Air Alliance Houston * Alternatives for Community & Environment (ACE) * Ashurst Bar Smith Community Organization * Center for Environmental Health * Clean Air Council * Concerned Citizens for Nuclear Safety * Deep South Center for Environmental Justice * Earthjustice GASP * Greenaction for Health and Environmental Justice * New Mexico Environmental Law Center * New York Lawyers for the Public Interest * North Carolina Conservation Network * Sierra Club * Southern Environmental Law Center * Environmental Justice Clinic at Vermont Law School * West End Revitalization Association (WERA) * Adrienne L. Hollis * Gregg Macey * Hannah Perls * Katherine Wolf Marc Brenman * Pam Hill * Richard Grow Ryke Longest * Tommy Landers * Vernice Miller-Travis * Vincent M. Martin

February 24, 2022

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Via email to: EngelmanLado.Marianne@epa.gov; Dorka.Lilian@epa.gov

Re: Comments on EPA's External Civil Rights Compliance Office (ECRCO) Process and Criteria for Prioritizing and Selecting Affirmative Compliance Reviews, and other ECRCO guidance.

Dear Ms. Engelman-Lado and Ms. Dorka:

We, the undersigned, appreciate the opportunity to provide comments on the External Civil Rights Compliance Office's (ECRCO) Process and Criteria for Prioritizing and Selecting Affirmative Compliance Reviews, issued on January 6, 2022. We commend ECRCO and the Office of General Counsel (OGC) for the commitments made in OGC's Revised Responses to the Office of Inspector General's (OIG) Recommendations on September 13, 2021, to implement an oversight system to ensure that recipients of EPA funding are properly complying with and implementing Title VI of the Civil Rights Act of 1964.

As we and our colleagues have consistently stated in comments to ECRCO and other EPA offices, substantive affirmative review of federal funding recipients' compliance with EPA regulations implementing Title VI–and in particular those regulations' prohibitions against actions that have discriminatory effects on the basis of race, color, or national origin–is fundamental to avoiding continued, racially disproportionate environmental harms in our communities, and to holding noncompliant federal funding recipients accountable.

In the comments below, we identify several areas in which we believe ECRCO can significantly strengthen the identified Process and Criteria. Additionally, we recommend, at minimum, EPA incorporate the standards set forth in the U.S. Department of the Treasury's Compliance Assurances of Civil Rights Requirements (appended to this document and available here). We urge ECRCO to:

- set clear, consistent, and substantive expectations to effectively encourage compliance;
- clarify recipients' obligations to collect and use data in making programmatic decisions; and
- request EPA leadership to quickly increase ECRCO's capacity to conduct affirmative compliance reviews.

These comments are also applicable to other current ECRCO initiatives identified in EPA's response to the OIG's 2020 Report, including the Dear Colleague Letter and revising the 4700-4 Review process.

I. ECRCO Should Set Clear, Consistent, and Substantive Expectations to Effectively Encourage Compliance

A. We urge ECRCO to take every opportunity, including in the Dear Colleague Letter and Revision of the 4700-4 Process, to affirm that compliance with Title VI will likely involve reconsideration, and revision as necessary, of recipients' decision-making processes.

For too long, recipients of EPA funding have seen compliance with Title VI as a procedural hurdle with no substantive implications for their programmatic decision-making, resulting in persistent and flagrant noncompliance with EPA's Title VI regulations. EPA now has many opportunities to address this culture of noncompliance through clear and consistent directives to recipients, paired with appropriate training, review, and enforcement. In its response to the OIG's Sept. 2020 report, EPA made commitments to issue guidance and other documents, with the first round of deliverables due by the end of Q4FY22. This deadline is quickly approaching. Launching any of the first round (Q1FY22) of initiatives will take some time to make their way into engagement between EPA, its regional offices, and the recipient agencies. Thus, all ECRCO communications, including the Affirmative Compliance Review Process and Criteria, should

emphasize upfront to recipients that full compliance with Title VI will almost certainly involve reconsideration and possibly revision of their programmatic decision-making processes. ECRCO needs to convey to recipients that ECRCO is mandated to eliminate noncompliance with civil rights statutes–and resultant discriminatory treatment or effects–and that this will require systemic changes at all levels.

