

Email information to:  
[Title VI Complaints@epa.gov](mailto:Title_VI_Complaints@epa.gov)

Fax: (202) 565-0196  
(202) 501-1836

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**From:** (b) (6) Privacy, (b) (7)(C) Enforcement Privacy  
**Sent:** Thursday, January 9, 2020 12:24 AM  
**To:** Title VI Complaints <[Title\\_VI\\_Complaints@epa.gov](mailto:Title_VI_Complaints@epa.gov)>  
**Subject:** Inquiry Only

Dear EPA Title VI Administrator,

My name is (b) (6) Privacy, (b) (7)(C) Enforcement Privacy I work with the Hawaii Department of Agriculture, Pesticides Branch (HDOA). I am in a difficult situation and I believe it stems from my involvement with a civil rights (Title VI) complaint: EPA File No. 44RNO-16-R9. In this case, I was slated to be the Title VI Coordinator for the Pesticides Branch. On an unfortunate turn of events and to my disadvantage, 44RNO-16-R9 was informally resolved by HDOA's submission of a Title VI Plan, which provides a process by which to receive public complaints. Up to the month of July 2019 and into the month of September 2019, I was protected by 44RNO-16R9. However, by Dec. 4, 2019, by a roundabout way of being subjected to performance expectation with a mandated deadline imposed on me of Dec. 4, 2019, which I did not meet due to unreasonable expectations, I received a demotion and loss of wages (commensurate decrease in pay). I believe that this stemmed from my participation with 44RNO-16-R9. Is there a way that you could assist me to regain my original position or to be lateralled out to an equivalent position with my employer?

If you are not the right agency to contact, then would you please refer me to an agency that would be able to help me on this matter.

Please note that the attachments are 'must share' items I have to share with you in order that you can understand my current situation better.

Would you please advise.

Thank you.

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy

## Harrison, Brenda

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**From:** McGhee, Debra  
**Sent:** Friday, January 10, 2020 11:16 AM  
**To:** Harrison, Brenda  
**Cc:** Harrison, Brenda  
**Subject:** FW: Inquiry Only  
**Attachments:** 4\_180725\_Email from Delanie.pdf; 2EarthJustice EPA draft resolution.doc; 1EPA DRAFT Informal Resolution Agreement HDOA (44RNO-16-R9).pdf; 3\_180914\_Email from Delanie.pdf

For the P: Drive file – (b) (6) Privacy, (b) (7)(C) Enforcement Privacy sent some attachments along with his complaint.



Debra McGhee  
TEAM LEAD  
External Civil Rights Compliance Office  
Office of General Counsel  
Environmental Protection Agency  
PHONE: 202-564-4646



**From:** Rhines, Dale <rhines.dale@epa.gov>  
**Sent:** Thursday, January 9, 2020 12:28 PM  
**To:** McGhee, Debra <mcghee.debra@epa.gov>  
**Subject:** FW: Inquiry Only

Debra,  
Can you take a look and give me your thoughts? Thanks!

**From:** Title VI Complaints <[Title\\_VI\\_Complaints@epa.gov](mailto:Title_VI_Complaints@epa.gov)>  
**Sent:** Thursday, January 9, 2020 9:38 AM  
**To:** Dorka, Lilian <[Dorka.Lilian@epa.gov](mailto:Dorka.Lilian@epa.gov)>; Rhines, Dale <[rhines.dale@epa.gov](mailto:rhines.dale@epa.gov)>  
**Subject:** Fw: Inquiry Only

Mail Information to:  
Director of the Office of Civil Rights  
U.S. Environmental Protection Agency  
Mail code 1201A  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

(b) (6) Privacy

**From:** [REDACTED]  
**Sent:** Wednesday, July 25, 2018 11:29 AM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** Attempt to resolve EARTHJUSTICE COMPLAINT 44RNO-16-R9  
**Attachments:** EPA DRAFT Informal Resolution Agreement HDOA (44RNO-16-R9).pdf; EarthJustice EPA draft resolution.doc

Good morning my friends!!

Attached please find EPA's version of the draft resolution agreement (the .pdf file) and my version of the draft resolution agreement (the .doc file).

All of the things contained in the Complaint Procedures and Non-Discrimination Obligations (attached to my draft) are the bare minimum Title VI requirements that have been in effect for decades. A review of the non-discrimination policies and procedures on the Department of Transportation and the Department of Education websites demonstrate what the departments had to do as a result of similar lawsuits. It's a miracle HDOA went this long without a lawsuit.

The HDOA website needs to immediately, (if not sooner), reflect the availability of interpretation services and necessary accommodations upon request. EPA also wants the information on the website translated for non-English speakers/readers. We may be able to get away with providing information in Japanese, Chinese, Korean, Tagalog, Ilocano, and Pacific Islander. EPA also wants the Title VI Coordinator position to be referred to as the "Non-discrimination Coordinator." (Yes - that was an actual EPA requirement that the position title be changed to non-discrimination coordinator!)

As to the non-discrimination posting requirements, there are posters available on-line that comply with all the requirements. There is also a laminated poster with all necessary compliance information available for purchase. The non-discrimination posters should be posted at all HDOA offices.

