



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

JUL 24 2014

MEMORANDUM

TO: Title VI Civil Rights Staff Across the Federal Government

FROM: Jocelyn Samuels *JS*
Acting Assistant Attorney General

SUBJECT: The 50th Anniversary of the Civil Rights Act of 1964 and
Announcement of New Governmentwide Title VI Coordination Initiative

I am writing to you – the civil rights staff of the federal funding agencies – on the occasion of the 50th anniversary of the passage of the Civil Rights Act of 1964 of which Title VI is a critical component. Title VI bars entities that receive federal financial assistance away from discriminating on the basis of race, color, and national origin. When President Johnson signed Title VI into law 50 years ago on July 2, 1964, he called upon the federal agencies “to fully discharge the new responsibilities imposed upon them by the law and to do it without delay.” Your counterparts of that era soon wielded Title VI to change this Nation in dramatic ways, from desegregation of public school systems to confronting discriminatory zoning and housing practices. As we honor this seminal anniversary, we must strengthen our resolve and our partnerships to ensure that the law’s promise of truly equal opportunity becomes a reality.

The forms of discrimination have changed over the years, and we face evolving challenges. Yet Title VI remains a powerful tool to address a wide array of injustices, such as discriminatory environmental enforcement; racial profiling; disparities in health care and basic services; and continued inequities in education, housing, public benefits, transportation, and access to justice. In recognition of this historic moment, I renew President Johnson’s call for enduring enforcement by the federal agencies. I commend you for your dedication to public service, and ask that you join me in a recommitment to robust Title VI enforcement.

As a direct result of your Title VI enforcement efforts in recent years:

- immigrant farm workers in Louisiana can finally access critical worker protection programs regardless of their national origin and limited English proficiency;
- African American residents in Ohio can travel safely to a large medical center, job sites, and other essential services, a benefit previously denied to them when a small town refused to approve construction of bus stops in their predominantly White community.

- those who cannot speak or understand English have access to justice in state court systems across the country
- police have ended practices that resulted in stopping, detaining, and even arresting individuals on the basis of the color of their skin or the sound of their voice;
- school districts provide English Language Learner (ELL) services to thousands of national origin minority students who were improperly denied such services, and students who face unique challenges now receive assessments and services specially designed to address their needs.

These are but a few of your recent accomplishments. And working together, we can achieve even more; we can fulfill the full promise embodied in President Kennedy's words more than fifty years ago when he described his vision of Title VI: "Simple justice requires that public funds, to which all taxpayers of all races contribute, not be spent in any fashion which encourages, entrenches, subsidizes or results in racial discrimination."

To support and encourage your continued efforts to fulfill this vision, the Civil Rights Division announces today a major Department of Justice (DOJ) initiative to restructure, reevaluate, and strengthen DOJ's Title VI coordination program under Executive Order 12250. As you may know, under EO 12250, DOJ is charged with ensuring the consistent and effective implementation of Title VI and related statutes. Exec. Order No. 12250, *Leadership and Coordination of Nondiscrimination Laws*, 45 Fed. Reg. 72,995 (Nov. 4, 1980). In order to fulfill this critical mandate, the Department, through the Civil Rights Division's Federal Coordination and Compliance Section (FCS), provides assistance and oversight to agency civil rights offices.

Many of you have worked with my staff in FCS in furtherance of our joint mandate to ensure strong enforcement of Title VI, and I trust that you have found their assistance valuable. Still, there are many aspects of our coordination program that may be improved. To that end, I have directed FCS to prioritize and devote substantial Division resources over the coming year to this initiative. In addition to our well-established program of technical assistance and legal counsel to your agencies, below I outline major new components of this initiative, many of which are already underway.

Publication of updated and expanded Title VI Legal Manual: In the near future, the Division expects to issue the first portion of our updated and expanded Title VI Legal Manual, which provides substantive legal guidance to your agencies as you investigate and analyze administrative complaints. The chapters soon to be published address a range of legal issues from jurisdiction to theories of proof, including intentional discrimination, discriminatory effects, and retaliation. The discriminatory effect chapter, for example, contains detailed guidance many of your agencies have requested to assist you in the investigation of pending cases. I urge you to remember that you play an especially critical role in discriminatory effects cases because victims can only turn to your administrative complaint process, and may not bring private lawsuits for relief. Therefore, your agencies must be particularly vigilant in ensuring strong enforcement in this area. FCS staff remain available to assist you in applying the guidance set forth in the Manual to your agency's docket.