We also recommend that ECRCO remind recipients in the Process and Criteria document and other planned communications that recipients are subject to EPA General Terms and Conditions as referenced in the EPA OIG letter. ECRCO must remind recipients that these conditions require recipients to affirmatively demonstrate compliance with Title VI:

> In accepting this assistance agreement, the recipient acknowledges it has an affirmative obligation to implement effective Title VI compliance programs and ensure that its actions do not involve discriminatory treatment and do not have discriminatory effects even when facially neutral. The recipient must be prepared to demonstrate to EPA that such compliance programs exist and are being implemented or to otherwise demonstrate how it is meeting its Title VI obligations.[1]

To encourage proactive compliance with Title VI, however, ECRCO must do more than convey expectations. ECRCO must clearly lay out what compliance requires and reiterate the office's intent to aggressively enforce such requirements. Where current guidance is insufficiently detailed, such guidance must be clarified, including by stating explicitly that ECRCO is committed to enforcing civil rights statutes in the face of noncompliance. At a minimum, EPA should impose on recipients conditions in alignment with those in receipt of funds through the U.S. Department of the Treasury as articulated in the Department's Assurances of Compliance With Civil Rights Requirements, which include,

- "maintain[ing] a complaint log and inform[ing] the Department of the Treasury of any complaints of discrimination . . . covered by Title VI . . . and implementing regulations" and
- "provid[ing] documentation of an administrative agency's or court's findings of non-compliance of Title VI and efforts to address the non-compliance, including any voluntary compliance[.]"[2]

However, the onus remains on EPA to ensure that recipients are not, in practice, engaging in programs or activities that have a discriminatory impact in actions including, but not limited to, permitting, regulatory activities, enforcement, land use and transportation planning and zoning,

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[1] Environmental Protection Agency, EPA General Terms and Conditions Effective October 1, 2021, https://www.epa.gov/system/files/documents/2021-09/fy_2022_epa_general_terms_and_conditions_effective_october_1_2021.pdf (last visited Feb. 22, 2022).

[2] Department of the Treasury, Assurances of Compliance with Civil Rights Requirements, https://home.treasury.gov/system/files/136/Assurances-of-Compliance-with-Title-VI-of-the-Civil-Rights-Act.pdf (last visited Feb. 22, 2022).

and the design and enforcement of mitigation measures, as well as affirmative funding mechanisms and distribution of environmental benefits.

B. ECRCO should set clear compliance expectations by defining key terms and preferred analytical methodologies, including consideration of cumulative structural effects.

Another persistent challenge posed by EPA's Title VI program is the agency's intent to maintain and maximize discretion "to determine the substantive issues for investigation and the number and frequency of the investigations."[3] While a certain amount of discretion might be necessary to ensure that ECRCO is able to respond to emerging issues, too much discretion with insufficient guidance creates significant uncertainty for recipients seeking to comply and ultimately ties program effectiveness to personnel rather than policy. We, therefore, urge ECRCO to make every effort to simplify and broadly share its definitions of key terms, e.g., "adverse," "disparate," "significant," and whether community impacts are "cognizable under a recipient's authority" versus a direct result of a recipient's program, policy, or action.

The more clarity ECRCO can provide to funding recipients on expectations, and clear consequences of noncompliance, the more effective its program will be at promoting affirmative compliance and responding to noncompliance. For this reason, ECRCO's overreliance on agency discretion in the current Process and Criteria document makes it an ineffective tool to encourage proactive compliance. For example, ECRCO should clarify what metrics it will use to gauge the procedural and substantive performance of recipients for purposes of selecting sites for compliance review, and how the design of those metrics will be influenced by one or more of the input sources ECRCO lists in the Process and Criteria document. The document must also include steps that ECRCO will take to limit discretion as it designs, and then applies, those metrics.

