ABOUT THIS DOCUMENT

The Civil Rights Division’s *Title VI Legal Manual* provides an overview of Title VI legal principles. This document is intended to be an abstract of Title VI principles and issues; it is not intended to provide a complete, comprehensive directory of all cases or issues related to Title VI. For example, this manual does not address all issues associated with private enforcement. In addition, although the manual includes cases interpreting both Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq., and Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, where their interpretation overlaps with Title VI, the manual should not be considered to be an overview of any statute other than Title VI.

The Civil Rights Division periodically issues policy guidance, directives, and other memoranda to federal agencies regarding statutes the Division enforces. The manual discusses, as appropriate, current guidance documents and directives relating to Title VI. Persons referring to the manual should check the Division’s websites periodically (www.usdoj.gov/crt and www.lep.gov) for guidance documents and directives issued subsequent to its publication of the manual. Comments on this manual, and suggestions as to future updates, including published and unpublished cases, may be addressed to:

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The Civil Rights Division issues the *Title VI Legal Manual* pursuant to its responsibility under Executive Order 12250, 28 C.F.R. pt. 41, app. A, to coordinate federal government compliance with the requirements of Title VI and other federal financial assistance statutes and to foster consistent and coordinated Title VI enforcement. The manual is intended only to provide general assistance to interested persons and is not intended to, does not, and may not be relied upon to create any right or benefit, that is substantive or procedural, or enforceable at law by a party against the United States. Finally, because the law changes frequently, the Civil Rights Division cannot guarantee that all information is current. Updates will be issued from time to time; please refer to the date issued for each section.
A. Scope of Coverage

Title VI prohibits recipients, most of which are employers, from discriminating based on race, color, and national origin. Congress, however, did not intend Title VI to be the primary federal vehicle to prohibit employment discrimination. It does forbid recipients from discriminating in employment in certain situations. Specifically, if “a primary objective” of the federal financial assistance to a recipient is to provide employment, then the recipient’s employment practices are subject to Title VI. 42 U.S.C. § 2000d-3. In addition, a recipient’s employment practices also are subject to Title VI where those practices negatively affect the delivery of services to ultimate beneficiaries.

An illustration of the Title VI “primary objective” analysis is as follows: If a recipient builds a temporary shelter with funds designed to provide assistance to dislocated individuals, the employment practices of the recipient with respect to the construction of the facility would not be subject to Title VI. However, if the recipient builds the same facility with funds received through a public works program whose primary objective is to generate employment, the employment practices would be subject to Title VI. In the former case, the program’s benefit was to provide shelter to dislocated individuals, while in the latter, the benefit was the employment of individuals to build the facility.

One important factor in determining the reach of the employment provision of Title VI is the clear congressional intent that Title VI not “impinge” on Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq. Johnson v. Transp. Agency, 480 U.S. 616, 628 n.6 (1987). Title VII prohibits employment discrimination based on race, color, national origin, religion, and sex. Title VII covers employers with 15 or more employees. To sustain a Title VI claim of employment discrimination under the exception for “a primary objective,” the plaintiff has a specific threshold requirement: not only must the plaintiff establish that the recipient receives federal financial assistance, but also that a “primary objective” of the federal funding is to provide employment. Middlebrooks v. Godwin Corp., 722 F. Supp. 2d 82, 91-92 (D.D.C. 2010); Reynolds v. School Dist. No. 1, Denver, 69 F.3d 1523, 1531 (10th Cir. 1995) (motion to dismiss granted where plaintiff failed to show that a primary purpose of federal assistance was to

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1 Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e to 2000e-17, is the primary vehicle that Congress established to address employment discrimination. Under Title VII, employers with 15 or more employees are prohibited from discriminating based on race, color, national origin, religion, and sex. When Congress enacted Title VI, it made clear its limited reach with respect to employment:

Nothing contained in [Title VI] shall be construed to authorize action under [Title VI] by any department or agency with respect to any employment practice of any employer, employment agency, or labor organization except where a primary objective of the Federal financial assistance is to provide employment.

