

**HEW
AND
TITLE
VI**

A Report on the Development of the Organization, Policies, and Compliance Procedures



of the Department of Health, Education, and Welfare Under

Title VI of the Civil Rights Act of 1964

U.S. COMMISSION ON
CIVIL RIGHTS
CLEARINGHOUSE
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U.S. COMMISSION ON CIVIL RIGHTS

The U.S. Commission on Civil Rights is a temporary, independent, bipartisan agency established by Congress in 1957 and directed to:

- Investigate complaints alleging that citizens are being deprived of their right to vote by reason of their race, color, religion, or national origin, or by reason of fraudulent practices;
- Study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution;
- Appraise Federal laws and policies with respect to equal protection of the laws;
- Serve as a national clearinghouse for information in respect to denials of equal protection of the laws; and
- Submit reports, findings, and recommendations to the President and the Congress.

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PREFACE

Title VI of the Civil Rights Act of 1964, with its pledge of equal access to the benefits of federally assisted programs, was passed more than 5 years ago. At the time it was enacted, the necessity for this law was clear. Documented data by this Commission and other agencies, both government and nongovernment, had shown that discrimination was rampant in the operation of federally assisted programs. It was a major cause of continued denial of equal opportunity to minority group members. The enactment of Title VI was an historic event, important not only as specific legislation to end such discrimination, but also as a symbol of the Nation's will to redeem its mandate to provide equality to all its citizens.

The rich promise of Title VI has not been realized. The Commission has found that discrimination persists in the operation of a number of Federal programs and that the benefits of these programs still do not reach all Americans on an equitable basis. The Commission also has found that the performance of Federal departments and agencies in carrying out their Title VI responsibilities has been uneven and that their efforts have rarely been proportionate to the responsibilities explicitly defined by the act.

A major reason for this lack of progress is found in the inadequacies of the mechanisms which departments and agencies have established to assure that there will be effective compliance. For many agencies, the concept of civil rights has created a new area of responsibility and, despite long experience in devising efficient machinery to administer traditional programs, they have found it difficult to develop effective means of carrying out their civil rights responsibilities.

The Commission already has undertaken surveys of the Title VI procedures of a number of Federal departments and agencies. It has completed reports based on surveys of the Civil Aeronautics Board and of two major departments—the Department of the Interior and the Department of Agriculture—pointing out flaws in their existing operations and suggesting ways in which their civil rights structure and organizations could be improved. The present survey of the mechanisms developed by the Department of Health, Education, and Welfare (HEW) in carrying out its Title VI responsibilities is another in this series.

The Commission considers this survey to be of special importance. HEW, by virtue of the nature and scope of its programs, is the most important Federal department or agency to be affected by Title VI. To a large extent, the success or failure of that law is measured by the success or failure of HEW's effort. Therefore, it is essential that this department maintain policies, practices, and techniques which will assure achievement of the letter and spirit of Title VI.

This report is based primarily on Commission staff work undertaken during the spring and summer of 1968. Interviews were conducted with staff members in HEW's Office for Civil Rights in Washington, and in the Atlanta and Charlottesville Regional Offices, and guidelines, reports, memoranda, letters, and other written materials were analyzed in an effort to develop a comprehensive picture of the HEW Title VI compliance program.

This survey does not purport to be an exhaustive appraisal of HEW's entire equal opportunity program. For example, it does not deal with HEW's efforts to assure equal employment opportunity within its own Department or in employment pursuant to contracts in which the Department is involved. Further, in the area of Title VI enforcement attention has not been focused on the northern school program which was just getting underway at the time the Commission field work was conducted. Finally, the report is not concerned with specific instances of discrimination in the operation of HEW programs. Other Commission investigations and reports, such as its 1965 publication, *Title VI . . . One Year After*, have documented continued problems of discrimination in these programs. The present report is concerned with the adequacy of the enforcement machinery that HEW has devised to meet these problems.