Amending the Title VI Coordination Regulations: We anticipate reissuing and amending the Title VI coordination regulations, 28 C.F.R. 42.401 to 42.415, to revise outdated provisions and

streamline procedural steps. These regulations govern federal agency enforcement of Title VI. Among other things, the amendments will address procedural requirements intended to improve DOJ's ability to fulfill its coordination and oversight functions under EO 12250. The Department is also considering streamlining and clarifying provisions regarding information and data collection, assurances and grant application reviews, post-approval reviews, and opportunities to encourage public engagement and transparency, as well as further incorporating current law regarding meaningful access for individuals who are limited English proficient.

Establishment of Executive Order 12250 Directives and issuance of new Directive governing DOJ clearance and reporting: In order to provide clear and consistent guidance to your agencies concerning your Title VI enforcement responsibilities, we are developing the first in a series of Executive Order 12250 Directives. We plan to issue Directives periodically using a numbering system that will allow for compilation into a reference for agencies that develops over time. Directive DOJ-12250-2014.1 will address a critical component of our responsibility to ensure the consistent and effective enforcement of Title VI and related antidiscrimination statutes: the development and clearance of agency regulations and policy guidance documents. The Directive is a new format for the 12250 memoranda we have issued to restate existing obligations set forth in EO 12250, regulations, and memoranda previously issued by the AAG, institute procedures to ensure an efficient and meaningful review process, and establish annual agency reporting requirements along with requirements for updates six-months thereafter. These annual reporting requirements are part of a broader effort to restructure and streamline the content of agency Implementation Plans. It is in our collective interest to avoid unexpected review late in the development of your documents, and to ensure that important civil rights regulations and guidelines reach their intended audience without undue delay.

Launch of Title VI Civil Rights News @FCS: We recently launched a new email update service, *Title VI Civil Rights News @FCS*, and have already issued two installments. As part of DOJ's coordination responsibilities, the Civil Rights Division will now be providing periodic emails highlighting noteworthy Title VI developments from across the government. Future emails will showcase the work of other agencies, share helpful Title VI resources (including updated chapters of our Title VI Legal Manual), provide important Title VI updates, and much more. We will also use this service to provide important internal updates to federal agency Title VI staff. We hope that this service will enable you to benefit from the experience and expertise of sister agencies. If you have not already done so, please consider subscribing to this service through the following link: <https://public.govdelivery.com/accounts/USDOL/subscriber/new?qsp=997>.¹

Development of new Title VI training program: FCS is working with more than a dozen agencies, through the Training Committee of the Title VI Interagency Working Group (IWG), to create a new and robust Title VI training program. With a tentative goal set to begin training under this new rubric in the fall of 2014, the Committee is in the process of designing dynamic lesson plans, guided notes, and curricula to facilitate broader understanding of the foundational aspects of Title VI. The goal of the Committee was to craft materials that would allow qualified trainers across the federal family to train their staff independently, using materials developed with interagency consensus and oversight.

¹ Sign up with your email address and on the following screen click on the plus sign next to "Civil Rights Division" and then click on the box labeled "Title VI Including Race, Color, and National Origin Discrimination."

That way, all federal staff will receive the same introduction to Title VI. Attached is a list of resources currently available to assist staff in your offices. The Committee is also planning to begin rolling out upper-level interagency trainings, for advanced practitioners of Title VI, in winter 2014-15.

Expanded assistance on diverse governmentwide Title VI docket: In the coming months, we will develop an expanded program of assistance on the diverse governmentwide Title VI docket. This program will include opportunities for expanded legal counsel to your agencies on complex or novel Title VI cases, joint investigations, and interagency meetings to focus on particular recurring issues. We will also be expanding our program of Title VI assistance reviews to include periodic evaluations of your agencies' dockets, in order to identify and address common challenges.

Leveraging resources among sister agencies: We will continue to lead the Title VI Interagency Working Group, a forum for federal civil rights leadership, staff, and counsel to leverage resources, training, promising practices, and problem-solving opportunities with the goal of creating more effective and consistent Title VI enforcement programs across government. In particular, we will work to expand the IWG as a platform for resource sharing among your agencies, and will call upon those of you with specific expertise to share your knowledge with your sister agencies. We also continue to coordinate the LEP IWG and the Title VI Committee of the Environmental Justice IWG, both of which address critical Title VI issues. We also continue to run our highly successful detailee program in which staff from other federal agencies can work full- or part-time in FCS on programs that address cross-cutting Title VI issues while gaining specific investigative and other skills to take back to their agencies. I encourage you to consider participating in these programs. In addition, we will continue to expand our partnerships with U.S. Attorneys to collaborate on Title VI investigations and enforcement actions in their districts.