Furthermore, the generic and overly broad nature of the "trends" ECRCO says it will consider in determining noncompliance and prioritizing sites for review makes such criteria meaningless. ECRCO fails to signal to funding recipients and advocates alike what constitutes a "trend," much less how such evaluations will be conducted. ECRCO must include clear guidelines as to how each of these factors contributes to the Office's compliance assessment. In other words, how does ECRCO plan to analyze and what weight will ECRCO give to factors such as the significance of the issue, geography, population, pollution levels, land use patterns, opportunities for collaboration, and prior complaints? With respect to prior complaints, ECRCO must be transparent to recipients and the broader universe of stakeholders how it intends to treat past complaints where no finding of discrimination was made. Given the paucity of past findings of

[3] Environmental Protection Agency External Civil Rights Compliance Office ("ECRCO"), External Civil Rights Compliance Office (ECRCO) Process and Criteria for Prioritizing and Selecting Affirmative Compliance Reviews, https://www.epa.gov/system/files/documents/2022-01/01-06-20-ecrco-process-for-prioritizing-and-selecting-affirmative-compliance-reviews.pdf (last visited Feb. 22, 2022).

discrimination made by ECRCO, such a determination should not be grounds to discount a prior complaint, particularly in the many cases where numerous complaints have been filed over many years with no action on the part of EPA.

We also urge ECRCO to clarify how the Office will jointly consider "recipient noncompliance trends" with policy artifacts, i.e., historical policies with ongoing effects. In the Process and Criteria document, ECRCO states it will consider, *inter alia*, "pre-existing disadvantages resulting from prior discriminatory practices" and "current land use patterns with a nexus to prior discriminatory practices that have not been fully ameliorated." There is now a vibrant literature on the "intercategorical" impacts of structural racism on community health. We urge ECRCO to both require recipients, and commit in its own prioritization assessments, to collect data on and consider the combined influence of historical and current policies and practices. Only by assessing a recipient's history of prior complaints in the context of other forms of structural racism including, but not limited to, other indicators of spatially concentrated housing and residential disadvantage, education and healthcare segregation, and discrimination in the provision of government benefits such as social security, can ECRCO understand the true impact of current recipients' practices on communities.

There are models upon which ECRCO can rely to conduct these evaluations. For example, cutting-edge work by CalEPA's racial equity team to overlay CalEnviroScreen maps as a proxy for cumulative impact with California Home Owners' Loan Corporation designations from the 1930s provides useful insights into the ongoing effects of housing discrimination.[4]

ECRCO also notes that it will seek input from other EPA offices on "priority geographies" to consider when selecting candidates for compliance review. In addition to assessing overlapping environmental harms, we strongly urge ECRCO to prioritize frontline communities that face unique overlapping and mutually reinforcing policies that create unique stressors and trauma. For example, over the past few years alone, St. James Parish, Louisiana battled expulsive zoning, permits that would triple the level of air pollution in the parish, and laws that would criminalize visits to gravesites.[5] ProPublica recently identified more than 1,000 such frontline communities.[6]

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[4] CalEPA, *Pollution and Prejudice: Redlining and Environmental Injustice in California* (August 16, 2021), https://storymaps.arcgis.com/stories/f167b251809c43778a2f9f040f43d2f5.

[5] Anne Rolfes & Justin Kray, *A Plan Without People: Why the St. James Parish 2014 Land Use Plan Must be Changed* (June 13, 2019), https://labucketbrigade.org/wp-content/uploads/2020/08/A-Plan-Without-People-6.2019_0.pdf; Lylla Younes, *What Could Happen if a $9.4 Billion Chemical Plant Comes to "Cancer Alley,"* ProPublica (Nov. 18, 2019), https://www.propublica.org/article/what-could-happen-if-a-9.4-billion-chemical-plant-comes-to-cancer-alley; Julie Dermansky & Sharon Kelly, *Formosa Plastics Opponents Ask Louisiana Governor to Veto Bill Over Harsh Sentencing Concerns*, Desmog (June 11, 2020), https://www.desmog.com/2020/06/11/mandatory-minimum-hb197-louisiana-formosa-plastics/.

