

TITLE VI LEGAL MANUAL



CIVIL RIGHTS DIVISION U.S. DEPARTMENT OF JUSTICE

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ABOUT THIS DOCUMENT

The Civil Rights Division's *Title VI Legal Manual* provides an overview of Title VI legal principles. This document is intended to be an abstract of Title VI principles and issues; it is not intended to provide a complete, comprehensive directory of all cases or issues related to Title VI. For example, this manual does not address all issues associated with private enforcement. In addition, although the manual includes cases interpreting both Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq., and Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, where their interpretation overlaps with Title VI, the manual should not be considered to be an overview of any statute other than Title VI.

The Civil Rights Division periodically issues policy guidance, directives, or other memoranda to federal agencies regarding statutes the Division enforces. The manual discusses, as appropriate, current guidance documents and directives relating to Title VI. Persons referring to the manual periodically should check the Division's websites (www.usdoj.gov/crt and www.lep.gov) for guidance documents and directives issued subsequent to the publication of the manual. Comments on the manual, and suggestions as to future updates, including published and unpublished cases, may be addressed to:

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The Civil Rights Division issues the *Title VI Legal Manual* pursuant to its responsibility under Executive Order 12250, 28 C.F.R. pt. 41, app. A, to coordinate federal government compliance with the requirements of Title VI and other federal financial assistance statutes and to foster consistent and coordinated Title VI enforcement. The manual is intended only to provide general assistance to interested persons and is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States. Finally, because the law changes frequently, the Civil Rights Division cannot guarantee that all information is current. Updates will be issued from time to time; please refer to the date issued for each chapter.

I. INTRODUCTION

In 1964, after years of intensive work on the part of civil rights advocates and their supporters in Congress, President Lyndon B. Johnson signed the landmark Civil Rights Act of 1964. Included among the Civil Rights Act's eleven titles is Title VI, codified at 42 U.S.C. § 2000d et seq. In 1963, President John F. Kennedy explained the need for Title VI: "Direct discrimination by Federal, State, or local governments is prohibited by the Constitution. But indirect discrimination, through the use of Federal funds, is just as invidious." Title VI directly addresses the then-common practice of denying certain persons access to federally funded services, programs, and activities based on their race, color, or national origin.



At the March on Washington for Jobs and Freedom, on August 28, 1963, a demonstrator carries a placard calling for the passage of Title VI, "No U.S. Dough to Help Jim Crow Grow."

Specifically, Section 601 states the following:

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.

42 U.S.C. § 2000d.¹

¹ The Title VI Legal Manual provides an overview of Title VI legal principles. This document is intended to be an abstract of the general principles and issues that concern federal agency

The Civil Rights Division of the U.S. Department of Justice (DOJ) is responsible for coordinating the Title VI implementation and enforcement efforts of federal agencies pursuant to Executive Order 12250, 28 C.F.R.pt. 41, app. A. As part of its coordination role, the Division periodically issues policy guidance, directives, or other memoranda to federal agencies regarding Title VI. The Title VI Legal Manual summarizes current DOJ guidance documents and directives relating to Title VI. Persons referring to the manual should check the Division's websites (www.usdoj.gov/crt and www.lep.gov) for guidance documents and directives issued subsequent to the publication of this document.

enforcement; it is not intended to provide a complete, comprehensive directory of all cases or issues related to Title VI. For example, this Manual does not address all issues associated with private enforcement. In addition, although the Manual refers to cases interpreting Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq., and Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, where their interpretation overlaps with Title VI, the Manual should not be considered to be an overview of any statute other than Title VI.

II: SYNOPSIS OF LEGISLATIVE HISTORY AND PURPOSE OF TITLE VI

The Civil Rights Act of 1964 was a product of the growing demand during the early 1960s for the federal government to launch a nationwide offensive against racial discrimination. In calling for its enactment, President John F. Kennedy stated:

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. Direct discrimination by Federal, State, or local governments is prohibited by the Constitution. But indirect discrimination, through the use of Federal funds, is just as invidious; and it should not be necessary to resort to the courts to prevent each individual violation.

See H.R. Misc. Doc. No. 124, 88th Cong., 1st Sess. 3, 12 (1963).

Title VI was not the first attempt to ensure that the federal government not finance discrimination based on race, color, or national origin. Beginning with Franklin Roosevelt, presidents issued Executive Orders prohibiting racial discrimination in hiring. See *Cannon v. Univ. of Chicago*, 441 U.S. 677, 720 & n.3 (1979) (White, J., dissenting).¹ Various prior Executive Orders prohibited racial discrimination in, for instance, the armed forces, employment by federally funded construction contractors, and federally assisted housing.² As Rep. Emanuel Celler, Chairman of the House Judiciary Committee and floor manager for the Civil Rights Act in the House of Representatives, noted:

In general, it seems rather anomalous that the Federal Government should aid and abet discrimination based on race, color, or national origin by granting money and other kinds of financial aid. It seems rather shocking, moreover, that while we have on the one hand the 14th amendment, which is supposed to do away with discrimination since it provides for equal protection of the laws, on the other hand, we have the Federal Government aiding and abetting those who persist in practicing racial discrimination.

