

**Developing a Model Civil Rights Program  
for the  
Environmental Protection Agency**

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Final Report

**Civil Rights Executive Committee**

April 13, 2012

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## PREFACE

The Environmental Protection Agency (EPA) is committed to building a model civil rights program. To help achieve this goal, EPA hired the consulting firm Deloitte Consulting LLP to conduct an assessment of EPA's civil rights program. Deloitte delivered on March 21, 2011, a report titled: "Evaluation of the EPA Office of Civil Rights," posted on EPA's website at <http://www.epa.gov/epahome/ocr-statement.htm>. Following receipt of the report, Administrator Lisa P. Jackson appointed a Civil Rights Executive Committee<sup>1</sup> (the Executive Committee, or "committee"), chaired by Deputy Administrator Robert Perciasepe, to review the Deloitte Report and other sources of information, and to make recommendations for fundamentally improving EPA's civil rights program. This report summarizes the Executive Committee's recommendations to the Administrator for building a model civil rights program at EPA.

The Executive Committee focused on internal changes within EPA to build a model civil rights program, including new operational and management structures, better accountability systems, and ways to broaden participation across the Agency to advance civil rights. The committee did not address civil rights *legal or policy* questions that have remained unsettled for many years, particularly in the context of Title VI, as this was beyond the charge to the committee. The committee focused instead on the structural changes that would strengthen the Agency's overall Title VI program. The committee views these changes as near term priorities for building a strong and sustained civil rights program. Parallel with these efforts (see recommendations that follow), EPA will continue the equally important work of consulting with the Department of Justice, engagement with external stakeholders, and coordination with other agencies through the Interagency Workgroup on Environmental Justice, to bring greater clarity to many of the legal and policy issues that remain a high priority for stakeholders, the States and Tribes, and EPA.

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<sup>1</sup> See Attachment 1 for a list of Executive Committee Members

## INTRODUCTION

A strong civil rights and diversity program at EPA is essential for creating a high performing organization, attracting and retaining a talented and diverse work force, and ultimately creating an environment in which employees can succeed and meet the challenge of EPA's mission. Over the past year, EPA's civil rights program made significant progress, and the Administrator has taken several actions to strengthen EPA's commitment to civil rights, equal employment opportunity and diversity in the workplace, and implementation of Title VI. EPA has set a record for training its employees under the Notification and Federal Employee Antidiscrimination and Retaliation Act (No FEAR); submitted on time its Management Directive 715 Report (MD-715) to the Equal Employment Opportunity Commission; incorporated equal employment opportunity (EEO) language into the performance standards of all supervisors and managers; revised and strengthened the EEO performance standard for all Senior Executive Service members; and issued a new anti-harassment policy.

With regard to Title VI, the Administrator appointed a special counsel to help address longstanding complaints of discrimination, and through a focused team approach, EPA succeeded in processing in 2011 the highest number of complaints in any year, including some of the oldest Title VI complaints. EPA issued a Limited English Proficiency (LEP) Order ("internal Title VI guidance") to comply with Executive Order 13166, and revised its Worker Protection Standard Agricultural Inspection Guidance (to assure access to individuals with limited English proficiency). More recently, EPA for the first time has included standard Title VI compliance language in National Program Manager's (NPM) guidance across EPA programs to highlight for grant recipients their affirmative responsibility to comply with Title VI.

While these are promising signs of moving forward, a large challenge remains to build a model program for EPA that will broaden responsibility and strengthen accountability for civil rights across the Agency. Improvements in OCR alone cannot effectuate a model program for the Agency. Senior level awareness, commitment, training, accountability systems, and adequate resources, are all critical to a sustained model civil rights program. In short, EPA's civil rights program cannot be the responsibility of solely one office or one program, but instead must reflect "One EPA" principles and involve managers and staff from across the Agency.

### Deloitte Report

The consulting firm Deloitte Consulting, LLP, completed in March 2011 an evaluation of the organizational structure, requirements of civil rights laws and statutes, internal operations, staff competencies, and resources of the Office of Civil Rights to assess its ability to meet its functional responsibilities and operations. In addition, Deloitte reported on interviews with nine federal agencies and other external research to benchmark EPA's civil rights function. Deloitte's evaluation identified deficiencies in several areas of EPA's program and provided a range of recommendations where Deloitte concluded that improvements are necessary.

Each of the Deloitte recommendations was reviewed and scored in terms of priority and timing by a group of senior advisors and career managers (“Deputies Group<sup>2</sup>”) formed by the EPA Civil Rights Executive Committee. A synthesis of that review is in Attachment 2.

Within the sections below are Executive Committee recommendations in four areas: (1) Strengthening OCR and the Agency’s Civil Rights Structure; (2) Strengthening EPA’s Title VI Program; (3) Strengthening EPA’s Title VII Program, and (4) Strengthening EPA’s Affirmative Employment and Diversity Program. In some cases the “key recommendations” in these sections elaborate upon recommendations found in the score card. Some recommendations were developed by the Executive Committee itself, and are not listed in the score card.

## **A Model Civil Rights Program**

While the Deloitte report mostly focused on changes within the Office of Civil Rights, the Executive Committee took a broader view. Addressing OCR issues and policies/procedures is not enough to fundamentally improve EPA’s civil right program. Bold actions are needed, and civil rights – like any important priority of the Agency – needs to reflect One EPA principles. A model civil rights program needs broad buy- in, senior level commitment, and accountability from many quarters, not just OCR. To support the Executive Committee’s work, the Deputies Group outlined a vision for a model program, which is included as Attachment 3 in this report. In summary, a model program includes:

- Direct investment of senior leadership in the success of the program;
- An annual EEO Policy Statement by Administrator;
- Inclusion of EEO, Title VI, and affirmative employment and diversity in strategic plans and performance objectives of offices and regions;
- Inclusion in performance standards for all managers and supervisors an element for internal and external civil rights compliance;
- Adequate funding and resources;
- Direct reporting to the Administrator/Deputy Administrator by the senior civil rights director;
- Clear Agency-wide statement and common understanding of civil rights mission and strategy;
- Hiring, training and developing staff with the necessary skills and inclusion of timeliness, quality outputs, and outcomes in employee performance standards;
- A focused strategy for complaint prevention and compliance assurance;
- Collaboration with and cooperation across all EPA offices and regions;
- Broad integration of Alternative Dispute Resolution (ADR) approaches across civil rights and employee relations activities; and
- Transparency and on-going stakeholder involvement.

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<sup>2</sup>See Attachment 1 for a list of Deputies Group Members

## Section 1

### STRENGTHENING OCR AND THE AGENCY'S CIVIL RIGHTS STRUCTURE

#### Broadening Responsibility for Civil Rights – A One EPA Approach

The Executive Committee emphatically embraces a “One EPA” approach for building a model civil rights program at EPA. The Agency needs to fundamentally redefine roles and responsibilities for civil rights, with an emphasis on broadening responsibility and strengthening accountability. It follows that significant changes will take place both within and outside of OCR. Within OCR, greater emphasis is needed on its leadership role in developing strategies/policies, monitoring Agency progress, and managing accountability and reporting systems. In the future, a greater share of responsibility for “local implementation” needs to rest with managers and staff throughout the entire EPA organization, including regional offices and headquarters (HQ). In the development of a model program, Agency management must continue to emphasize shared commitment and connectedness among practitioners across the Agency.

#### Creation of Deputy Civil Rights Officials in EPA's Regions and Headquarter Offices

As a first step toward broadening responsibility for civil rights, a network of senior officials should be delegated certain authorities and held accountable for “local implementation” of civil rights programs in their offices and charged with working together on national strategy and policy development. Instead of the networked teams (as envisioned in the Deloitte report), the committee recommends that senior Deputy Civil Rights Officials (DCROs) be designated by an internal Agency order in each regional office and each Assistant Administrator's office (AA-ship) to ensure accountability and improve the coordination of policies and initiatives. The DCROs would be accountable for carrying out certain civil rights implementation activities in their respective regional office or AA-ship. The DCRO concept is modeled after the Agency's existing Deputy Ethics Officials framework, and the officials would have broad responsibilities for implementing the Agency's civil rights program and diversity initiatives. For example, DCROs would ensure that all staff receive required No FEAR training, and that all supervisors have mandatory civil rights elements in PARS agreements. (The No FEAR training itself should be revised to promote greater awareness of civil rights responsibilities and to make it more applicable for practical EEO concerns – e.g., explaining the role of EEO counselors, DCROs, ADR, etc). In addition, the DCRO would represent their organization for the purposes of the Title VI Case Management Protocol, discussed in Section 2 (Strengthening EPA's Title VI Program).