[6] Lylla Younes, Ava Kofman, Al Shaw, & Lisa Song, *Poison in the Air*, ProPublica (Nov. 2, 2021, 5:00 a.m.), https://www.propublica.org/article/toxmap-poison-in-the-air.

While ECRCO's October 27, 2021 external stakeholder meeting garnered significant interest and meaningful input from frontline communities, the format limited its effectiveness as it was conducted online, with limited time allotted to each speaker, and no opportunity for dialogue between participants and EPA staff. As an initial matter, while the document provides for one or more public listening sessions and commenting opportunities annually, ECRCO should formalize quarterly public listening sessions and should consider doing so in coordination with the National Environmental Justice Advisory Council. We further urge ECRCO to consider developing and implementing various opportunities through which frontline communities may offer more in-depth input into priority geographies beyond a nationwide listening session or through comment letters. This could include, for example, more localized listening sessions conducted by ECRCO and direct engagement between regional offices and community members.

C. ECRCO communications, including the Process and Criteria document, should establish an enforcement framework that identifies the consequences for noncompliance and provides for consultations with complainants and members of an affected community throughout the enforcement process, including investigation.

It is of the utmost importance that the affirmative compliance review process include *substantive* requirements for recipients of federal funding, with clear and timely legal and financial consequences for funding recipients found to be out of compliance. Without assurances that noncompliant recipients will face immediate and meaningful consequences, Title VI will continue to be a toothless tiger, and communities will continue to bear the significant public health consequences of racist permitting, planning, enforcement, and other recipient decisions.

After those criteria are established, it is essential that ECRCO, consistent with its stated goal "to take action to bring recipients into compliance,"[7] clearly and definitely affirm its intent to withhold funding from recipients found to have discriminated on the basis of race, color, or national origin, or to use "any other means authorized by law"[8] to obtain compliance. Such commitments should address past failures to ensure compliance from noncompliant recipients and clarify in what way ECRCO's procedures or its substantive approach to analyzing Title VI compliance have changed to avoid similar outcomes in the future.

For example, where ECRCO commits to engage in "informal resolution agreement process[es]" as part of its compliance review, ECRCO should address how current procedures account for and redress the failed settlement agreements reached in *Angelita C.*,[9] and *Greenaction for Health and*

[7] ECRCO, *supra* note 3, at 3.
[8] 40 C.F.R. § 7.130(a).
[9] Agreement Between Cal. Dep't of Pesticide Regulation and U.S. EPA, Angelita C. v. Cal. Dep't of Pesticide Regulation (Aug. 24, 2011).

Environmental Justice and El Pueblo para el Aire y Agua Limpia.[10] In the case of *Greenaction and El Pueblo*, the settlement was presented as "a model for the types of activities and considerations that can help vulnerable communities."[11] Yet those activities included highly technical proceedings and research where agencies pledged to use their "best efforts" and "consider" certain factors.[12] Three years after that settlement agreement was reached, CalEPA and the Department of Toxic Substances Control were accused of violating the agreement.[13]

ECRCO needs to (1) institute a commitment to involve complainants and other impacted community members during investigations and before concluding a compliance review or reaching a settlement, resolution agreement, or final determination in a case, and (2) clearly communicate ECRCO's mechanisms for enforcing the terms of such resolutions to both recipients and community members alike. The experience of complainants from communities throughout the country has been that ECRCO and the recipient negotiate behind closed doors and impacted communities are given few, if any, opportunities for input or consent. The process as communities have experienced it is disempowering and only reinforces existing power dynamics. Consultation with impacted community members should include making them aware of the need for, and allow time to submit, specific categories of additional information if ECRCO believes it needs such information or certain evidence is not in the record. ECRCO should further clarify that consultation is required, not discretionary.