¹ See also *Cooper v. Aaron*, 358 U.S. 1 (1958); *Simkins v. Moses H. Cone Mem'l Hosp.*, 323 F.2d 959 (5th Cir. 1963).

² Exec. Order No. 9981, 13 Fed. Reg. 4313 (July 26, 1948) (equal opportunity in the armed services); Exec. Order No. 10479, 18 Fed. Reg. 4899 (Aug. 13, 1953) (equal employment opportunity by government); Exec. Order No. 11063, 27 Fed. Reg. 11,527 (Nov. 20, 1962) (equal opportunity in housing), as amended by Exec. Order No. 12259, 3 C.F.R. § 307 (1981), *reprinted in* 42 U.S.C. § 3608.

It is for these reasons that we bring forth title VI. The enactment of title VI will serve to override specific provisions of law which contemplate Federal assistance to racially segregated institutions.

110 Cong. Rec. 2467 (1964) (*quoted in Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 330-31 (1978) (opinion of Marshall, J.). Congress recognized the need for a statutory nondiscrimination provision to apply across-the-board “to make sure that the funds of the United States are not used to support racial discrimination.” 110 Cong. Rec. 6544 (statement of Sen. Humphrey).

Senator Humphrey, the Senate manager of the Civil Rights Act of 1964, identified several reasons for the enactment of Title VI. *Id.* First, several federal financial assistance statutes, enacted prior to *Brown v. Board of Education*, 347 U.S. 483 (1954), expressly provided for federal grants to racially segregated institutions under the “separate but equal” doctrine that *Brown* overturned. Although *Brown* made the validity of these programs doubtful, the decision did not automatically invalidate these statutory provisions.

Second, Title VI would eliminate any doubts that some federal agencies may have had about their authority to prohibit discrimination in their programs.

Third, through Title VI, Congress would “insure the uniformity and permanence to the nondiscrimination policy” in all programs and activities involving federal financial assistance. 110 Cong. Rec. 6544 (1964). Title VI would eliminate the need for Congress to debate nondiscrimination amendments in each new piece of legislation authorizing federal financial assistance.³ As stated by Representative Celler, “Title VI enables the Congress to consider the overall issue of racial discrimination separately from the issue of the desirability of particular Federal assistance programs. Its enactment would avoid for the future the occasion for further legislative maneuvers like the so-called Powell amendment.” *Id.* at 2468.⁴

³ See 6 Op. O.L.C. 83, 93 (1982) (“The statutes [Title VI, Title IX, Section 504, and the Age Discrimination Act] ... [are] intended to apply to all programs or activities receiving federal financial assistance without being explicitly referenced in subsequent legislation. They should therefore be considered applicable to all legislation authorizing federal financial assistance ... unless Congress evidences a contrary intent.”)

⁴ The “Powell amendment” refers to the effort of Representative Adam Clayton Powell to add nondiscrimination clauses to federal legislation. See 110 Cong. Rec. 2465 (1964) (Statement by Rep. Powell).

Fourth, the supporters of Title VI considered it an efficient alternative to ponderous, time-consuming, and uncertain litigation. Prior legal challenges demonstrated that litigation involving private discrimination proceeded slowly, and the adoption of Title VI was seen as an alternative to such an arduous route. *See* 110 Cong. Rec. 7054 (1964) (statement by Sen. Pastore).

Further, federal funds continued to subsidize racial discrimination. For example, Senator Pastore addressed how North Carolina hospitals received substantial federal monies for construction, that the hospitals discriminated against Blacks as patients and as medical staff, and that, in the absence of legislation, judicial action was the only means to end these discriminatory practices.

That is why we need Title VI of the Civil Rights Act, H.R. 7152—to prevent such discrimination where Federal funds are involved.... Title VI is sound; it is morally right; it is legally right; it is constitutionally right.... What will it accomplish? It will guarantee that the money collected by colorblind tax collectors will be distributed by Federal and State administrators who are equally colorblind. Let me say it again: The title has a simple purpose—to eliminate discrimination in Federally financed programs.

Id.; *see also Simkins v. Moses H. Cone Mem'l Hosp.*, 323 F.2d 959, 969 (4th Cir. 1963) (federal provisions undertaking to authorize segregation by state-connected institutions are unconstitutional).⁵

President Lyndon Johnson signed the Civil Rights Act of 1964 into law on July 2, 1964, after more than a year of hearings, analyses, and debate. During the course of congressional consideration, Title VI was one of the most debated provisions of the Act.

