

SPECIAL REPORT

Status of Submission of Title VI Implementation Plans

June 2008

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Comptroller of the Treasury**



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June 6, 2008

The Honorable Ron Ramsey
Speaker of the Senate
The Honorable Jimmy Naifeh
Speaker of the House of Representatives
and
Members of the General Assembly
State Capitol
Nashville, Tennessee 37243

Ladies and Gentlemen:

Transmitted herewith is the report on the status of submission of Title VI implementation plans. This review was conducted pursuant to the requirements of Section 4-4-123, *Tennessee Code Annotated*.

Sincerely,

John G. Morgan
Comptroller of the Treasury

JGM/jwt
08-019

**Status of Submission of Title VI Implementation Plans
June 2008**

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Status of Submission of Title VI Implementation Plans June 2008

INTRODUCTION

AUTHORITY

Section 4-21-901, *Tennessee Code Annotated*, requires state agencies subject to the requirements of Title VI of the Civil Rights Act of 1964 to develop a Title VI implementation plan. By statute these plans were to be submitted to the Department of Audit by June 30 of each year. In 2007, legislative action changed the due date to October 1 for 2007 and every year thereafter. The section requires the Department of Audit to publish, at least once a year, a cumulative report of its findings and recommendations concerning compliance with the statute's requirements. This report is intended to fulfill that requirement.

OBJECTIVES

The objectives of the review were to summarize the purpose and scope of Title VI and to detail agencies' compliance with the statutory reporting requirements.

SCOPE AND METHODOLOGY

We reviewed the *State of Tennessee Single Audit Report* for the year ended June 30, 2006, to determine agencies that received federal funding and were thus subject to Title VI regulations. Each agency is responsible for drafting its own Title VI implementation plan and submitting it to the Division of State Audit. The division determines whether the plans are submitted on time, and interviews the Title VI coordinator of each agency to determine the number of Title VI complaints filed against the agency during the fiscal year. The status of submission of the plans for recent fiscal years is in the conclusions section of this report.

PURPOSE AND SCOPE OF TITLE VI

Title VI of the Civil Rights Act of 1964, as codified in 42 U.S.C. 2000(d), states:

No person in the United States shall, on the grounds of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving federal financial assistance.

Title VI is intended to prohibit discrimination on the basis of race, color, or national origin in federally assisted programs even if federal money makes up only a portion of the program's budget. The emphasis of Title VI is on services provided by a government agency to the citizens of a given area. If federal money is used to provide services, Title VI applies, and services must be delivered in a nondiscriminatory manner.

Discriminatory acts are generally categorized as intentional acts or disparate effect discrimination. While intentional discrimination may be characterized by overt acts, disparate effect discrimination may result from more subtle acts, or failure to act in a manner, that subjects an individual or a group of persons in a protected class to be treated differently as beneficiaries of a federally assisted program or agency.

A recipient of federal assistance violates Title VI when it

- denies an individual service, aid, or benefits because of race, color, or national origin;
- provides only inferior or discriminatory service, aid, or benefits because of any individual's race, color, or national origin;
- subjects an individual to segregation or different treatment in relation to aid, services, or benefits because of race, color, or national origin;
- restricts or discourages individuals in their enjoyment of facilities because of race, color, or national origin;
- treats an individual differently because of race, color, or national origin in regard to eligibility for programs or services;
- uses selection criteria or methods of administration which have the effect of subjecting individuals to discrimination because of race, color, or national origin;
- discriminates against an individual in any program or activity that is conducted in a facility constructed even partly with federal funds; or
- subjects an individual to discriminatory employment practices under any federal program intended to provide employment.

TITLE VI PLAN GUIDELINES

U.S. President Jimmy Carter signed Executive Order 12250 in 1979 to provide for consistent and effective implementation of the various laws prohibiting discriminatory practices on the basis of race, color, national origin, sex, disability, or religion in programs and activities receiving federal financial assistance. Congress has since enacted many additional statutes

prohibiting discrimination against certain classes of people, and guidelines for compliance with Title VI have been issued by the U.S. Department of Justice.

In Tennessee, the Title VI Commission, administratively attached to the Department of Human Resources, assumed Title VI monitoring responsibilities in August 2002 when Governor Don Sundquist issued Executive Order 34, creating the commission and giving it the following duties and responsibilities:

- to review Title VI monitoring and enforcement procedures;
- to define and implement state policy to promote compliance with Title VI;
- to identify any needed changes in laws, rules, programs, services, and budgetary priorities to promote compliance with Title VI;
- to serve as the central agency for executive branch agencies providing resources to promote compliance with Title VI, and report on Title VI compliance efforts of those agencies;
- to engage in activities to inform Tennesseans of the requirements of Title VI, and to encourage compliance;
- to investigate allegations of noncompliance with Title VI; and
- to report annually to the Governor and the General Assembly.

The 13-member Title VI Commission has not been able to reach a quorum and hold a meeting since March 15, 2004. After establishing the Title VI Commission by executive order, the previous Governor appointed the nine citizen members listed below.

