

Pursuant to a permanent injunction issued by the U.S. 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. [Click here for additional and updated information.](#)

U.S. ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF EXTERNAL CIVIL RIGHTS COMPLIANCE



CASE RESOLUTION MANUAL
(CRM)

EFFECTIVE DATE: JANUARY 17, 2025¹

¹ This document supersedes any prior previously released versions of this document and any previous internal procedures released by OECRC or former OCR regarding the processing of external civil rights complaints. This document provides internal guidance to EPA staff and is not intended to create or impose any legal requirements or obligations or revise any existing statutory or regulatory requirements.

Introduction

The U.S. Environmental Protection Agency's Office of External Civil Rights Compliance (OECRC), which is located in EPA's Office of Environmental Justice and External Civil Rights (OEJECR), carries out its 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), disability, sex, age, and intimidation and retaliation for the exercise of a protected right, by applicants for and recipients of EPA financial assistance.² OECRC's responsibilities include conducting complaint investigations and resolutions, compliance reviews, pre-award reviews, and post-award audits, as well as providing proactive technical assistance and other education and outreach activities.

As part of a holistic approach to strengthening the EPA's external civil rights program, OECRC has established objectives related to the enforcement of and compliance with civil rights laws. For purposes of transparency and to timely and effectively communicate with EPA recipients, complainants and communities, EPA has made its strategic planning efforts publicly available on OECRC's webpage, along with the OECRC Civil Rights Compliance Toolkit, this Case Resolution Manual (CRM), and all case letters of finding and resolution agreements, to facilitate a better understanding of EPA's external civil rights program.³ OECRC also maintains a searchable docket on its webpage with information about the status of complaints received and compliance reviews initiated since 2014.

Finally, but perhaps most notably, OECRC is making full use of the resolution tools available to it, as discussed further in Chapter 3 of this CRM, such as the informal resolution of complaints specifically authorized in EPA's nondiscrimination regulation. EPA's regulation requires that it seek the cooperation of EPA recipients in securing compliance with the federal civil rights laws and that it attempt to resolve complaints informally whenever possible.

² 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.

³ The OECRC website is available at: <https://www.epa.gov/external-civil-rights>.

Case Resolution Manual

This CRM provides procedural information to guide OECRC case managers and other EPA staff members in the performance of their duties to ensure EPA’s prompt, effective, and efficient resolution of civil rights complaints and compliance reviews, consistent with the civil rights laws and the mission of EPA – to protect human health and the environment. The CRM does not and is not intended to address substantive civil rights policy or legal standards or processes outside of OECRC’s jurisdiction and responsibility to enforce the federal civil rights laws described above.

To continue the practice of transparency and accountability, OECRC posted this revised version of the CRM on its website in January 2025, to replace the previous version posted in 2021. Updates incorporated into this version of the CRM were informed by input from EPA staff and discussions with EPA advisory council members, including recipients and communities that have participated in OECRC’s discrimination complaint process. Any changes are intended to ensure that the CRM accurately reflects current practices and procedures for investigating and resolving complaints pursuant to federal civil rights laws. OECRC envisions that the CRM will continue to be evaluated, updated, and revised periodically.

Although OECRC retains the primary authority and responsibility for carrying out the external civil rights program, OECRC recognizes the fundamental importance of including program and regional offices in a collaborative process to evaluate, investigate, and resolve complaints and conduct compliance reviews. This “One-EPA” approach enables representatives from across the Agency to coordinate and commit the analytical resources, expertise, and technical support from EPA environmental and human health programs and other offices needed to enable OECRC to address and promote civil rights compliance. The CRM describes how OECRC engages with program and regional representatives⁴ to determine the appropriate resolution path for each complaint or compliance review.

For persons with limited-English proficiency, OECRC will meet its affirmative obligation to take reasonable steps to provide meaningful access to language services at no cost to those persons accessing or participating in OECRC’s programs and activities. OECRC will further provide qualified persons with disabilities an equal opportunity to participate in and benefit from OECRC’s programs and activities at no cost to them.

⁴ Throughout the CRM, “regional representatives” may include, but are not limited to, Deputy Civil Rights Officials (DCROs), Environmental Justice Division Directors, Regional Counsels, Regional case management staff, and their designees.

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CHAPTER 1 EVALUATION OF COMPLAINTS

This Chapter sets out procedures OECRC uses when it receives correspondence from an external source, or has such correspondence referred to it from another EPA office or other federal agency.

Section 1.1 Evaluation of Correspondence

OECRC conducts a preliminary review of correspondence to determine whether it constitutes a complaint.

A complaint is a written statement to the agency alleging that the federal civil rights of one or more persons have been violated by a recipient⁵ of financial assistance from EPA and requesting that the agency act. Complaints may be filed, for example, by electronic mail, regular mail, fax, or in person.⁶

The following will not be considered a complaint:

- Oral allegations that are not reduced to writing;
- Anonymous correspondence⁷;
- Courtesy copies of correspondence or courtesy copies of a complaint filed with or otherwise submitted to another person or other entity;
- Inquiries that seek advice or information but do not seek action or intervention from OECRC; or
- Correspondence expressing general concerns about the environment or human health.

When OECRC is notified by another EPA office that it received comments or other correspondence that references civil rights issues without explicitly evincing an intention to file a complaint, OECRC may contact the individual (or group) who made the submission to inform them of the complaint process.

Section 1.2 Acknowledging Receipt of a Complaint

Once OECRC determines that a correspondence constitutes a complaint, OECRC will promptly issue a standardized letter to the individual (or group) who filed the complaint as well as to any named entity (potential/alleged recipient) to acknowledge receipt. In the acknowledgement letter to the complainant, OECRC will include a statement advising the complainant that, if the complaint is accepted for investigation, a copy of the complaint will be shared with the recipient, consistent with 40

⁵ Federal civil rights laws apply to applicants for, and recipients of, EPA financial assistance in the operation of programs or activities receiving such assistance. See 40 C.F.R. § 7.15. Where applicable, throughout the CRM, the term “recipient” includes *both* applicants for, and recipients of, EPA financial assistance.

⁶ U.S. EPA, Office of General Counsel, External Civil Rights Compliance Office, 1200 Pennsylvania Avenue, N.W., Washington, D.C., 20460. Complaints may be faxed to (202) 501-1836 and submitted by email to Title_VI_Complaints@epa.gov.

⁷ Anonymous correspondence may be considered as one factor in a decision to initiate a compliance review but will not be sufficient to constitute a complaint.

C.F.R. § 7.120(e), and that OECRC will release the complaint with appropriate redactions consistent with the Freedom of Information Act (FOIA) and the Privacy Act and will only release identifying information to the extent necessary to comply with 40 C.F.R. Parts 5 and 7.⁸

A copy of the acknowledgement letter and the complaint will be emailed to the appropriate regional representatives and OGC's Civil Rights & Finance Law Office (CRFLO). The appropriate regional representatives and CRFLO will promptly inform OECRC of any known information that should be considered in its evaluation of the complaint pursuant to Section 1.9. Additionally, the appropriate regional representatives will identify a point of contact with whom OECRC can coordinate, consult, and confer about the specific case.

Section 1.3 Assign a Case Number

Immediately upon receipt of a complaint, OECRC will assign a case number. OECRC's "opening" date for a jurisdictional review is the date OECRC receives the complaint on a business day, excluding federal holidays. If a complaint is received over a weekend or on a federal holiday, OECRC will consider it received on the next business day.

When a complaint identifies multiple separate allegations relating to the action of multiple separate entities, the following guidelines will apply in determining the assignment of case numbers:

- (1) OECRC will assign a separate case number to each entity (alleged recipient) named in the complaint.
- (2) If, during the investigation, OECRC determines that other entities are involved in the alleged acts of discrimination, OECRC may open separate complaints and assign a separate case number for each such entity. The case opening date for those entities is the date of OECRC's letter notifying those additional entities that they are involved. (See Section 1.10.)
- (3) If, during the investigation, a complainant modifies the complaint to allege acts of discrimination against other entities, OECRC may open separate complaints and assign a separate case number for each such entity. The case opening date for those entities is the date that OECRC receives notification from the complainant of their intent to modify the complaint.
- (4) Complaints from more than one person or organization against the same entity that contain different allegations are treated as separate cases.
- (5) Multiple complaints sent by one or more than one person that raise sufficiently similar allegations against the same entity may be consolidated into one case and assigned one case number. During the investigation of a complaint, OECRC will review any subsequent complaint it receives that raises sufficiently similar allegations against the same entity to

⁸ Freedom of Information Act, 5 U.S.C. § 552(b)(6) and (7)(c) and the Privacy Act of 1974, 5 U.S.C. § 552a.

determine whether to incorporate it into the existing case(s). If the subsequent complaint raises distinct allegations, OECRC may assign a separate case number.⁹

- (6) New allegations filed by the same person against the same entity after OECRC has opened an investigation pursuant to the initial complaint are reviewed on a case-by-case basis to determine whether the allegations should be added to the open case or treated as a new case. If the correspondence relates to actions that are under the jurisdiction of another federal agency, OECRC will refer the matter as described in Section 1.7.

Section 1.4 Case Tracking and Case Files

After acknowledging receipt of a complaint (see Section 1.2), OECRC staff will utilize case tracking tools, as appropriate, that identify all case processing points from receipt to resolution and proposed timeframes for completion of each point. (See Chapter 2.)

Immediately upon receipt of a complaint, OECRC will establish a case file. OECRC will enter all appropriate case management information and required documents into the case file. Staff should follow OECRC's protocols to maintain physical and electronic case files once a case file is created. The purpose of the case file is to preserve any information that OECRC considered in its evaluation of the complaint.

Section 1.5 Jurisdictional Review of Complaints

OECRC will provide oral and written information, as appropriate, to individuals wishing to file a complaint to assist them in understanding the jurisdictional requirements under the regulation. This includes explaining the nondiscrimination rights covered by the statutes and regulations enforced by OECRC. OECRC will help complainants and recipients understand the administrative procedures and processes associated with OECRC's complaint processing. However, OECRC is a neutral decision-maker and is not an advocate on behalf of complainants or recipients.