Under this recommendation, DCROs would be responsible for identifying and/or requesting adequate funding and resources for civil rights work, and for ensuring that their organization has well-functioning policies, processes, and management controls for:

- Selection, training, and performance monitoring/evaluation of EEO staff (i.e., EEO Counselors, ADR staff, EEO Officials, etc.);

- Timely reporting of information for various civil rights and diversity related reports and data-calls;
- Training civil rights staff and meeting mandatory requirements for training managers and employees within their region or AA-ship (e.g., No FEAR);
- Ensuring that management promotes diversity and equal employment opportunity and adheres to other responsibilities under the Agency’s civil rights program;
- Ensuring that performance agreements have appropriate EEO language (required for managers, and necessary for certain other positions);
- Facilitating informal EEO complaint resolution, and assuring that well-qualified/organized ADR processes are employed;
- Representation of the region/AA-ship for the purposes of the Title VI Case Management Protocol (see Section 2); and
- Development and implementation of MD-715 Action Plans.

The Executive Committee proposes that the DCRO responsibility be incorporated into the duties of the ARA or DRA in the regions, as determined by the Regional Administrator, and at the DAA level in HQ. Under this recommendation there would be a manager at the Senior Executive Service (SES) level responsible for ensuring implementation of civil rights and diversity programs/initiatives, which will bring a high level of importance and visibility. The order establishing the DCROs should also require the designation of alternate DCRO (also SES) in the event the DCRO has a conflict of interest in a particular issue.

### **Building Staff Skills for a Stronger Civil Rights Program**

Deloitte reported that, from the perspective of people they interviewed, the skills necessary to accomplish OCR’s work are not well matched with the current skills in the office. While that perspective cannot be discounted, the more critical question examined by the Executive Committee is how EPA can develop and attract staff with expertise for an office with new roles and responsibilities – an OCR capable of building and leading a model civil rights program. Broadly speaking, there should be greater emphasis in OCR on leadership. OCR must lead the development of strategies and guidance, coordination of policy, and evaluation of the Agency’s progress. Essentially, OCR must provide higher-level management and oversight of the Agency’s civil rights program while delegating substantial “hands-on” work through a strong network across the Agency. Skills and expertise for this role may or may not currently reside in OCR. To meet these expectations, OCR’s staff and other staff responsible for civil rights work may need changes in skill mix and capacity. For example, OCR should invest more in tools, training and technical assistance to EEO counselors who have a critical role for cases – handling both initial efforts to resolve cases, as well as the development of counselor’s reports which serve as background for cases that go on to the formal stage of the EEO adjudication process. Improvements in the counseling process and products (i.e., counselor’s reports) could also translate into substantially less follow-up investigatory work in OCR.

It is important to note that the capacity and skills of civil rights personnel across the Agency are just as crucial to building a model program as any changes made within OCR. One of the first tasks for the DCROs will be to assess the staffing and expertise needed for their organizations. Employees who do civil rights work full time, with a high level of expertise are



needed for building a model program. One dedicated full-time equivalent (FTE) in regional offices is likely insufficient for achieving a model program and it will be incumbent upon DCROs to work within their program/region to ensure these function are adequately staffed.

A significant challenge lies ahead for OCR's management and staff. Many OCR employees, including supervisors, likely are willing and able to embrace change and make the transition to a future OCR. Some may need training or some may prefer to leave the office. The Executive Committee recommends a focused and intensive process to engage employees in updating the mission and vision statements of OCR, establishing priorities for policies and procedures, and identifying the skill mix necessary for accomplishing the office's "new" responsibilities consistent with the recommendations of this report. A staffing plan should be developed working in conjunction with the Office of Administration and Resource Management (OARM) that will guide training, hiring, career development planning (for staff and managers), and assistance to staff interested in pursuing other career opportunities. The office's skill mix may need to change to accomplish the essential functions of the future OCR, and on a case-by-case basis, performance issues need to be addressed. OCR will need continued, sustained assistance to make the transition to a high-performing organization, and the office (and related organizations) will need additional FTE and resources to effectively implement the recommendations in this report. Specific actions to begin this process are outlined in the recommendations below.

The success of this strategy depends on the active involvement of DCROs, who themselves may need extensive training and continuing education in civil rights. Working through the DCRO system discussed above, OCR would provide leadership in the development of staff expertise and skills throughout the Agency. The "elevation" of skills and expertise across EPA is a long-term project, and will take sustained team work within the DCRO community (in conjunction with the Office of Administration and Resource Management (OARM), in particular, for the development of position descriptions for civil rights duties, training, performance standards, etc.).

## **Key Recommendations for Section 1**

### **1. Establish Deputy Civil Rights Officials**

#### ***Specific steps include:***

- Use the Executive Management Council (EMC) to facilitate a discussion about the DCRO role, elevate visibility/understanding and to obtain input into the development of an Agency Order (completed in December 2011);
- Establish a working group at the DRA/DAA level to review these recommendations and to draft an EPA Order (and/or Agency Delegation) implementing the new DCRO structure; and
- Issue Agency Order in FY12.

### **2. Develop a Staff Plan and Training Program for Agency Civil Rights Functions** – Engage OCR staff in an organizational development process to update/rewrite the mission and vision for OCR and to identify the essential functions of the Office (substantially based

on the recommendations of this report), to inform the development of a comprehensive staff plan. Throughout this process, the lead region and other organizations should be engaged, so that the skills necessary for partners outside OCR (e.g., regional EEO Officers, OARM diversity specialists, etc.) can be incorporated into the plan.

***Specific steps include:***

- Engage staff to identify actions and plans for implementing the recommendations of this report, and identifying OCR's essential functions based on a review of existing processes/activities, benchmarking, the Deloitte report, and other sources of information;
- With the assistance of OARM identify the specific types of skills and relative size of staff necessary for accomplishing essential civil rights functions;
- Using the input from staff, and working with OARM and external consultants (as necessary), finalize a staffing plan for OCR, including model PDs, recommended job series, and staff size;
- Fill positions using a competitive process, to enhance skill sets and bring expertise into OCR;
- Establish a training and skill development program to help staff serve consistent with the skills identified in the staff plan; and
- Request FTE/resources to effectively implement the recommendations in this report through the regular budget development process, if necessary.

- 3. Build Employee Skill and Assist in Career Development** – Immediately ask OCR staff to come forward for assistance if they are interested in career opportunities other than in civil rights. These staff should be assisted in achieving their career goals outside the civil rights arena. In addition, as appropriate, ensure adequate performance and accountability across the office.

***Specific steps include:***

- Invite staff to self-select for reassignments, and arrange one-on-one meetings with supervisors/managers (underway);
- Working with OARM, identify potential positions outside of OCR and assist in arranging interviews with other organizations. As part of this process, OARM would ensure that OCR staff are considered for lateral transfers;
- Provide assistance to staff, as needed, on resume writing and interview skills; and
- Provide performance assistance plans as appropriate and ensure adequate performance and accountability across the office.

- 4. Update Standard Operating Procedures** – As needed, add, update, or eliminate standard operating procedures, including templates, model documents and internal guidance documents.

***Specific steps include:***

- Engage OCR staff in identifying by June 2012 priority standard operating procedures(SOPs) that need to be added, updated, or eliminated – based on the

essential functions as identified above. Attachment 4 provides a comprehensive list, developed by OCR staff, that can serve as a starting point;

- Distribute the proposed priority list to partner organizations and regional offices for input and to request assistance on project teams; and
- Develop “project plans” for each SOP in priority order, including specific actions, internal partners, specific outreach/engagement, and time frame for finalization.