Juan Kindelan	Minnie Bommer	Dr. Jose Velazquez
Dr. Jerry Jerkins	Richard Morin	Cherie Cash-Rutledge
Juanita Cannon	Dr. Anthony Daniels	John Hedgecoth

Representative Tommie Brown was appointed as a member from the House. All of these appointments expire in October 2008. No legislative member has been appointed to fill the other House appointment or either of the two Senate appointments.

Until he retired January 31, 2008, the commission had had one director since its creation in 2002. The director had provided training and technical assistance to state agency Title VI coordinators—those responsible for preparing and implementing agency Title VI plans. The director also had issued three advisory memoranda to assist state entities in compliance. According to Memorandum No. 2, dated February 9, 2004, all state agencies are to promptly notify the commission of any formal or informal Title VI complaint submitted to or involving the agency and/or its subrecipients. As of April 15, 2008, a new director has not been named.

OBSERVATIONS AND COMMENTS

FILING TITLE VI COMPLAINTS

Section 4-21-905, *Tennessee Code Annotated*, specifies the procedures for filing a complaint concerning Title VI discrimination. An aggrieved person has 180 days to file a complaint with the state agency receiving federal funds, and may also file a complaint with the Title VI Compliance Commission. Any complaint is subject to review by that commission. In previous years, we did not review Title VI complaints filed by inmates against the Department of Correction, because of the great volume of those complaints. However, according to the department's Title VI Coordinator, the department has implemented procedures to categorize and to determine the validity of the complaints received. This allows the department to focus on the potentially valid Title VI complaints. The following table lists, by department, the number of complaints filed during the last four fiscal years.

**Number of Title VI Complaints Reported for Fiscal Years 2004-2007
(Agencies Not Listed Did Not Report Any Complaints)**

<u>State Entity</u>	<u>FY 04</u>	<u>FY 05</u>	<u>FY 06</u>	<u>FY 07</u>
Administrative Office of the Courts	0	0	1	1
Arts Commission	0	0	1	0
Board of Probation and Parole	0	1	0	0
Commission on Children and Youth	1	0	0	0
Department of Children's Services	1	6	0	6
Department of Correction	0	0	0	96
Department of Education	1	0	11	10
Department of Environment and Conservation	0	2	0	1
Department of F&A--(TennCare)	0	2	2	3
Department of Health	3	6	5	7
Department of Human Services	11	10	4	4
Department of Labor and Workforce Development	1	0	0	0
Dept. of Mental Health and Developmental Disabilities	3	0	0	8
Tennessee Board of Regents	8	5	5	6
University of Tennessee	<u>0</u>	<u>4</u>	<u>0</u>	<u>0</u>
Total Complaints Reported	29	36	29	142

CONCLUSIONS

SUBMISSION OF TITLE VI IMPLEMENTATION PLANS

All agencies required to follow Title VI have access to the information necessary to prepare Title VI implementation plans and have filed them. However, minor issues related to timeliness have occurred, primarily due to incorrect mailing addresses and changes in the statutory due date. See Appendix A for the dates of submission of plans for fiscal years 2005 through 2008.

SUMMARY OF TITLE VI FINDINGS

The potential risk of failure to comply with the requirements of Title VI is the loss of federal assistance funds. In addition to the Title VI Commission's investigation of complaints, the Division of State Audit reviews the status of Title VI activities during its audits.

Financial and Compliance Audits

Financial and compliance audits review an agency's use of funding and its adherence to applicable laws and regulation. For an agency subject to the requirements of Title VI, auditors determine whether the agency's Title VI coordinator submitted the Title VI Implementation Plan by the due date and also determine steps the agency has taken to implement that plan. The audit report includes violations of Title VI filing requirements noted during the audit. Financial and compliance reports issued during fiscal year 2006 do not contain any findings related to Title VI. During fiscal year 2007, the Division of State Audit released 29 financial and compliance reports of agencies subject to Title VI. One report of those 29 (3%) contains the following finding.

- The financial and compliance audit report of the Alcoholic Beverage Commission, released July 2007, includes the finding that the commission failed to timely submit Title VI compliance reports and implementation plans relating to compliance with the Civil Rights Act of 1964.

Performance Audits

A performance audit by the Division of State Audit reviews an agency's operations for efficiency and, for an agency subject to the requirements of Title VI, includes interviews of agency staff to determine the agency's compliance with Title VI, including requirements related to monitoring, filing, education, handling and tracking of complaints, and demographic data.

The audit report includes violations of Title VI requirements noted during the audit. Of the five performance audit reports of agencies subject to Title VI and issued during calendar year 2006, one report (20%) contains the following finding:

- The July 2006 performance audit of the Department of Education contains a finding that the department has not adequately addressed the risk that discriminatory practices have continued because staff does not ensure that substantiated Title VI complaints are resolved.

Of the six performance audit reports of agencies subject to Title VI issued during calendar year 2007, two reports (33%) contain the following findings.