(1) Jurisdictional requirements

When evaluating complaints for acceptance, rejection, or referral to the appropriate federal agency, EPA's nondiscrimination regulation requires OECRC to consider the following four jurisdictional requirements, which are described in further detail below:

- i. Whether it is in writing;
- ii. Whether it alleges a discriminatory act(s) that, if true, may violate federal civil rights laws over which EPA has jurisdiction and/or EPA's nondiscrimination regulation;

⁹ OECRC may subsequently consolidate cases initially assigned different case numbers where it determines during jurisdictional review or investigation that multiple complaints sent by more than one person raise sufficiently similar allegations against the same entity.

- iii. Whether it identifies an applicant for, or a recipient of, EPA financial assistance as the entity that committed the alleged discriminatory act;¹⁰ and
- iv. Whether it was received by OECRC within 180 calendar days of the alleged discriminatory act. [40 C.F.R. § 7.120.](#)

If a complaint does not meet these jurisdictional requirements, it will be rejected. OECRC will refer the complaint, as appropriate, in accordance with Section 1.7.

(2) Determine that the complaint is in “writing”

A complaint need not be written in English. OECRC will take reasonable steps to provide meaningful access for persons with limited-English proficiency to OECRC’s complaint process and its other programs and activities. Similarly, OECRC will provide qualified persons with disabilities an equal opportunity to participate in and benefit from OECRC’s complaint process and its other programs and activities.

(3) Determine jurisdiction over the subject matter of the complaint

OECRC must have jurisdiction over the subject matter of the complaint. For OECRC to establish jurisdiction, the complaint must allege, or OECRC must be able to infer from the facts given, an allegation of: discrimination based on race, color, national origin (including limited English proficiency), sex, disability or age; intimidation or retaliation for the purpose of interfering with any right or privilege secured by the civil rights laws enforced by OECRC, or because the person has filed a complaint, testified, or participated in any manner in an OECRC proceeding; or other violation of an EPA nondiscrimination regulation, such as failure to implement any required procedural safeguards. See [40 C.F.R. §§ 5.300 – 5.550](#), [40 C.F.R. §§ 7.30-7.75](#), and [40 C.F.R. §§ 7.100 – 7.180](#). If OECRC lacks subject matter jurisdiction over any of the issues raised in the complaint, it will not proceed further regarding those issues and will reject the issues and/or complaint in accordance with Section 1.8.

OECRC has jurisdiction pursuant to the following statutory and regulatory authorities:

- i. **Title VI of the Civil Rights Act of 1964**, [42 U.S.C. §§ 2000d et seq.](#), [40 C.F.R. Part 7](#). Under Title VI, OECRC has jurisdiction to investigate complaints alleging discrimination by applicants and recipients based on race, color, or national origin, including limited English proficiency. For employment complaints, OECRC follows procedures consistent with the employment coordinating regulations at [28 C.F.R. Part 42](#) and [29 C.F.R. Part 1691](#).¹¹

¹⁰ EPA’s nondiscrimination regulations apply to “all applicants for, and recipients of, EPA assistance in the operation of programs or activities receiving such assistance.” See 40 C.F.R. § 7.15. For the purposes of determining jurisdiction over a complaint, “program or activity” means all of the operations of any entity as described in 40 C.F.R. § 7.25. While the complaint must identify an applicant or a recipient under this requirement, OECRC will conduct an independent investigation to determine whether the entity identified is a recipient of EPA financial assistance.

¹¹ With respect to alleged discrimination in employment, OECRC’s jurisdiction is limited to alleged discrimination in employment on the basis of sex in any program or activity subject to Section 13, or on the basis of race, color, or national origin in any program or activity whose purpose is to create employment; or, by means of employment discrimination, deny intended beneficiaries the benefits of EPA financial assistance, or subject the beneficiaries to prohibited discrimination. [40](#)

- ii. **Title IX of the Education Amendments of 1972**, as amended, [20 U.S.C. §§ 1681 et seq.](#), [40 C.F.R. Part 5](#). Under Title IX, OECRC has jurisdiction to investigate complaints alleging discrimination on the basis of sex in any education program or activity receiving financial assistance from the EPA. For employment complaints in general, OECRC follows procedures consistent with the employment coordinating regulations at [28 C.F.R. Part 42](#) and [29 C.F.R. Part 1691](#).
- iii. **Section 504 of the Rehabilitation Act of 1973**, as amended, [29 U.S.C. § 794](#), [40 C.F.R. Part 7](#). Under Section 504, OECRC has jurisdiction to investigate complaints alleging discrimination on the basis of disability in a program or activity receiving financial assistance from the EPA. For employment complaints, OECRC follows procedures consistent with the employment coordination regulations at [28 C.F.R. Part 37](#) and [29 C.F.R. Part 1640](#).
- iv. **Age Discrimination Act of 1975**, [42 U.S.C. §§ 6101 et seq.](#), [40 C.F.R. Part 7, Subpart F](#). Under the Age Discrimination Act, OECRC has jurisdiction to investigate complaints alleging discrimination based on age in a program or activity receiving financial assistance from the EPA. Accepted complaints of this nature are subject to mandatory referral for mediation to the Federal Mediation and Conciliation Service (FMCS) before investigation. However, complaints of employment discrimination based on age against an individual by recipients of federal financial assistance are subject to the Age Discrimination in Employment Act of 1967 and should be filed administratively with the Equal Employment Opportunity Commission. 40 C.F.R. § 7.120(a). For age complaints, OECRC adheres to the responsibilities of federal agencies with respect to the Age Discrimination Act. See 45 C.F.R. Part 90.
- v. **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 et seq.](#) (1972)), [40 C.F.R. Part 7](#). Under Section 13 of the Federal Water Pollution Control Act Amendments, OECRC has jurisdiction to investigate complaints alleging discrimination based on sex involving a program or activity receiving financial assistance under the Clean Water Act.

(4) Determine jurisdiction over the entity alleged to have discriminated

OECRC must also have jurisdiction over the entity or potential recipient, including sub-recipients, alleged to have committed the discriminatory act. Under the statutes listed above, OECRC has jurisdiction over entities that receive financial assistance from EPA (“recipients”) and their programs or activities. Determining whether an entity is an EPA recipient may require analysis including, for example, examining the flow-through of federal funds or the level of administrative control exercised by the recipient, such as recipient’s authority to make financial, staffing, priority planning and other binding decisions about the operations of an entity. Under these circumstances, OECRC will conduct a factual inquiry and consult with CRFLO and the appropriate regional representatives to make an informed determination about whether a particular entity satisfies the criteria. When a complaint is

[C.F.R. § 7.35\(a\)\(6\)](#). Complaints solely alleging employment discrimination against an individual on the basis of race, color, national origin, sex or religion shall be processed under 28 C.F.R. Part 42 and 29 C.F.R. Part 1691.

filed against an entity that does not receive financial assistance from EPA, OECRC will not proceed further and will refer or reject the complaint in accordance with Section 1.7 or 1.8, respectively.

(5) Determine whether the allegations are timely

OECRC will consider as timely¹² those allegations that have been filed within 180 calendar days after the date of the last act of alleged discrimination.¹³ If a case does not satisfy this condition, is not a continuing policy or practice as defined below, and/or is not granted a waiver, it will be rejected under Section 1.8.

i. Continuing Policy or Practice

OECRC may investigate acts that are outside of the 180-day time period when a complainant alleges facts that indicate a continuing discriminatory policy or practice. However, a complaint claiming continuing violations must do more than allege that an individual or a group is subjected to a continuing violation. The complainant must allege facts that are sufficient to indicate either a series of related acts of which one occurred within the 180-day filing period, or a systematic policy or practice that operated within the 180-day period.¹⁴ Notably, a continuing violation is occasioned by continual unlawful acts, not continual ill effects from an original violation.¹⁵

In evaluating the complaint's allegations, and where appropriate through clarification from the complainant, OECRC will determine whether an allegation is timely filed based on whether there is evidence of a continuing violation. OECRC must be able to identify an act that occurred within 180 calendar days of filing the complaint, or the existence of a continuing systematic policy or practice of discrimination that operated within the 180-day period. If a complaint alleges the maintenance of a discriminatory policy by a recipient, the complainant need not identify individuals who were discriminated against within the filing period; the alleged maintenance of the policy is sufficient to consider the complaint to be timely for investigative purposes.

¹² If the end of the 180-day period falls on a weekend or federal holiday, a complaint will be considered timely filed if the complaint is filed on the next business day.

¹³ *United Air Lines, Inc. v. Evans*, 431 U.S. 553, 557 (1977). *See also Del. State College v. Ricks*, 449 U.S. 250, 258 (1980) (holding that the proper focus for statute of limitations periods is upon the time of the discriminatory act, not upon the time that the consequences of the act became most painful, that is, the denial of tenure was the discriminatory act and not the termination of employment which was the natural consequence of that act); *Franks v. Ross*, 313 F.3d 184, 195-196 (4th Cir 2002) (finding that the statute of limitations did not begin to run until the landfill permit was issued because there was no "obvious factual contingency that put construction seriously in doubt.") (citation omitted); *Rozar v. Mullis*, 85 F.3d 556, 561-562 (11th Cir. 1996) (citations omitted) (determining in the environmental permitting context that the statute of limitations does not begin to run until the facts which would support a cause of action are apparent or should be apparent, so the time period was triggered when the county vote selecting a landfill site occurred and was known as evidenced by one plaintiff voicing protest prior to that vote).

¹⁴ *See generally Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 100, 107 (2002).