I have gathered this compliance information from "the law" (State and Federal) and a review of at least six EPA agreements settling complaints with other States.

While the entire HDOA is subject to these non-discrimination requirements, because the Earthjustice complaint is directed towards the pesticide branch, it is incumbent upon the pesticide branch to lead the charge toward Title VI compliance.

My version of the draft resolution is based upon the theory that there is already a non-discrimination program in place and a person need only inquire about how to file a complaint to obtain that information. Unfortunately, the how to file a complaint information is required to be "accessible." EPA has been checking the HDOA website to verify compliance.

If we do not make these changes immediately, and we wish to challenge the Title VI compliance aspect of the complaint, we could do that, but we would most likely lose that battle and suffer the "compliance consequences" after that. EPA has some mean "compliance consequences."

And could someone PLEASE PLEASE PLEASE correct the spelling of "accessibility" on the HDOA website – in two places it is spelled "accessibility" : (

Let me know if you have any questions!!

(b) (6) Privacy

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**Balignasay, Jose T**

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**From:** (b) (6) Privacy  
**Sent:** Friday, September 14, 2018 9:48 AM  
**To:** (b) (6) Privacy  
**Cc:**

**Subject:** RE: Title VI Law (Anti-Discrimination)  
**Attachments:** 42 USC subchapter V, Chapter 21 Title VI.doc; 40 CFR part 7 re nondiscrimination requirements.doc

Well this email stream sadly explains a lot : (

The law as related to Title VI and HDOA, is set forth in 42 U.S.C. sections 2000d through 2000d-7. For purposes of this discussion, the regulations that implement Title VI are 40 CFR Part 7 entitled "Nondiscrimination in programs or activities receiving federal assistance from the environmental protection agency", and Subpart D entitled "Requirements of Applicants and Recipients".

A copy of 42 U.S.C. sections 2000d et seq. is attached for review.

42 U.S.C. section 2000d entitled "Prohibition against exclusion from participation in, denial of benefits of, and discrimination under federally assisted programs on ground of race, color, or national origin" states:

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination **under any program or activity receiving Federal financial assistance.**

42 U.S.C. section 2000d-7 entitled "Civil rights remedies equalization" states:

**(a) General provision**

(1) **A State shall not be immune under the Eleventh Amendment of the Constitution of the United States from suit in Federal court for a violation of section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], title IX of the Education Amendments of 1972 [20 U.S.C. 1681 et seq.], the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], or the provisions of any other Federal statute prohibiting discrimination by recipients of Federal financial assistance.**

(2) In a suit against a State for a violation of a statute referred to in paragraph (1), remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in the suit against any public or private entity other than a State.

**(b) Effective date**

The provisions of subsection (a) shall take effect with respect to violations that occur in whole or in part after **October 21, 1986.**

In 2016, EarthJustice filed a complaint with the EPA alleging that the HDOA pesticides program discrimination against native Hawaiians (**there is no way they could prove this**), and that HDOA, as the recipient of federal funds from EPA, did not have a Title VI program in place (**this they could prove**).

HDOA receives funds directly from EPA in addition to funds from the U.S. Dept. of Ag (a federal agency with similar Title VI requirements). I have located records dating back to 2008 showing HDOA has received at least \$1,000,000 + each year from these federal agencies (in 2009 it was almost \$4,500,000). So there is no way we can deny being the recipient of federal money from EPA.

In each application to EPA for money, under the section "Pre-award Compliance Review Report for all Applicants and Recipients Requesting EPA Financial Assistance" asks: "Does the applicant/recipient provide initial and continuing notice that it does not discriminate on the basis of race, color, national origin, sex, age, or disability in its programs or activities?" The question cites to 40 CFR sections 5.140 and 7.95. HDOA has consistently answered this question "Yes".

40 CFR section 7.95 Notice of nondiscrimination:

(a) *Requirements.* **A recipient shall provide initial and continuing notice that it does not discriminate on the basis of race, color, national origin, age, or handicap in a program or activity receiving EPA assistance or, in programs or activities covered by section 13, on the basis of sex. Methods of notice must accommodate those with impaired vision or hearing. At a minimum, this notice must be posted in a prominent place in the recipient's offices or facilities. Methods of notice may also include publishing in newspapers and magazines, and placing notices in recipient's internal publications or on recipient's printed letterhead. Where appropriate, such notice must be in a language or languages other than English. The notice must identify the responsible employee designated in accordance with §7.85.**

A copy of 40 CFR Part 7 is attached for review.

HDOA's initial defense was that HDOA, as a state agency within the executive branch, was covered by the Title VI program established by the Hawaii Department of Human Resource Development. EPA did not find that adequate. Thanks to the pesticide branch, who has made a great effort to at least give the appearance of Title VI compliance, had the appropriate information added to the website, placed anti-discrimination posters in publicly assessable areas, and worked to get an actual Title VI procedure in place. Shout out to the Pesticides Branch!!!

