/civilrights/faq-adrt6.htm](http://www.epa.gov/civilrights/faq-adrt6.htm)).
4. The EPA will continue its present practice of requesting additional information (e.g. interviews) from the complainants and recipients during the course of an investigation.

¹¹ 40 CFR 7.130(b)(2).

¹² 40 CFR 7.130(b)(3).

5. During the course of an investigation when OCR deems it necessary, it may exercise its enforcement discretion to gather additional information from relevant sources (e.g., community members, businesses/industry, and permit holders).
6. The EPA will make publicly available information that is updated on a quarterly basis related to the Title VI complaints in its case tracking system.

B. ALTERNATIVE DISPUTE RESOLUTION

As stated above, the 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.¹³ As appropriate, the 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.

The decision to try ADR to resolve a Title VI complaint is completely voluntary for complainants and recipients. If they agree to attempt ADR to resolve their dispute, the EPA will move the complaint into abeyance status and the regulatory timeframes for the EPA to complete its investigation will be tolled during the convening, situation assessment, and mediation or facilitation processes (i.e., the duration of the ADR process). The complainants and recipients may informally resolve a Title VI complaint and such informal resolution refers to any settlement or resolution of complaint allegations prior to the issuance of a formal finding of noncompliance.¹⁴ If settlement is reached, the OCR will dismiss the complaint, and notify recipients and complainants of closure. Any resolution must be reflected in a written settlement or resolution agreement signed by complainants and recipients identifying the actions each will take to resolve the conflict reflected in the complaint.

ADR participants can withdraw from the process at any time without penalty if they determine that they cannot meet their interests and achieve a satisfactory outcome. If this happens, complaint processing and the investigation will resume.

C. INFORMAL RESOLUTION AND/OR VOLUNTARY COMPLIANCE

After acceptance of a complaint, the EPA may, at any point prior to a preliminary finding of compliance or non-compliance, seek to informally resolve complaints of discrimination with the recipient.

Following issuance of a preliminary determination of noncompliance, the EPA may enter into a voluntary compliance agreement with a recipient to resolve a complaint. Where the EPA issues a preliminary finding of noncompliance, in addition to notifying the recipient, per the regulations, the EPA intends to notify the complainant of said finding.¹⁵ 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.¹⁶ The EPA will also, at the appropriate time, notify the public of a preliminary finding of

¹³ See [EPA's Website at http://www.epa.gov/ocr/faq-adrt6.htm](http://www.epa.gov/ocr/faq-adrt6.htm)

¹⁴ *Id.* at 39,673.

¹⁵ When a preliminary finding has been made and the EPA is engaging in voluntary compliance in accordance with 40 CFR §7.115(d), the EPA retains the discretion to contact the recipient first.

¹⁶ 40 CFR 7.120(d)(1)(iii).

noncompliance by posting its decision on its public access website

If resolution discussions are occurring between the EPA and the recipient, the EPA will use its discretion, when appropriate, to engage complainants who want to provide input on potential remedies, and the EPA will determine based on its enforcement discretion when such engagement may occur during the process. For instance, the EPA, in appropriate cases, may request and consider the complainant's input on potential remedies for the complaint and may forward the suggested remedies to the recipient for further discussion with the EPA. The EPA may undertake the gathering of such additional information, in appropriate cases, because the information could help in evaluating whether a settlement is in the Agency's best interest.

Alternatively, depending on the complaint, the EPA may seek and consider the complainant's input on potential terms of a voluntary compliance agreement between the EPA and the recipient. Voluntary compliance agreements must be in writing, set forth the specific steps the recipient has agreed to take, and be signed by the Director of OCR or designee and an official with legal authority to bind the recipient.¹⁷

¹⁷ *Id.*
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