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STATEMENT OF
GREGORY J. AHART, DIRECTOR, HUMAN RESOURCES DIVISION
BEFORE THE
HOUSE COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS ²⁵⁰²
ON
[ACTIONS TAKEN BY FEDERAL AGENCIES TO
IMPLEMENT TITLE VI OF THE CIVIL RIGHTS ACT OF 1964]



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Mr. Chairman and Members of the Subcommittee, we are pleased to be here today to discuss our report on the actions taken by Federal agencies to implement title VI of the Civil Rights Act of 1964. Our review, made at your request, was directed at determining how the Department of Justice and the agencies were implementing and enforcing title VI.

Title VI provides that no person shall be discriminated against on the grounds of race, color, or national origin under any program or activity receiving Federal financial assistance. In carrying out financial assistance programs, recipients are to ensure that the benefits are being provided in compliance with title VII--free of discrimination. Federal financial assistance generally refers to the process by which the Federal Government provides benefits to a specified segment of the population (beneficiaries) through recipients--generally State and local governments. The benefits can be cash, services, goods, or equipment.

Each agency is responsible for determining which of its activities and programs provide Federal financial assistance subject to title VI and for carrying out its title VI responsibilities. The Department of Justice, under Executive Order 11764, is responsible for coordinating agencies' enforcement of title VI and assisting the agencies.

QUESTIONNAIRES TO OBTAIN AGENCIES'
PERCEPTIONS OF TITLE VI COVERAGE

We sent 324 questionnaires to agencies to gather data on the types of domestic assistance activities they administered. The questionnaire listed 20 types of assistance activities and asked each agency to identify (1) which type it provided, (2) how these activities were administered, and (3) whether the assistance was covered by title VI. Only nine agencies did not respond. Those that did respond said they administered 1,206 assistance activities--of which 763 (63 percent) were covered by title VI.

We also sent a second questionnaire to 32 agencies representing the respondents to our first questionnaire with activities subject to title VI. We were trying to determine how they perceived their responsibilities under title VI and how they ensure compliance.

In addition to the questionnaires, we reviewed the Department of Justice's coordination and technical assistance efforts, and the Department of Health, Education, and Welfare's (HEW's) implementation of two programs under title VI coverage--foster child care and health planning.

TITLE VI RESPONSIBILITIES
NEED CLARIFICATION

Many responding agencies were unclear about which activities were covered by title VI:

--Agencies did not know whether their activities were covered.

--Agencies believed that title VI applied to some activities that the law exempts.

--Agencies' responses to our first and second questionnaires were inconsistent.

For example, 55 agencies or components were uncertain whether title VI applied to 105 of their federally assisted activities. Title VI coverage of agencies' nonmonetary activities--activities in which assistance is given in the form of goods or services other than money--caused the greatest uncertainty. Agencies were uncertain about the title VI coverage of 75 nonmonetary activities.

Also, some agencies believed that activities were covered by title VI which we believe were exempt from coverage. Agencies believed that title VI covered 16 activities of guaranteed or insured loans; however, title VI specifically excludes contracts of insurance or guaranty.

Further evidence that agencies were unclear about whether title VI applied to their programs is shown in the varying responses received between the first and second questionnaires. Some agencies said their Federal financial assistance activities/programs were covered when responding to one questionnaire and not covered when responding to the other questionnaire.

In our report, we are recommending that the Attorney General direct Justice's Civil Rights Division to

--clarify criteria and cite examples for agencies to use in determining which Federal assistance activities and programs are covered or not covered by title VI, and

--provide technical assistance to, and review the determinations of, title VI coverage of those agencies uncertain about title VI coverage.

JUSTICE NEEDS TO IMPROVE
TITLE VI COORDINATION AND
ENFORCEMENT

Neither the Department of Justice nor many Federal agencies with assistance programs subject to title VI have effectively implemented title VI requirements. To resolve these problems, Justice needs to clarify its regulations and monitor agency enforcement.

Responses to our second questionnaire showed that some agencies had not issued title VI regulations or guidelines which are required by Justice. Furthermore, the responses showed that, when administering Federal assistance programs subject to title VI, some agencies (1) take too long to resolve complaints and have inadequate systems for resolving complaints, (2) do not know whether State compliance systems are adequate, (3) do not collect adequate racial and ethnic data, (4) rely on written assurances and respond to complaints they reviewed instead of making compliance reviews, and (5) take too long to obtain voluntary compliance before beginning administrative hearings.

Agencies lack title VI regulations and guidelines

Justice regulations require that agencies subject to title VI issue their own regulations to implement title VI and publish guidelines for each type of assistance program subject to title VI. The guidelines are to describe (1) the nature of title VI coverage, (2) methods of enforcement, (3) examples of prohibited practices, and (4) methods for collecting data and handling complaints. If an agency determines that guidelines are not appropriate, its reasons must be stated in writing.

Although most major agencies--with the majority of programs subject to title VI--had issued regulations, six relatively small agencies having title VI responsibilities had not published the required regulations, including the Equal Employment Opportunity Commission.

Only eight agencies said they had published guidelines for all of their title VI programs. Most agencies were in some stage of preparing their guidelines, although some were uncertain when to expect completion. Eight agencies with 62 programs that lacked guidelines had not determined whether guidelines were needed, even though agencies are required to make this determination if they decide not to publish guidelines.

Federal agencies' failure to prepare title VI regulations and guidelines, or to determine whether such guidelines are inappropriate, shows little concern for their title VI responsibilities. Justice has not reviewed some agencies' title VI guidelines or assured that all agencies with programs subject to title VI published title VI regulations; therefore, Justice does not know the extent to which most agencies are enforcing title VI.

