



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

August 19, 2010

MEMORANDUM

TO: Federal Funding Agency Civil Rights Directors

FROM: Thomas E. Perez *TEP*
Assistant Attorney General

SUBJECT: Title VI Coordination and Enforcement

As you know, Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, and national origin in programs receiving federal financial assistance. One year ago, on the 45th anniversary of the passage of Title VI, Acting Assistant Attorney General Loretta King asked you to join the Civil Rights Division in a governmentwide initiative to strengthen Title VI enforcement, including enforcement of your agency's Title VI disparate impact regulations. Over the past year, we have heard from many agencies working to strengthen their compliance programs, and we are also engaged in this effort ourselves. We are committed to continue working with you to vigorously enforce Title VI to prevent, root out, and address intentional and unintentional discrimination by recipients of taxpayer assistance.

To facilitate this important work, this memorandum explains the Department of Justice (DOJ) coordination and enforcement role under Title VI, and also encloses several key resource materials that I hope will be of assistance.

Department of Justice Role Under Title VI

Under Executive Order 12250 (EO 12250), DOJ is charged with ensuring the consistent and effective implementation of Title VI and other civil rights laws "prohibiting discriminatory practices in Federal programs and programs receiving Federal financial assistance." Exec. Order No. 12250, *Leadership and Coordination of Nondiscrimination Laws*, reprinted at 45 Fed. Reg. 72,995 (Nov. 4, 1980). The Section within the Civil Rights Division that provides Title VI assistance and oversight to agency civil rights offices has changed its name, effective this month. This Section, formerly called the Coordination and Review Section, has been renamed the Federal Compliance and Coordination Section (FCS). FCS is also adding staff to increase its capacity to assist federal agencies in their civil rights enforcement work. Among the key functions of FCS are the following:

- **Guidance Documents.** FCS develops guidance regarding implementation of Title VI and related statutes and executive orders. FCS has issued this guidance in a range of formats in the past, including notice-and-comment rulemaking; Frequently Asked Questions and Answers; tips and tools; promising practices documents; and correspondence to federal agencies, recipients, or beneficiaries. These documents are generally sent directly to interested stakeholders and also made available online. A number of our key guidance documents are included in the enclosed resource notebook (described below).
- **Title VI Training.** FCS offers an intensive two-day Title VI training course for federal agencies that have Title VI responsibilities. The training provides an overview of Title VI law and investigative procedures, including coverage of limited English proficient (LEP) individuals. FCS Title VI training also includes case studies tailored to the programs administered by the participating agencies. This year, we gave the two-day training course on three occasions to over 120 federal employees. We also offer half-day and full-day training courses, also tailored to specific agency needs. In addition, I welcome the suggestion that some of you have made that FCS develop a more advanced Title VI training course. We will work to develop such a training presentation within the next few months, and we would be happy to hear your input in this process.
- **Technical Assistance.** In addition to these Title VI training courses, FCS provides less formal assistance through ongoing technical assistance, including legal and policy guidance to federal funding agencies. On an almost daily basis, the FCS staff answer questions presented by staff from other federal agencies. FCS also provides hands-on assistance to individual agencies, including legal or technical assistance on novel issues or complex investigations. FCS can also assist in coordinating or presenting on interagency panels or conferences of recipients or advocacy groups, and can work with your offices to conduct joint outreach through community meetings, webcasts, brochures, or other strategies.
- **Clearance Authority.** DOJ continues to exercise its clearance authority under EO 12250 in a renewed effort to ensure the consistent and effective enforcement of Title VI. EO 12250 provides that federal regulations that effectuate Title VI (and other civil rights statutes, including Title IX of the Education Amendments of 1972) must be approved by the Attorney General. 42 U.S.C. § 2000d-1; EO 12250 at § 1-1. This includes the Title VI and Title IX portions of comprehensive regulations that implement other statutes. For example, if a federal agency drafts a rule governing administrative complaints generally, the rule is covered by EO 12250 to the extent it effectuates Title VI or Title IX. Therefore, I remind you that DOJ must review and clear certain federal agency documents concerning civil rights enforcement. The DOJ clearance role is critical to our responsibility to ensure consistent and effective enforcement of Title VI and other civil rights laws.

