

EPA Grants Federal Civil Rights Compliance for Recipients & Subrecipients of EPA Financial Assistance Webinar, September 19, 2024 Frequently Asked Questions (FAQ)

- Q1: Does prohibited “discrimination” include treating people, or groups of people, either more favorably or less favorably because of their protected characteristics?
- A1: Yes, “discrimination” is prohibited by the civil rights laws that EPA enforces, which includes treating people more or less favorably on the basis of race, color, national origin, disability, sex, or age, or on the basis of their participation in the discrimination complaint process identified in 40 CFR Part 7.
- Q2: One of Massachusetts’ environmental justice criteria is a lack of English proficiency. Is that not one of the criteria for EPA?
- A2: The environmental justice Executive Orders 12898 and 14096 and Executive Order 13166, *Improving Access to Services for Persons with Limited English Proficiency*, apply to the EPA and other Federal agencies. For more information about [Executive Order 13166](#).
- Q3: How long would an organization be on suspension if they did not comply with the regulations and terms and conditions?
- A3: Under EPA's regulations ([40 CFR 7.135](#)), there are procedures for regaining eligibility for funds when assistance has been suspended under 40 CFR Part 7. Any applicant or recipient whose assistance has been denied, terminated, or suspended regains eligibility as soon as it provides reasonable assurance that it is complying and will comply with regulations and satisfies the terms and conditions for regaining eligibility. You can find more detail in the regulations.
- Q4: Are the slides available?
- A4: The presentation from today’s webinar is available for download from the [Federal Civil Rights Compliance for Recipients & Subrecipients of EPA Financial Assistance webinar webpage](#).
- Q5: Does EPA anticipate updating the General Terms and Conditions soon (anticipating a 10/1/24 effective date)?
- A5: The updated General Terms and Conditions, effective October 1, 2024 or later, are posted on the [Grant Terms and Conditions](#) webpage.
- Q6: I have a grant applicant, a small island municipality, that answered “No” to question 8 and 9 on their 4700-4 Preaward Compliance Review form. Since they are a very small municipal government (the island government is small (<15 employees)), is there any further obligation needed here?
- A6: On the Form 4700-4, Question VIII (“Does the applicant/recipient maintain demographic data on the race, color, national origin, sex, age, or disability status of the population it serves?”) refers to obligations that apply to all recipients of Federal financial assistance, including entities with fewer than 15 employees. The recipient should follow up with its grant applicant to help them come into compliance with these requirements as soon as possible.

Question IX's reference to having a policy/procedure ("Does the applicant/recipient have a policy/procedure for providing meaningful access to services for persons with limited English proficiency?") does not reflect a regulatory requirement for recipients. But, as a best practice, a recipient should be able to demonstrate that it is taking reasonable steps to ensure meaningful access to a recipient's program or activities for persons with LEP. The [Civil Rights Guidance on Procedural Safeguards](#) is a resource to help the applicant understand requirements and best practices.

Q7: Can you tell me what is prohibited by the permanent injunction issued by a district court in Louisiana?

A7: Pursuant to a [permanent injunction](#) issued by the US District Court for the Western District of Louisiana on August 22, 2024, EPA will not impose or enforce any disparate-impact or cumulative-impact-analysis requirements under Title VI against any entity in the State of Louisiana.

Q8: Do subrecipients have to complete the EPA Form 4700-4?

A8: EPA does not require subrecipients to complete the Form 4700-4; this requirement only applies to the applicant (and ultimate recipient) of the Federal financial assistance. However, recipients have an obligation to ensure that subrecipients are in compliance with Federal civil rights laws and may, therefore, require subrecipients to provide some form of certification to the recipient. The EPA's [Civil Rights Guidance on Procedural Safeguards](#) includes a sample assurance form that a recipient may refer to in developing its own assurance form for subrecipients.

Q9: Can you please explain what needs to be included in a proper log of complaints? Is this only formal complaints or is it for any complaint?

A9: Under [40 CFR 7.85](#), recipients are required to collect, maintain, and on the request of EPA, 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. When completing the [Form 4700-4](#), recipients must submit information about:

- 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 CFR Parts 5 and 7.)
- 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 CFR Parts 5 and 7.)
- 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 CFR § 7.80(c)(3)).

Q10: What is the EPA's advice for those states that include race as part of their Environmental Justice criteria with respect to legal risks raised by the Louisiana issue?

A10: Recipients should consult their legal counsel for advice about any potential legal risk associated with the use of a state's environmental justice data.

