



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460**

EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

**External Civil Rights Compliance Office (ECRCO)
Process and Criteria for Prioritizing and Selecting Affirmative Compliance Reviews
January 6, 2022**

The United States Environmental Protection Agency (EPA) External Civil Rights Compliance Office (ECRCO), which is located in EPA's Office of General Counsel, implements EPA's federally-mandated responsibility to enforce several federal civil rights laws, which together prohibit discrimination on the basis of race, color, national origin (including limited-English proficiency (LEP)), disability, sex and age by applicants for and recipients of financial assistance from EPA.¹ ECRCO's responsibilities include, among other duties, initiating compliance reviews.² This memo describes the process and criteria ECRCO will apply to prioritize and select affirmative compliance reviews on an annual basis. Affirmative compliance reviews are conducted subsequent to the award of Federal financial assistance to determine whether a recipient complies with federal civil rights laws and EPA's implementing regulation.

I. Authority and Compliance Review Procedures

All federal agencies are required to maintain an effective program of "post-approval" or post-award compliance reviews. *See e.g.*, 28 C.F.R. § 42.407(c) (Title VI). A compliance review is an ECRCO-initiated investigation of a particular aspect of an EPA recipient's programs or activities to determine compliance with the civil rights laws enforced by ECRCO. In addition to the regulations implementing civil rights laws that require EPA to investigate complaints that are filed with the agency, the regulations specify that EPA may periodically conduct compliance reviews to assess the practices of recipients to determine whether they comply with nondiscrimination statutes and regulations. *See* 40 C.F.R. §§ 7.110, 7.115; 5.605.

EPA's nondiscrimination regulation affords EPA discretion to determine the substantive issues for investigation and the number and frequency of the investigations. The scope of a compliance review is defined on a case-by-case basis. *See* 40 C.F.R. § 7.115; Case Resolution

¹ Title VI of the Civil Rights Act of 1964, 42 United States Code §§ 2000d to 2000d-7 (Title VI); Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq.; Age Discrimination Act of 1975, 42 U.S.C. § 6101 et seq.; Federal Water Pollution Control Act Amendments of 1972, Pub. L. 92-500 § 13, 86 Stat. 903 (codified as amended at 33 U.S.C. § 1251 (1972)); 40 C.F.R. Parts 5 and 7.

² *See* 28 C.F.R. § 42.407(c) ("Federal agencies shall establish and maintain an effective program of post-approval compliance reviews" pursuant to Title VI); 40 C.F.R. § 7.115 (Postaward compliance).

Manual (CRM) Chapter 8.³ After selecting a recipient/site for review, ECRCO will inform the recipient of the scope of and schedule for review – that is, the issues to be investigated and the timing of the investigation –and its opportunity to make a written submission responding to, rebutting, or denying the issues raised in the review. *See* 40 C.F.R. § 7.115(b). The “initiation date” for the purposes of post-award compliance reviews is the date of the letter notifying the recipient of the compliance review. These compliance reviews may include information and data requests. They may also include on-site reviews when ECRCO has reason to believe that discrimination may be occurring in those programs or activities. *See* 40 C.F.R. § 7.115(a). Case managers will use the investigation and resolution paths and procedures identified throughout the CRM for compliance reviews, as appropriate.⁴ If the recipient agrees to engage in the informal resolution agreement process, at an appropriate time during the investigation process, ECRCO may suspend its compliance review and issue a letter to the recipient notifying it when informal resolution agreement discussions have commenced. At that point, the 180-day time period for ECRCO to issue a preliminary finding on the issues being investigated through the compliance review process is tolled.⁵

II. Prioritization and Selection Process

In prioritizing issue areas and selecting specific recipients for affirmative compliance reviews, ECRCO will consider a number of sources, including input from impacted communities and other internal and external stakeholders and partners, including EPA program and regional offices and other federal agencies. ECRCO will also consider statistical data, prior complaints, and other sources of relevant information. The target number of compliance reviews in any year will depend in part on resources.

A. Input from Impacted Communities and Other Internal and External Stakeholders and EPA Partners

The prioritization and selection process will be informed by the following ECRCO activities:

1. One or more public listening session and opportunity to submit comments annually convened by ECRCO;⁶
2. Consultation with EPA program and regional offices; and
3. Engagement with other external stakeholders and EPA partners.

ECRCO will also consider referrals or requests for investigation from other federal entities. Where appropriate, ECRCO will also consider conducting joint compliance reviews with other federal entities.

B. Statistical Analysis and Other Data

³ *See* Case Resolution Manual (CRM), Chapter 8, p. 35 (https://www.epa.gov/sites/default/files/2021-01/documents/2021.1.5_final_case_resolution_manual_.pdf)

⁴ *See* CRM, Chapters 2-7 (https://www.epa.gov/sites/default/files/2021-01/documents/2021.1.5_final_case_resolution_manual_.pdf)

⁵ *See* 40 C.F.R. §7.115(c)(1) (stating in relevant part that within 180 calendar days from the start of the complaint investigation, ECRCO will notify the recipient in writing of preliminary findings); CRM at p. 22.

⁶ ECRCO held the first public listening session on October 27, 2021.