II. Clarify Recipients' Obligations to Collect and Use Data in Making Programmatic Decisions

In its response to the OIG's recommendations, EPA has committed, by the end of Q4FY22, to "determining the best approach for clarifying that recipients *must not only collect and maintain data about the communities they serve but must also analyze it and use it in their decision-making process to promote equity and ensure program decisions, including permitting decisions, are consistent with civil rights laws.*"[14]

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[10] Settlement Agreement, Greenaction for Health and Environmental Justice and El Pueblo para el Aire y Agua Limpia and the California Environmental Protection Agency and Department of Toxic Substances Control (Aug. 10, 2016).
[11] *Id.* at 3.
[12] *Id.* at 4-8.
[13] Letter from Maricela Mares Alatorre, Bradley Angel, and Miguel Alatorre, Greenaction for Health and Environmental Justice, to Jared Blumenfeld, Sec'y, Cal. Environmental Protection Agency, and Meredith Williams, Acting Dir., Dep't of Toxic Substance Control, re: CalEPA and DTSC Ongoing Violations of Kettleman City Title VI Settlement (July 8, 2019).
[14] Environmental Protection Agency, OGC Revised Responses to OIG Recommendations, 7 (September 13, 2021), https://www.epa.gov/system/files/documents/2021-10/_epaoig_20-e-0333_agency_response2.pdf. (emphasis added). [hereinafter "OGC Revised Response"]

The Process and Criteria document, like the Dear Colleague Letter and revision of the 4700-4 Process, presents an opportunity for ECRCO to clarify what kinds of data recipients should collect, and most importantly, how recipients must use those data in making programmatic decisions. Below, we make specific recommendations to improve the Process and Criteria document, and broad recommendations for recipients' data collection and use to affirmatively demonstrate compliance with Title VI.

A. ECRCO should clarify that community science and qualitative data will be meaningfully considered in the affirmative compliance site prioritization and selection process, as well as in conducting compliance reviews.

While the Process and Criteria document states that ECRCO "may also consider . . . data made available by community science environmental or health monitoring efforts," there is no guarantee those data will be given the same consideration as other data sources. Furthermore, the document is silent on the use of qualitative data. Although ECRCO will consider "input from impacted communities" and other stakeholders, the document does not state how ECRCO will weigh such input as compared to the "statistical analysis and other data." Including qualitative data from these sources provides a crucial pathway to ensure community participation in ECRCO's prioritization process, and helps ECRCO capture the full scope of environmental, socioeconomic, and cultural impacts associated with a recipients' activities. We therefore urge ECRCO to provide explicit guarantees that the Office will accept and meaningfully consider community science and qualitative data, including community narratives, as part of its prioritization and selection process and on par with the statistical and quantitative data. If there are minimum quality standards that community science-produced data must meet to be considered, those standards must be stated explicitly in the document. The above suggestion that ECRCO expand and deepen its mechanisms for receiving input on site prioritization and selection from frontline communities speaks to the need for ECRCO and EPA's regional offices to increase their own capacity to gather, analyze, and consider qualitative data.

B. ECRCO should include process safeguards to avoid recreating data hierarchies in the identification and prioritization of sites for affirmative compliance review, as well as in conducting compliance reviews.

In relying on "a number of sources" to determine affirmative compliance priorities, ECRCO must also take care to avoid recreating the data hierarchy that appears in and grew out of the 2000 *Draft Revised Guidance for Investigating Title VI Administrative Complaints Challenging Permits*.[15] The data hierarchy contained in that document proceeds from monitoring to modeled exposure to known releases to quantities of substances used to activities with potential impacts. We therefore urge ECRCO to include safeguards in the Process and Criteria document to avoid

[15] 65 Fed. Reg. 39,650 (June 27, 2000).

recreating such a hierarchy as ECRCO sifts through data to identify and prioritize recipients for investigation. Among other problems with this approach is the potential to reinforce structural inequities by privileging certain data sources despite the gaps in data documenting existing harms faced by frontline communities. As we stated in our November 24, 2021 Letter to EPA Administrator Regan regarding *Enforcement of Civil Rights and Environmental Justice*:

> In 2020, the Government Accountability Office reported on the national ambient air quality monitoring system, finding that it suffers from aging infrastructure and underfunding, leading to gaps in data needed to "understand and address the health risks from air pollution."[16] This is not the only structural deficiency undermining understanding of cumulative environmental, climate, and health burdens. For example, for decades regulated industries have pushed back successfully against requirements for pre-construction monitoring to ensure actual onsite baseline air quality data, as was intended under the Clean Air Act, while many communities point to ill-placed monitors that fail to account for and track environmental and public health burdens caused by emitting facilities.