## Section 2

### STRENGTHENING EPA'S TITLE VI PROGRAM

#### Background

Title VI of the Civil Rights Act of 1964, as amended, prohibits discrimination based on race, color, or national origin under any program or activity of a Federal financial assistance recipient. Under the Act, Congress gave federal agencies considerable latitude to determine whether disparate impacts on minorities resulted from the actions of federal grant recipients. The Act emphasizes resolution of complaints of discrimination through informal, voluntary approaches. Title VI complainants are to be provided an opportunity for early informal resolution of their concerns, including use of ADR, at their discretion. The option of settlement through the use of ADR continues throughout the complaint. Ultimately, however, federal agencies may withhold funding from recipients found to have discriminated against protected classes.

The Executive Committee recognizes that many of the cases give rise to potentially significant legal and policy issues that have remained unsettled for many years. The committee did not attempt to address these issues, as this was beyond the charge to the committee. The committee focused instead on the structural changes that would strengthen the Agency's overall Title VI program. The committee views these changes as near term priorities for building a strong and sustained civil rights program. Parallel with these efforts EPA will continue the equally important work of consulting with the Department of Justice, engagement with external stakeholders, and coordination with executive agencies through the Interagency Workgroup on Environmental Justice, to bring greater clarity to many of the legal and policy issues that remain a high priority for stakeholders, the States and Tribes, and EPA.

#### Assessment

Keeping Title VI cases on track – and reducing the backlog of cases -- is a challenge for the Agency. Currently, the Office of Civil Rights has the sole responsibility within EPA to process and review Title VI administrative complaints. Under this approach, OCR has struggled to process complaints and obtain the technical and analytical support necessary to issue final decisions, resulting in a backlog of 25 cases stretching over 15 years. Over the past year EPA has made considerable efforts to address long-standing problems in Title VI processing and decision making. Regular, high-level meetings are held to discuss the current backlog and to ensure that resources and attention remain focused on the steps necessary to reduce the backlog.

The Executive Committee found an immediate need to establish a protocol for coordinating the analytical work necessary for investigations and decision making. A fundamental problem in EPA's current Title VI program is the perception in many parts of the Agency that civil rights is the responsibility of OCR, regional EEO officers, or "someone else." The Agency needs a system to assure clear accountability among EPA Offices for conducting research and producing analyses, and a framework for sustained high-level attention necessary for timely decision making.

In addition to addressing the backlog and incoming complaints, the Title VI program needs substantially greater focus on prevention and compliance. For example, significantly more effort is needed to communicate Title VI responsibilities to recipients of federal funding, and to monitor -- through systematic processes -- recipient compliance with Title VI requirements. In addition, a stronger cross-connection is needed between “program” guidance designed to assist states in carrying out delegated authorities under environmental statutes (e.g., monitoring or permitting guidance), with the obligations (and grant conditions) of Title VI for recipients of federal funds.

## Key Recommendations for Section 2

**1. Establish a Case Management Protocol** – Through an internal Agency Order, a protocol would be established to bring organizations across EPA into a consensus process for committing adequate analytical resources and technical support for Title VI investigations and decision making. The protocol will articulate the roles and responsibilities of the National Program Managers (NPMs) and/or regional offices involved in Title VI cases along with the structure for investigating the cases. OCR will oversee and manage the protocol and will ensure elevation to resolve internal disagreements, and OCR can assume the lead role in investigations whenever a question of neutrality for the lead organization could adversely affect the credibility of the process. See the Case Management Protocol Flowchart in Attachment 5. The key elements of the protocol include:

- OCR’s continues its role in accepting/rejecting complaints. But once a case is accepted, case management and the adjudication process would be typically a shared responsibility with a region/NPM;
- OCR leads development of a Preliminary Case Management Plan in partnership with region(s) and NPM(s);
- Under the protocol, OCR convenes a senior panel to determine organizational roles in case management, investigation, and decision making;
- Informed by the panel, OCR assigns lead office (NPM or region) or OCR retains the lead;
- Disputes would be elevated to Deputy Administrator if consensus is not reached on roles/assignments, milestones, or decisions;
- Lead NPM/region and OCR finalize the Case Management/Investigation Plan and obtain final concurrence & commitments as necessary from other NPMs/regions;
- Case teams are led by the Region/NPM or by OCR, with established governing rules and formal work role definitions. Team members receive briefings on Title VI context and decision criteria as necessary;
- NPM/region with OCR participation will lead informal resolution efforts, and complete investigation(s); and
- NPM/region recommends final action. OCR will issue the final Agency decision, unless OCR delegates the final decision to a region/NPM.

*Specific steps include:*

- Establish an EPA “Title VI Management Protocol,” through an Agency Order that establishes a formal process for reaching agreement among offices/regions on a “case management plan” for each Title VI complaint. The plan would spell out specific responsibilities for each party, as well as timeframes; and
- Develop and maintain a Title VI network of technical, legal, and policy experts coordinated by OCR that can be mobilized to answer questions, provide advice, and review documents as part of the Title VI case management process.

**2. Strengthen Title VI Compliance and Prevention through Grant Mechanisms - EPA**

should strengthen communication to grant recipients to ensure that Title VI responsibilities are clear and unambiguous, and examine authorities for improved oversight, including data collection, compliance, monitoring and reporting. Grant recipients already agree under existing grant conditions to comply with all federal civil rights laws; however, the requirement is buried among many other general conditions, and potentially is viewed as “pro forma” among recipients.

*Specific steps include:*

- As outlined in EPA’s Plan EJ 2014, include Title VI along with environmental justice as topics for discussions in regularly scheduled meetings with States and Tribes including meetings on the National Environmental Performance Partnership System (NEPPS) program and in discussions on performance partnership agreements and performance partnership grants, and increase the visibility of Title VI in all aspects of training and technical assistance for recipients through existing structures;
- Update EPA’s existing pre-award review process, as appropriate, to clarify when additional reporting as a grant condition may be appropriate. Where EPA has more fully developed, formal guidance (e.g., Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, June 25, 2004 Federal Register/Vol. 69, No. 122), explore authorities for assuring compliance, such as requiring implementation plans as a grant condition;
- During grant pre-award review, consider incorporating into grant agreements specific reporting requirements on program activities being carried out to comply with Title VI for recipients that appear to have compliance problems;
- Include a civil rights module in EPA’s post-award “advanced” grant audits, and increase the number of audits (including on-site visits) for recipients that appear to have compliance problems; and
- Develop guidance to grant recipients identifying components of an effective Title VI program, and conduct a review to determine whether EPA needs regulations to support/strengthen implementation.

**3. Mobilize Resources from Across EPA to Prevent and Resolve Title VI Complaints -**

Integration of Title VI prevention and compliance activities into regular and routine EPA activities across all programs is needed to institute a One EPA approach for civil rights.

Initial steps are included below, but over time, additional opportunities should be identified to further integrate Title VI into operating programs.

***Specific steps include:***

- Include standardized Title VI compliance language in programmatic guidance intended for recipients of federal funds;
- As policy evolves, EPA should work with States over the next two years in developing metrics and program goals for inclusion in NPM guidance and annual commitments, including reporting on Title VI compliance in the annual mid-year and end-of-year review processes for delegated programs that receive federal funding. EPA internal processes and procedures should be updated as appropriate to reflect these changes (e.g., guidance to EPA permit reviewers and appropriate training to increase the ability of line program staff to identify and address issues before they become formal complaints);
- EPA should consider other available avenues to address community concerns. In some cases, better communication, community engagement, and technical assistance may mitigate or resolve community concerns;
- Consider the role of Title VI in working with States and communities to develop environmental justice initiatives and strategies. Although environmental justice is a much broader program than Title VI compliance, there are some connections, and EPA should look at patterns of Title VI issues, especially potential patterns in geographic areas, in advancing EPA's environmental justice activities; and
- Develop policy statements/guidance that elucidates the analytical framework for reviewing Title VI complaints and for the use of ADR in resolving such complaints.



## Section 3

### STRENGTHENING EPA'S TITLE VII PROGRAM

#### Background

Title VII of the Civil Rights Act of 1964 deals exclusively with Equal Employment Opportunity (EEO), making it illegal to "...discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin..." Furthermore, "...it shall be the policy of the United States to insure equal employment opportunities for Federal employees without discrimination..." Hence, federal agencies have a clear directive to ensure equal employment opportunities and to provide procedures for addressing, adequately and efficiently, any instances of alleged discrimination that are brought before them. Employees alleging discrimination are to be provided an opportunity for early informal resolution of their concerns, including participation in EEO counseling or use of ADR, at their discretion. A formal complaint can be filed with the EPA's Office of Civil Rights if the allegation of discrimination cannot be settled at the informal stage. The option to resolve complaints through the use of ADR continues throughout the formal EEO process.