In scope, the study covers a time span of approximately 4½ years, from the enactment of Title VI in July 1964 through January 1969, when a new Administration took office. An attempt has been made to trace the development of the HEW compliance effort over a period of years in the belief that historical perspective can furnish a more insightful picture of current operations and trends. From this, it is hoped that a more complete understanding of the dynamics of the present program will emerge.

This report, unlike other Commission reports, deals largely with the past. It does not assess facts as they are now, but as they developed over a period of critical years when a major Federal department was struggling to devise methods of operation to carry out responsibilities in an area with which it pre-

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viously had not been primarily concerned. Thus the report deals mainly with history. The Commission believes that it is important history. It also believes that other departments and agencies not as advanced as HEW in their Title VI enforcement efforts can profit from this account of the HEW experience; that the report can assist them in learning the lessons that HEW could learn only through the difficult process of trial and error; and that it can help them accelerate the development of their own enforcement machinery. Finally, the Commission hopes that the report, by identifying the strengths and weaknesses in the earlier HEW Title VI efforts can be helpful to the new Administration as it seeks to make the Civil Rights Act of 1964 an integral part of the fabric of American life.

The Commission acknowledges the special services of Robert H. Cohen, Supervisory General Attorney, Office of Program and Policy, in the preparation of this report.

INTRODUCTION

On July 2, 1964, the most comprehensive civil rights legislation since the days of Reconstruction was signed into law. The 11 titles of the Civil Rights Act of 1964 cover a wide variety of basic legal rights such as the right to vote, the right to equal access to places of public accommodation, and the right to equal employment opportunity. One of the shortest titles of the act also is one of the most significant. Title VI, concerned with "Nondiscrimination in federally assisted programs," provides, in part, as follows:

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

Title VI applies to every Federal loan or grant program and every Federal department or agency administering these programs has the responsibility of assuring compliance with the provisions of this title. Of the more than 30 departments and agencies involved, however, only a handful have sizable Title VI responsibilities as measured by the specific relationship of their programs to minority group members and the amount of Federal financial assistance available for these programs. Of this handful, by far the most important is the Department of Health, Education, and Welfare (HEW).

The programs administered by HEW tangibly affect the lives of millions of Americans and hold special meaning for disadvantaged Americans, a disproportionate number of whom are minority group members. For example, HEW programs of assistance to education under the Elementary and Secondary Education Act represent a principal instrumentality by which disadvantaged children are enabled to gain the knowledge and skills that are prerequisites for productive participation in

society. Various welfare programs funded by HEW are of vital importance to children, the aged, the handicapped, and other needy persons. And various health programs administered by the Department, such as Medicare and Medicaid, provide needed medical assistance to the millions of American citizens who otherwise would be forced to do without.

Further, in terms of the sheer dollar amount of financial assistance provided under Federal loan and grant programs, HEW is the major agency affected by Title VI. Of the six largest Federal grant programs covered by Title VI, three—public assistance, aid to education, and public health research and services—are administered entirely or in large measure by HEW.¹

In Fiscal Year (FY) 1968, payments for public assistance programs—Aid to Families with Dependent Children (AFDC), Old Age Assistance (OAA), Aid to the Blind (AB), and Aid to the Permanently and Totally Disabled (APTD)—accounted for nearly \$5.4 billion in Federal money. The largest of these programs is AFDC. The funds for public assistance programs, as for most programs of HEW and other agencies, do not flow directly to the beneficiaries, but go to them through intermediate agencies, called recipients. The recipients of Federal aid for public assistance are State agencies [usually the State Department of Public Welfare] which are responsible for administering plans for aid and services which must be in effect throughout the State. By law a single State agency administers this statewide program and is responsible for insuring that all political subdivisions in the State adhere to the requirements of Title VI. This has particular significance for purposes of Title VI enforcement since, unlike the education and health programs discussed below, the recipient is not the local school district or the individual hospital, nursing home, or clinic, but is the State itself. Violations of the requirements of Title VI are the responsibility of the State and fund cutoffs must be applied to the entire State, not to the offending individual subdivision.