As part of the prioritization and selection process, ECRCO will consider relevant information on environmental, health risks or harms, and quality of life harms that are disproportionately borne by communities based on race, national origin, or color from screening and mapping tools such as, but not limited to, EPA's EJSCREEN, and appropriate supplementary environmental and health information/data,⁷ to identify potential geographic areas and jurisdictions for compliance review. ECRCO may also consider information from tools built by states or other entities containing data sets that provide more granular data for particular locations.

ECRCO may also consider information and data from scientific research literature,⁸ which could include data made available by community science environmental or health monitoring efforts and information from prior complaints,⁹ and news reports. In addition, ECRCO may consider statistical data on the relative burdens on particular populations or in specific geographic areas, as well as specific disease, mortality and/or morbidity rates, and whether these factors demonstrate disparate effects based on race, color, and/or national origin or are indicative of disparate treatment.

C. Whole of EPA Approach

To maximize the impact of ECRCO's affirmative compliance review authority, ECRCO will use a "whole of EPA" approach in prioritizing and selecting areas of focus to ensure that the protection of human health and the environment is available to all persons in the United States, regardless of race, color, national origin, disability, sex, and age. ECRCO will consider the environmental goals identified in EPA's strategic plan in prioritizing annual compliance review activities. Moreover, where appropriate, ECRCO may align action pursuant to its affirmative compliance review authority with the programmatic priorities articulated by other EPA programs and activities.

III. Criteria for Prioritizing and Selecting Annual Compliance Review Sites

The goal of compliance reviews is to proactively determine compliance by recipients of EPA financial assistance with civil rights laws that EPA enforces, and where noncompliance is identified, to take action to bring recipients into compliance. The following list of factors will contribute to the prioritization and selection of compliance reviews.

- A. Trends and, particularly, whether potential noncompliance on a particular issue or by a recipient, are increasing in frequency or significance.
- B. Strategic significance of the issue raised in light of, for example, agency priorities.

⁷ Such data could include, but are not limited to, data shared by a state or local government entity, privacy organizations, public health organizations, and private individuals.

⁸ Such sources could include, but are not limited to, peer reviewed journal articles, advance online drafts of articles undergoing peer review, studies by research organizations such as EPA's Office of Research and Development, state-issued health or environmental monitoring studies.

⁹ Such sources would not be restricted to civil rights complaints or complaints filed with EPA and/or ECRCO and could include environmental or health complaints to the states, local governments, private entities, or other federal entities.

C. Recipient and community characteristics,¹⁰ including:

1. Whether a recipient has large geographic boundaries, a large population, or concentrations of high population densities under its jurisdiction;
2. The presence of high levels of pollution, or high concentrations of regulated sources;
3. Current land use patterns with a nexus to prior discriminatory practices that have not been fully ameliorated – including, but not limited to, redlining and other forms of segregation; and
4. Recipient’s jurisdiction includes communities with environmental concerns – that is, communities that are or may be experiencing disproportionate adverse impacts from environmental health harms or risks, potentially including communities of color, indigenous populations, communities with a disproportionate number of people with LEP, people with disabilities, communities that have a disproportionate number of children or people who are aging, or that have other vulnerabilities.¹¹

D. Actions by recipients.

1. Opportunity for EPA to collaborate with recipients to ensure that new state or local environmental initiatives comply with Title VI of the Civil Rights Act of 1964; and
2. Opportunity for collaboration because a recipient is taking an action related to an emerging issue (such as use of new technology in public participation processes) that is part of a national trend likely to be followed by other jurisdictions (such as, for example, the shift to virtual hearings and meeting in light of the COVID 19 pandemic.)

E. History of prior complaints, including non-compliance.

1. Consideration of the number and nature of past and pending civil rights complaints¹² filed against specific recipients and/or based on specific issue areas;¹³
2. Civil rights findings or recommendations resulting from prior technical assistance, programmatic reviews and/or petitions,¹⁴ or investigations that have not been sufficiently resolved or implemented or where resolution or implementation has been substantially delayed;

¹⁰ ECRCO may use EJSCREEN or other similar GIS tools to identify geographic or programmatic candidates for Compliance Reviews. However, case managers should supplement any such GIS-based screening analyses with other investigatory tools such as, but not limited to, interviews with regional staff and stakeholders, local data sources, and where possible, site visits to “ground truth” the screening outputs.

¹¹ ECRCO may use GIS tools like EJSCREEN to identify community characteristics.

¹² Excluding certain employment discrimination complaints. See 40 C.F.R. Part 7.

¹³ ECRCO may prioritize recipients with prior histories of complaints related to Strategic Plan priority areas, such as, for example, discrimination complaints related to lead in drinking water or brownfield cleanup sites.

¹⁴ ECRCO will consult with EPA offices and programs for recommendations of priority geographies or issues ECRCO should consider in selecting candidates for compliance review investigations. For example, ECRCO may request from OAR a list of geographies or EPA financial assistance recipients who are the subject of a high number of, or seriously deficient, permit petitions.

3. Pre-existing disadvantages resulting from prior discriminatory practices that have not been fully ameliorated;¹⁵ and
4. Other information indicating a possible failure to comply with civil rights laws.

¹⁵ For example, localities with histories of discriminatory practices and policies such as redlining and exclusionary zoning.