#### Assessment

Mechanisms for the adjudication of EEO complaints are in place at EPA, but are not functioning at levels necessary for the timely processing or prevention of complaints. OCR struggles to achieve timeliness in the Title VII decision making process, and its reputation for customer service is poor. Draft work products under Title VII are uneven in quality, and significant rework is required through OGC or management review processes. In addition, the Agency's process lacks enough emphasis on ADR to facilitate a reduction in formal complaints while still assuring due process for employees alleging discrimination.

Strengthening EPA's EEO counselor corps would provide immediate, significant benefits and could be achieved with relatively modest investment. The EEO counselor role is critical to a model program. The counselor essentially serves as "intake" for complaints, facilitates informal solutions and alternative dispute resolution, informs employees of their rights, and assures adherence to statutory/regulatory/procedural requirements. Currently, there is heavy reliance on EPA employees who serve as EEO counselors as a collateral assignment. Often this is a serious problem for assuring high-level expertise, familiarity with evolving policy/procedures, and connectedness to OCR. A professional, well-coordinated, and well-trained cadre of Agency counselors is absolutely critical for the success of EPA's Title VII program.

Key recommendations and others for Title VII are described in more detail below. To succeed, these changes need to be implemented through a strong partnership between OCR and the Office of General Counsel's Civil Rights and Finance Law Office (CRFLO). Over time, as OCR develops stronger expertise, OGC's role should focus on pertinent legal issues that arise



from cases, rather than drafting and documenting work. In the meantime, OGC will continue to play a critical role in broadly supporting OCR core Title VII functions.

### **Key Recommendations for Section 3**

- 1. Strengthen EPA’s EEO Counselor Program** - OCR, using the DCRO network (see Section 1), should revitalize the EEO Counselor program to ensure that the best candidates are selected and adequately trained for this responsibility. “Professionalizing” the duties of EEO Counselors should be emphasized – including making these duties a critical element of an employee’s performance standards. In addition, the number of active EEO Counselors should be reviewed to assure an appropriate ratio of counselors to case workload.

#### ***Specific steps include:***

- Develop clear criteria and expectations of EEO Counselors;
- Revamp EEO Counselor training and formalize the recruitment process; and
- Incorporate into the authorities of DCROs the responsibility of assuring, within expected resources, the appointment of qualified counselors, training for counselors, and monitoring/evaluating of performance.

- 2. Improve Title VII Case Management** - OCR should use external experts to conduct investigations and employ a case management tool to track the workload, timeliness and results of Title VII cases. The case management tool should also have the ability to assist with data collection for mandatory reporting.

#### ***Specific Steps Include:***

- OCR will procure and utilize contractor services for investigations (now underway);
- OCR will procure and utilize a new case management tracking system (now underway);
- A clear explanation of the Title VII process, particularly roles and responsibilities among HQ and regions and time frames, should be developed and distributed to the EPA EEO community, in close consultation with DCROs; and
- To the extent practical and appropriate, regional EEO Officers will be engaged to help manage the complaints process from initiation to closure.

- 3. Involve EEO Officers in Title VII Policy Development** - EEO Officers should be included in policy development and provided with meaningful opportunities to implement and take part in the creation of a model civil rights program.

#### ***Specific Steps Include:***

- Engage EEO Officers in policy development and program implementation to strengthen their involvement in civil rights across the Agency;

- Review input and comments submitted by EEO Officers including the White Paper<sup>3</sup>, and develop a plan to implement recommendations for involvement of EEO Officers; and
- Jointly prepare an annual work plan for civil rights for the Administrator's Office and Civil Rights lead region to advance projects for improved policy coordination and implementation.

**4. Strengthen Alternative Dispute Resolution** - The Agency should ensure that a sound ADR program, which facilitates the early and effective informal resolution of disputes, is readily accessible to all employees for the full range of employment-related issues, and that EPA employees know what services are available to them. To achieve this recommendation, OCR and OARM/OHR are to closely coordinate their respective EEO ADR and Workplace ADR programs. Together, OCR and OARM/OHR should take steps to broaden awareness ADR resources, and the use of ADR should be promoted as an effective approach to settling workplace disputes, including grievances and allegations of discrimination.

***Specific Steps Include:***

- Develop and announce a clear Agency policy for the use of ADR to resolve the full range of employment related disputes;
- Develop and implement standard operating procedures for the Title VII ADR program to ensure compliance with EEOC guidelines including coordination with OARM/OHR Workplace ADR program, and the effective functioning of the programs;
- Engage civil rights staff, counselors, and DCROs in identifying specific program policies and procedures into which ADR should be incorporated;
- Provide training for staff and management on the use of ADR and services provided by the ADR programs, and for managers in conflict management;
- Establish reporting requirements and protocol for evaluating the effectiveness of ADR program activities.
- Ensure that communication about ADR clearly distinguishes civil rights ADR from the Agency's ADR program

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<sup>3</sup> *EEO Officer Input on Strengthening the Office of Civil Rights (White Paper), June 17, 2011*

## Section 4

### STRENGTHENING EPA'S AFFIRMATIVE EMPLOYMENT AND DIVERSITY PROGRAM

#### Background

OCR's Affirmative Employment and Diversity (AED) staff is charged with providing the leadership, direction and advice to managers and supervisors in carrying out equal opportunity and civil rights responsibilities, overseeing the Agency's Affirmative Employment and Special Emphasis and Diversity Programs, developing internal EEO policies/procedures, managing implementation of Executive Orders, and providing oversight of, and technical assistance to, HQ program management offices, regional offices and laboratories. The Special Emphasis and Diversity Programs include:

- Federal Women's Program
- Black Employment Program
- Hispanic Employment Program
- Asian American/Pacific Islander Employment Program
- American Indian/Alaska Native Employment Program
- Disability Employment Program
- Diversity Programs for Older Workers and Lesbian, Gay, Bisexual, Transgender Employees

A critically important function for AED is the development of the Agency's Affirmative Employment Program Plan and reporting under the Equal Employment Opportunity Commission's (EEOC's) Management Directive 715 (MD-715). The Agency's plan includes all program offices, regions and laboratories. Issued in 2004, the MD-715 provides guidelines for identifying triggers and conducting barrier analysis within the workforce.

#### Assessment

The staff in AED face a considerable challenge in coordinating civil rights and diversity matters. Currently, leadership for affirmative employment and diversity activities primarily resides in three HQ organizations: OCR, the Office of Diversity Outreach and Collaboration (ODOC), and Office of Human Resources (OHR). Additionally affirmative employment and diversity activities are structured in a variety of ways in regional offices. With multiple organizations involved in these activities, EPA's affirmative employment program needs a clearer focus on functions and priorities, stronger lines of accountability, and better coordination between HQ and regional offices. Some of the most critical functions in affirmative employment and diversity have received too little attention in relation to other, lower-priority activities. The Deloitte report noted, for example, that EPA has struggled with achieving MD-715 requirements while investing significant time and energy on special observances – one event for each program area. Clarification and realignment of functions across three principal organizations at HQ (and potentially within regions) is fundamental for achieving a model civil rights program.

OCR's AED program needs a more tightly defined mission centered on the core functions driven by the MD-715 process – identifying triggers, analyzing barriers to affirmative employment, assuring the development of action plans, implementing systems of accountability to monitor progress, and providing agency-wide training. Some of the activities currently handled by OCR's AED may need realignment for consistency with OARM's responsibility to promote, both internally and externally, staff diversity and cultural/traditional sensitivity.

The future OCR needs to become, in a sense, EPA's civil rights policy leadership and expertise center – coordinating the DCRO network and the HQ/regional civil rights “community of practice,” establishing and running civil rights policy working groups, developing agenda items to advance civil rights policy issues for senior management, drafting internal strategies/policies, developing and coordinating civil rights training, and providing on-going evaluation of the Agency's civil rights activities and programs. It is particularly important that OCR develop the ability for evaluation and accountability. Because of its position in the Administrator's Office, OCR is uniquely situated to evaluate the Agency's activities, and to hold accountable the Agency's managers. These new directions should be taken into account as OCR's staffing plans and other recommended changes are implemented.