¹⁵ *Jersey Heights Neighborhood Ass'n v. Glendening*, 174 F.3d 180 (4th Cir. 1999).

ii. Determine whether a waiver should be granted

If an allegation¹⁶ is not filed in a timely manner, OECRC will assess the record to determine whether a waiver is appropriate and/or may notify the complainant of the opportunity to request a waiver. OECRC may grant a waiver of the 180-day filing requirement for various reasons, such as:

- a) The complainant could not reasonably be expected to know the act was discriminatory within the 180-day period, and the complaint was filed within 60 calendar days after the complainant became aware of the alleged discrimination. (Note that lack of previous awareness of OECRC or the civil rights laws enforced by OECRC is not a basis for a waiver.)
- b) The complainant demonstrates through corroborating evidence an inability to file a timely complaint because of a medical incapacitation or other incapacitating circumstances during the 180-day period, and the allegation was filed within 60 calendar days after the period of incapacitation ended.
- c) The complainant filed a complaint alleging the same discriminatory act within the 180-day period with a federal, state, or local civil rights enforcement agency, and then the complainant filed a complaint with OECRC within 60 calendar days from the date on which the other agency issued a decision reflecting completion of its investigation. OECRC will evaluate the complaint to determine whether there is an unresolved civil rights issue appropriately within OECRC's jurisdiction.
- d) The complainant filed a complaint with OECRC within 60 calendar days from the date of issuance of a decision by a state or federal court about the complainant's discrimination allegations that was not a decision on the merits or settlement of the discrimination allegations. (Dismissal with prejudice is considered a decision on the merits.)
- e) The complainant filed, within the 180-day period, a grievance with the recipient of financial assistance, or a due process hearing, alleging the same discriminatory conduct that is the subject of the OECRC complaint, and the complaint is filed no later than 60 calendar days after the internal grievance or due process hearing was concluded.

When a waiver is not requested and not granted by OECRC based on the record, or when a waiver is requested but not granted, the allegation and/or complaint will be rejected in accordance with Section 1.8.

¹⁶ Although the manual refers to "complaints" and "complaint allegations," OECRC makes a determination as to each individual allegation separately in a complaint. For example, in a single complaint, OECRC may decide that it is appropriate to proceed to investigation on one or more allegations while dismissing or closing another allegation.

(6) Additional information for evaluating complaints

In addition to the allegations presented in the complaint, OECRC may consider all available information – including, for example, information collected through a separate investigation or compliance review, media reports, and other public or EPA sources – to conduct a jurisdictional review.

(7) Correspondence alleging discrimination based on income

If OECRC receives a complaint that alleges discrimination on the basis of income, OECRC will communicate to the complainant that, even if the allegation were true, it would not violate one of the federal civil rights laws enforced by OECRC because income level is not a protected class under these laws. OECRC may ask the complainant to provide supplemental information to determine whether the alleged discrimination was based on a federal civil rights statute that OECRC enforces. (See Section 1.5(3).)

Further, OECRC does not investigate alleged noncompliance with Executive Order 12898, [Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations](#), 59 Fed. Reg. 7629 (Feb. 16, 1994), or Executive Order 14096, [Revitalizing Our Nation's Commitment to Environmental Justice for All](#), 88 Fed. Reg. 25251 (Apr. 26, 2023), which are applicable only to federal agencies and are intended only to improve the internal management of the executive branch. These Executive Orders are not intended to, nor do they, create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any person. More information about EO 12898 or EO 14096, may be found at EPA's Office of Environmental Justice's website at <https://www.epa.gov/laws-regulations/summary-executive-order-12898-federal-actions-address-environmental-justice>.

If income or noncompliance with the Executive Orders above is the sole basis identified for the alleged discrimination, OECRC will reject the complaint and may also forward the correspondence to other offices within EPA, as appropriate, including within the region where the allegations arose, for awareness and any appropriate action to address the allegations outside of the external civil rights complaint process.

Section 1.6

Request for Clarification

OECRC may contact the complainant to identify and attempt to resolve any specific questions about the complaint, such as when additional information is needed for OECRC to make a determination as to any jurisdictional requirements (e.g., the date of the alleged discriminatory act or more details about the discriminatory act or the discriminatory basis being alleged). OECRC will explain that the information being sought is necessary for OECRC to complete its jurisdictional review of the complaint allegation.

In particular, OECRC may prepare and issue a written Request(s) for Clarification (RFC). The RFC will include, at a minimum: (1) a clear description of the additional information being requested of the complainant(s), and (2) specific timeframes for complainant's response to the RFC. Generally, OECRC will ask the complainant to provide this additional information to OECRC within 10 calendar days of the

date that OECRC issues a written RFC. OECRC will advise the complainant that the complaint allegation may be rejected if the information is not received by that date. When a complainant fails to timely provide the requested information and there is insufficient information in the record to evaluate jurisdiction, OECRC may reject the complaint.

At the conclusion of jurisdictional review, OECRC will determine whether to accept, reject, or refer the complaint.

Section 1.7

Determine Whether to Refer the Complaint

OECRC may refer a complaint to another federal agency as described below.

(1) Referral to an appropriate federal agency

If OECRC determines that EPA does not have jurisdiction over the complaint, OECRC will refer the complaint to the appropriate federal agency to address the allegations raised in the complaint.

(2) More than one agency with jurisdiction

If a complaint is filed with the EPA and another federal agency, and both agencies have jurisdiction over the subject matter, OECRC will determine whether to:

- i. Refer the complaint to another federal agency (or agencies) with jurisdiction that has the expertise to address the complaint allegations; or
- ii. Accept the case and coordinate efforts with the other agency (or agencies) toward case resolution. As required by [40 C.F.R. § 7.125](#), OECRC will ensure that one of the agencies is designated the lead agency for the purpose of coordination. The designation of a lead agency is based upon factors such as subject matter expertise relevant to the complaint allegations. When an agency other than EPA serves as the lead agency, any action taken, requirement imposed, or determination made by the lead agency, other than a final determination to terminate funds, shall have the same effect as though such action had been taken by EPA.

(3) Referral of employment complaints

Before referring a matter, OECRC determines whether the EPA financial assistance received by the recipient was primarily for an employment program. If it was and the other jurisdictional criteria identified in Section 1.5 are met, then OECRC, per 40 C.F.R. § 7.125, coordinates with the Equal Employment Opportunity Commission (EEOC) on processing the complaint.

If the financial assistance was not primarily for an employment program and the employment discrimination complaint solely alleges discrimination against an individual, OECRC closes the matter and refers the complaint to EEOC per 40 CFR § 7.120(a), 28 CFR § 42.605(d) and (e), and 29 CFR § 1691.5(e). In its closure letter, OECRC will state that it has determined that EEOC's investigation and resolution process is comparable to the resolution process used by OECRC and closes the matter to avoid duplication. If such a referral occurs, OECRC will include the following notification: "Complainant

may refile a complaint within sixty (60) calendar days of the EEOC's decision or informal resolution if that decision/informal resolution does not resolve the civil rights allegations. If the complaint is refiled, OECRC will conduct another preliminary review to determine acceptance, rejection, or referral. OECRC generally anticipates adopting a decision issued by another federal agency regarding the same allegation. OECRC may evaluate whether any additional action(s) by EPA is/are needed, in this case, as a result of EEOC's finding."

(4) Coordination of referral

To the extent possible, OECRC will seek to coordinate with the federal agency to which OECRC is recommending a referral. OECRC will provide the complainant with a copy of the referral letter and contact information for the agency or office to which the complaint has been referred.

Section 1.8

Determine Whether to Reject the Complaint

If a complaint lacks the necessary elements described in Section 1.5(1) and/or the regulation at [40 C.F.R. § 7.120](#), OECRC will prepare a rejection letter with the appropriate input from regional representatives. When a complaint allegation is rejected, OECRC will issue a rejection letter to the complainant and alleged recipient explaining the reason for rejecting the allegation.

Section 1.9

Other Factors That May Be Considered

In general, OECRC will accept, reject, or refer a complaint after considering the four jurisdictional factors described in the regulation. (See Section 1.5, [40 C.F.R. § 7.120](#).) In addition, if OECRC obtains information from regional representatives, the complainant, the identified recipient, or other credible sources leading OECRC to conclude that an investigation is unjustified for prudential reasons, OECRC may reject a complaint allegation in accordance with Section 1.8.

Such prudential factors include but are not limited to:

- (1) The allegation is not ripe for review because it is speculative in nature and/or anticipates future events that may or may not unfold as outlined in the complaint.¹⁷
- (2) The allegations are moot because OECRC obtains credible information indicating that the allegations raised by the complaint have been resolved. In such a case, OECRC will confirm that the information is credible and that the allegations have been resolved. If OECRC determines that there are no current allegations appropriate for further resolution, the complaint will be rejected.

¹⁷ This type of allegation is rejected without prejudice. The complainant may refile within 180 calendar days of a subsequent act or event that raises an allegation of discrimination.

- (3) The same complaint allegations have been filed and/or are currently pending with the EPA, or another federal, state or local agency, or through a recipient's internal grievance procedures, including due process proceedings, and OECRC anticipates that the agency will provide the complainant with a resolution process. If filed with another federal, state or local agency, or through a recipient's internal grievance procedure, the complainant should be advised that she or he may refile within 60 calendar days of the completion of the other agency's action if the other agency's action does not resolve complainant's civil rights allegations or provide complainant with a resolution process.
- (4) The same civil rights allegations have been filed by the complainant against the same recipient in state or federal court individually or through a class action. A complaint may be refiled with OECRC within 60 calendar days following termination of the court proceeding if there has been no decision on the merits or settlement of the complaint civil rights allegations. (Dismissal with prejudice is considered a decision on the merits.)
- (5) OECRC has recently addressed or is currently addressing substantially similar issues involving the same recipient in a compliance review, another OECRC complaint, or through an Informal Resolution Agreement or Voluntary Compliance Agreement.
- (6) The issues raised in the complaint are more appropriate for a compliance review, consistent with OECRC's compliance review policy and EPA's strategic priorities. (See Chapter 7).
- (7) The issues raised in the complaint are more appropriate to address through action outside of the external civil rights complaint processes. In such cases, OECRC will forward the complaint to other federal agencies and/or EPA offices with relevant expertise or authorities for awareness and any appropriate action, which may include, but is not limited to, conflict resolution, technical assistance, research and reporting, or other forms of enforcement.

In addition, OECRC may consider, in its discretion, whether accepting the complaint for investigation would be an appropriate use of resources, considering factors including but not limited to the significance of the allegations and strength of evidence presented. If OECRC determines that the above or other prudential factors support rejecting a complaint, it will draft a rejection letter in accordance with Section 1.8.