- The February 2007 performance audit of the Tennessee Human Rights Commission contains a finding that the commission does not provide Title VI training to its employees as stated in its Title VI plan, and does not provide information on Title VI to complainants.
- The March 2007 performance audit of the Commission on Aging and Disability includes the finding that the commission did not prepare reports cited in its Title VI Implementation Plan.

**Appendix
Submission Dates of Title VI Implementation Plans**

<u>State Entity</u>	<u>FY 05 Plan Submitted</u>	<u>FY 06 Plan Submitted</u>	<u>FY 07 Plan Submitted</u>	<u>FY 08 Plan Submitted</u>
Administrative Office of the Courts	6/21/2004	6/28/2005	6/22/2006	6/27/2007
Alcoholic Beverage Commission	5/31/2006	5/31/2006	*	7/2/2007
Arts Commission	6/30/2004	6/30/2005	6/29/2006	6/28/2007
Board of Probation and Parole	6/30/2004	6/30/2005	6/29/2006	6/29/2007
Commission on Aging and Disability	7/28/2004	9/21/2005	6/30/2006	6/26/2007
Commission on Children and Youth **	6/30/2004	6/29/2005	6/15/2006	5/24/2007
Department of Agriculture	9/15/2004	9/15/2005	8/2/2006	7/2/2007
Department of Commerce and Insurance	6/28/2004	6/23/2005	7/3/2006	6/28/2007
Department of Children's Services	6/30/2004	6/30/2005	6/30/2006 Revised 08/11/06	6/29/2007
Department of Correction	6/30/2004	7/1/2005	6/30/2006	2/22/2008 (Late)
Department of Economic and Community Development	6/30/2004	6/29/2005	6/30/2006	6/27/2007
Department of Education	6/30/2004	7/6/2005	6/30/2006	6/20/2007
Department of Environment and Conservation	6/30/2004	6/30/2005	6/30/2006	9/11/2007
Department of Finance and Administration	6/30/2004	7/7/2005	6/30/2006	7/2/2007
Department of F&A - Division of Mental Retardation Services	6/30/2004	6/30/2005	6/30/2006	10/1/2007

<u>State Entity</u>	FY 05 Plan Submitted	FY 06 Plan Submitted	FY 07 Plan Submitted	FY 08 Plan Submitted
Department of F&A - Bureau of TennCare	6/29/2004	6/17/2005	6/1/2006	10/1/2007
Department of General Services	7/2/2004	6/30/2005	6/29/2006	6/28/2007
Department of Health	6/30/2004	6/29/2005	6/27/2006	6/28/2007
Department of Human Services	6/30/2004	6/30/2005	8/15/2006	5/29/2007
Dept of Mental Health and Developmental Disabilities	6/30/2004	6/30/2005	6/30/2006	10/1/2007
Department of Labor and Workforce Development	6/4/2004	9/30/2005	6/30/2006	10/1/2007
Department of Revenue	7/1/2004	6/28/2005	6/28/2006	6/29/2007
Department of Safety	6/29/2004	7/7/2005	6/30/2006	10/1/2007
Department of State	6/30/2004	6/30/2005	6/29/2006	6/28/2007
District Attorneys General Conference	6/29/2004	6/30/2005	6/29/2006	5/25/2007
District Public Defenders Conference	6/30/2004	6/30/2005	6/28/2006	Not Req'd
Military Department	8/4/2004	7/1/2005	6/29/2006	6/29/2007
Tennessee Board of Regents	7/2/2004	6/28/2005	8/30/2006	9/28/2007
Tennessee Bureau of Investigation	6/29/2004	6/29/2005	6/30/2006	6/21/2007
Tennessee Higher Education Commission	6/30/2004	6/30/2005	6/30/2006	6/29/2007
Tennessee Housing Development Agency	6/29/2004	6/29/2005	6/29/2006	9/27/2007
Tennessee Human Rights Commission	6/30/2004	7/26/2005	6/30/2006	9/14/2007
Tennessee Regulatory Authority	8/28/2004	6/30/2005	6/30/2006	10/31/2007
Tennessee Student Assistance Corporation	6/30/2004	6/30/2005	6/28/2006	6/29/2007

<u>State Entity</u>	FY 05 Plan Submitted	FY 06 Plan Submitted	FY 07 Plan Submitted	FY 08 Plan Submitted
Tennessee Wildlife Resources Agency	6/28/2004	6/21/2005	6/23/2006	6/28/2007
Department of Transportation	6/30/2004	6/30/2005	6/30/2006	9/28/2007
Department of the Treasury	6/30/2004	6/30/2005	7/28/2006	10/1/2007
University of Tennessee	7/6/2004	7/20/2005	8/1/2006	9/25/2007
Department of Veterans' Affairs	6/22/2004	6/30/2005	7/13/2006	7/13/2007
Tennessee State Veterans' Homes' Board	*	6/29/2005	6/30/2006	10/1/2007

Notes:

* - No plan was submitted for that year.

** - This plan covers the Council of Juvenile and Family Court Judges.