## **Key Recommendations for Section 4**

### **1. Integrate Civil Rights and Diversity in Agency Reporting Vehicles**

#### ***Specific Steps Include:***

- Work with Office of the Chief Financial Officer to clearly identify and integrate civil rights and diversity into the Agency's Strategic Plans, Organizational Assessments, Operating Plans and other relevant Agency reporting vehicles;
- Include civil rights and diversity as important Agency goals and cross-cutting strategies in the Agency's Strategic Plan;
- Starting in FY13, report progress on civil rights and diversity initiatives in the Agency's Organizational Assessments; and
- OCR and OARM, working with the DCRO network, should refine and issue quarterly civil rights and diversity reports to Agency senior leadership.

### **2. Improve OCR's Capacity for Meeting MD-715 Requirements** - In the development of OCR's staffing plan, place high priority on ensuring OCR has the skills and expertise necessary for carrying out OCR's principle role in the MD-715 process.

#### ***Specific Steps Include:***

- Develop a detailed analysis of specific skills necessary for the MD-715 process (e.g., barrier analysis, evaluation, and statistics);
- Benchmark EPA's analysis with other high-performing organizations and through consultation with EEOC and other relevant organizations; and
- Develop position descriptions reflecting the staffing plan.

### 3. Implement Items from the Agency's Diversity and Inclusion Strategy

#### *Specific Steps Include:*

- Use the EMC as a platform for input and decisions on the diversity strategy and its maintenance;
- Consider integration of recommendations from the National Advisory Council for Environmental Policy and Technology (chartered under the Federal Advisory Committee Act) into the Agency's workforce planning/diversity strategy;
- Make support tools for managers and supervisors readily available and effective; and
- OCR/OHR/ODOC and OGC should meet jointly, at least once a year, to discuss, evaluate, and address outstanding or emerging issues pertaining to hiring, staffing, civil rights, diversity, reporting etc.

### 4. Shift responsibility for Cultural Appreciation and Heritage Events to OARM

#### *Specific Steps Include:*

- Document current practices, contact information, and any other information that will help ensure a smooth transition of the function to OARM; and
- Through the realignment plan (see next recommendation), identify positions that may be necessary in OARM to carry out these functions.

### 5. Finalize Realignment/Reorganization Plan

#### *Specific Steps Include:*

- Task senior management in OHR, ODOC, OCR and the Office of Small Business Programs (OSBP), in consultation with regional offices, with:
  - developing a realignment/reorganization plan within 4 months of the release of this report that clearly identifies roles/responsibilities and addresses coordination with regions;
  - articulating the role of each organization in meeting the requirements of Executive Orders and White House Initiatives, and establishing a system for assigning, tracking and reporting on implementation of such orders and initiatives.

## Conclusion

A strong civil rights program is crucial to EPA's success. Over the last two years, EPA has made a great deal of progress toward building a model civil rights program and strengthening the Agency's commitment to diversity and inclusion. The activities recommended in this report, implemented under a One EPA approach, will accelerate progress toward a model civil rights program and establish a sturdy and lasting framework for the future.

**Attachment 1: Executive Committee and Deputies Group Membership List**

<b>Executive Committee</b>	<b>Deputies Group</b>	<b>Staff</b>
<ul style="list-style-type: none"><li>● Bob Perciasepe</li><li>● Diane Thompson</li><li>● Scott Fulton</li><li>● Gwendolyn Keyes-Fleming</li><li>● Craig Hooks</li><li>● Cynthia Giles</li><li>● Rafael DeLeon</li></ul>	<ul style="list-style-type: none"><li>● Steven Chester</li><li>● Rafael DeLeon</li><li>● Lisa Garcia</li><li>● Jim Jones</li><li>● Brenda Mallory</li><li>● Stan Meiburg</li><li>● Phillip Metzger</li><li>● John Reeder</li><li>● Vicki Simons</li><li>● Raul Soto</li></ul>	<ul style="list-style-type: none"><li>● Kevin Bailey</li><li>● Karen L. Martin</li></ul>

## Attachment 2: Recommendations Score Card

The EPA Civil Rights Executive Committee and the supporting “Deputies Group” were tasked with identifying a path forward for developing a Model Civil Rights program in EPA. The following pages contain the combined recommendations, designated score for each action and some summary statistical information. Where it was logical to do so, recommendations were combined and arranged by themes/team/subject matter. The starting point for this challenge began with the Deloitte Study issued in March 2011. To support the Executive Committee, the Deputies Group synthesized the Deloitte findings and recommendation based on the following questions/criteria:

1. Does the recommendation serve to stabilize EPA's civil rights program and enable EPA to meet current/ongoing requirements? Would implementation of the recommendation affect future/longer-term institutional changes necessary to achieve a model civil rights program? How?
2. Does the recommendation serve to advance EPA toward a model civil rights program? How?
3. Will the recommendation work at EPA, considering EPA's structure and culture? If not, could it be adjusted to make it work at EPA? In what ways?
4. When should implementation of the recommendation begin? Immediately, within 6 months, within a year, beyond one year?

	<b>Finding</b>	<b>Recommendation</b>	<b>Priority</b> 1. High 2. Medium 3. Low 4. None	<b>Time Line</b> A. Now B. Within 6 Months C. Within 1 Year D. Beyond 1 Year	<b>Implementation Notes and Considerations</b>
<b>Green = Stabilizing Recommendation      Orange = Advances Model Program      Red = Not Recommended for Implementation</b>					
<b>Recommendations for Office of Civil Rights (Management –Staff-Skills- Tools-Procedures)</b>					
1	<b>Vision and Mission</b>	<b>Develop OCR vision and mission – proactive mindset for civil rights. Ensure that staff know and understand the mission</b>	1	A	<b>Vision and mission statement being developed with input from staff, possible interim statement</b>
2	<b>Leadership – Skills</b>	<b>Develop cohesive leadership management team</b>	1	A	<b>Majority of ne OCR managers have been hired; May need to broaden in certain areas e.g., more legal expertise</b>
3	<b>Management Skills</b>	<b>Improved oversight of staff required. Ensure strong managerial and civil rights background needed in OCR leadership.</b>	1	A	<b>Manager hired</b>
4	<b>Accountability</b>	<b>Ensure that all managers and supervisors have Civil rights/EEO within standards</b>	1	A	<b>Completed</b>
5	<b>Data - Use</b>	<b>Obtain a reliable and user-friendly complaint tracking system to monitor compliance with regulatory deadlines</b>	1	A	<b>Completed</b>



	<b>Finding</b>	<b>Recommendation</b>	<b>Priority</b> 1. High 2. Medium 3. Low 4. None	<b>Time Line</b> A. Now B. Within 6 Months C. Within 1 Year D. Beyond 1 Year	<b>Implementation Notes and Considerations</b>
<b>Green = Stabilizing Recommendation      Orange = Advances Model Program      Red = Not Recommended for Implementation</b>					
<b>6</b>	<b>Partnerships - OGC</b>	<b>Involve OGC in legal review early in complaint processing for T6 and T7</b>	<b>1</b>	<b>A</b>	<b>Completed; Accomplished through new, informal arrangements; Arrangement should be formalized in a SOP; Management attends monthly meetings; Staff are meeting to discuss specific cases-this also acts as training and capacity building</b>
<b>7</b>	<b>Internal Success Stories</b>	<b>Identify and use internal success stories as a benchmark for other teams (e.g. Reasonable Accommodations Program)</b>	<b>1</b>	<b>A</b>	<b>Start now</b>
<b>8</b>	<b>Leadership – Skills, credibility and confidence</b>	<b>Ensure that leadership has requisite expertise needed to effectively implement program objectives (all teams)</b>	<b>1</b>	<b>B</b>	<b>Completed; Deputy position is detailee</b>
<b>9</b>	<b>Data - Systems</b>	<b>Reliable case management systems needed to support program work in all sections of OCR and to support mandatory reporting requirements (MD-715, No Fear Reporting, etc)</b>	<b>1</b>	<b>B</b>	<b>Implementation has begun; i-complaints procured; T6 completed, waiting to install on server; AED-developing integrated system through HR and People Plus; Reasonable accommodations up and running</b>

