Message

From: Golightly-Howell, Velveta [Golightly-Howell.Velveta@epa.gov]
Sent: 6/19/2015 4:54:54 PM
To: Matthew, Dayna [Matthew.Dayna@epa.gov]; Dorka, Lilian [Dorka.Lilian@epa.gov]; Wooden-Aguilar, Helena [Wooden-Aguilar.Helena@epa.gov]
Subject: RE: ADEM Issue

Thanks Dayna. Working with Lilian and Helena, I'm sure you three will come to consensus on what you think should be included. Once done, I'll review the reply. Thanks.

Velveta

From: Matthew, Dayna
Sent: Wednesday, June 17, 2015 11:14 AM
To: Dorka, Lilian; Wooden-Aguilar, Helena; Golightly-Howell, Velveta
Subject: RE: ADEM Issue

Re-sending my suggested edits to all

From: Matthew, Dayna
Sent: Thursday, June 11, 2015 5:01 PM
To: Dorka, Lilian; Wooden-Aguilar, Helena; Golightly-Howell, Velveta
Subject: RE: ADEM Issue

Hi Ladies,

Here are my ideas for additions to the response below. The references are primarily from either 1) the 2000 Draft Investigation Guidance, 2) the 2006 Public Involvement Guidance, or 3) the EJ document Collette circulated yesterday.

Thanks for your feedback

Dayna

Dayna Bowen Matthew
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From: Dorka, Lilian
Sent: Wednesday, June 10, 2015 4:34 PM
To: Wooden-Aguilar, Helena; Matthew, Dayna
Subject: ADEM Issue
Importance: High

Hi guys, I know we are all handling 10K things at once so to make this a little easier, because it looks like we are not meeting today, can we take a good look at what Helena and GC last had on the table and then discuss what Dayna suggests we add? Maybe Dayna, you just want to add some additional or different language, examples, etc., in line with what you were suggesting? I will go ahead and try to reschedule us to meet tomorrow. Sound OK? Thanks - Lilian

EPA recognizes that there are many ways to demonstrate compliance with Title VI and the other nondiscrimination statutes. For this reason, EPA continues to learn as much as possible from all relevant stakeholders as it improves and strengthens its Title VI compliance program. Under the current Title VI and other nondiscrimination regulations, in 40 CFR Parts 5 and 7, recipients are required to:

Maintain a brief description of any discrimination lawsuits pending against the recipient;

- Maintain racial/ethnic, national origin, age, sex and disability data or EPA form 4700-4 information submitted with the application;
- Maintain a log of discrimination complaints identifying the complaint, date filed, the date of recipient's investigation was completed, disposition and date of disposition;
- Maintain reports of any compliance reviews conducted by any other agencies;
- Maintain data and information specific to certain programs or activities to demonstrate compliance;
- Establish a grievance procedure;
- Designate a Title VI Coordinator; and
- Display notices of non-discrimination

These existing regulatory obligations are likely familiar to any state receiving financial assistance from other federal agencies. In fact, EPA expects that parts of its Title VI compliance program will be similar to the obligations imposed on states by others agencies, such as DOJ, DOT, US Department of Education, HHS, or USDA. For this reason, EPA encourages you to draw upon your state's experiences of demonstrating compliance to EPA's sister agencies as you consider how best to demonstrate compliance to EPA regarding Title VI and the other nondiscrimination laws.

Public Involvement

Based on the nature of the complaints received by OCR, we published a Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs, http://edocket.access.gpo.gov/2006/pdf/06-2691.pdf.

The guidance defines meaningful public involvement as consisting of informing, consulting, and working with potentially affected and affected communities at various stages of the permitting process to address their concerns. Appropriate collaboration during the permitting process can foster trust, and help establish credible, solid relationships between permitting agencies and communities.

Limited English Proficiency

Because Title VI requires EPA recipients to provide meaningful access to Limited English Proficient individuals, recipients also must construct a method to satisfy this obligation. To assist recipients in meeting this obligation and consistent with Executive Order 13166, OCR issued LEP guidance to recipients in 2004. "Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons." http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2004_register&docid=fr25jn04-79.pdf.

The 2004 guidance describes LEP individuals as "those who do not speak English as their primary language and have a limited ability to read, write, speak, or understand English." This guidance states that Recipients are required to take reasonable steps to ensure meaningful access to their programs and activities by LEP persons. While designed to be

flexible and fact-dependent, the starting point is an individualized assessment that balances the following four factors: (1) The number or proportion of LEP persons eligible to be served or likely to be encountered by the recipient's program or activity; (2) the frequency with which LEP individuals come in contact with the program or activity; (3) the nature and importance of the program, activity, or service provided by the program to people's lives; and (4) the resources available to the recipient and costs.

The LEP guidance offers a "safe harbor" regarding written translation in certain circumstances. In particular, EPA would consider the following to be strong evidence of compliance with written translation obligations: for small language groups, recipients may limit written translation to "vital documents" and for the smallest language groups, recipients may provide oral translation of those documents instead. *See* 69 Fed. Reg. 35,610 (2004). This concept is consistent with guidance from the U.S. Department of Justice.

EPA's Draft Revised Guidance for Investigating Title VI Administrative Complaints Challenging Permits

Another source that might help you construct and implement an appropriate analytical framework to ensure that your permitting actions do not have discriminatory effects on any protected class, is EPA's Draft Revised Guidance for Investigating Title VI Administrative Complaints Challenging Permits, issued in 2000 (65 Fed. Reg. 39,667). This document identifies a range of possible approaches that EPA may use in analyzing adverse disparate impact. In addition, to the extent that you want to review how EPA, itself, approaches these issues during an investigation, we encourage you to consult OCR's website where we have posted past decisions and settlement agreements which are example of how EPA has performed such analyses. See http://www.epa.gov/ocr/TitleVIcases/index.html

Partnerships and Working with Environmental Council of States

OCR participates on the ECOS' Performance and Partnership workgroup's monthly meetings and provides civil rights programmatic updates to the membership as appropriate. EPA has also formed a State-EPA Civil Rights Workgroup monthly call. The purpose of the State-EPA Civil Rights workgroup monthly calls is to create a dialogue with ECOS on topics including, but not limited to, compliance with the federal civil rights laws. In September 2014, OCR shared a memorandum with ECOS that set out some goals for OCR, including the development of a Civil Rights Compliance Toolkit (Toolkit) for EPA FFA recipients. The Toolkit's purpose is to promote EPA FFA recipients' understanding of their obligations under federal civil rights laws enforced by OCR and to facilitate their compliance with these laws.

Conclusion

Lastly, several states have stated they are implementing innovative ways to address issues of nondiscrimination in their permitting, enforcement and public participation processes. Indeed, this is part of the reason that my office has been participating in the small meetings suggested by the Environmental Council of States, so that your experiences with these processes may inform EPA's policy decisions. For example, it is our understanding that some states, such as Massachusetts, routinely have methods and tools, publicly available, for identifying populations or communities and racial/ethnic data, which could easily help them identify LEP individuals, as well as other community members who might be impacted by their programs and activities and who want to participate in or have notice about a permit decision-making process. These data could also help them to address disparity, which is one element of the Title VI adverse disparate impact analysis.