From the Office of Environmental Justice and External Civil Rights (OEJECR) policy perspective, nothing in the *State of Louisiana v. U.S. EPA, et al* decision affected how a recipient may voluntarily elect to use such data to advance compliance with its Federal nondiscrimination obligations. It is noted that EPA's nondiscrimination regulation at [40 CFR 7.85](#) requires that every recipient collect and maintain, and if requested by OEJECRC, provide certain data, including racial/ethnic, national origin, age, sex, and disability data.

The EPA's [Civil Rights Guidance on Procedural Safeguards](#) provides more guidance regarding the regulatory requirements that all recipients must follow regarding data collection, maintenance and production. It also identifies best practices that recipients may elect to implement to further demonstrate compliance with Federal nondiscrimination laws.

Q11(a): Can you please elaborate on "non-compliance?"

A11(a): Recipients of Federal financial assistance must comply with all applicable Federal civil rights statutes and the EPA's nondiscrimination regulations at 40 CFR Parts 5 and 7. "Non-compliance" is the failure to adhere to these statutory and regulatory obligations. Please refer to the training presentation for more information about what is required for recipients and any subrecipients.

Q11(b): Can you provide information about the required good faith practices and using Minority Business Enterprise/Women Business Enterprise (MBE/WBE) forms?

A11(b): Information about the MBE/WBE program is provided at the [Disadvantaged Business Enterprise Program Requirements webpage](#), including a frequently asked questions document.

Q12: On the last slide, #4 states that subrecipients must comply if contracting with recipients. Would that be a contractor, engineer, etc. working on a project? If not, please explain a scenario where this would apply.

A12: The primary recipient is the entity that receives Federal financial assistance directly from the EPA. The primary recipient may then distribute the Federal assistance to a subrecipient to carry out a program. (Subrecipients are entities that receive Federal financial assistance through a relationship with the primary recipient, including contractors, transferees, and assignees.) Like recipients, subrecipients must comply with Federal civil rights laws. See [Civil Rights Guidance on Procedural Safeguards](#), at Sec. 9 (Definitions); see also [DOJ Title VI Legal Manual](#), at Sec. V(D).

Q13: We are a small population state. The EJ Screening Tool is excellent. However, we have a very low percentage of each minority group. The Geographic Information System (GIS) based tool relies on U.S. Census data, and the data is statistically less stable. How can we comply or show compliance when the tool cannot offer strong accuracy on protected groups in the vicinity of a funded project? Is EPA working on an improved tool?

A13: [EJScreen](#) is EPA's environmental justice mapping and screening tool that provides EPA with a nationally consistent dataset and approach for combining environmental and socioeconomic indicators. Since its public release in 2015, EJScreen has been and will continue to be updated annually with the newest and best data available.

EJScreen users should note there is substantial uncertainty in socioeconomic and environmental data, particularly when looking at small geographic areas. Screening results should be supplemented with additional information and local knowledge to get a better understanding of the issues in a selected location. In addition to EJScreen, recipients may consider data sources such as the US Census, including the American Community Survey (ACS), as well as [other Federal and state databases and mapping tools](#). For more information about data collection best practices, please refer to the EPA's [Civil Rights Guidance on Procedural Safeguards](#).

Q14: Can you please provide a citation or link for the Louisiana court case mentioned?

A14: The [permanent injunction](#) was issued by the U.S. District Court for the Western District of Louisiana on August 22, 2024, in *State of Louisiana v. U.S. EPA, et al.*

Q15: The recent injunction in Louisiana said it applies to “any entity.” Are Tribal Nations included in this? If so, why?

A15: If a Federally recognized Tribe in Louisiana or doing work in Louisiana is a recipient of EPA financial assistance, EPA will generally consider the Tribe to be an “entity in Louisiana” for purposes of the injunction.

Q16: When we share materials with the public, such as outreach materials, board meeting agendas, and website materials, are we also required to provide a translated version if a large majority of our customers speak Spanish?

A16: Under Title VI, 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. This means that persons with LEP must have meaningful access to information about a recipient's programs, activities, services, or benefits that is on par with the information provided to English speakers or persons without LEP.

There is not a “one-size fits all” approach to compliance with this requirement – this is a fact-dependent analysis. As a best practice, recipients may use the following, non-exclusive 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 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.

For more information about meaningful access requirements and best practices, please refer to the EPA's [Civil Rights Guidance on Procedural Safeguards](#).