	<b>Finding</b>	<b>Recommendation</b>	<b>Priority</b> 1. High 2. Medium 3. Low 4. None	<b>Time Line</b> A. Now B. Within 6 Months C. Within 1 Year D. Beyond 1 Year	<b>Implementation Notes and Considerations</b>
<b>Green = Stabilizing Recommendation      Orange = Advances Model Program      Red = Not Recommended for Implementation</b>					
10	<b>Accountability</b>	<b>Regular performance and career development coaching for staff</b>	<b>2</b>	<b>A</b>	<b>Now - training is continually provided and made available to staff; Happening now with T6</b>
11	<b>Accountability - Staff</b>	<b>Performance plans address timeliness, quality, outputs and outcomes</b>	<b>2</b>	<b>A</b>	<b>Ongoing</b>
12	<b>Leadership – Skills, credibility and confidence</b>	<b>Management clearly identifies and provides the skills required for staff success. Use these requirements to drive training and hiring decisions.</b>	<b>2</b>	<b>A/B</b>	<b>Training is underway; Should broadly include the rest of the Agency along with EEO Officers and Investigators;</b>
13	<b>Standard Operating Procedures</b>	<b>Develop repeatable processes (templates, procedures, job aids) to support all project areas on all OCR teams.</b>	<b>1, 2, 3</b>	<b>C</b>	<b>Now – identified as essential to stabilizing functions of the Civil Rights Program; SOPs review complete, and will be prioritized for updates; Need a plan to focus on highest priority</b>
14	<b>HQ &amp; Regions Relationships</b>	<b>Establish a “dotted line” reporting relationship formally connecting HQ OCR as an authority to regional CR staff</b>	<b>2</b>	<b>B</b>	<b>“Community of Practice” that is strong like other programs building off DCRO approach;</b>
15	<b>HQ &amp; Regions Relationships</b>	<b>Establish formal workflows for issues that involve both HQ and regions</b>	<b>2</b>	<b>B</b>	<b>Combined with #14</b>

	<b>Finding</b>	<b>Recommendation</b>	<b>Priority</b> 1. High 2. Medium 3. Low 4. None	<b>Time Line</b> A. Now B. Within 6 Months C. Within 1 Year D. Beyond 1 Year	<b>Implementation Notes and Considerations</b>
<b>Green = Stabilizing Recommendation      Orange = Advances Model Program      Red = Not Recommended for Implementation</b>					
16	<b>Data - Process</b>	<b>Develop/Improve process for sharing data across offices - OCR/OHR/OGC/ODOC/Regions</b>	<b>2</b>	<b>B</b>	<b>Underway; Include regions; Include EEO Statistical Report, information on complaints and Diversity Dash Boards</b>
17	<b>Contracts</b>	<b>Improve system for managing and monitoring quality of all contract products and services</b>	<b>2</b>	<b>C</b>	<b>Ongoing; Need to review all contract vehicles; focus on the contacts that deal with investigation</b>
18	<b>ADR</b>	<b>Identify ways to make greater use of ADR in Civil Rights Program</b>	<b>2</b>	<b>C</b>	<b>Needs more discussion on how; mandating verses marketing; Need to develop a clear ADR Policy;</b>
19	<b>Vision and Mission</b>	<b>Annual Civil Rights Progress Report</b>	<b>2</b>	<b>D</b>	<b>Possibly 2012; MD-715 will be a part of this report; MD-715 requires annual reporting by the OCR Director to the Head of the Agency; MD-715 report is shared with all offices and regions</b>
20	<b>Data - Use</b>	<b>Use data generated from reports and compliance assistance to identify "hot spots" under both T6 and T7. Provide compliance assistance, training as appropriate.</b>	<b>2</b>	<b>C</b>	

	<b>Finding</b>	<b>Recommendation</b>	<b>Priority</b> 1. High 2. Medium 3. Low 4. None	<b>Time Line</b> A. Now B. Within 6 Months C. Within 1 Year D. Beyond 1 Year	<b>Implementation Notes and Considerations</b>
<p style="text-align: center;"> <span style="color: green;">Green = Stabilizing Recommendation</span> <span style="color: orange;">Orange = Advances Model Program</span> <span style="color: red;">Red = Not Recommended for Implementation</span> </p>					
21	<b>Partnerships – Regions</b>	<b>Collaborate with regions on policies and agency-wide practices</b>	<b>2</b>	<b>B</b>	<b>Fold into creation of DCROs</b>
22	<b>Strategic Alignment-Organizational</b>	<b>Develop a roadmap to direct a complete overhaul of every OCR program area to align with model OCR and institute improvement management system</b>	<b>2</b>	<b>C</b>	
<b>Recommendations for Title VI</b>					
23	<b>T6 – Compliance/Outreach</b>	<b>Provide technical assistance to recipients on Limited English Proficiency requirements.</b>	<b>2</b>	<b>B</b>	
24	<b>T6- Standard Operating Procedures</b>	<b>Develop repeatable processes (templates, procedures, job aids) to promote compliance assistance in T6.</b>	<b>1, 2, 3</b>	<b>C</b>	<b>Identified as essential to stabilizing functions of the Civil Rights Program; SOPs are being reviewed, prioritized and updated; Stage activities based on priorities</b>
25	<b>T6- External Partners</b>	<b>Regular engagement with community and EJ groups, state and local governments and industry.</b>	<b>2</b>	<b>C</b>	<b>Ongoing; Evaluating ways to better and regularly engage with external partners; Currently meeting with some EJ groups and plan to meet with more in the future</b>

	<b>Finding</b>	<b>Recommendation</b>	<b>Priority</b> 1. High 2. Medium 3. Low 4. None	<b>Time Line</b> A. Now B. Within 6 Months C. Within 1 Year D. Beyond 1 Year	<b>Implementation Notes and Considerations</b>
<span style="color: green;">Green = Stabilizing Recommendation</span> <span style="color: orange;">Orange = Advances Model Program</span> <span style="color: red;">Red = Not Recommended for Implementation</span>					
26	<b>T-6 External Partners</b>	<b>Condition award of assistance applicants' assurance of compliance and completion of pre-award audits</b>	<b>2</b>	<b>C</b>	<b>Addressed in report text</b>
27	<b>T-6 External Partners</b>	<b>Conduct technical assistance and onsite compliance reviews</b>	<b>2</b>	<b>C</b>	<b>Addressed in report text</b>
28	<b>T6 Compliance/Outreach</b>	<b>Improve compliance assistance and outreach</b>	<b>2</b>	<b>C</b>	<b>Addressed in report text</b>
29	<b>T6 Compliance/Outreach</b>	<b>Provide final guidance to grant recipients on compliance with T6 and EPA regulations</b>	<b>2</b>	<b>C</b>	<b>Addressed in report text</b>
30	<b>T6 Compliance/Outreach</b>	<b>Train recipients periodically in complaint prevention and compliance</b>	<b>2</b>	<b>D</b>	<b>Can do some training now; Connected to guidance</b>
31	<b>T6 Compliance/Outreach</b>	<b>Make model T6 policy and grievance procedures available for use by recipients</b>	<b>2</b>	<b>D</b>	
32	<b>T6 Compliance/Outreach</b>	<b>Require recipients to submit data on affected persons and communities and on LEP compliance.</b>	<b>2</b>	<b>D</b>	<b>Addressed in report text</b>

