

# **SPECIAL REPORT**

## **Status of Submission of Title VI Implementation Plans**

**May 2010**

**Justin P. Wilson  
Comptroller of the Treasury**



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Comptroller of the Treasury**

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May 17, 2010

The Honorable Ron Ramsey  
Speaker of the Senate  
The Honorable Kent Williams  
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 4-21-901, *Tennessee Code Annotated*.

Sincerely,

Arthur A. Hayes, Jr., CPA  
Director

AAH/js  
10-030

**Status of Submission of Title VI Implementation Plans  
May 2010**

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# **Status of Submission of Title VI Implementation Plans May 2010**

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## **INTRODUCTION**

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### **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 and submit that plan to the Department of Audit by October 1 of each year. 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. In 2010, as explained in the next paragraph, the General Assembly passed legislation removing this responsibility from the Department of Audit.

### **TITLE VI REPORTS TO HUMAN RIGHTS COMMISSION IN 2010**

Section 4-21-203, *Tennessee Code Annotated*, transfers Title VI monitoring responsibilities to the Tennessee Human Rights Commission, effective July 1, 2009. This means that beginning in 2010, each covered agency will submit its annual Title VI compliance report and implementation plan update to the Human Rights Commission and not to the Department of Audit. The Human Rights Commission "shall publish a cumulative report of its findings and recommendations concerning compliance with the requirements."

### **OBJECTIVES, SCOPE, AND METHODOLOGY**

The objectives of the review are to summarize the purpose and scope of Title VI and to detail agencies' compliance with the statutory reporting requirements. Each agency is responsible for drafting its own Title VI implementation plan and submitting it to the Department of Audit. The department determines whether the plans are submitted on time and determines 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 APPLICABILITY 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 an 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 assumed Title VI monitoring responsibilities in August 2002 when Governor Sundquist issued Executive Order 34, creating the commission, and giving it the duties and responsibilities listed below.

- 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 engage in activities to inform Tennesseans of the requirements of Title VI, and to encourage compliance;
- 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 investigate allegations of noncompliance with Title VI; and
- to report annually to the Governor and the General Assembly.

Section 4-21-203, *Tennessee Code Annotated*, transferred these responsibilities to the Human Rights Commission July 1, 2009. By this act, the Executive Order creating the Title VI Compliance Commission is rendered obsolete.

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## **CONCLUSIONS**

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## **SUBMISSION OF TITLE VI IMPLEMENTATION PLANS**

All but one of the agencies subject to Title VI have prepared and filed implementation plans for 2010. See table for the dates of submission of plans for fiscal years 2007 through 2010.

### Submission Dates of Title VI Implementation Plans

<u>State Entity</u>	<u>FY 07 Plan Submitted</u>	<u>FY 08 Plan Submitted</u>	<u>FY 09 Plan Submitted</u>	<u>FY 10 Plan Submitted</u>
Administrative Office of the Courts	6/22/2006	6/27/2007	10/02/2008	10/1/2009
Alcoholic Beverage Commission	no report	7/2/2007	10/1/2008	10/1/2009
Arts Commission	6/29/2006	6/28/2007	6/26/2008	6/30/2009
Board of Probation and Parole	6/29/2006	6/29/2007	6/30/2008	10/1/2009
Commission on Aging and Disability	6/30/2006	6/26/2007	6/23/2008	6/18/2009
Commission on Children and Youth *	6/15/2006	5/24/2007	6/24/2008	9/30/2009
Department of Agriculture	8/2/2006	7/2/2007	9/18/2008	11/10/2009
Department of Children's Services	6/30/2006	6/29/2007	10/30/2008	9/30/2009
Department of Commerce and Insurance	7/3/2006	6/28/2007	6/30/2008	8/5/2009
Department of Correction	6/30/2006	2/22/2008	4/13/2009	no report
Department of Economic and Community Development	6/30/2006	6/27/2007	9/30/2008	10/1/2009
Department of Education	6/30/2006	6/20/2007	10/1/2008	10/1/2009
Department of Environment and Conservation	6/30/2006	9/11/2007	9/23/2008	9/25/2009
Department of Finance and Administration	6/30/2006	7/2/2007	9/25/2008	9/29/2009
Department of Finance and Administration - Division of Intellectual Disabilities Services	6/30/2006	10/1/2007	9/30/2008	9/30/2009
Department of Finance and Administration - Bureau of TennCare	6/1/2006	10/1/2007	9/26/2008	9/16/2009
Department of General Services	6/29/2006	6/28/2007	10/2/2008	9/30/2009