Section 1.10

Opening an Investigation

Before issuing a letter accepting an issue or a complaint for investigation, OECRC will share a draft acceptance letter with the appropriate regional representatives for input. OECRC will evaluate the

complaint allegations and determine the scope of the investigation in light of any relevant information received.¹⁸

OECRC will issue letters of acceptance to the complainant and the recipient that contain, at a minimum, the following information:

- (1) OECRC's jurisdiction with applicable regulatory citations;
- (2) A clear statement of the issue(s) to be investigated;
- (3) A statement that OECRC is a neutral fact-finder;
- (4) A statement that OECRC is providing a copy of the complaint to the recipient and the recipient will be provided an "opportunity to make a written submission responding to, rebutting, or denying the allegations raised in the complaint" (*see* 40 C.F.R. § 7.120(d)(1)(ii-iii));
- (5) A reference to the regulation at 40 C.F.R. § 7.120(d)(2) requiring OECRC to resolve complaints informally whenever possible and information about the informal resolution processes available to the recipient – including, as appropriate, Early Complaint Resolution (ECR), Informal Resolution Agreement (IRA), facilitated dialogue during IRA (IRA-Plus), and Mediation – as a potential path for resolution of the issues;
- (6) Information that if the informal resolution process fails to result in an agreement, that OECRC will resume its investigation process and issue preliminary findings within 180 calendar days of the start of the investigation – excluding any days spent in the informal resolution process (*see* 40 C.F.R. § 7.115);
- (7) A statement on prohibition of retaliation and intimidation; and
- (8) Contact information of the OECRC staff person who will serve as the complainant's and the recipient's primary contact during the investigation and resolution of the complaint.

The "opening" date for a case investigation is the date OECRC issues the acceptance letters.

Section 1.11

Withdrawing a Complaint

A complainant may withdraw a complaint at any time before or after OECRC has accepted a complaint for investigation. However, where the complainant has alleged systemic violations, OECRC may determine that it will continue the investigation notwithstanding the complainant's withdrawal of the complaint.¹⁹ If OECRC determines not to continue the investigation, OECRC will issue a closure letter to

¹⁸ In addition, OECRC has the discretion, during the course of any investigation, to review a recipient's policies and procedures regarding its foundational nondiscrimination program, including the procedural safeguards required by EPA's nondiscrimination regulation, as well as recommended policies and procedures to ensure meaningful access to the recipient's programs and activities for persons with disabilities and persons with limited-English proficiency.

¹⁹ OECRC may, based on its strategic priorities and other neutral criteria, pursue a matter even if a complainant chooses to withdraw a complaint, if there is sufficient evidence and means of gathering evidence from individuals impacted by the alleged discriminatory act of an EPA recipient. For example, where the complainant has alleged systemic violations, OECRC may determine that it will continue the investigation notwithstanding the complainant's withdrawal of the complaint. Moreover, where OECRC has obtained sufficient evidence to support a finding of a violation with regard to any allegation(s), OECRC will not close the allegation(s), but will proceed in accordance with the appropriate provisions set forth in Chapter 4.

the complainant and recipient indicating the complaint has been withdrawn and that no further action will be taken by OECRC on the complaint. The withdrawal will generally be a closure without prejudice to the complainant's ability to refile the complaint with OECRC at a later time, subject to the four jurisdictional requirements. (*See* Section 1.5(1).)

CHAPTER 2 COMPLAINT INVESTIGATION PROCESS

This Chapter sets forth OECRC's procedures for conducting complaint investigations. The investigation and resolution of open complaints is primarily the responsibility of OECRC. During the course of an investigation, a case manager and the case team facilitate interviews, gather information, evaluate facts, and analyze data relevant to applicable legal standards. However, collaboration and consultation with recipients, complainants, and the appropriate EPA regional representatives, programs and offices, will ensure the prompt, effective, and efficient resolution of cases.

Section 2.1 Resolution Paths for Complaints Accepted for Investigation

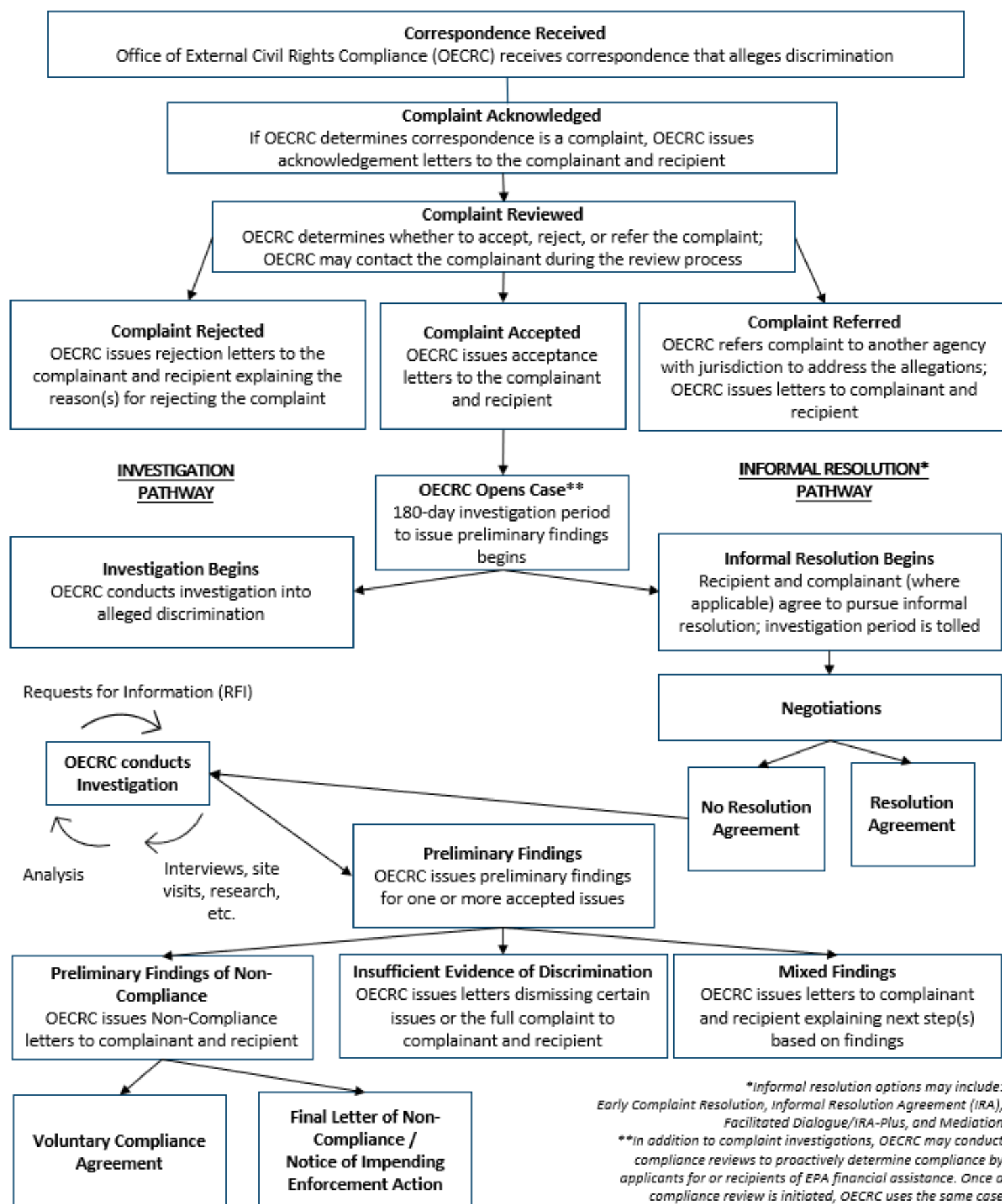
OECRC investigates complaints to determine whether the recipient is in compliance with federal civil rights law applicable to recipients of EPA financial assistance. Consistent with the EPA's nondiscrimination regulation, OECRC will attempt to resolve complaints informally whenever possible.²⁰ To that goal, OECRC may pursue various resolution paths with complainants and recipients.

OECRC will generally contact the recipient within 10 days of the date OECRC issues the letter accepting the complaint for investigation.²¹ In doing so, OECRC will provide the recipient with information about OECRC's complaint investigation process and present available informal resolution options to resolve the issues that OECRC has accepted for investigation. These informal resolution paths are shown in the following chart and discussed more specifically in Chapter 3. If an informal resolution path is agreed upon, OECRC will promptly seek to engage in negotiations.

²⁰ See 40 C.F.R. § 7.120(d)(2)(i) ("[OECRC] shall attempt to resolve complaints informally whenever possible.").

²¹ See 40 C.F.R. § 7.105.

RESOLUTION PATHS FOR COMPLAINTS ACCEPTED FOR INVESTIGATION



Section 2.2

Time Period for Investigation and Tolling

EPA's nondiscrimination regulation at 40 C.F.R. § 7.115(c)(1)²² provides that OECRC will issue "preliminary findings" within 180 calendar days of accepting a complaint for investigation. Preliminary findings may include preliminary findings of fact and/or preliminary findings of law, including a finding of insufficient evidence, on one or more issues under investigation. (See Chapter 4.)

The 180-day investigation time period begins once a complaint is accepted for investigation. If the recipient agrees at any point during the investigation to engage in an informal resolution process, OECRC will send a tolling letter to notify the recipient and complainant that OECRC will toll the investigation time period effective as of the date the recipient agrees to enter informal resolution. OECRC intends to process cases as expeditiously as possible.

If the complaint reverts to the investigation process because the informal resolution process has failed, OECRC will issue letters to recipients and complainants notifying them that OECRC is resuming the investigation. The 180-day investigation time period will exclude any time spent conducting an informal resolution process.

Section 2.3

Role of Complainants and Recipients

A complainant who files a complaint with OECRC is not like a plaintiff in court who has the burden of proving their case before a judge or jury. Rather, a complainant's role is to report what they believe is an act violating federal nondiscrimination laws by an entity receiving EPA's financial assistance. OECRC is not in an adjudicatory role, ruling on a disputed issue or claim between parties. Instead, OECRC investigates potential discrimination by an EPA recipient, and generally either resolves the discrimination issues through voluntary informal resolution or issuing preliminary findings, which may include findings of discrimination or insufficient evidence of discrimination.

One of the EPA's goals is to promote appropriate involvement of both complainants and recipients in the complaint investigation and informal resolution processes. EPA's policy paper on the *Role of Complainants and Recipients in the Title VI Complaints and Resolution Process*, issued May 4, 2015, clarifies EPA's approaches to providing appropriate involvement.²³ Additional details about the informal resolution processes, including roles of complainants and recipients, are contained in Chapter 3.

