



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D C. 20460

Office of Environmental Justice and External Civil Rights

Office of External Civil Rights Compliance

Process and Criteria for Selecting Form 4700-4 for Audit Effective January 1, 2023

The United States Environmental Protection Agency (EPA) Office of External Civil Rights Compliance (OECRC) implements EPA's mandate to enforce several federal civil rights laws, which together, prohibit discrimination on the basis of race, color, national origin (including limited-English proficiency (LEP)), disability, sex and age by applicants for and recipients of financial assistance from EPA.¹ OECRC's responsibilities include, among other duties, initiating compliance reviews both pre- and post-award.² This memo describes the process and criteria OECRC will apply to prioritize and conduct post-award audits of the information submitted on the Preaward Compliance Review Report for all Applicants and Recipients Requesting EPA Financial Assistance ("Form 4700-4" or "Form").³

I. Authority and Pre-Award Review

Primary responsibility for prompt and vigorous enforcement of Title VI rests with the head of each department and agency administering programs of Federal financial assistance.⁴ A post-award audit is an OECRC-initiated review of a recipient's responses on the Form 4700-4 that was found to be sufficient by EPA on its face, based on a "four corner" review of the Form and a certification by the recipient at the time of application that the Form and all attachments are "true, accurate and complete." The audit will confirm that the recipient fulfills the nondiscrimination regulation requirements as indicated on the Form.

During the pre-award review, OECRC or its designated reviewers in EPA's Regional offices ("reviewer(s)") will review applicants'/recipients' responses to the 11 questions (some of which include subparts) on the Form 4700-4 to determine whether the responses are complete and whether they are consistent with the EPA nondiscrimination regulation requirements. If responses are complete and, on their face, consistent with the EPA nondiscrimination regulation requirements, the reviewer will approve the Form, notifying the EPA grants office that processing of the grant application may proceed. However, the reviewer may simultaneously flag the Form for a possible post-award audit by OECRC, as described in Section II.

II. Selection of Forms for Audit

In the audit selection process, OECRC may determine not to audit every Form 4700-4 that is flagged by reviewers and is also not limited to auditing only Forms that were flagged during the pre-award review. For example, OECRC may randomly select Forms for post-award audit.

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

² See 40 C.F.R. §§ 7.110, 7.115 (pre-award and post-award compliance). See also 28 C.F.R. § 42.407(b), (c) ("Prior to approval of federal financial assistance, the federal agency shall make written determination as to whether the applicant is in compliance with title VI," and "Federal agencies shall establish and maintain an effective program of post-approval compliance reviews" pursuant to Title VI).

³ EPA Form 4700-4 (https://www.epa.gov/sites/default/files/2014-09/documents/epa_form_4700_4.pdf).

⁴ 28 C.F.R. § 50.3.

Generally, however, in selecting a specific Form or a specific recipient for audit of its Form, OECRC will consider several factors, including but not limited to the following:

- prior civil rights lawsuits, federal administrative complaints or compliance reviews listed on the Form;
- knowledge of a past or current complaint submitted to OECRC, whether listed on the Form or not;
- input OECRC has received from communities and other internal and external stakeholders and partners, including EPA program and regional offices and other federal agencies;
- information regarding potential noncompliance obtained from a recipient's website or other publicly available notices or publications, as well as any information submitted to EPA as part of the Form 4700-4 review process, complaint investigation, compliance review, or other EPA process;
- other sources of relevant information leading EPA to have reason to believe that an answer is not "true, accurate, or complete."

In EPA's Strategic Plan (FY22-FY26), the stated long-term performance goal is to complete 305 post-award audits through FY26.⁵

III. Audit Process

Once selected, OECRC will seek to confirm the responses on the Form by taking steps that may include, but are not limited to:

- determining the basis for, status and/or outcome of any civil rights lawsuits, administrative complaints, or compliance reviews listed in questions III, IV, and V;
- verifying the name and contact information for the nondiscrimination coordinator named in question X;
- verifying any website links provided on the Form, such as for grievance procedures in question XI;
- reviewing any supplemental materials submitted with the Form during the application process;
- reviewing the recipient's website and/or other publicly available notices or publications;
- reviewing OECRC's records for complaints or correspondence about the recipient received within two years before submission of the Form to the time of the audit;
- requesting information from the EPA Regional office for the area in which the recipient is located; and/or
- contacting the Point of Contact listed on the Form for additional information, as needed.

If OECRC concludes from its audit that the Form 4700-4 responses were not true, accurate and/or complete, OECRC will follow the same process as if the original review of the Form had determined that the answers were not complete or consistent with EPA's nondiscrimination regulation requirements.⁶

⁵ EPA Strategic Plan FY2022-FY2026, <https://www.epa.gov/system/files/documents/2022-03/fy-2022-2026-epa-strategic-plan.pdf>, at 37.

⁶ OECRC will contact the Point of Contact listed on the Form. If the applicant is not able to show that it is in compliance with the Form requirements, it will be required to agree in writing to come into compliance within six months of entering the agreement. Failure to enter into or to fulfill the terms of the agreement may result in a finding of noncompliance and action to suspend, annul, or terminate the award under 40 C.F.R. §7.130.

Depending on the nature of the information learned during the audit, OECRC may pursue other remedies as permitted by law for knowingly false or misleading statements.