Moreover, a return to the proposed 2000 data hierarchy would risk discounting the relevance and value of community-based monitoring, information gained through community science, and/or qualitative local knowledge.

While EPA initiates a Multi-Scale Monitoring Project designed to address some of these gaps and inequities, including "through the largest investment in community-based monitoring systems in EPA history[,]"[17] ECRCO should take care to incorporate new data sources while accounting for and addressing existing on-the-ground conditions that may impede access to data.

C. ECRCO data collection and use requirements must be designed to facilitate recipients' demonstration that their programs do not result in discriminatory effects.

As ECRCO clarifies guidance on data collection and use, it must emphasize that any data collection effort, by itself, is insufficient to demonstrate compliance with Title VI. Rather, recipients must demonstrate collection and use of that data to assess whether their programs result in racially disparate effects. Furthermore, ECRCO should clarify that recipients may not substitute an environmental risk-based analysis for a civil rights analysis under Title VI. The focus of a civil rights analysis should begin and end with the question of whether there is a racially disproportionate pollution burden.

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[16] U.S. Gov't Accountability Off., GAO-21-38, Air Pollution: Opportunities To Better Sustain And Modernize The National Air Quality Monitoring System (2020), https://www.gao.gov/products/gao-21-38.

[17] Press Release, Environmental Protection Agency, EPA Administrator Regan Announces Bold Actions to Protect Communities Following the Journey to Justice Tour (Jan. 26, 2022), https://www.epa.gov/newsreleases/epa-administrator-regan-announces-bold-actions-protect-communities-following-journey.

For example, in EPA's response to the OIG's Sept. 2020 Report, the agency states that "fundamentally, the Form 4700-4 review process needs to convey the expectation that applicants and recipients of EPA financial assistance will comply with Title VI and EPA's regulation."[18] However, the current language in 4700-4 regarding data collection falls far short of this, asking only: "Does the applicant/recipient maintain demographic data on the race, color, national origin, sex, age, or disability status of the population it serves?"[19]

To achieve the agency's own goals for the 4700-4 process to support assurance of compliance with Title VI requirements, the data collection requirement must require adequate data to support the obligation of recipients to "not use criteria or methods of administering its program or activity which have the effect of subjecting individuals to discrimination," and likewise regarding "site or location" decisions regarding facilities.[20]

Accordingly, the data collection requirement must go beyond the general requirement described on the current 4700-4 form, and instead require data collections of sufficient detail to enable recipients to evaluate the kinds of decision-making that are often alleged to result in discriminatory impacts. This would include, for instance, recipient decisions with regard to permits, planning documents, enforcement, issuance of regulations, zoning, and other land use related decisions. Requiring collection of these data will facilitate substantive compliance with Title VI by enabling recipients to conduct disparate impact evaluations in an effective (and compliant) manner by relying on data of sufficient detail to define areas of impact, support disparity analyses and so on. Indeed, recipients need to be collecting and using this type of data to determine whether their actions are leading to adverse, disparate effects, i.e., whether they are complying with Title VI or not.

Such data requests are well within EPA's regulatory authority where an applicant has a history of alleged noncompliance, as current regulations allow ECRCO to request "data and information which is relevant to determining compliance" where ECRCO has "reason to believe that discrimination may exist."[21]

There are several models and tools upon which ECRCO can rely in crafting further guidance on data collection and use. Health Impact Assessment (HIA) tools in particular provide a systematic process to "determine the potential effects of a proposed policy, plan, program, or project on the