Agencies are not complying with
Justice title VI implementation
and enforcement requirements

Although agencies are required to develop guidelines for use in implementing and enforcing their title VI responsibilities, Justice has failed to insure that these requirements are being met. The following examples illustrate problems we found with the implementation of title VI.

--Although Justice requires agencies to publish procedures for the prompt processing and disposal of title VI complaints, it does not require agencies to set any specific time limits for processing complaints. According to our questionnaire responses, agencies have been taking a long time to resolve these complaints--averaging 280, 360, and 900 days for some agencies.

--Justice's regulations require agencies to collect sufficient data on Federal assistance applicants and recipients to aid in the effective enforcement of title VI. The regulations give examples of data that should be collected--data on race, color, or national origin of the population eligible to be served. Because Justice's regulations do not specifically indicate the exact information to be collected, some agencies

have established guidelines that do not require collection of racial or ethnic data.

--Federal agencies generally use four methods to determine if applicants and recipients comply with title VI: written assurances, complaint system, preaward review and postaward review. Responses to our questionnaire showed agencies used a wide variety of methods to enforce title VI. The agencies did not use any of the four compliance methods in 45 programs, and used all methods in only 61 programs. We believe that agencies' failure to determine recipients' compliance with title VI is partly attributable to their lack of guidelines and Justice's failure to specify criteria for agencies to use in conducting onsite reviews. For example, Federal agencies are not performing preaward reviews in all cases (as required by Justice), and most agencies are not performing postaward reviews. Instead, agencies are relying on written assurances and complaint systems to determine compliance with title VI in assistance programs.

Justice requires agencies to have effective post-award review systems. Agencies make both desk and onsite postaward reviews. Postaward onsite reviews are the most effective. However, during fiscal years 1973-77, only 12 of the 32 agencies that responded to our second questionnaire had made postaward reviews, with 1 agency having a system that met Justice's requirements.

We are recommending that the Attorney General direct the Civil Rights Division:

1. To ensure that Justice's regulations requiring agencies to issue title VI regulations and guidelines are implemented.
2. To improve its monitoring of agencies' enforcement of Justice's title VI requirements.

We are also recommending that the Attorney General amend Justice's regulations to

- provide for review and approval of agencies' title VI guidelines;
- require agencies to collect racial and ethnic data for their programs; and
- develop criteria for agencies' use in conducting onsite compliance reviews.

AGENCY PROBLEMS WITH
ENFORCING TITLE VI

In our second questionnaire 32 agencies were asked to identify problems encountered in enforcing title VI. The agencies that responded said they lacked

- adequate agency title VI policies, regulations, guidelines, or manuals;
- sufficient staff to effectively enforce title VI;
- adequate title VI knowledge or training for agency personnel with title VI responsibilities; and
- enough title VI enforcement funds.

In 1971, the Commission on Civil Rights reported that agencies with programs subject to title VI suffered from various problems. Many of the problems the Commission reported included most of the problems that agencies reported in response to our questionnaire.

We are recommending that the Director of the Office of Management and Budget (1) require executive department and agency heads to determine their personnel and training needs and (2) consider whether the agencies need additional staff and training. This determination should include considering agencies' use of program personnel for enforcing title VI.

TITLE VI COMPLIANCE EFFORTS NEED
TO BE STRENGTHENED--CASE STUDIES

22 Two HEW programs were studied to determine whether problems exist in effectively enforcing title VI. HEW did not know, and we could not determine, if its foster care and health planning programs were in compliance with title VI because HEW had not

--provided adequate guidance to program managers on their title VI responsibilities,

--collected sufficient racial and ethnic data to permit program managers to evaluate title VI compliance for these programs.

Better guidance is needed

HEW has not published title VI guidelines or conducted title VI training for its foster care and health planning programs. Nor has it provided guidance to HEW program managers, foster child care personnel, and health planners in carrying out their civil rights responsibilities. Had HEW issued both guidelines and specific requirements for collecting and using racial and ethnic data and had the data been collected, we might have been able to determine whether the HEW programs studied were in compliance with title VI.

Better racial and ethnic
data are needed

As we discussed earlier, Justice requires agencies, except where found inappropriate, to collect enough data from applicants and recipients of financial assistance to permit effective enforcement of title VI: HEW's regulations do not require HEW program managers, including foster care and health planning managers, to collect and analyze data on the racial and ethnic composition of program beneficiaries or eligible populations. Foster care and health planning program managers have not collected racial and ethnic data for program planning, reviewing, or compliance assessment; therefore, HEW and program officials do not have an important management tool to measure title VI compliance.

Project review regulations
are inadequate

To guide State health planners in their review of proposed changes in health delivery systems (e.g., a hospital adding a new department), HEW has issued regulations requiring them to develop review procedures and project review criteria, which are to include 14 general considerations. These regulations, however, do not provide for these reviews to consider the needs of minorities or for assessing title VI compliance.

We are recommending that the Secretary of HEW:

- Include in the proposed Bureau of Health Planning project review regulations a provision for assessing title VI compliance.
- Direct OCR and HEW program managers to assign sufficient staff to permit timely reviews of title VI compliance.
- Require the collection of sufficient racial and ethnic data to enable health planning and foster care managers to (1) establish program goals that recognize the needs of all people to be served and (2) determine compliance with title VI.
- Direct health planning and foster care program managers to train their staffs and those in the State and local governments about their title VI responsibilities. The regional centers for health planning could be used to train health planning personnel.

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This concludes my prepared statement, Mr. Chairman.

We will be happy to answer any questions you or other Members of the Subcommittee may have.