In addition, federal implementing directives (whether in the nature of regulations or implementing guidance) that are issued under any of the laws covered by EO 12250 are "subject to the approval of the Attorney General, who may require that some or all of them be submitted for approval before taking effect." EO 12250 at § 1-402. These documents include regulations issued to effectuate statutes that "provide, in whole or in part, that no person in the United States shall, on the ground of race, color, national origin, handicap, religion, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." *Id.* § 1-201(d). The authority to review such guidance documents has been delegated to the Assistant Attorney General for Civil Rights. For any upcoming rules or implementing directives covered by EO 12250, I encourage you to contact FCS for assistance during the early stages of the project.

- **Referral for Litigation.** Title VI authorizes the Attorney General to initiate civil litigation in federal court on behalf of an agency for violations by recipients. Before referring a matter for litigation, agency regulations require that the funding agency make a determination that voluntary compliance cannot be achieved, and the recipient must be notified of the intended agency action to effectuate compliance. Some agency regulations require additional time after this notification to continue negotiation efforts to achieve voluntary compliance. An agency must then formally initiate referral of the matter to DOJ.

Within this framework, I encourage you to submit Title VI and other civil rights matters for litigation if they cannot be resolved administratively (that is, when your agency determines that informal resolution or fund termination are not viable solutions). FCS can also assist you at the stage when it appears that litigation is a potential outcome.

- **Implementation Plans.** Agencies that administer federally assisted programs are required to submit EO 12250 reports to FCS that describe their past year's performance and upcoming plans to implement Title VI and related statutes. (Data under Section 504 of the Rehabilitation Act of 1973 is submitted to the Disability Rights Section for review.) These reports, called Implementation Plans, contain information from each agency on the major components of their civil rights enforcement programs, including budget and staffing for external civil rights activities, complaint investigations, pre-award and post-award compliance reviews, regulatory and policy development, outreach and technical assistance, and training. FCS reviews each agency's Implementation Plan and works with the agency to clarify any questions or to discuss any issues that arise. When appropriate, FCS meets with the agency to discuss opportunities for FCS to assist in improving civil rights enforcement.

The Civil Rights Division last requested Implementation Plans for Fiscal Year 2008 activities. We plan to send you a request in October 2010 for FY 2009 and FY 2010 Implementation Plans. This request will include a few new questions intended to assist

us in refining our compliance and coordination activities. If you have thoughts on the Implementation Plan process in the meantime, please feel free to contact us to discuss.

- **Coordination and Clearinghouse.** When a complaint has been filed with several agencies that all fund a particular recipient, FCS sometimes coordinates the investigation. FCS's role involves bringing together representatives from the various agencies to ensure that they approach and conduct their investigations in a consistent manner. In addition, FCS has significant governmentwide coordination responsibilities to act as a clearinghouse for review and referral of mail from the public; non-governmental organizations; federal, state, and local agencies; and others concerning civil rights matters. Agencies should contact FCS when they receive complaints for which they do not have jurisdiction and do not know where the complaints should be forwarded.

Enclosed Guidance Documents and Resources

A number of you have expressed an interest in receiving copies of documents we have prepared to assist in Title VI and language access enforcement. To respond to this request, enclosed with this memorandum is a resource notebook that includes the Civil Rights Division's key guidance documents.

Among the enclosed documents are copies of our Title VI Legal Manual and Investigations Procedures Manual, which were first issued in 2001. We have begun the process of updating these manuals, and would like your feedback concerning those areas in which you most need our guidance. Your input will help us focus on the areas of Title VI enforcement that would be most useful to your programs.

Also among the enclosed documents is a copy of model assurance language that your agency may consider adopting for future assurance agreements to accompany your grants. Title VI implementing regulations (and those of other related statutes) require that funding agencies obtain written assurances of compliance from recipients of federal financial assistance. These assurances are a critical component of the Title VI enforcement scheme, yet are often incomplete or inconsistent across agencies. We frequently receive requests for technical assistance in developing assurances, and are including our model language in the attached materials to assist you in ensuring that your agency's assurances are thorough and enforceable.