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 seek 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, if your agency determines that informal resolution or fund termination are not viable solutions). I remind you that your agencies must consider enforcement measures, including fund termination and litigation, where negotiations fail to resolve noncompliance. Importantly, you need not wait to seek our assistance through litigation; rather, FCS staff can also assist you as appropriate during earlier stages of your cases, including the pre-finding and negotiations stages. The Civil Rights Division can also offer expertise in ensuring that your case is appropriately prepared for litigation before a potential referral.

Finally, I invite you to contact FCS to discuss your agencies' additional ideas for our Title VI coordination program. Thank you again for the critical role you play as a frontline civil right enforcement staff. I very much look forward to our continued collaboration in this critical area of our nation's civil rights laws.

TITLE VI RESOURCES

- Title VI of The Civil Rights Act of 1964, <http://www.justice.gov/crt/about/cor/coord/titlevi.php>
- Executive Order 12250, <http://www.justice.gov/crt/about/cor/12250.php>
- Executive Order 13166, <http://www.justice.gov/crt/about/cor/13166.php>
- Title VI Coordination Regulations, <http://www.justice.gov/crt/about/cor/byagency/28cfr424.pdf>
- Title VI Enforcement Guidelines, <http://www.justice.gov/crt/about/cor/byagency/28cfr503.pdf>
- Title VI Legal Manual, <http://www.justice.gov/crt/about/cor/coord/vimanual.pdf>
- Title VI Legal Manual - *Sandoval* Note, http://www.justice.gov/crt/about/cor/Sandoval_Fix_070710.pdf
- OMB Draft Assurance Language, http://www.justice.gov/crt/about/cor/draft_assurance_language.pdf
- Commonly Asked Questions and Answers Regarding the Protection of Limited English Proficient (LEP) Individuals under Title VI of the Civil Rights Act of 1964 and Title VI Regulations, http://www.lep.gov/faqs/042511_Q&A_TitleVI_and_Regulations.pdf
- Protecting Against Race, Color, and National Origin Discrimination by Recipients of Federal Funds, 4-year report, July 2013, http://www.justice.gov/crt/about/cor/4yr_report.pdf
- Department of Justice Agreements, Resolutions, and Enforcement of Title VI, <http://www.justice.gov/crt/about/cor/agreements.php>
- Title VI Appellate Briefs and Opinions, http://www.justice.gov/crt/about/app/briefs_vi.php
- Joint Guidance on the Voluntary Use of Race, Office of Civil Rights at the Department of Education and Education Opportunity Section of the Civil Rights Division at the U.S. Department of Justice, December 2, 2011, <http://www.justice.gov/crt/about/edu/guidance.php>
- Title VI and Coverage of Religiously Identifiable Groups, Assistant Attorney General Thomas Perez Letter to The Office of Civil Rights at the Department of Education, September 2010, http://www.justice.gov/crt/about/cor/TitleVI/090810_AAG_Perez_Letter_to_Ed_OCR_Title%20VI_and_Religiously_Identifiable_Groups.pdf
- Understanding and Abiding by Title VI of the Civil Rights Act of 1964, Video, <http://www.justice.gov/crt/pressroom/videos.php?group=1>
- Title VI Civil Rights Newsletters, <http://www.justice.gov/crt/about/cor/pubs.php>

- July 10, 2009, Memo Regarding Strengthening Enforcement of Title VI, http://www.justice.gov/crt/lep/titlevi_enforcement_memo.pdf
- August 19, 2010, Title VI Coordination and Enforcement Memo, http://www.justice.gov/crt/about/cor/titlevi_memo_tp.pdf
- February 17, 2011, Attorney General Memo Regarding Language Access Obligations under Executive Order 13166, http://www.justice.gov/crt/about/cor/AG_021711_EO_13166_Memo_to_Agencies_with_Supplement.pdf
- May 20, 2013, Interagency Coordination Memo, http://www.justice.gov/crt/about/cor/AAG_Perez_Coordination_memo_5_20_13.pdf
- Agency-Specific Civil Rights Information, <http://www.justice.gov/crt/about/cor/fedagencies.php#CROFA>
- January 28, 1999 Block Grant Memo, <http://www.justice.gov/crt/about/cor/Pubs/blkgrnt.php>
- Recovery Act Non-Discrimination Notice, <http://www.justice.gov/crt/about/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/about/cor/Pubs/manuals/complain.php>
- 2002 Department of Justice LEP Guidance, www.justice.gov/crt/about/cor/lep/DOJFinLEPFRJun182002.pdf
- 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, <http://www.justice.gov/crt/about/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/about/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>