Education, the third largest area of Federal aid, also is administered by HEW and accounted for more than \$4 billion in FY 1968. Each of the 20,000 school districts within the United States is an actual or potential recipient of a portion of this money. Nearly \$1.5 billion in FY 1968 helped support activities under the Elementary and Secondary Education Act. Most of the money provided under Title I of the act supported educa-

¹ Congressional Quarterly, Aug. 15, 1969, at 1496.

tional programs in areas having a high concentration of low-income families. Lesser amounts helped provide school library resources, textbooks and other instructional materials, and supplementary educational centers and services. Other major programs of Federal aid to education include the maintenance and operation of schools in federally impacted areas, research grants and fellowship awards (through the National Science Foundation), manpower development and training activities, cooperative vocational education, and higher educational facilities.²

Recipients of this aid include State educational agencies, local school districts, and local educational agencies. Title I assistance, for example, flows to State education agencies and, in turn, is distributed by them to local school districts. Aid to impacted areas, on the other hand, is furnished directly to school districts which are affected by Federal activity in their locality.

The sixth largest area of federally assisted programs, with a total Federal outlay of nearly \$1.7 billion in FY 1968, was public health and research services administered by HEW. Most of the nearly 9,000 hospitals in the United States are recipients of Federal financial assistance. In addition, thousands of health clinics, nursing homes, and similar facilities receive Federal monies. Major expenditures in FY 1968 included \$351 million for construction of hospitals and health research facilities under the Hill-Burton Program, more than \$100 million for general medical services, and more than \$730 million for research projects and grants.

Federal financial assistance for medical and health services and research goes to a variety of recipients, ranging from small private nursing homes and hospitals to State health departments. Whether they are public or private, and regardless of size, all are covered by Title VI and can be held accountable for nondiscrimination in the use of Federal money.³

Throughout the history of Title VI, the pivotal role of HEW

² American Education Annual Guide to Office of Education Programs, *Where the Money Is* (U.S. Government Printing Office, 1968).

³ It is important to note that many of the recipients of public health research grants are institutions of higher education. As such, they also are covered by Title VI by virtue of a variety of other Federal programs, most notably the Higher Education Facilities Act and the National Defense Education Act. For purposes of Title VI compliance, they have always been viewed as educational institutions regardless of the amount of Federal aid which they may receive for health research. Other Title VI programs administered by HEW include vocational rehabilitation (nearly \$300 million in Fiscal Year 1968) and child care assistance (including maternal and child health and welfare services), child health and human development activities, and juvenile delinquency and youth development program (\$263 million). For purposes of Title VI compliance, these programs increasingly have come under the broad heading of "welfare" and currently, are included together with public assistance as part of the State agency review program which is discussed later.

OVERVIEW

In common with other Federal agencies with civil rights responsibilities, the Title VI program at HEW has been in flux for the past 5 years. There have been a number of changes in organization, in structure, in lines of authority, and in personnel within the Title VI program, paralleling similar changes within the Department as a whole. In addition, the number and dollar volume of Title VI programs have grown significantly since 1964, thereby compounding the task of Title VI enforcement but, at the same time, providing additional scope and leverage for achieving its objectives.

Despite the amount of change, four fairly distinct phases of activity can be identified. The first period began before passage of the 1964 Act and continued roughly to the end of 1965. Enforcement efforts were carried on by the operating agencies⁴ under the leadership of James M. Quigley, then Assistant Secretary.⁵ The second phase, covering a time span of about 18 months, dates from December of 1965, when an Office for Civil Rights (OCR) was established under the direction of F. Peter Libassi, who was designated as Special Assistant to the Secretary for Civil Rights. The third phase began in mid-1967 when civil rights functions which had been borne by the operating agencies were reorganized⁶ and brought under the OCR. This period, characterized by decentralization of enforcement operations to OCR

⁴ These are the agencies responsible for administering HEW's substantive programs. As used throughout this report the term refers to the Public Health Service, the Office of Education, the Social Security Administration, the Welfare Administration, and the Vocational Rehabilitation Administration. On August 15, 1967, pursuant to a departmental reorganization, the Welfare Administration and the Vocational Rehabilitation Administration were brought within the newly created Social and Rehabilitation Service.