	<b>Finding</b>	<b>Recommendation</b>	<b>Priority</b> 1. High 2. Medium 3. Low 4. None	<b>Time Line</b> A. Now B. Within 6 Months C. Within 1 Year D. Beyond 1 Year	<b>Implementation Notes and Considerations</b>
<b>Green = Stabilizing Recommendation      Orange = Advances Model Program      Red = Not Recommended for Implementation</b>					
33	<b>T-6 External Partners</b>	<b>Target applicants and recipients based on pre-award audits, risk analysis using random sampling, complaint trend analysis, and predictive modeling – Note ( based on EPA experience Intervention Concept)</b>	<b>3</b>	<b>C</b>	<b>Use simpler approaches in near term</b>
34	<b>T6- Leadership/Mgmt</b>	<b>Program leaders experienced in environmental laws and civil rights</b>	<b>2</b>	<b>B</b>	<b>Completed</b>
35	<b>T6 - Staff Skills</b>	<b>Staff position descriptions and training program include expertise in environmental law, legal writing and analysis, civil rights, investigations, statistical analysis</b>	<b>2</b>	<b>C</b>	<b>Partially underway through training and skill development</b>
<b>Recommendations for AED</b>					
36	<b>AED – MD 715</b>	<b>Ensure timely submission of report annually</b>	<b>1</b>	<b>A</b>	<b>Done – report submitted in January, annual requirement; MD 715 is a year round process;</b>
37	<b>AED Staff</b>	<b>Train staff in use of databases necessary for MD 715 analysis</b>	<b>1</b>	<b>A</b>	
38	<b>AED –MD 715</b>	<b>Use MD -715 to guide internal communication with stakeholders across the agency and with executives on a quarterly basis.</b>	<b>1</b>	<b>A</b>	<b>Completed; Needs some modification; Use for internal – not “all” communications</b>

	<b>Finding</b>	<b>Recommendation</b>	<b>Priority</b> 1. High 2. Medium 3. Low 4. None	<b>Time Line</b> A. Now B. Within 6 Months C. Within 1 Year D. Beyond 1 Year	<b>Implementation Notes and Considerations</b>
<b>Green = Stabilizing Recommendation      Orange = Advances Model Program      Red = Not Recommended for Implementation</b>					
39	<b>AED – MD 715</b>	<b>Formalize roles for offices (all EPA) involved in leading and implementing MD-715 action plans (OCR/OHR/ODOC/OGC)</b>	<b>1</b>	<b>B</b>	<b>Now – these groups are coordinating efforts through new informal mechanisms; Currently establishing Charter; Maybe develop SOP</b>
40	<b>AED Staff</b>	<b>Staff PDs and training program include expertise in barrier analysis, writing, investigations, statistics, interpersonal and communication skills</b>	<b>1</b>	<b>B</b>	<b>Investigations not in AED;</b>
41	<b>AED Staff</b>	<b>Increase staff expertise to develop and implement remediation strategies</b>	<b>1</b>	<b>B</b>	<b>Change recommendation to “develop and evaluate “Drop implement.</b>
42	<b>AED Staff</b>	<b>Ensure that staff are experienced in barrier analysis (MD-715)</b>	<b>1</b>	<b>B/C</b>	<b>Separate MD-715 and Diversity an option; all staff may not need barrier analysis training</b>
43	<b>AED – MD 715</b>	<b>Emphasize complaint trend analysis and use predictive modeling to pinpoint areas for intervention/training/compliance assistance. (T7 issue)</b>	<b>3</b>	<b>C</b>	<b>Not an immediate issue</b>
<b>Recommendations for Title VII</b>					
44	<b>T-7 Backlog/Case Management</b>	<b>Implement a case management tool for workload, timeliness, results and mandatory reporting</b>	<b>1</b>	<b>A</b>	<b>Completed</b>

	<b>Finding</b>	<b>Recommendation</b>	<b>Priority</b> 1. High 2. Medium 3. Low 4. None	<b>Time Line</b> A. Now B. Within 6 Months C. Within 1 Year D. Beyond 1 Year	<b>Implementation Notes and Considerations</b>
<b>Green = Stabilizing Recommendation      Orange = Advances Model Program      Red = Not Recommended for Implementation</b>					
45	<b>T-7 Regions</b>	<b>Ensure that EEO Offices are included in policy development and provide them with meaningful opportunities to implement civil rights policies and guidance</b>	<b>1</b>	<b>A</b>	<b>Ongoing; EEO Officers have developed a white paper; Interested in maximizing use of lead region concept for Civil Rights</b>
46	<b>T-7 Data</b>	<b>Trend analysis of complaints for proactive prevention</b>	<b>1</b>	<b>C</b>	<b>Underway; Committee to discuss it for MD-715; Predictive modeling not necessary, but need to use existing data to identify hotspots;</b>
47	<b>T-7 Analysis</b>	<b>Monitoring /addressing hotspots of complaint activity with programs and regions; Prioritize complaints</b>	<b>1</b>	<b>C</b>	<b>Need to think through what is appropriate intervention. Maybe include in action plans or other strategies with senior level involvement and buy-in. Take time to do it right.</b>
48	<b>T-7 Training – Agency</b>	<b>Annual EEO training for all staff; similar to security and ethics</b>	<b>1</b>	<b>B</b>	<b>Need clear effective training; Resource concerns; Need time to develop a training strategy before a decision is made on tools and methods;</b>
49	<b>T-7 Backlog/Case Management</b>	<b>Strengthen ADR; Assign EEO officers part-time and full time to address backlog</b>	<b>2</b>	<b>A</b>	<b>EEO Officers have agreed to help with backlog</b>



	<b>Finding</b>	<b>Recommendation</b>	<b>Priority</b> 1. High 2. Medium 3. Low 4. None	<b>Time Line</b> A. Now B. Within 6 Months C. Within 1 Year D. Beyond 1 Year	<b>Implementation Notes and Considerations</b>
<b>Green = Stabilizing Recommendation      Orange = Advances Model Program      Red = Not Recommended for Implementation</b>					
50	<b>T-7 Partnering - OGC</b>	<b>Document rules of engagement with CRFLO to mitigate perceptions about neutrality being compromised in formal complaints management strategies</b>	<b>2</b>	<b>B</b>	<b>Ongoing; Roles clearly defined at HQ, but blurred in region; Need greater clarity; EEO Officers need to be viewed as clients of CRFLO and thus avail EEP Officers of legal advice that is separate from employment attorneys; This may be an area to focus on where we could make some significant long-term changes. Possibility of having EJ/CR attorney for these positions; Can service center option work here;</b>
51	<b>T-7 –Framework for measuring and evaluation</b>	<b>Include evaluation of contractor products</b>	<b>2</b>	<b>C</b>	<b>Ongoing; Standard performance clause is in contract; See 21?</b>
52	<b>T-7 –Framework for measuring and evaluation</b>	<b>Enforce a performance management and quality assurance program.</b>	<b>3</b>	<b>C</b>	<b>Phase-in approach needed here; more fundamental capacity building;</b>
53	<b>T-7 Staff Skills</b>	<b>Strengthen research and analytical skills, develop analytical and communication skills.</b>	<b>2</b>	<b>C</b>	<b>Partially underway through training and skill development; Addressed in report text</b>

	Finding	Recommendation	Priority 1. High 2. Medium 3. Low 4. None	Time Line A. Now B. Within 6 Months C. Within 1 Year D. Beyond 1 Year	Implementation Notes and Considerations
<p style="text-align: center;">Green = Stabilizing Recommendation      Orange = Advances Model Program      Red = Not Recommended for Implementation</p>					
54	T-7 Staff Skills	Staff position descriptions include expertise on EEO, legal writing and analysis, statistical analysis and investigations	2	C	Partially underway through training and skill development; Addressed in report text
<b>No Plan to Implement</b>					
55	AED- Diversity - Approach	Networked team to include ODOC, CRFLO, ARA EEO, AED, T7 team, HQ EEO, OHR – Chaired by Diversity AA	4	No Plan to Implement	
56	T6 –Team Approach	Networked team using OCR, OECA, ORD, EJ, etc. to resolve backlog, but approach will support future efficiencies for approaching T6 work –Chaired by OECA AA	4	No Plan to Implement	
57	T6 - Framework	Build a framework for determining cross-functional teams needed to respond to T6 complaints	4	No Plan to Implement	

## Attachment 3: Model Civil Rights Program

### **ELEMENTS OF A MODEL CIVIL RIGHTS PROGRAM<sup>4\*</sup>**

#### Environmental Protection Agency

- Senior leadership directly involved and invested in success of the program
- Clear statement and common understanding of civil rights mission and strategy
- Annual EEO Policy Statement by Administrator
- EEO, Title VI, and AED included in strategic plans and performance objectives of offices and regions
- Performance standards for all managers and supervisors include an element for internal and external civil rights compliance
- Adequate funding and resources