provide employment); *Ass’n Against Discrimination in Emp’t v. City of Bridgeport*, 647 F.2d 256, 276 (2d Cir. 1981) (plaintiff failed to prove all elements of employment discrimination claim because of lack of evidence of primary purpose of federal funds); *Bass v. Bd. of Cty. Comm’rs*, 38 F. Supp. 2d 1001, 1009 (M.D. Fla. 1999) (summary judgment against plaintiff because of lack of evidence of primary purpose of federal funds); *Thornton v. Nat’l R.R. Passenger Corp.*, 16 F. Supp. 2d 5, 7 (D.D.C. 1998) (complaint dismissed because funding transportation was the primary objective of funding, not employment). In *Reynolds*, the plaintiff’s assertion that federal funds paid, in part, the salary of an employee was insufficient, because the plaintiff did not show that a primary objective of the federal funds was employment rather than general funding of school programs. *Id.* at 1532.2

By contrast, in *Rogers v. Board of Education*, 859 F. Supp. 2d 742, 744 (D. Md. 2012), the court noted that Maryland public schools “received more than $1 billion through the American Recovery and Reinvestment Act of 2009 (ARRA), Pub. L. No. 111–5, 123 Stat. 115, and that the [defendant public school system] received such funds ‘for the express purpose of creating jobs and maintaining existing ones.’” The court observed that “[t]he statute is clear that this objective need not be exclusive [and that] providing employment need only be a primary goal …. *Rogers*, 859 F. Supp. 2d at 751. Although the defendant conceded that it received ARRA and other funds that targeted employment, the school board argued that it did not use these funds for employment. The court denied the defendant’s motion for summary judgment on this issue because it determined that the issue was in dispute.3

Further, where a recipient’s employment discrimination has a secondary effect on the ability of beneficiaries to participate meaningfully in and/or receive the benefits of a federally assisted program in a nondiscriminatory manner, those employment practices are within the purview of Title VI.4 Agency regulations specifically address this principle in identical or similar language:

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2 Cases involving staff privileges at hospitals have led to some apparent inconsistency. As one commenter noted,

Courts have not been uniform in their handling of staff privileging cases brought under Title VI .... The cases turn on the question of whether a physician is an intended beneficiary of Title VI protections. Where courts find there is no nexus between the allegedly discriminatory practice and the use of federal funds, physician claims have failed .... This “primary objective” exception makes the distinction between employee and non-employee physicians in staff privileging cases important. If physicians are employees of the health care defendant, then there is no colorable Title VI discrimination claim. However, where physicians are independent contractors, a Title VI claim may survive.


3 Subsequently, the court dismissed the plaintiff’s harassment complaint, finding that she failed to show that she was the victim of severe or pervasive offending conduct. *Rogers v. Bd. of Educ.*, No. 8:11–CV–01194–PJM (D. Md. July 27, 2012). *aff’d*, 508 Fed.App’x 258 (4th Cir. 2013).

4 This is oftentimes referred to as the “infection theory.”
In regard to Federal financial assistance which does not have providing employment as a primary objective, the provisions of paragraph (c)(1) [prohibitions where objective is employment] apply to the employment practices of the recipient if discrimination on the grounds of race, color, or national origin in such employment practices tends, on the grounds of race, color, or national origin, to exclude persons from participation in, to deny them the benefits of or to subject them to discrimination under the program receiving Federal financial assistance. In any such case, the provisions of paragraph (c)(1) of this Section shall apply to the extent necessary to assure equality of opportunity to and nondiscriminatory treatment of beneficiaries.