⁵ Quigley was assigned responsibility for coordinating and supervising HEW's Title VI efforts by Secretary Anthony J. Celebrezze in 1964 and continued in this capacity until the Office for Civil Rights was established.

⁶ Although the reorganization was a continuous process, which started in the early summer of 1967 and ran through the end of the year, the formal, effective date was Nov. 19, 1967.

staff in the Regional Office, ended with the departure of Secretary John W. Gardner and the resignation of Libassi shortly thereafter. The fourth phase dates from the assumption of leadership of OCR by Ruby G. Martin in the spring of 1968 and ends with her resignation early in 1969.

PHASE I

In the spring of 1964, HEW began to "tool up" in anticipation of passage of the Civil Rights Act. Agency task forces were assembled, proposed regulatory language was discussed, and attempts were made to catalog programs of Federal financial assistance. By midsummer and early fall consideration was being given to possible methods of enforcement, such as assurances and statements of compliance, and informal legal opinions were being prepared as problems of interpretation, scope, and authority, emerged.⁷ These task forces generally were composed of HEW staff members who had either volunteered for the assignment or had expressed interest in working with the new legislation. A number of the staff members active on these early task forces have continued in influential roles within HEW's subsequent civil rights operation.⁸

By the time the Civil Rights Act of 1964 was passed, HEW had developed considerable momentum for carrying forward the mandate of Title VI. The Office of General Counsel, under the direction of Reginald Conley, then Assistant General Counsel for Legislation, bore the major departmental responsibility during this initial phase. At the same time, an interagency committee, which included representatives of the White House, the U.S. Commission on Civil Rights, the Department of Justice, and the Bureau of the Budget, was convened for the purpose of drawing up a consistent, uniform set of Title VI regulations.⁹ The initial set of regulations was drafted for HEW and then

⁷ The number and variety of memoranda of law grew considerably during the year or two following passage of Title VI. An effort was made within HEW to develop an index-digest of these opinions for use within the Department and for their possible use by other agencies with similar Title VI problems. Despite a fair amount of work, the digest never was issued. The main reason given by HEW's Office of General Counsel was that legal opinions developed in HEW were applicable only to HEW administered programs and would be of little use, if not actually misleading, to other Federal agencies which might try to apply them in interpreting their own Title VI responsibilities. Subsequently, the Department of Justice, in exercising its responsibility for coordinating Title VI efforts, revived the idea of developing a central file of legal opinions dealing with Title VI. Despite wide concurrence on the part of representatives of a number of Title VI agencies and of this Commission that such a file could be extremely helpful, a central file never has been created.

⁸ E.g., Louis Rives, formerly with the Vocational Rehabilitation Administration, is currently Director of the Operations Division; Edwin Yourman, formerly Assistant General Counsel for Welfare and Education, is currently Assistant General Counsel for Civil Rights.

⁹ Congressional Quarterly, week ending Apr. 9, 1965 at 621.

used as the standard for regulations of the other Title VI agencies. In the fall of 1964, Assurance Forms (441's)¹⁰ and Statements of Compliance¹¹ were developed within HEW. The former were to be submitted by all recipients of Federal financial assistance; the latter, by State agencies administering continuing programs. With the distribution of the 441's and Statements of Compliance, the phase of "paper compliance"¹² was launched. Some onsite reviews¹³ were conducted, primarily in response to complaints of discrimination against hospitals and other health facilities. There were relatively few reviews of schools, rehabilitation centers, and other facilities and services of HEW recipients. During this initial stage of compliance activity, staff members encountered varying degrees of resistance from program administrators and regional people within their own agency who often were identified closely with State and local officials. The latter urged a "go slow" attitude and complained that more time was needed to prepare their own staff members, boards, and local communities regarding the requirements of Title VI and the expectations of HEW officials.