#### **Civil Rights Program Office(s)**

- Director(s) reports to and has regular access to the Administrator, DA, or COS
- Annual Civil Rights “State of the Union”
- Critical skills and knowledge are identified and drive staff hiring and training
- Outreach, recruitment, and hiring of skilled, knowledgeable staff
- Formal, mandatory training program
- Staff understand their functions, tasks, processes, and expectations
- Performance plans address timeliness, quality, outputs, and outcomes
- Performance tracking and quality assurance program
- Regular performance and career development coaching
- Data collection and management systems, in cooperation with other offices
- Complaint prevention and compliance assurance focus
- Case management tools, including complaint tracking and quality assurance
- Standard Operating Procedures (SOPs), templates, and replicable processes and analytical frameworks developed with partner offices
- OGC legal counsel and review early in complaint processing
- Collaboration with and cooperation from EPA offices and regions
- Alternative Dispute Resolution (ADR) integrated into civil rights programs

#### External Complaints and Compliance (Title VI) Program

- Program leaders experienced in environmental laws and civil rights
- Staff position descriptions and training program include expertise in environmental laws, legal writing and analysis, civil rights, investigations, and statistical analysis
- Final guidance to grant recipients on compliance with Title VI and EPA’s regulations

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\* While this heading refers to a model civil rights program at EPA, the elements listed do not necessarily have to reside within a single civil rights office. This paper makes no assumptions regarding the ideal organizational location of model internal, external, and affirmative employment/diversity programs.

- Recipients periodically trained in complaint prevention and compliance
- Model Title VI policies and grievance procedures available for use by recipients
- Technical assistance provided to recipients on compliance with LEP requirements
- Regular engagement with community and environmental justice groups, state and local governments, and industry
- Award of assistance conditioned on applicant's assurance of compliance and completion of pre-award desk audit
- Technical assistance and on-site compliance reviews targeted to applicants and recipients based on pre-award audits, risk analysis using random sampling, complaint trend analysis, and predictive modeling
- Recipients must submit data on affected persons and communities and on LEP compliance
- Prioritize complaints and group related complaints
- Coordination with DOJ and other agencies for technical assistance and defensibility
- Use of ADR program with environmental expertise

#### **Employment Complaint Resolution (Title VII) Program**

- Program leaders experienced in EEO
- Staff position descriptions and training program include expertise in EEO, legal writing and analysis, statistical analysis, and investigations
- Annual EEO training for all employees, similar to security and ethics training
- System for managing and evaluating contract investigators
- Complaint tracking system to monitor compliance with regulatory deadlines
- Trend analysis of complaints for proactive prevention
- Monitoring and addressing hotspots of complaint activity with programs and regions
- Regional EEO Offices with significant, specified responsibilities
- Use of ADR Program

#### **Affirmative Employment and Diversity Program**

- Program leaders experienced in barrier analysis
- Staff position descriptions and training program include expertise in barrier analysis, writing, investigations, statistics, interpersonal and communication skills
- Meet regularly with managers to seek input and provide guidance on barrier analyses
- EEO and Affirmative Employment policies/procedures, including anti-harassment and reasonable accommodation policy and procedures
- Guidance for Special Emphasis Program Managers on responsibilities, activities, logistics, and reporting
- Conduct trend analyses of EEO complaints and workforce demographics
- Staff skilled in use of databases necessary for MD 715 analysis
- Timely MD 715 analysis and reporting
- Clearly defined responsibilities distinct from those of other offices

## Sources

*Evaluation of the EPA Office of Civil Rights*, Deloitte LLP, March 21, 2011; *Instructions to Federal Agencies for EEO MD 715, Section I, The Model EEO Program*, Equal Employment Opportunity Commission (EEOC), <http://www.eeoc.gov/federal/directives/715instruct/section1.html>;

*Attaining a Model Agency Program: Efficiency*, EEOC, <http://www.eeoc.gov/federal/efficiency>

Letter from Dexter Brooks, EEOC, to Rafael DeLeon, EPA, September 28, 2010

*Review of the Title VII EEO Complaints Process - Draft*, EPA Management Review Team, May 23, 2001

*Ten-Year Check-Up: Have Federal Agencies Responded to Civil Rights Recommendations? Vol. III: An Evaluation of the Departments of Agriculture and the Interior, the Environmental Protection Agency, and the Small Business Administration*, U.S. Commission on Civil Rights (USCCR), June 12, 2003

*Not in My Backyard: Executive Order 12,989 and Title VI as Tools for Achieving Environmental Justice*, USCCR, October 2003

## Attachment 4: Inventory of Standard Operating Procedures

### Office of Civil Rights Inventory of Standard Operating Procedures and Templates Title VI

Team	Procedure	Comment
<b>Title VI</b>	Freedom of Information Act (FOIA) SOP for Title VI	
	Draft SOP for the Processing of EPA Form 4700-4 (Pre-Award Compliance Review)	First 10 pages provided for reference. Full document available electronically.
	Draft SOP for Processing of EPA Post Award Compliance Reviews	
	Investigation Report Template	
	Investigation Plan Template	
	Sample Investigation Process Timeline	
	Final OCR T6 Complaint Listing	Also posted on OCR website
	40 CFR Part 7– Non-discrimination in Programs Receiving Federal Assistance from the Environmental Protection Agency	First five pages provided for reference purposes. Full document available electronically.
	Title VI - Legal Manual US Department of Justice (DOJ) -2001	Note: OCR made a policy call to begin using DOJ guidance. There is a plan underway to draft EPA-specific guidance that mirrors DOJ's.  Table of Contents provided for reference purposes. Full document available electronically.
	DOJ Investigation Procedures Manual – 1998	Note: OCR made a policy call to begin using DOJ guidance. There is a plan underway to draft EPA -specific guidance that mirrors DOJ's.  Table of Contents provided for reference purposes. Full document available electronically.
	Limited English Proficiency (LEP) guidance – Federal Register Notice June 25, 2004	First five pages for reference only. Full document available electronically.
	Recipient Guidance – Federal Register Notice 2006	

**Office of Civil Rights**  
**Inventory of Standard Operating Procedures and Templates**  
**Title VII**

Team	Procedure	Comment
<b>Title VII</b>	Contents of an EEO Complaint File	
	Procedures for Union Notification	Developed in Jan 2011
	Regional Contact List –EEO Officers	
	Description of OCR functions by team	
	EEONet procedures and user’s manual	EEONet is the tracking system for all EEO complaints.
	EEO Counselors –Required documents of an EEO folder	Contains a listing of all contents associated with a complaint file when it is given to HQ staff.
	OCR Correspondence Types	Provides a list of correspondence generated throughout the process; also contains a glossary of terms.
	SOP for Civil Rights and Finance Law Office	Provides CRFLO’s standard review time for EEO actions (e.g., accept/dismiss, Final Agency Decisions, etc.)
	How to review a Report of Investigation	
	Settlement Authority	Provides citations/statutory authorities for settlement actions.
	Request for Official Time	Template to use when official time is needed to prepare or respond to an EEO investigation request.
	SOP for electronically exporting EEONet pre complaint data	
	SOP for Preparing Case Files	
	Checklist for Report of Investigation	
	How to use EEONet (website)	
	How to use and access EEONet Ellipticals	
	Processing EEO Complaints	Draft and has not been approved by OCR management.
	Develop SOPs for the processing of ADR cases and coordination with the OARM/OHR Workplace ADR Program	

**Office of Civil Rights**  
**Inventory of Standard Operating Procedures and Templates**  
**Affirmative Employment and Diversity (AED)**

Team	Procedure	Comment
<b>AED</b>	Special Emphasis and Diversity Program Managers' Handbook	Dated July 2006 (Currently being updated by AED Staff)
	National Special Emphasis Program Committees Policies and Procedures	Dated July 2009(Included in SEP & Diversity Program Managers' Handbook)
	By Laws – Black Employment Program Advisory Council, Hispanic Employment Program, Federal Women Program, American Indian Alaska Native, Asian American Pacific Islander, Disability Employment Program, LGBT and Older Workers Diversity Program	AED Staff is currently consolidating all SEP By-laws into one SOP.



## Attachment 5: Flowchart for Case Management Protocol