As you review the enclosed materials, please let us know if you have questions or if there are additional materials that would be valuable.

As you likely have heard me say, Title VI has been called the "sleeping giant" of civil rights law. Title VI's breadth of coverage is extensive and it can address a huge array of injustices: from environmental racism to discriminatory profiling, and from disparities in health care and basic services to inequities in transportation, housing, and education. Title VI offers federal agencies a powerful tool to fight discrimination based on race, color, and national origin.

Yet all too frequently this authority is underutilized. Working together, I am confident that we can ensure full, fair, and effective enforcement of Title VI.

Toward that end, you will hear more from me in the future concerning interagency opportunities to address the needs of your Title VI compliance program, and to encourage additional collaboration among sister agencies. In the meantime, please do not hesitate to contact Mark Kappelhoff, Acting Chief of FCS, at 202-307-2222, or Christine Stoneman, Acting Deputy Chief, at 202-616-6744. My staff in FCS stands ready to assist you in ensuring the growth of your Title VI program. Thank you for your support for greater enforcement and utilization of Title VI, and I look forward to our continued joint efforts in this critically important work.

cc: Funding Agency General Counsels

Contents of Binder Sent to Federal Agencies with the Attorney General's August 19, 2010 Executive Order 12250 Coordination Letter

- Title VI of The Civil Rights Act of 1964, <http://www.justice.gov/crt/cor/coord/titlevistat.php>
- Executive Order 12250, <http://www.justice.gov/crt/cor/byagency/eo12250.php>
- Executive Order 13166, www.justice.gov/crt/cor/eolep.pdf
- Title VI Coordination Regulations, www.justice.gov/crt/cor/byagency/28cfr424.pdf
- Title VI Enforcement Guidelines, http://edocket.access.gpo.gov/cfr_2008/julqtr/pdf/28cfr50.3.pdf
- Title VI Legal Manual, <http://www.justice.gov/crt/cor/coord/vimanual.php>
- Title VI Legal Manual - *Sandoval* Note, http://www.justice.gov/crt/cor/Sandoval_Fix_070710.pdf
- OMB Draft Assurance Language, http://www.justice.gov/crt/cor/draft_assurance_language.pdf
- January 28, 1999 Block Grant Memo, <http://www.justice.gov/crt/cor/Pubs/blkgrnt.php>
- Recovery Act Non-Discrimination Notice, www.justice.gov/crt/cor/RecoveryActNotice09.pdf
- Investigation Procedures Manual for the Investigation and Resolution of Complaints Alleging Violations of Title VI and Other Nondiscrimination Statutes, <http://www.justice.gov/crt/cor/Pubs/manuals/complain.php>
- 2002 Department of Justice LEP Guidance, <http://www.justice.gov/crt/cor/lep/DOJFinLEPFRJun182002.php>
- Top Tips from Responses to the Survey of Language Access Strategies Used by Federal Agencies, September 3, 2008, http://www.lep.gov/resources/2008_Conference_Materials/TopTips.pdf
- The 2006 Federal Agency Language Access Survey, http://www.justice.gov/crt/lep/resources/2008_Conference_Materials/FedLangAccessSurvey.pdf
- Your Rights Under Title VI of the Civil Rights Act of 1964, brochure, www.justice.gov/crt/cor/Pubs/TitleVIEng.pdf
- I Speak Language Identification Cards, www.lep.gov/ISpeakCards2004.pdf
- Language Access Know Your Rights Beneficiary, brochure,, <http://www.justice.gov/crt/cor/pubs.php> (Arabic, Cambodian, Chinese, Creole, English, Hmong Korean Russian Spanish Vietnamese)
- What Federal Agencies and Federally Assisted Programs Should Know about Providing Services to LEP Individuals, brochure, <http://www.lep.gov/lepbrochure.pdf>