<b><u>State Entity</u></b>	<b>FY 07 Plan Submitted</b>	<b>FY 08 Plan Submitted</b>	<b>FY 09 Plan Submitted</b>	<b>FY 10 Plan Submitted</b>
Department of Health	6/27/2006	6/28/2007	9/29/2008	9/24/2009
Department of Human Services	8/15/2006	5/29/2007	9/29/2008	10/1/2009
Department of Labor and Workforce Development	6/30/2006	10/1/2007	9/29/2008	9/21/2009
Department of Mental Health and Developmental Disabilities	6/30/2006	10/1/2007	10/1/2008	10/1/2009
Department of Revenue	6/28/2006	6/29/2007	6/11/2008	6/26/2009
Department of Safety	6/30/2006	10/1/2007	9/30/2008	9/30/2009
Department of State	6/29/2006	6/28/2007	7/1/2008	9/29/2009
Department of Transportation	6/30/2006	9/28/2007	10/1/2008	10/1/2009
Department of Veterans Affairs	7/13/2006	7/13/2007	10/22/2008	11/17/2009
District Attorneys General Conference	6/29/2006	5/25/2007	9/18/2008	9/17/2009
District Public Defenders Conference	6/28/2006	not req'd	not req'd	9/30/2009
Military Department	6/29/2006	6/29/2007	6/18/2008	6/3/2009
Tennessee Board of Regents	8/30/2006	9/28/2007	10/1/2008	10/2/2009
Tennessee Bureau of Investigation	6/30/2006	6/21/2007	6/26/2008	6/25/2009
Tennessee Higher Education Commission	6/30/2006	6/29/2007	10/1/2008	10/1/2009
Tennessee Housing Development Agency	6/29/2006	9/27/2007	9/30/2008	9/30/2009
Tennessee Human Rights Commission	6/30/2006	9/14/2007	10/10/2008	9/29/2009
Tennessee Regulatory Authority	6/30/2006	10/31/2007	9/29/2008	10/6/2009
Tennessee State Veterans' Homes Board	6/30/2006	10/1/2007	8/6/2008	9/30/2009

<u>State Entity</u>	<u>FY 07 Plan Submitted</u>	<u>FY 08 Plan Submitted</u>	<u>FY 09 Plan Submitted</u>	<u>FY 10 Plan Submitted</u>
Tennessee Student Assistance Corporation	6/28/2006	6/29/2007	10/1/2008	10/2/2009
Tennessee Wildlife Resources Agency	6/23/2006	6/28/2007	6/24/2008	6/26/2009
Treasury Department	7/28/2006	10/1/2007	6/1/2008	12/28/2009
University of Tennessee	8/1/2006	9/25/2007	9/26/2008	9/30/2009

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

## **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 regulations. 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 would include violations of Title VI filing requirements noted during the audit.

During calendar year 2009, the Division of State Audit released eight financial and compliance reports of agencies subject to Title VI. One of those reports contains an item related to Title VI. The March 2009 financial and compliance audit of the Department of Veterans Affairs notes that the Title VI report due June 30, 2006, was filed late.

### 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, educating individuals about Title VI requirements, handling and tracking of complaints, and demographic data. The audit report includes violations of Title VI requirements noted during the audit. Of the ten performance audit reports of agencies subject to Title VI issued during calendar year 2009, two reports contain the following findings:

- The March 2009 performance audit of the Tennessee State Veterans' Homes Board contains a finding that the Board is not taking sufficient actions to ensure the residents

and their families understand the requirements of Title VI, and is not monitoring its subcontractors for compliance.

- The April 2009 performance audit of the Department of Commerce and Insurance contains a finding that the department did not prepare reports and complete activities referred to in its Title VI implementation plan.

## 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. The following table lists, by agency, the number of complaints filed during the last four fiscal years. In previous years, we did not include Title VI complaints filed by inmates against the Department of Correction, because of the great volume. However, according to the department's Title VI coordinator, the department now categorizes and determines the validity of the complaints received so that the department can focus on the potentially valid Title VI complaints. We include the number of those complaints so deemed by the department.

### Number of Title VI Complaints Reported for Fiscal Years 2006-2009 (Agencies Not Listed Did Not Report Any Complaints)

<u>State Entity</u>	<u>FY 06</u>	<u>FY 07</u>	<u>FY 08</u>	<u>FY 09</u>
Administrative Office of the Courts	1	1	0	0
Arts Commission	1	0	0	0
Commission on Children and Youth	0	0	0	2
Department of Children's Services	0	6	8	3
Department of Correction	0	96	62	No report
Department of Education	11	10	31	6
Department of Environment and Conservation	0	1	0	0
Dept. of F&A, Div. of Intellectual Disabilities Svcs.	0	0	0	5
Dept. of Finance and Administration (TennCare)	2	3	3	0
Department of Health	5	7	7	9
Department of Human Services	4	4	3	25
Department of Labor and Workforce Development	0	0	0	8
Dept. of Mental Health and Dev. Disabilities	0	8	0	0
Tennessee Board of Regents	<u>5</u>	<u>6</u>	<u>19</u>	<u>8</u>
<b>Total Complaints Reported</b>	<b>29</b>	<b>142</b>	<b>133</b>	<b>66</b>