- Q17: Beyond guidance at LEP.gov and the relevant executive order, are there CFR provisions that specify LEP requirements?
- A17: 40 CFR § 7.35(a) prohibits discrimination on the basis of national origin in the programs or activities of a recipient of EPA assistance and 40 CFR § 7.95(a) requires notices of nondiscrimination to be in languages other than English where appropriate. For more information about meaningful access requirements and best practices, please refer to the EPA's [Civil Rights Guidance on Procedural Safeguards](#).
- Q18: What if our EPA funded project is not providing services to the public. Can you answer N/A on all of the 4700-4 items?
- A18: No. The Form 4700-4 must be completed by all applicants for EPA financial assistance, regardless of whether the recipient will be providing direct services to the public. Furthermore, a recipient's obligations to comply with all applicable civil rights statutes and EPA regulations extend to all its programs and activities as defined in 42 U.S.C. 2000d-4a.
- Q19: The current 4700-4 has expired. When will a new form be available?
- A19: We are aware that the current Form 4700-4 indicates an approval expiration date of 06/30/2024. The form is in the process of being re-approved; meanwhile, however, applicants should continue to use the current form available [here](#).
- Q20: Can we use the Justice 40 initiative when deciding how to enforce compliance for disadvantaged communities that will benefit from EPA projects?
- A20: Under the [Justice 40 Initiative](#), the Federal government has made it a goal that 40 percent of the overall benefits of certain Federal climate, clean energy, affordable and sustainable housing, and other investments flow to disadvantaged communities that are marginalized by underinvestment and overburdened by pollution. Federal agencies use the [Climate and Economic Justice Screening Tool](#) (CEJST) mapping tool to help identify disadvantaged communities. Recipients may also refer to this tool in administering their programs or activities in compliance with the Federal civil rights statutes. However, EPA is not directing such action and, as such, a recipient will need to determine whether the Justice 40 tools provide enough relevant information for the recipient to assess whether its programs or activities comply with Federal nondiscrimination laws and regulations.
- Justice 40 does not allow recipients to prioritize enforcement of Federal civil rights laws for disadvantaged communities. The Federal prohibition against discrimination applies to all, regardless of whether a community is disadvantaged as defined in CEJST or not.
- Q21: Why does Louisiana have a permanent injunction against EPA imposing or enforcing disparate impact analysis? Do any other states have similar status?
- A21: The permanent injunction was issued by the U.S. District Court for the Western District of Louisiana on August 22, 2024, in *State of Louisiana v. U.S. EPA, et al.* The permanent injunction only applies to entities in the State of Louisiana.
- Q22: When it comes to designating a person to coordinate efforts to comply with Federal civil rights laws, would the City's Community Relations Coordinator be enough, or should there be someone who specifically is working on the grant project?

A22: The EPA's nondiscrimination regulations require recipients with 15 or more employees to designate a nondiscrimination coordinator to help ensure compliance with Federal civil rights laws.¹ For more information about requirements and best practices related to the functions and authority of the nondiscrimination coordinator, please refer to the EPA's [Civil Rights Guidance on Procedural Safeguards](#).

Nondiscrimination requirements apply to the recipient of Federal financial assistance with respect to the administration of all its programs or activities, not only those directly funded by such financial assistance. So, for example, if a nonprofit organization receives \$50,000 from the EPA to run a specific program, the nondiscrimination coordinator must oversee compliance with Federal civil rights law and the EPA's nondiscrimination regulations for all programs or activities of the nonprofit.

Q23: Can you share what a complaint might look/sound like? Are there base elements to a "complaint?"

A23: EPA publishes the [docket online](#). This docket has links to complaints that have been filed with the Agency. Also, there is information about filing a complaint on [EPA's website](#).

Q24: Are you referring to contractors as in construction or does it include consultants?

A24: The primary recipient is the entity that receives Federal financial assistance directly from the EPA. The primary recipient may then distribute the Federal assistance to a subrecipient to carry out a program. (Subrecipients are entities that receive Federal financial assistance through a relationship with the primary recipient, including contractors, transferees, and assignees.) You may read more about contractors in [Civil Rights Guidance on Procedural Safeguards](#); see also [DOJ Title VI Legal Manual, at Sec. V](#).

Q25: As a recipient, if I believe a sub-recipient is not in compliance what should I do if the project has already begun and/or what authority do I have to ensure the subrecipient is in compliance?

A25: A recipient is required to ensure that its subrecipients are in compliance with Federal civil rights laws and the EPA's nondiscrimination regulations. If a recipient believes that a subrecipient is not in compliance, the recipient should take steps as appropriate under any contractual agreement with the subrecipient; this may include requiring the subrecipient to take corrective actions or, if issues are not remedied, terminating the agreement. Noncompliance on the part of a subcontractor may present a compliance risk for the recipient directly if a civil rights complaint is filed against the subcontractor and/or recipient, or if a compliance review finds deficiencies in the recipient's oversight of its subrecipients.