Specifically, during the jurisdictional review of civil rights complaints, OECRC may seek clarification regarding the issues articulated by the complainants. During the course of an investigation, OECRC may request interviews with complainants or request additional information from the complainants.

²² In relevant part, section 7.115 provides: (1) Within 180 calendar days from the start of the compliance review or complaint investigation, the [OECRC] will notify the recipient in writing by certified mail, return receipt requested, of: (i) Preliminary findings; (ii) Recommendations, if any, for achieving voluntary compliance; and (iii) Recipient's right to engage in voluntary compliance negotiations where appropriate. 40 C.F.R. §7.115(c)(1) (emphasis added).

²³ See EPA, *Roles of Complainants and Recipients in the Title VI Complaints and Resolution Process* (May 4, 2015), https://www.epa.gov/sites/production/files/2017-02/documents/roles-of-complainants-and-recipients-issue_final.pdf.

Whether complainants choose to respond to these requests is voluntary and the burden for completing the investigation remains with OECRC.

OECRC may offer complainants and recipients periodic check-ins with OECRC to ensure transparency, efficiency, and effectiveness through appropriate sharing of information and status updates.

Section 2.4

Case Planning

Case planning should begin as early as possible and will be conducted throughout the duration of every case to ensure high quality decisions, prompt investigation and informal resolution processes, and efficient use of OECRC's resources. Part of effective case planning includes the identification of all legal standards that would be applicable to the issues identified for investigation.

Case Managers should draft an Investigative Plan as described in Section 2.5. The scope of OECRC's investigation and informal resolution activities, as reflected in the Investigative Plan, will depend upon the issues accepted for investigation and applicable legal standards. OECRC will share with appropriate regional representatives a draft Investigative Plan, draft Requests for Information pursuant to Section 2.6, and/or requests for internal analytical or technical review (for example, of air modeling data) as early as possible to solicit relevant input.

The analysis of the information and issues gathered through the investigation will be guided by federal civil rights laws and the legal standards used in investigating and resolving external nondiscrimination complaints at the EPA. OECRC staff will consult servicing legal counsel with any legal questions.

Section 2.5

Investigative Plan

Complaint investigations and resolutions are preceded by planning, and the approach should be developed based on the nature and complexity of the issues involved. All Investigative Plans should set out the specific issues to be resolved and the expected internal milestones to guide the case management team. The Investigative Plan will help the case management team focus on the principal issues to be explored during the investigation, as well as the sources of evidence needed and available to resolve them. The Investigative Plan will also discuss the factual evidence needed and obtained from recipients and complainants and identify the following:

- (1) Jurisdictional information;
- (2) Identification of discrimination bases and issues;
- (3) Identification of the potentially applicable legal standards;
- (4) Preliminary conclusions drawn from the analysis of the data or other evidence already gathered;
- (5) Evaluation of whether the case is appropriate for informal resolution. After acceptance of a complaint, and at any point during the investigation, OECRC and the recipient may seek to informally resolve complaints of discrimination through Early Complaint Resolution (ECR),

Informal Resolution Agreement (IRA), facilitated dialogue during IRA (IRA-Plus), or Mediation (see Chapter 3);

- (6) Description of the documentary, testimonial, and statistical evidence needed to complete the investigation, including interviews, and the best sources and means of obtaining each type of evidence;
- (7) Anticipated sequence of case activities, including onsite visits if needed;
- (8) Analysis of recipient's responses and any additional evidence required to validate;
- (9) Information on whether additional information is needed from a recipient and whether OECRC will issue Request(s) for Information pursuant to Section 2.6 in consultation with the appropriate regional representatives;
- (10) Evaluation and documentation of any significant issues that should be brought to the recipient's attention as soon as possible; and
- (11) Anticipated timeframes for obtaining and analyzing evidence. The Investigative Plan will anticipate completion of the investigation in accordance with 40 C.F.R. § 7.115(c)(1).

Case managers will use the Investigative Plan to memorialize the organization, development, and analysis of information.

Section 2.6

Investigatory Evidence

When investigating civil rights compliance issues, the case manager will collect necessary information and evidence in order to determine compliance with civil rights laws. OECRC may collect documents, testimonials, emails, and statistical evidence needed to complete the investigation. Such evidence may include interviews of the complainant, recipient, and other witnesses, and other information as appropriate. The evidence may be gathered in writing or orally, provided that oral evidence is recorded or documented in a written record of contact. Investigatory evidence should be maintained in the case file.

(1) Request for Information (RFI)

A Request for Information (RFI) is an important step in OECRC's complaint resolution processes. OECRC may issue RFI to recipients, complainants or both to obtain information and evidence relevant to the issues accepted for investigation; to prepare for an informal resolution process; to fill in information gaps during a complaint investigation; to identify sources of documentary and other evidence; and to determine appropriate matters for an informal resolution agreement. While OECRC will generally issue RFIs soon after accepting a complaint for investigation, it can also do so at any stage of the investigation or informal resolution processes, depending on the facts and circumstances of a particular complaint. An RFI will include, at a minimum: (1) a clear description of the additional information being requested of the recipient(s)/complainant(s) considering the issue(s) under investigation, (2) specific instructions regarding format of response and definitions of terms used in a request, and (3) specific timeframes for recipient's/complainant's response to the RFI.

(2) Access to Information

A recipient is required by 40 C.F.R. § 7.85(f) to:

- (i) Give OECRC access during normal business hours to its books, records, accounts and other sources of information, including its facilities, as may be pertinent to ascertain compliance with EPA's nondiscrimination regulation;
- (ii) Make compliance information available to the public upon request; and
- (iii) Assist in obtaining other required information that is in the possession of other agencies, institutions, or persons not under the recipient's control. If such party refuses to release that information, the recipient shall inform OECRC and explain its efforts to obtain the information.

(3) Denial of Access to Information

Where the recipient has refused to provide OECRC access orally or in writing, in person, over the telephone or through use of other media, OECRC will attempt to ascertain the exact basis for the recipient's refusal to ensure there is a mutual understanding about the nature of the requests and to explain OECRC's authority to obtain the information. Where repeated and documented attempts to gain access have failed, OECRC will collaborate with the appropriate regional representatives to develop and issue a letter of preliminary findings of noncompliance for failure to cooperate with the investigation. (See Section 4.1(3) and [40 C.F.R. § 7.115\(c\)\(1\)](#).) OECRC will continue its investigation into the substantive issues accepted for investigation and follow the procedures outlined in Chapters 4 and 5.

Section 2.7 Other Factors to Consider

If, after accepting a complaint for investigation, OECRC obtains information from regional representatives, complainant, recipient, or other credible sources leading OECRC to conclude that an investigation is unjustified for prudential reasons, OECRC may "administratively close" the complaint. OECRC retains its discretion to continue or close any investigation to ensure that the EPA complies with its obligations under the federal civil rights statutes. Factors that may support the administrative closure of a complaint after opening an investigation include:

- (1) The allegations, as clarified during the investigation process, fail to state a violation of one of the laws OECRC enforces.
- (2) The allegations, as clarified during the investigation process, lack sufficient detail (*i.e.*, who, what, where, when, how) or are not sufficiently grounded in fact for OECRC to infer that discrimination or retaliation may have occurred or is occurring.
- (3) The issues, as clarified during the investigation process, are not ripe for review because they are speculative in nature and/or anticipate future events that may or may not unfold as outlined in

the complaint, so a meaningful review of the issues cannot be conducted at the time OECRC receives the complaint.²⁴

- (4) The issues are moot because OECRC obtains credible information indicating that the issues raised by the complaint have been resolved and there are no systemic issues that merit further investigation. In such a case, OECRC will confirm that the information is credible and that the issues have been resolved. If OECRC determines that there are no current issues appropriate for further resolution, the complaint will be administratively closed.
- (5) The same complaint issues have been filed with another federal, state, or local agency, or through a recipient's internal grievance procedures, including due process proceedings, and OECRC anticipates that the other agency will provide the complainant with a resolution process. The complainant should be advised that she or he may refile within 60 days of the completion of the other agency's action.
- (6) The same civil rights issues have been filed by the complainant against the same recipient with state or federal court individually or through a class action. A complaint may be refiled with OECRC within 60 calendar days following termination of the court proceeding if there has been no decision on the merits or settlement of the complaint civil rights issues. (Dismissal with prejudice is considered a decision on the merits.)
- (7) The complaint issues are foreclosed by legally binding decisions of federal courts, adjudication decisions of the EPA, changes in civil rights law or regulations, or EPA's policy determinations regarding agency enforcement of civil rights statutes.
- (8) OECRC has recently addressed or is currently addressing substantially similar issues involving the same recipient in a compliance review or another complaint filed with OECRC.
- (9) The complaint issues are more appropriate for a compliance review, consistent with OECRC's compliance review policy and EPA's strategic priorities. (See Chapter 7).
- (10) The complainant withdraws the complaint after OECRC has opened it for investigation (see Section 1.11); however, where the complainant raises systemic violations, OECRC may determine that it will continue the investigation notwithstanding the complainant's withdrawal of the complaint. Moreover, where OECRC has obtained sufficient evidence to support a finding of a violation regarding any issue(s), OECRC will not close the issue(s), but will proceed in accordance with the appropriate provisions set forth in Chapter 4.
- (11) OECRC determines that its ability to complete the investigation is substantially impaired by the complainant's loss of contact, death, or refusal to provide information that is reasonably accessible to the complainant and is necessary for investigation of the complaint. Generally, this factor may not apply where the investigation raises systemic issues that warrant continuing the investigation. OECRC will include documentation in the case file of its efforts to

²⁴ This type of issue is considered to be administratively closed without prejudice. The complainant may refile within 180 calendar days of a subsequent act or event that raises an allegation of discrimination.

contact the complainant by phone, in writing, or via electronic mail to request the necessary information and of the complainant's failure to provide information.

- (12) OECRC determines that the issues raised in the complaint are more appropriate to address through action outside of the external civil rights complaint processes. In such cases, OECRC will forward the complaint to other federal agencies and/or EPA offices with relevant expertise or authorities for awareness and any appropriate action, which may include, but is not limited to, conflict resolution, technical assistance, research and reporting, or other forms of enforcement.

