EPA recognizes that there are many ways to demonstrate compliance with Title VI and the other nondiscrimination statutes (external civil rights). For this reason, EPA continues to learn as much as possible from all relevant stakeholders as it improves and strengthens its external civil rights compliance program. Under the EPA's current 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, who serves as the coordinator for all non-discrimination obligations; 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.

In additional to these explicit regulatory requirements, there are a number of additional procedural and policy actions that are necessary for a recipient to satisfy its affirmative obligation to comply with non-discrimination statutes. For ease, we have attempted to identify some of the components of a compliance program that are expected by EPA and other Federal agencies.

***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 including elements of "informing, consulting, working with potentially affected and affected communities at various stages of" the environmental decision-making process. EPA's OCR's Public Participation Guidance, 71 FR 14, 2007, 14,210 (March 31, 2006). The guidance describes a range of possible tools for early involvement with communities. Appropriate collaboration during the permitting process may foster trust and help establish credible, solid relationships between permitting agencies and communities. For example, the guidance recommends a recipient develop a Public Involvement Plan (PIP). A PIP potentially could include the following:

(1) An overview of the recipient's plan of action for addressing the community's needs and concerns;
(2) A description of the community (including demographics, history, and background);
(3) A contact list of agency officials with phone numbers and email addresses to allow the public to communicate via phone or internet;
(4) A list of past and present community concerns (including any Title VI complaints);
(5) A detailed plan of action (outreach activities) recipient will take to address concerns;
(6) A contingency plan for unexpected events;
(7) Location(s) where public meetings will be held (consider the availability and schedules of public transportation);
(8) Contact names for obtaining translation of documents and/or interpreters for meetings;
(9) Appropriate local media contacts (based on the culture of the community); and
(10) Location of the information repository. (71 FR 14,211)

Clearly, there is not a one-size fits all approach to achieving public participation. Instead, based on a recipient's knowledge of the impacted community, routine use of the various modern methods for disseminating information and creativity, it is likely a recipient may include a variety of actions in its PIP that were not identified in the Guidance. In addition, although the Guidance was focused on the permitting process, it may provide useful suggestions that have equally applicable for other recipient actions.

***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.

After conducting the above analysis, the Guidance recommends that recipients develop policies, procedures and training for staff to ensure that LEP persons are providing meaningful access to its programs and procedures. For example, the guidance recommends recipients create a language access plan, publicize such a plan, and include a regular and reoccurring review of such a plan. Also, publishing such policies, plans and procedures will help avoid a potential situation where LEP persons are deprive an opportunity to benefit from or participate in a recipient's programs and activities.

For additional information about LEP, you may want to consult www.LEP.gov, which is a website that DOJ created in consultation with other federal agencies, to assist federal recipients and federal agencies to comply with the prohibition against national origin discrimination.

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

Another source that might help you understand the factors that EPA considers when investigating complaints about permitting actions 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 claims. It also provides that EPA will consider as part of its analysis what, if any, action recipients have affirmatively taken in an effort to mitigate or ameliorate potential impacts.

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 and that states have an avenue through which to learn directly from each other.