28 C.F.R. § 42.104(c)(2) (DOJ); see also 15 C.F.R. § 8.4(c)(2) (Dep’t of Commerce); 34 C.F.R. § 100.3(c)(3) (Dep’t of Education). In this situation, there is a causal nexus between employment discrimination and discrimination against beneficiaries; that is, the employment discrimination infects the beneficiaries’ entitlement of the recipient’s services, programs, and activities. United States v. Jefferson Cty. Bd. of Educ., 372 F.2d 836, 883 (5th Cir. 1966) (“faculty integration is essential to student desegregation”); Ahern v. Bd. of Educ., 133 F.3d 975, 983-84 (7th Cir. 1998) (applying infection theory to public school plan for assignment of principals); Caulfield v. Bd. of Educ., 486 F. Supp. 862, 876 (E.D.N.Y. 1979) (characterization of infection theory where employment practices affect beneficiaries, i.e., students); Marable v. Ala. Mental Health Bd., 297 F. Supp. 291, 297 (M.D. Ala. 1969) (patients of state mental health system have standing to challenge segregated employment practices which affect delivery of services to patients.).

Section 2000d-3 only limits Title VI’s employment coverage. It does not exempt a recipient’s employment practices from other applicable federal statutes, executive orders, or regulations. United States ex rel. Clark v. Frazer, 297 F. Supp. 319, 322 (M.D. Ala. 1968); see also Contractors Ass’n of E. Pa. v. Sec’y of Labor, 442 F.2d 159, 173 (3d Cir. 1971). Furthermore, a recipient’s compliance with state and local merit systems for employment may not necessarily constitute compliance with Title VI. See, e.g., 28 C.F.R. § 42.409.

B. Regulatory Referral of Employment Complaints to EEOC

In 1983, DOJ and the Equal Employment Opportunity Commission published “Procedures for Complaints of Employment Discrimination Filed Against Recipients of Federal Financial Assistance.” 28 C.F.R. §§ 42.601 – 42.613 (DOJ); 29 C.F.R. §§ 1691.1 – 1691.13 (EEOC) (often referred to as the Title VI/VII rule). The purpose of the regulation is simple: to reduce “duplicative investigations by various Federal agencies of similar complaints of employment discrimination against an employer.”
48 Fed. Reg. 3570, 3670 (1983). The regulation further noted that by placing the primary responsibility for addressing employment discrimination with the EEOC, “agencies will be able to focus their efforts on possible instances of systemic employment discrimination or discrimination in the provision of services to beneficiaries of Federally assisted programs.” Id.

In summary, and as a general rule, the procedures provide that a federal agency receiving a complaint of employment discrimination against a recipient covered by both Title VI (and/or other grant-related prohibitions against discrimination) and Title VII may (and generally does) refer the complaint to the EEOC for investigation and conciliation. Id. §§ 42.605(d), 42.609. If the EEOC finds discrimination and is unable to resolve the complaint, the rule calls for the funding agency to evaluate the matter, with “due weight to EEOC’s determination that reasonable cause exists,” and to take appropriate enforcement action. Id. § 42.610. Where a complaint alleges a pattern or practice of discrimination and there is dual coverage, agencies have the option of keeping the complaint rather than referring it. 7

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5 As of the date of this Manual, the EEOC has indicated that it intends to review and revise the joint regulation. The EEOC has not yet issued a Notice of Proposed Rulemaking on this matter but has included it in the Unified Agenda. See OMB/OIRA Unified Agenda, https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201604&RIN=3046-AA93 (last visited Oct. 14, 2016).

6 If the complaint only alleges a violation of Title VII and not Title VI, the matter should be transferred to the EEOC. In addition, the regulation exempts from its application Executive Order 11246, which the Department of Labor’s Office of Federal Contracts Compliance Programs enforces. Similarly, the nondiscrimination provisions in the Omnibus Crime Control and Safe Streets Act, as amended, and the Juvenile Justice and Delinquency Prevention Act are not limited as to coverage of employment discrimination. See 28 C.F.R. § 42.601.

7 For example, the Office for Civil Rights (OCR) at the Department of Education generally does not refer such complaints to the EEOC if OCR has jurisdiction and the complaint alleges a pattern or practice of employment discrimination or the complaint also alleges discrimination in other practices of the recipient. See OCR Case Processing Manual, Article VI, Section 601 (Special Intake Procedures), (c) Title VI and Title IX Employment Complaints.