Section 2.8 **Addressing New Compliance Issues Raised After Opening an Investigation**

When during the investigation of a complaint, OECRC identifies new compliance issues that were not raised in the complaint or identified by OECRC as issues accepted for investigation, OECRC may follow up on those issues and address them within the resolution of the original complaint through:

- (1) the administrative closure or preliminary findings letter;
- (2) any agreement resulting from an informal resolution process;
- (3) the Voluntary Compliance Agreement;
- (4) OECRC may inform the parties of the new issues under investigation and provide technical assistance to resolve those issues; or
- (5) OECRC may consider the new compliance issues for a possible compliance review, or any other action in its enforcement discretion.

In consultation with the appropriate regional representatives, OECRC will inform the recipient of any additional compliance issues and OECRC's intent to pursue those issues. Additionally, if OECRC identifies non-civil rights issues relating to compliance with an environmental law(s), OECRC will inform the relevant regional representatives and EPA offices.

Section 2.9 **Letter of Concern**

In the course of an investigation, OECRC may choose to send the recipient a Letter of Concern. The purpose of a Letter of Concern is to convey the results of OECRC's initial fact finding and analysis of all or some of the issues accepted for investigation to facilitate an informal resolution process. The Letter of Concern may include recommended actions to address the issues that would be discussed during informal resolution negotiations, to support an expeditious resolution of the complaint. The Letter of Concern does not conclude the investigation or represent any final conclusions of fact or law as to the recipient's compliance with the federal civil rights laws.

CHAPTER 3

INFORMAL RESOLUTION PROCESSES

This Chapter discusses the steps involved in resolving a complaint through an informal resolution process, including the Early Complaint Resolution (ECR) process; the Informal Resolution Agreement (IRA) process, with an option for facilitated dialogue (IRA-Plus); and the Mediation process. An informal resolution process may be used to address some or all of the discrimination issues in a complaint. Any outstanding complaint issues not resolved through informal resolution will be resolved through the complaint investigation and resolution process. See Chapters 2, 4 and 5.

This Chapter also describes whether and how any agreement resulting from an informal resolution process will be monitored by OECRC and the consequences of the recipient's failure to fulfill agreement terms.

OECRC is committed to carrying out its regulatory requirement to resolve complaints informally whenever possible.²⁵ As appropriate, OECRC will seek engagement and assistance from the EPA's Office of Conflict Prevention & Resolution (CPRC) and regional representatives in the informal resolution process to ensure prompt, effective, and efficient complaint resolution.

Section 3.1

Initiating an Informal Resolution Process

After OECRC accepts a complaint for investigation, and at any point during the investigation, OECRC and the recipient may seek to resolve a complaint through an informal resolution process. OECRC has discretion to determine, on a case-by-case basis and in consultation with CPRC as appropriate, whether and which process(es) to offer as a possible resolution path. Once agreed to, OECRC will ensure that the process is conducted consistent with any applicable legal, policy, and procedural guidelines and that it appropriately resolves the issues accepted for investigation.

If the recipient expresses an intent to engage in an informal resolution process, whether after OECRC's initial offer or at another appropriate time during the investigation process, OECRC will toll the 180-day time period for issuing preliminary findings, as described in Section 2.2; however, the case team may continue its investigation of issues raised in the complaint as needed.

For informal resolution processes in which the complainant is a participant, including ECR, IRA-Plus, and Mediation, OECRC will confirm that both the recipient and complainant have agreed to participate.

Section 3.2

Voluntary Participation

The decision to participate in an informal resolution process is completely voluntary for the recipient and, as applicable, the complainant. Informal resolution processes rely on the good faith efforts of the participants to work constructively toward resolution.

²⁵ 40 C.F.R. § 7.120(d)(2)(i).

Section 3.3

Confidentiality of an Informal Resolution Process

To promote the open exchange of ideas and dialogue during an informal resolution process, OECRC will not disclose the specific content of informal resolution negotiations nor the specific content of draft informal resolution agreements outside of the process, subject to legal requirements.²⁶ However, OECRC will attempt to keep complainants apprised of the status of informal resolution. The fact that a recipient and complainant, where applicable, have agreed to engage in an information resolution process is not confidential and may be disclosed publicly by EPA.

To promote candid and productive discussions during the ECR, IRA-Plus and Mediation processes, all communications with the facilitators shall be treated as confidential pursuant to Section 574 of the Administrative Dispute Resolution Act (ADRA), 5 U.S.C. § 574. The agreement to participate (*see* Section 3.1) in these processes will generally also include confidentiality protections agreed to by the complainant and recipient.

Section 3.4

Withdrawal from an Informal Resolution Process

The recipient and, as applicable, the complainant may withdraw from an informal resolution process at any time. If a participant chooses to withdraw, the process is concluded and OECRC may, in its discretion, offer a different resolution process or resume the complaint investigation as described in Chapter 2. OECRC will issue letters to notify the complainant and recipient that OECRC has resumed the investigation to issue preliminary findings within 180 days of the start of the investigation, excluding any days spent in the informal resolution process.

Section 3.5

Early Complaint Resolution (ECR)

The ECR process facilitates the resolution of accepted complaints by providing an early opportunity for the recipient and complainant to resolve the complaint issues informally with a mutually acceptable agreement. ECR is appropriate for use in cases where there are specific/discrete issues that involve individual remedies or, if the remedies involve a class of persons, the individual remedies will serve the interests of the class.

OECRC serves as an impartial, confidential facilitator between the recipient and complainant during the ECR process. OECRC will inform the parties of ECR procedures and will assist them in understanding the pertinent legal standards and possible remedies for the complaint. OECRC will designate staff to facilitate an agreement between the recipient and the complainant and will, where appropriate, assist to reduce the resolution to writing.

²⁶ Subject to the applicable federal laws such as the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act of 1974, 5 U.S.C. § 552a.

To the extent possible, staff assigned to conduct the ECR process should not be the same staff involved in the complaint investigation. To maintain confidentiality of the process, any notes taken during ECR by the facilitator and/or any records or other documents offered by the recipient or complainant during the process will be kept in a separate file and will not be shared with the staff member(s) assigned to investigate the complaint.

At the conclusion of ECR, OECRC will retain a copy of the ECR Agreement that has been signed by the recipient and the complainant. OECRC will issue a closure letter reflecting the resolution of the complaint, or specific issues raised by the complaint, by agreement of the recipient and complainant. A copy of the ECR Agreement will be attached to the closure letter.

OECRC will not sign, approve, endorse, or monitor the ECR Agreement. If the complainant believes that the agreement has been breached, the complainant may request within 60 calendar days of the alleged breach that OECRC review the alleged breach. If after reviewing the alleged breach OECRC determines that there has been a material breach of the agreement, OECRC may open a new complaint to address the alleged act of discrimination raised by the complaint.

Section 3.6

Informal Resolution Agreement (IRA)

(1) IRA Process

The IRA process provides the opportunity for recipients to negotiate a complaint resolution directly with OECRC. If the recipient agrees to participate, OECRC may continue to conduct fact-finding – including, but not limited to, meetings with complainants and recipients, interviews, Requests for Information, review of public records, and site visits – as needed to inform the IRA process. OECRC will generally seek input from the complainant and recipient regarding potential complaint resolution options to prepare for IRA discussions.²⁷

OECRC will prepare a draft IRA based on initial information and fact-finding, as appropriate, and provide it to the recipient for review and consideration, which may lead to further negotiations toward a final IRA. Once an IRA is finalized and signed by OECRC and the recipient, OECRC will then issue letters to the recipient and complainant resolving the complaint.

OECRC will monitor the implementation of the IRA until the recipient has fulfilled the terms of the agreement. See Chapter 6. If a recipient fulfills the terms of the IRA, OECRC will close its monitoring of the case and close the complaint file in accordance with Section 6.5. If a recipient fails to fulfill the terms of the IRA, OECRC may reopen the investigation.

²⁷ See generally EPA, *Roles of Complainants and Recipients in the Title VI Complaints and Resolution Process* (May 4, 2015), https://www.epa.gov/sites/production/files/2017-02/documents/roles-of-complainants-and-recipients-issue_final.pdf.

(2) Facilitated Dialogue (IRA-Plus) Option

At any point during the IRA process, the case manager may consult with CPRC to determine, on a case-by-case basis, whether to offer the option for facilitated dialogue (IRA-Plus) between the recipient and complainant. IRA-Plus provides the opportunity for the recipient and complainant to participate jointly in identifying potential ways to address issues raised by the complaint. Use of the IRA-Plus option can build trust and capacity for problem solving between the recipient and complainant; provide a confidential forum for dialogue; and offer participants a space in which to ask questions and gather information, develop solutions, and inform terms in an IRA.

The case manager may convene meetings with the recipient, complainant, and the CPRC Title VI Lead, as appropriate, to assess the suitability of the case for IRA-Plus based on recipient and complainant interest, capacity, and aligned expectations for the process. Once OECRC offers the IRA-Plus option and the recipient and complainant agree to participate, the CPRC Title VI lead will identify a facilitator(s) for the case. Facilitators/case managers will meet separately with the complainants and recipients to identify issues to be addressed in the joint session(s), discuss goals, set expectations, and identify participants for the joint session(s).

Through the joint session(s), recipients and complainants may discuss topics including, but not limited to:

- i. Elements of issues in the complaint that were accepted for investigation by OECRC;
- ii. Ideas/options for resolving issues raised in the complaint;
- iii. Ideas/options for improving communication and/or collaboration among complainants and recipients;
- iv. Policies, processes, or other factors that may affect implementation of options; and
- v. Specific proposals to inform an IRA draft.

If options to resolve complaint issues or specific proposals to inform an IRA draft are identified during the facilitated dialogue session(s), OECRC and the recipient will consider such input during the IRA negotiations as described in Section 3.6(1).

At the conclusion of the IRA-Plus joint sessions, OECRC and the recipient may continue direct negotiations under the IRA process. If, at any time, the recipient decides to no longer participate in the IRA process, OECRC will resume its complaint investigation as described in Section 2.2.

