



U.S. Department of Justice


Civil Rights Division

Assistant Attorney General
950 Pennsylvania Ave, NW - RFK
Washington, DC 20530

APR 24 2018

MEMORANDUM

TO: Federal Agency Civil Rights Directors and General Counsels

FROM: John M. Gore 
Acting Assistant Attorney General

SUBJECT: Clearance Requirements for Title VI, Title IX, Section 504, and Related
Nondiscrimination Regulations and Policy Guidance Documents

I am writing to provide you with information and a helpful tool to support your agency's efforts to comply with longstanding clearance requirements for certain nondiscrimination regulations and policy guidance documents. The Civil Rights Division periodically issues memoranda to federal agencies on coordinated, government-wide civil rights enforcement, particularly during times of staff and leadership transition. This memorandum provides background information to assist your staff in identifying the types of documents that may require review by the Civil Rights Division.

Under Executive Order 12250 (EO 12250), the Department of Justice (DOJ) is charged with ensuring the consistent and effective implementation of 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).¹ Document clearance is a critical and longstanding component of this DOJ mandate.

Clearance Authority. Clearance requirements under EO 12250 should be routinely considered during your agency's regulatory review process, and during the development of any new document addressing the laws covered by the Order. Importantly, these requirements apply

¹ Under Executive Order 12250, DOJ is charged with coordinating the implementation and enforcement by Executive agencies of various provisions of the following laws: (a) Title VI of the Civil Rights Act of 1964 (prohibiting race, color, and national origin discrimination, which includes language access for limited English proficient individuals, in federally funded programs and activities), 42 U.S.C. §2000d *et seq.*; (b) Title IX of the Education Amendments of 1972 (prohibiting sex discrimination in education programs and activities of recipients of federal funds), 20 U.S.C. §1681 *et seq.*; (c) Section 504 of the Rehabilitation Act of 1973 (prohibiting disability discrimination in both federally conducted and federally funded programs and activities), 29 U.S.C. §794; and (d) "any other provision of Federal statutory law which provides, 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." Exec. Order 12250 at §1-201.

not only to new and amended regulations and guidance documents, but also to the repeal of such documents. There are two basic levels of clearance:

1. The Department of Justice must review and approve regulations implementing Title VI, Title IX, and Section 504. The Attorney General must approve Federal regulations that effectuate Title VI and Title IX. 42 U.S.C. §2000d-1; 20 U.S.C. §1682; Exec. Order 12250 at §1-1. The Assistant Attorney General for Civil Rights must approve regulations that effectuate Section 504. 28 C.F.R. §41.4(b). These requirements also apply to the portions of regulations that affect Title VI, Title IX, or Section 504 enforcement, but that primarily implement other statutes. For example, if a federal agency drafts a general rule governing administrative complaints, the EO 12250 requirements apply to that rule to the extent it covers Title VI, Title IX, or Section 504 enforcement by that agency.

2. The Department of Justice may require that some or all regulations implementing the nondiscrimination provisions of laws *other than* Title VI, Title IX, and Section 504 or policy guidance issued under *any* of the laws covered by EO 12250 be “submitted for approval before taking effect.” Exec. Order 12250 at §1-402. Documents subject to this requirement 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.” Exec. Order 12250 at §1-201(d), 1-402. This requirement also applies to policy guidance documents addressing any of the laws covered by EO 12250, whether or not they will be issued for public notice and comment. Exec. Order 12250 at §1-402.

To better inform agencies, I am attaching a chart that summarizes the EO 12250 clearance process. It is intended to be a plain language “how-to” guide, with relevant citations, that should support agencies’ accurate and early identification of documents covered by EO 12250 and timely notice of such documents to DOJ.

With respect to nondiscrimination on the basis of disability, DOJ is in the unique position of having to ensure not only the consistent implementation of Section 504 across the federal government but also parity between Section 504 and the Americans with Disabilities Act (ADA).² While not addressed by EO 12250, the authority to issue regulations and technical assistance implementing or interpreting subtitle A of Title II of the ADA is within the exclusive domain of DOJ unless provided otherwise under statute³ or by express delegation by DOJ. I am

² See 42 U.S.C. §12134(b); 42 U.S.C. §12201(a); H.R. Rep. 102-822 at 83 (Aug. 10, 1992); S. Rep. 102-357 at 12 (Aug. 3, 1992).

³ Section 202 of the Rehabilitation Act provides the Director of the National Institute on Disability and Rehabilitation Research with the responsibility for “coordinating activities with the Attorney General regarding the provision of information, training, or technical assistance regarding the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*) to ensure consistency with the plan for technical assistance required under section 506 of such Act (42 U.S.C. 12206).” 29 U.S.C. §762.

attaching a memorandum that describes the legal authority of DOJ and other agencies under Title II of the ADA and Section 504, the relationship between these two laws, and DOJ's responsibility for coordination of these statutes among federal agencies. Please ensure the distribution of these two reference documents to your staff.

The Division's Federal Coordination and Compliance Section (FCS) runs a comprehensive program of assistance and oversight to agency civil rights offices on Title VI, Title IX, and related program matters. In addition, the Disability Rights Section (DRS) coordinates the implementation and enforcement of Section 504 and other disability-related matters, and the Educational Opportunities Section (EOS) coordinates assistance on education-related matters. Recognizing that many of your documents may cover multiple statutes, these Sections work closely together to ensure that the EO 12250 clearance process runs as smoothly and effectively as possible.

Next steps. If your agency identifies civil rights regulations or policy guidance documents for possible development, repeal, replacement, or modification, DOJ review and clearance may be required under EO 12250. This is particularly important in the case of modification or repeal of regulations or policy guidance that the Attorney General or the Assistant Attorney General approved previously. Please ensure early coordination with FCS, EOS, or DRS for assistance in identifying applicable clearance requirements. My staff will contact your office in the coming months to arrange a brief staff training on the EO 12250 clearance process requirements.

Thank you for your continuing efforts to ensure consistent and effective enforcement of Title VI, Title IX, Section 504, and related laws through our close coordination on documents covered by EO 12250. Please do not hesitate to contact Tamara Kessler, Chief of FCS, at 202-307-2222, Shaheena Simons, Chief of EOS, at 202-305-3364, or Rebecca Bond, Chief of DRS, at 202-307-0663 with questions about the clearance process.

Attachments

Executive Order 12250 Clearance Summary Chart

Memorandum: Coordination of Federal Agencies' Implementation of title II of the Americans with Disabilities Act and section 504 of the Rehabilitation Act