In responding to the EarthJustice complaint, HDOA has maintained its position that HDOA had, and has, a Title VI program in place, and all anyone had to do was call and they would be directed to the appropriate person. EPA now knows this is not the case. EPA and HDOA are in the process of trying to make this complaint just go away. The more stuff we can get done by next week, (the next EPA conference call), would go a long way in making this happen.

As to the Title VI compliance poster John suggested that HDOA use – **it contains all the necessary information.** I'm sure there are many more posters out there but frankly, be it from EPA or the U.S. Civil Rights office, as long as a poster goes up that contains the appropriate information I'm fine with that. If HR is concerned about using an "HR approved poster" please contact the Hawaii Department of Human Resource Development, hopefully they can provide some guidance, or maybe even an actual poster. Wouldn't that be nice!!!

**Please read the attachments. This is the law, current as of today's date, and has been the law for decades.**

I'm here if you need anything at all – email or call my direct line 586-1189.

**WE CAN DO THIS – the sooner the better!!!**

Delanie



(b) (6) Privacy

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From (b) (6) Privacy

Sent: Thursday, September 13, 2018 4:38 PM

(b) (6) Privacy

Subject: FW: Title VI Law (Anti-Discrimination)

(b) (6) Privacy

In response to your request, I am cc-ing Delanie on this email.

Are we of the same understanding? (non-discrimination policy, fundamentally, is uniform nationally)

Please note:

The PPG fund that we receive, I believe is from the USDA. The USDA fund is administered by EPA. In this context, the primary role is played by the USDA. Thus, on logic construct, the USDA policy and procedure would fit the bill to apply here with anti-discriminatory policy.

This entire initiative stems from an Earth Justice complaint, which you are probably aware of. My understanding is, there is a procedural-gap on fielding complaints. Under an informal agreement, to which our Office of the State Attorney General and the EPA (I think, with the External Civil Rights Compliance Office) were parties to drafting and concurring on the settlement to addressing the procedural-gap (again, this is how I understand the case to be as a person recently coming into the picture). For this reason, the anti-discrimination posting has to be done. As to location, "Methods of Notification" is covered under Title IX and Section 504 (ruling schools and colleges) anti-discrimination notification regulations.

You are correct in identifying that the Title VI regulation does not specify the method to be used by federal grant recipients as to where to furnish notices on non-discrimination.

The intent of Title VI is broadly applied by the DLIR. The fundamental requirements of Title VI is adopted by DLIR. To me, what binds the two is that the non-discrimination policy has to be compatible to be non-discrepantly applicable nationally. On this account, the arm of DLIR is much more extensive.

Job searches are vital to supporting existence and daily living. The portal to EPA is more restrictive compared to DLIR's because, stereotypically, people see it as the authority for environmental concerns and not necessarily for equity concerns. For this reason, an employment bulletin board would be a central place that would draw the greatest number of eyes.

These are just my two cents' worth of thoughts.

With the above things said, I want to turn it over to Delanie.

Hi Delanie,

Could you please address the query made by Darcie? Thank you in advance for your kind response.

Regards.

Joe

From: (b) (6) Privacy

Sent: Thursday, September 13, 2018 3:42 PM

To: (b) (6) Privacy

(b) (6) Privacy

Subject: RE: Title VI Law (Anti-Discrimination)

Hi Joe,

I believe that this EPA brochure may be a better fit for the bulletin boards than the US DLIR poster. Please ask (b) (6) Privacy if this EPA brochure will be acceptable.

Additionally, we already post this 2009 EEOC poster on the bulletin boards.

Also, for my records, please provide the reference where it says we need to post this.

Thanks!

(b) (6) Privacy

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From: (b) (6) Privacy

Sent: Thursday, September 13, 2018 1:22 PM

(b) (6) Privacy

Subject: RE: Title VI Law (Anti-Discrimination)

(b) (6)

PT

We have just received a ruling from the Deputy Attorney General's Office (AG) on the poster in question here. The AG's Office says the poster is ok to post.

May I have your approval to go ahead with the postings of the poster on all the islands?

Thank you.

(b) (6)

Privacy

From: (b) (6) Privacy

Sent: Thursday, September 13, 2018 10:35 AM

To: (b) (6) Privacy

(b) (6), (b) (6)

(b) (6) Privacy

Subject: FW: Title VI Law (Anti-Discrimination)

(b) (6) Privacy

(b) (6) from Hilo contacted us regarding your request to post the attached flyer on the Hilo Office bulletin board since HR maintains the bulletin boards for King Street, Maui, Kauai and Hilo Offices and approves the postings. We also noticed that this flyer was posted on the King Street bulletin board fronting the elevator on the 1<sup>st</sup> floor (which I removed for now).

Before we consider the posting, can you please confirm if the Deputy AG has confirmed if this the correct flyer to meet the PEST requirements?

Thanks!

[Redacted]

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From: (b) (6) Privacy

Sent: Wednesday, September 12, 2018 7:35 AM

(b) (6) Privacy

Subject: Title VI Law (Anti-Discrimination)

(b) (6) Privacy

Title VI Law has become part of our task in the program. Posting of this notice is one of the requirements to observing, in good faith, Title VI intent. For this reason, please print and post on notice boards the attached national policy.

Thank you.

(b) (6) Privacy