Section 3.7

Mediation

The Mediation²⁸ process involves the formal mediation of the complaint issues accepted for investigation between the recipient and the complainant using a trained, professional mediator.

As part of the Mediation process, the recipient and complainant must agree upon the selection of a mediator. If the recipient and the complainant have not agreed upon a mediator within 90 calendar days of the Mediation offer, OECRC may withdraw the offer and resume its investigation as described in Section 2.2. Once the recipient and the complainant agree on a mediator, OECRC will provide appropriate background materials to the mediator, so that the mediator is familiar with the original complaint as well as the applicable federal nondiscrimination laws, EPA's nondiscrimination regulation, and any applicable policy or guidance.

Although OECRC is not directly involved when a complaint is in the Mediation process, OECRC will request periodic procedural updates from CPRC to ensure that the Mediation process occurs promptly and without undue delay. If the Mediation participants reach a mutually acceptable agreement to resolve the complaint, CPRC will share the proposed Mediation Agreement with OECRC. Once OECRC determines the terms reasonably address the issues accepted for investigation, OECRC will communicate its determination to CPRC to facilitate the recipient's and complainant's signing and finalization of the Mediation Agreement.²⁹

Once notified by CPRC that the Mediation Agreement has been finalized, OECRC will promptly issue a letter notifying the complainant and recipient that the Mediation Agreement serves to resolve the complaint fully and that OECRC will close the complaint as of the date of the letter. OECRC will not monitor the implementation of the Mediation Agreement. If the complainant believes that the agreement has been breached, the complainant may request within 60 calendar days of the alleged breach that OECRC review the alleged breach. If after reviewing the alleged breach OECRC determines that there has been a material breach of the agreement, OECRC may open a new complaint to address the alleged act of discrimination raised by the complaint.

²⁸ In the previous version of the Case Resolution Manual (2021), Mediation was called "Alternative Dispute Resolution" or "ADR". OECRC has retitled this process in recognition that various forms of informal resolution listed in 3.6 and 3.7 may be considered alternative dispute resolution.

²⁹ OECRC will ensure that one of the terms articulated by the mediator is that the complainant and recipient acknowledge that the finalization of the Mediation Agreement will result in the full resolution of the complaint and that OECRC will issue a letter closing the complaint in light of the Mediation Agreement.

CHAPTER 4 FINDINGS & VOLUNTARY COMPLIANCE AGREEMENTS

OECRC must notify the recipient of: 1) preliminary findings within 180 days of the start of the investigation,³⁰ excluding any time spent in any informal resolution process; 2) recommendations, if any, for achieving voluntary compliance; and 3) the recipient's right to engage in voluntary compliance negotiations where appropriate.³¹ However, the regulation does not require that preliminary findings be issued for all issues under investigation. EPA may issue *some* preliminary findings and continue its investigation of additional issues beyond 180 days so long as any delay is not unreasonable. Therefore, preliminary findings may range from and include preliminary findings of fact to preliminary findings of law, on one or more issues under investigation.

Section 4.1

Preliminary Findings

(1) Generally

OECRC may issue preliminary findings to a recipient at any point during OECRC's investigation. However, OECRC is required to notify recipients of preliminary findings of fact and/or law within 180 calendar days of the acceptance of the complaint, excluding any time spent in an informal resolution process. OECRC will determine, using a preponderance of the evidence standard, whether there is insufficient evidence to support a conclusion of noncompliance, or the evidence supports a conclusion of noncompliance. Preliminary findings can be issued for all or some of the issues accepted for investigation.

During the investigation process, OECRC establishes a factual record and analyzes the issues accepted for investigation through the applicable legal standards. After this evaluation, OECRC may bring to the recipient's attention certain factual and/or legal determinations through a preliminary findings letter. For example, if OECRC's investigation has confirmed specific and important disputed facts, OECRC may wish to issue preliminary findings of fact. OECRC may also bring to the recipient's attention potential issues of noncompliance with the nondiscrimination laws enforced by OECRC through a preliminary findings letter.

(2) Preliminary Findings of Insufficient Evidence

OECRC may find insufficient evidence to show that an alleged discriminatory act has occurred or is occurring that may violate the federal civil rights statutes and EPA's implementing nondiscrimination

³⁰ See 40 C.F.R. § 7.115(c)(1)(i).

³¹ 40 C.F.R. § 7.115(c)-(e).

regulation.³² When OECRC determines that the preponderance of the evidence does not support a finding of noncompliance, OECRC will prepare a letter dismissing certain issues or the complaint based on a finding of insufficient evidence. A dismissal letter for a finding of insufficient evidence must include:

- i. A statement of issue(s) in the case;
- ii. A statement of OECRC's jurisdictional authority, including recipient status and the statutory basis for the investigation;
- iii. A description of any attempts to informally resolve the complaint;
- iv. A statement of the findings of fact for each issue(s), supported by any necessary explanation or analysis of the evidence on which the findings are based;
- v. Conclusions for each issue that reference the relevant facts, the applicable regulation(s), and the appropriate legal standards;
- vi. Notice that the letter of findings is not intended and should not be construed to cover any other issue regarding the recipient's compliance and that the recipient has a continuing responsibility to comply with the federal civil rights laws;
- vii. Notice that letter is not a formal statement of OECRC policy and should not be relied upon, cited, or construed as such; and
- viii. Notice that with the findings, certain issues or the complaint is closed as of the date of the letter.

(3) Preliminary Findings of Non-Compliance

When OECRC determines that the preponderance of the evidence supports a conclusion that the recipient failed to comply with federal civil rights laws, OECRC will prepare a letter of preliminary finding(s) of noncompliance and provide recommendations, if any, for achieving compliance. OECRC will also notify the EPA Award Official and the Assistant Attorney General for Civil Rights of the preliminary findings of noncompliance. (See 40 C.F.R. § 7.115(c)(2).)

A preliminary finding of noncompliance letter must include:

- i. A statement of issue(s) in the case;
- ii. A statement of OECRC's jurisdictional authority, including recipient status and the statutory basis for the investigation;
- iii. A description of any attempts to informally resolve the complaint;
- iv. A statement of the findings of fact for each issue(s), supported by any necessary explanation or analysis of the evidence on which the findings are based;
- v. Conclusions for each issue that reference the relevant facts, the applicable regulation(s), and the appropriate legal standards;
- vi. OECRC's recommendations for achieving voluntary compliance, where appropriate, and may include a proposed Voluntary Compliance Agreement (see Section 4.2);

³² See 40 C.F.R. § 7.115(c)(1)(i).

- vii. A statement of the recipient's rights to engage in voluntary compliance negotiations, where appropriate (see [40 C.F.R. § 7.115\(c\)\(1\)\(iii\)](#));
- viii. A statement of the recipient's right to submit a response to OECRC's finding within 50 calendar days, pursuant to [40 C.F.R. § 7.115\(d\)](#);
- ix. A statement that limits the scope of the decision to: (1) the particular applicant or recipient, and (2) the particular program, activity, or part of the applicant/recipient, in which the discrimination was found;
- x. Notice that the letter of findings is not intended and should not be construed to cover any other issue regarding the recipient's compliance and that the recipient has a continuing responsibility to comply with the federal civil rights laws; and
- xi. Notice that the letter is not a formal statement of OECRC policy and should not be relied upon, cited, or construed as such.

(4) Mixed Findings

A mixed findings determination may be appropriate for complaints with multiple issues where the issues will be resolved in different ways. For example, a mixed findings determination is appropriate when OECRC has found non-compliance with regard to some issues and insufficient evidence with regard to other issues; or when OECRC makes findings with regard to some issues and there are other issues that are appropriate to resolve through informal resolution.

Section 4.2

Voluntary Compliance Agreements

After issuing the letter of preliminary finding of non-compliance on one or more complaint issues, OECRC will contact and attempt to secure a Voluntary Compliance Agreement (VCA) with the recipient. A VCA to address a finding of non-compliance must include actions or steps that, when implemented, will remedy both the individual discrimination at issue as well as any systemic discrimination. Additionally, a Voluntary Compliance Agreement:

- i. Must be signed by a person with authority to legally bind the recipient and the Director of OECRC, *see* 40 C.F.R. § 7.115(f);
- ii. Must be in writing; and
- iii. Must include:
 - a. Specific act(s) or step(s) the recipient will take to resolve its non-compliance;
 - b. Dates for implementing each act(s) or step(s);
 - c. Dates for submission of reports and documentation;
 - d. Where appropriate, language requiring submission of documents and/or other information or actions for OECRC's review and approval, and timeframes for their submission;
 - e. Timeframes requiring the recipient to implement what OECRC has approved, and language requiring documentation verifying implementation.

OECRC will monitor the recipient's implementation of the VCA until such time that OECRC determines that the recipient has fulfilled the terms of the VCA. (See Chapter 6.)

Section 4.3

Final Letter of Non-Compliance

The recipient will have 50 calendar days after receiving the notice of the preliminary finding of non-compliance to agree to OECRC's recommendations in the VCA or submit a written response sufficient to demonstrate that the preliminary findings are incorrect, or that compliance may be achieved through steps other than those recommended by OECRC.³³ If the recipient does not take one of these actions, OECRC shall send within 14 calendar days a formal written Final Letter of Non-Compliance to the recipient notifying the recipient of the finding, the action proposed to be taken and the opportunity for an evidentiary hearing.³⁴ At the same time, OECRC shall send copies of the Final Letter of Non-Compliance to the appropriate regional representatives, the Award Official, and Department of Justice's Assistant Attorney General.³⁵ A draft VCA will accompany the Final Letter of Non-Compliance. The recipient will have 10 calendar days from receipt of the final determination of non-compliance in which to agree to come into voluntary compliance.³⁶ If the recipient fails to meet the 10-calendar day deadline, OECRC will issue a Notice of Impending Enforcement Action. (See Chapter 5.)

³³ See [40 C.F.R. § 7.115\(d\)](#).

³⁴ See 40 C.F.R. §7.130(b)(1).

³⁵ See [40 C.F.R. §§ 7.115\(d\) and 7.130\(b\)\(1\)](#).

³⁶ See 40 C.F.R. § 7.115(e).