Q26: If I am buying a shelter from a vendor, and the vendor is building the shelter and installing it on our site, is the vendor considered a contractor?

A26: The vendor is considered a subrecipient – and is therefore subject to Federal civil rights law and EPA's nondiscrimination regulations – if the vendor receives Federal financial assistance through a contractual relationship with the primary recipient.

¹ All recipients that operate education programs or activities must designate a Title IX coordinator, and publish the name, office address and telephone number of the person appointed to this position.

- Q27: If my agency has grants with different Federal agencies (Department of Transportation (DOT) or Department of Homeland Security (DHS)), do Title VI complaints go to both agencies, or one agency over the another? Also are there differences in how EPA asks recipients to manage Civil Rights vs other Federal agencies?
- A27: Anyone who believes they have been discriminated against by a recipient of Federal financial assistance may file a civil rights complaint. The complaint may be directed to one or more Federal agencies that provide Federal financial assistance to that recipient. In cases where the complaint is filed with more than one Federal agency, the agencies will coordinate to determine which agency (or agencies) will accept the complaint based on factors such as jurisdiction over the subject matter and expertise relevant to the complaint.
- Federal agencies each have their own nondiscrimination regulations that describe how that particular agency implements Federal civil rights statutes. There may be differences among the agencies in their policies and procedures with respect to civil rights compliance and enforcement. To address any specific questions, recipients should consult the regulations and/or the relevant agencies' civil rights offices.
- Q28: Can you please share a link to the guidance on procedural safeguards?
- A28: The guidance is available on the [EPA website](#).
- Q29: For clarification, what would an activity be (which requires a civil rights coordinator) if broader than the activity the grant is funding?
- A29: Nondiscrimination requirements apply to the recipient of Federal financial assistance with respect to the administration of all its programs or activities, not only those directly funded by such financial assistance. So, for example, if a nonprofit organization receives \$50,000 from the EPA to run a specific program, all programs or activities of the nonprofit are subject to the nondiscrimination requirements.
- Q30: You said that the civil rights applying broadly to the program (not just that funding stream) was a "legal question." But, you've been repeating that. Can you explain? Our legal counsel said they couldn't find any legal support for that broad application.
- A30: Title VI defines "program or activity" at 42 U.S.C. 2000d-4a. The [DOJ Title VI Legal Manual](#) provides information about the legal basis for how Federal agencies interpret the definition of "program or activity" under Title VI and other Federal civil rights statutes.
- Q31: If you are waiting on an award as a subrecipient which is not guaranteed, would it cause an issue if I applied independently by the chance the recipient is denied? If both receive an award, I could not accept the award, correct?
- A31: For applications that are unique, where an organization is a recipient on one award, and a subrecipient on another, EPA will inquire about how organization will manage funding and costs to ensure work does not overlap. Most of the time, an organization is allowed to be a recipient one award and a subrecipient on another, if the work is unique, and EPA is not paying twice for the same work. However, if you are applying to a competitive grant opportunity, check to make sure the Notice of Funding Opportunity doesn't prohibit applicants from also being subrecipients listed on another applicant's award.

Q32: If the applicant is an education program or activity, or has 15 or more employees, do they need to designate an employee to coordinate its compliance with 40 CFR Parts 5 and 7? If so, are they required to provide the name, title, position, mailing address, e-mail address, fax number, and telephone number of the designated coordinator?

A32: If an applicant has 15 or more employees, it must designate a [nondiscrimination coordinator](#). EPA's nondiscrimination regulations require as a condition for receiving EPA financial assistance that a recipient publish a [notice of nondiscrimination](#), which should include contact information for the recipient's nondiscrimination coordinator. For more information about requirements and best practices related to the functions and authority of the nondiscrimination coordinator, please refer to the EPA's [Civil Rights Guidance on Procedural Safeguards](#).

If the applicant is an education program or activity, it must designate a Title IX coordinator, and publish the name, office address and telephone number of the person appointed to this position. For more information about the Title IX coordinator, please refer to [40 CFR § 5.135\(a\)](#).

Q33: Can programs receiving EPA assistance segregate people, deny their opportunity to participate, or restrict people from enjoyment of advantage/privilege based on non-compliance with U.S., State, or local laws?

A33: In the United States, the Supremacy Clause in the U.S. Constitution states that federal law is "the supreme Law of the Land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding." All recipients of Federal financial assistance must comply with all Federal civil rights laws. Please consult legal counsel for any fact-specific applications of the Federal civil rights laws.