Finally, this first phase was characterized by uncertainty on the part of HEW staff, recipients, and the general public regarding the commitment of the Administration, the expectations of agency administrators, and the standards by which compliance would be determined. Although many of these uncertainties abated by the second or third year after the compliance program began, vestiges of confusion have persisted.

PHASE II

In December 1965, 1 year after the regulations had been issued, Secretary Gardner established within the Office of the Secretary a Civil Rights Office, hereafter referred to as the Office for Civil Rights (OCR). F. Peter Libassi, then Deputy Staff Director of

¹⁰ HEW Form 441-A (1/65).

¹¹ See for example, Form CB-FS 5022, Department of HEW, Welfare Administration, Bureau of Family Service, Children's Bureau (1/65). Budget Bureau No. 122-R097. Similar documents were utilized with State vocational rehabilitation departments and with State health agencies.

¹² This is a term which has come to be used contemptuously in reference to compliance efforts which are characterized by the heavy reliance on assurances, statements of compliance, and other paper devices as a means for achieving compliance largely to the exclusion of field reviews and investigations.

¹³ The term "onsite reviews" is used to describe field visits to offices, facilities, and other places from which recipients dispense services, in an effort to determine whether the recipient is complying with Title VI. "Onsite reviews" may be part of a periodic, regularly scheduled inspection program or may be *ad hoc* investigations made in response to specific information or allegations of discrimination. In practice, the scope, intensity, and duration of "onsite reviews" have varied greatly. For a further discussion of reviews and investigations see the *Compliance Officer's Manual*, (U.S. Commission on Civil Rights, October 1966).

the U.S. Commission on Civil Rights, was appointed to head the new office and was designated Special Assistant for Civil Rights. In a memorandum to agency heads and other top level administrators, the Secretary set forth the respective responsibilities of OCR and of the operating agencies.¹⁴

The responsibilities assigned to the Special Assistant and his staff included policy development; staff leadership; development of civil rights training programs; coordination of HEW's activities with the Department of Justice, the U.S. Commission on Civil Rights, the Civil Service Commission, and the White House; liaison with the Office of General Counsel; representation of the Department in dealing with Congress and other groups as related to the civil rights program; and establishment of a system of record-keeping, reporting and notification between operating agencies. OCR also was responsible for aiding in the investigation of "important or difficult cases"¹⁵ and recommending action to the Secretary regarding unresolved cases. In situations where the Secretary had established guidelines, Libassi's office was empowered to take action on behalf of the Secretary. Where more than one agency within the Department was concerned with compliance on the part of the same recipient, OCR was to assign primary responsibility. In summary, the Special Assistant to the Secretary was to "exercise leadership and technical guidance and serve as the Secretary's representative with respect to compliance activities throughout the Department."¹⁶

The head of each operating agency within HEW was directed to designate a special staff assistant for civil rights. The staff assistant was to have duties parallel to those of the Special Assistant to the Secretary. Operating agencies were charged with responsibility for organizing and administering a plan to assure "effective compliance with Title VI,"¹⁷ including implementation of an "affirmative program to accelerate compliance"¹⁸ and a compliance investigation and inspection program both on a routine basis and in response to complaints. Operating agencies were directed to resolve, insofar as possible, all routine problems of compliance and to report and recommend action on unresolved cases to the Special Assistant to the Secretary. At the same time,

¹⁴ Memorandum from the Secretary, "Title VI of the Civil Rights Act (12-14-65),"

¹⁵ *Id.* at 3.

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ *Id.* at 4.