CHAPTER 5 INITIATION OF ENFORCEMENT ACTION

If the recipient fails to meet the 10-calendar day deadline to come into voluntary compliance after the issuance of a Final Letter of Non-Compliance (see Chapter 4), OECRC will issue a Notice of Impending Enforcement Action.

When OECRC issues a Notice of Impending Enforcement Action to a recipient, it will include notice to the recipient that EPA will: (1) initiate administrative proceedings to terminate, or refuse to grant or continue, financial assistance to the recipient; or (2) use any other means authorized by law, including referring the matter to the Department of Justice (DOJ).³⁷

The letter will identify the uncorrected violation, the action proposed to be taken, and the opportunity for an evidentiary hearing before an EPA Administrative Law Judge.³⁸ Where appropriate, if OECRC determines that it will refer the uncorrected violation to DOJ, OECRC will issue a letter to the recipient identifying the uncorrected violation and that the case is being referred to DOJ. Alternatively, the OECRC may also use any other means authorized by law to obtain compliance.³⁹

³⁷ See [40 C.F.R. § 7.130](#).

³⁸ See [40 C.F.R. § 7.130\(b\)\(1\)](#).

³⁹ See [40 C.F.R. § 7.130](#).

CHAPTER 6

MONITORING OF AGREEMENTS

Effective case resolution monitoring is essential to ensuring compliance with civil rights laws. OECRC will closely monitor the recipient's implementation of an Informal Resolution Agreement (IRA) or Voluntary Compliance Agreement (VCA) to ensure that the commitments made are implemented. Case managers will track all commitments and activities to ensure recipient's compliance with the IRA or VCA within agreed upon timeframes.

OECRC will not cease monitoring an IRA or VCA until such time that OECRC determines that the recipient has fulfilled the terms of the IRA or VCA.

Section 6.1

Monitoring Process

OECRC will promptly acknowledge receipt of any information provided by the recipient demonstrating fulfillment of IRA or VCA obligations.⁴⁰ OECRC will evaluate the information and issue an appropriate response (*e.g.*, that OECRC determines actions taken are sufficient or insufficient under the IRA or VCA). OECRC must obtain sufficient information to determine whether the commitments made by the recipient have been implemented consistent with the terms of the IRA or VCA. OECRC may verify implementation of the commitments by, among other things, reviewing reports, required documentation, and/or other information submitted by recipients; interviewing the recipients, complainants, and/or other knowledgeable persons; and/or conducting a site visit(s). OECRC may publicize site visits in order to obtain information from the public concerning the recipient's implementation of the commitments under the IRA or VCA. OECRC will also seek the appropriate regional engagement and assistance in the process to verify implementation by recipients.

Section 6.2

Implementation Concerns

OECRC will promptly provide notice to the recipient of any deficiencies of which OECRC has notice with respect to implementation of terms of the IRA or VCA. OECRC will request appropriate action to address such deficiencies, and will offer appropriate technical assistance to address the deficiencies. When OECRC has determined that a recipient has failed to comply with the IRA or VCA commitments for reasons that do not justify modification of the IRA or VCA, OECRC will take prompt action to address the deficiencies. Failure or refusal to implement an IRA commitment may result in OECRC's re-opening the complaint investigation and/or issuing a preliminary finding as appropriate. Failure or refusal to

⁴⁰ Monitoring reports consist of information received from a recipient as required by and pursuant to the terms of an Informal Resolution Agreement or the Voluntary Compliance Agreement.

implement a VCA commitment will result in OECRC taking the appropriate action under Section 4.3 and/or Chapter 5.

Section 6.3

Agreement Modification

(1) Changed Circumstances Affecting Agreements

OECRC may agree to modify or terminate an IRA or VCA when it learns that circumstances have arisen that substantially change, fully resolve, or render moot some or all the issues that were addressed by the IRA or VCA. OECRC will consult with regional representatives in the process to verify the changed circumstance.

(2) Approval of Modifications

OECRC must approve modifications to the IRA or VCA Agreement (*e.g.*, requests to change the substance of any provision in the Agreement, requests for extension of time to submit a report or to complete a required action). Requests for modification must be documented in the case file.

Approved modifications must be set forth in writing and, where appropriate, appended to the original Agreement. The complainant will be notified in writing of approved modification(s) to the substance of the Agreement and, where appropriate, to extension(s) of the timeframe within which to complete a required act(s).

Section 6.4

New Issues or Concerns That Arise During Monitoring

OECRC may address a new issue(s) or concern(s) identified for the first time during monitoring by providing technical assistance or considering the issue(s) as a factor(s) to initiate a compliance review. See Chapter 7.

Section 6.5

Conclusion of Monitoring

OECRC will conclude the monitoring of an IRA or VCA when it determines that the recipient has complied with the terms of the IRA or VCA, including any subsequent approved modifications. OECRC may also seek the appropriate regional engagement and assistance in verifying implementation.

Prior to concluding the monitoring of the IRA or VCA commitments, OECRC will contact the complainant to inform them that all commitments have been completed and it intends to close monitoring. The recipient and the complainant will be promptly notified in writing that monitoring of the IRA or VCA has been completed and that the complaint is closed as of the date of the letter.

CHAPTER 7

COMPLIANCE REVIEWS

A compliance review is an OECRC-initiated investigation of one or more aspects of an EPA recipient's programs or activities. The goal of compliance reviews is to proactively determine compliance by recipients of EPA financial assistance with civil rights laws that EPA enforces and EPA's nondiscrimination regulation, and where noncompliance is identified, to take action to bring recipients into compliance.

In addition to EPA's nondiscrimination regulations (*see* Section 1.5) that require OECRC to investigate complaints that are filed with the agency, the regulations specify that OECRC may periodically conduct compliance reviews to assess the practices of recipient programs or activities to determine whether they comply with civil rights statutes and regulations.⁴¹ Compliance reviews are conducted in accordance with EPA's nondiscrimination regulations, relevant policy, and/or guidance, as described below.

Section 7.1

Affirmative Compliance Reviews

OECRC will identify, plan, and implement Affirmative Compliance Reviews in consultation with the appropriate regional representatives.

(1) Prioritizing and Selecting Affirmative Compliance Reviews

OECRC considers various factors to prioritize and select Affirmative Compliance Reviews, as described in OECRC's "Process and Criteria for Prioritizing and Selecting Affirmative Compliance Reviews" policy.⁴² The following list of factors will contribute to the prioritization and selection of compliance reviews:

- i. Trends and, particularly, whether potential noncompliance on a particular issue or by a recipient, are increasing in frequency or significance;
- ii. Strategic significance of the issue raised in light of, for example, agency priorities;
- iii. Recipient and community characteristics;
- iv. Actions by recipients; and
- v. History of prior complaints, including non-compliance.

The target number of affirmative compliance reviews in any year will depend in part on available resources.

⁴¹ 40 C.F.R. § 7.115.

⁴² See <https://www.epa.gov/system/files/documents/2022-01/01-06-20-ecrc-process-for-prioritizing-and-selecting-affirmative-compliance-reviews.pdf>.

(2) Complaint Resolution through Affirmative Compliance Review

OECRC may, during the jurisdictional review process or in the course of investigating a complaint, determine to resolve the complaint through a compliance review. OECRC may initiate an Affirmative Compliance Review in cases where, for example:

- i. A complaint that has been rejected on jurisdictional grounds such as timeliness or mootness nevertheless creates reason to believe that the recipient is not in compliance with federal civil rights law.
- ii. The complaint issues are more appropriate for resolution through an Affirmative Compliance Review. For example, where OECRC has reason to believe that an instance of discrimination may be part of a broader pattern or practice of discrimination against a class of persons, or where OECRC has identified an area of strategic significance, OECRC may exercise its discretion to incorporate the individual complaint issue into a broader Affirmative Compliance Review.
- iii. A complaint withdrawn by the complainant under Section 1.11 or 2.7(10) has alleged systemic violations.

In such cases, OECRC will issue a letter to notify the complainant and recipient of its decision to initiate a compliance review to resolve the complaint. OECRC will reject or administratively close the complaint investigation in accordance with the processes set forth in Sections 1.8 and 2.7.

(3) Affirmative Compliance Review Process

After selecting a recipient for an Affirmative Compliance Review, OECRC will inform the recipient of the scope of and schedule for review – that is, the issues to be investigated and the timing of the review – and its opportunity to make a written submission responding to, rebutting, or denying the issues raised in the review.⁴³

OECRC may contact the recipient to gather information during the process for prioritizing the Affirmative Compliance Review. The “opening” date for the purposes of an Affirmative Compliance Review is the date of the letter notifying the recipient of the Affirmative Compliance Review. The Affirmative Compliance Review may include information and data requests. It may also include on-site reviews when OECRC has reason to believe that discrimination may be occurring in those programs or activities.⁴⁴

Case managers will use the same case handling procedures identified throughout the Case Resolution Manual for Affirmative Compliance Reviews, as appropriate. If the recipient agrees to engage in an informal resolution process, OECRC may suspend its Affirmative Compliance Review and issue a letter to the recipient notifying it when such a process has commenced. At that point, the 180-day time

⁴³ See 40 C.F.R. § 7.115(b).

⁴⁴ See 40 C.F.R. § 7.115(a).

period for OECRC to issue preliminary findings on the issues being investigated through the Affirmative Compliance Review process is tolled.⁴⁵

In cases where OECRC has rejected or administratively closed a complaint to initiate an Affirmative Compliance Review under Section 7.1(2), OECRC will continue to involve the complainant during the process. Whether and the extent to which complainants choose to provide information in response to OECRC requests is voluntary and the burden for completing the investigation remains with OECRC. OECRC will notify the complainant by letter when the compliance review is completed.

Section 7.2 Responding to A Compliance Review Request

If OECRC receives a request to conduct a compliance review, OECRC will promptly issue a letter acknowledging receipt to the individual (or group) who issued the request. The letter will identify how the request was received, what the specific request was, advise the requesters of OECRC's "Process and Criteria for Prioritizing and Selecting Affirmative Compliance Reviews" policy, and note that the request may be considered as the program establishes compliance review priorities.

⁴⁵ See 40 C.F.R. §7.115(c)(1) (stating in relevant part that within 180 calendar days from the start of the compliance review, OECRC will notify the recipient in writing of preliminary findings).