[18] OGC Revised Response, *supra* note 15, at 5.
[19] Environmental Protection Agency, Preaward Compliance Review Report for All Applicants and Recipients Requesting EPA Financial Assistance (EPA Form 4700-4) 2, https://www.epa.gov/sites/default/files/2014-09/documents/epa_form_4700_4.pdf?VersionId=p592AfB5VNxDFskzr5x8E159m2.KxTF3 (last accessed Feb. 22, 2022).
[20] 40 C.F.R. § 7.35(b)(c).
[21] 40 C.F.R. § 7.85(b).

health of a population and the distribution of those impacts within the population."[22] HIA helps emphasize the human health effects in disadvantaged communities as part of environmental impact reviews because it *necessarily* identifies differential impact and disparities in baseline levels of health as part of its standard application.[23] HIA is an increasingly refined and inherently equity-promoting approach to sensitivity analysis of pollution-attributable health impacts of projects and plans that could be more widely adopted in support of ECRCO's work.

III. EPA Must Significantly and Quickly Increase ECRCO'S Capacity to Conduct Affirmative Compliance Reviews to Encourage Proactive Compliance

In order for ECRCO's affirmative compliance program to effectively identify and deter noncompliance, there must be a sufficient number of compliance reviews per year that recipients believe their programs may be audited on a regular basis.

EPA's current plans to increase capacity to initiate post-award civil rights compliance reviews to 15 per year by 2026[24] is insufficient, and will only further encourage rampant noncompliance by EPA funding recipients. ECRCO makes clear in the Process and Criteria document that "[t]he target number of compliance reviews in any year will depend in part on resources." However, in FY 2021, EPA had the capacity to initiate only one post-award civil rights compliance review in an environmentally overburdened community. In FY 2021, EPA completed zero audits to ensure recipients comply with nondiscrimination program requirements. The rate by which EPA conducts compliance reviews was the subject of discussion in the 2016 U.S. Commission on Civil Rights Report, which quoted a commenter who noted that to ensure review of 800 recipients for compliance at the rate proposed by EPA would take "40 years."[25] ECRCO has not, to our knowledge, proposed anything more ambitious relative to its current rate of funding recipients.

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[22] National Research Council, Committee on Health Impact Assessment, Improving Health in the United States: The Role of Health Impact Assessment (2011).

[23] Mirko Winkler et al., *Health Impact Assessment International Best Practice Principles,* Int'l Ass'n for Impact Assessment Special Publication Series No. 5 (Apr. 2021). *See also* Jonathan Heller et al., *Advancing Efforts to Achieve Health Equity: Equity Metrics for Health Impact Assessment Practice*, 11 Int'l J. of Envtl. Res. & Public Health 11054 (2014). Other EPA offices have already prioritized use of HIAs in environmental impact reviews. For example, in 2015, Susan Bromm, Director of EPA's Office of Enforcement and Compliance Assurance, called for wider use of HIA in the NEPA process, Section 309 reviews under the Clean Air Act, and elsewhere. Letter from Susan E. Bromm, Dir., Off. of Enforcement and Compliance Assurance, to Regional NEPA Directors and Regional 309 Environmental Review Coordinators (Nov. 10, 2015), https://www.epa.gov/sites/default/files/2016-03/documents/hia_memo_from_bromm.pdf.

[24] Environmental Protection Agency, Draft FY 2022-2026 EPA Strategic Plan 29 (Oct. 1, 2021), https://www.epa.gov/system/files/documents/2021-10/fy-2022-2026-epa-draft-strategic-plan.pdf.

[25] U.S. Commission on Civil Rights, Environmental Justice: Examining the Environmental Protection Agency's Compliance and Enforcement of Title VI and Executive Order 12,898 (Sep. 2016), https://www.usccr.gov/files/pubs/2016/Statutory_Enforcement_Report2016.pdf.

Conclusion and Contact Information

In sum, we urge ECRCO to use its full authority and substantial expertise to create a robust and effective affirmative compliance program that will finally hold recipients of federal funding accountable to their Title VI obligations. Thank you for your time and consideration of these comments. We would be glad to discuss further and assist however possible as you move forward. For more information, please contact Amy Laura Cahn (alcahn@vermontlaw.edu; 917-771-3385) and any of the undersigned groups.

Sincerely,

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