⁵ At issue in *Simkins* was a provision of the Hill-Burton Act (Hospital Survey and Construction Act), 60 Stat. 1041 (1946), as amended, 42 U.S.C. § 291e(f), which “authorize[d] the construction of hospital facilities and the promotion of hospital services with funds of the United States on a ‘separate-but-equal’ basis.” *Simkins*, 323 F.2d at 961. The Act included a general nondiscrimination provision, but further stated that “an exception shall be made in cases where separate hospital facilities are provided for separate population groups, if the plan makes equitable provision on the basis of need for facilities and services of like quality for each such group;....” *Id.* at 969 (quoting 42 U.S.C. § 291e(f)).

III: DEPARTMENT OF JUSTICE ROLE UNDER TITLE VI

Title VI authorizes and directs federal departments and agencies that extend financial assistance to issue rules, regulations, or orders that effectuate the prohibition on discrimination on the basis of race, color, or national origin. Title VI assigns the Department of Justice (DOJ) two key government-wide roles: coordinator of federal agency implementation and enforcement, and legal representative of the United States.¹

A. Ensuring Consistent and Effective Enforcement Across the Federal Government

Under Executive Order 12250, 28 C.F.R. pt. 41, app. A, the President tasked the Attorney General to “coordinate the implementation and enforcement by Executive agencies” of Title VI, Title IX, and Section 504. Executive Order 12250 further provided that the Attorney General coordinate

any other provision of Federal statutory law which provides, in whole or in part, that no person in the United States shall, on the ground of race, color, national origin, handicap, religion, or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance.

Exec. Order No. 12250 § 1-201. Accordingly, DOJ is charged with ensuring the consistent and effective implementation of Title VI across the federal government.

Initially, the Title VI coordination responsibility was assigned to a President’s Council on Equal Opportunity, which was created by Executive Order 11197, 3 C.F.R. 1964-1965 Comp. 278 (Feb. 5, 1965). The Council was abolished after six months and the responsibility was reassigned to the Attorney General pursuant to Executive Order 11247. 3 C.F.R. 1964-1965 Comp. 348 (Sept. 24, 1965). Executive Order 11247 provided that the Attorney General was to assist federal departments and agencies in coordinating their Title VI enforcement activities and in adopting consistent, uniform policies, practices, and procedures. During this period, DOJ

¹ The DOJ has a third role, of course: ensuring that its own recipients of funding abide by their Title VI (and other federal funding statute) obligations. This Manual chapter focuses on the Department’s unique Title VI obligations.

issued its “Guidelines for the Enforcement of Title VI, Civil Rights Act of 1964,” 28 C.F.R. § 50.3, which are still in force today.

In 1974, the President signed Executive Order 11764, designed “to clarify and broaden the role of the Attorney General with respect to Title VI enforcement.” Exec. Order No. 11764, 3A C.F.R. § 124 (1974 Comp.). The Order gave the Attorney General broad power to ensure the effective and coordinated enforcement of Title VI. In 1976 and pursuant to this Executive Order, DOJ promulgated its Coordination Regulations describing specific implementation, compliance, and enforcement obligations of federal funding agencies under Title VI. *See* 28 C.F.R. §§ 42.401-42.415.² Every agency that extends Title VI covered federal financial assistance is subject to the Coordination Regulations as well as Title VI guidelines and directives issued by DOJ.

On November 2, 1980, the President signed Executive Order 12250, which directed the Attorney General to oversee and coordinate the implementation and enforcement responsibilities of the federal agencies pursuant to Title VI. For the first time, and notwithstanding that no rules, regulations, or orders of general applicability “shall become effective unless and until approved by the President,” 42 U.S.C. § 2000d-1, the President delegated approval power over regulations to the Attorney General. Exec. Order No. 12250, at § 1-1. This Executive Order further charges the Attorney General with specific Title VI oversight responsibilities, which, with the exception of the approval of agency regulations implementing Title VI and the issuance of coordinating regulations, the Attorney General has delegated to the Assistant Attorney General for Civil Rights:

- Review existing and proposed rules, regulations, and orders of general applicability of the Executive agencies in order to identify those that are inadequate, unclear, or unnecessarily inconsistent (§ 1-202);
- Develop specific standards and procedures for taking enforcement actions and for conducting investigations and compliance reviews (§ 1-203);
- Issue guidelines for establishing reasonable time limits on efforts to secure voluntary compliance, on the initiation of sanctions, and for referral to DOJ of enforcement where there is noncompliance (§ 1-204);

² These regulations were amended slightly after the signing of Executive Order 12250 in 1980 to identify correctly the applicable Executive Order, but in substance they have not been changed since being issued in 1976.

- Establish and implement a schedule for the review of the agencies' regulations that implement Title VI and related statutes (§ 1-205);
- Establish guidelines and standards for the development of consistent and effective recordkeeping and reporting requirements for Executive agencies; for the sharing and exchange of agency compliance records, findings, and supporting documentation; for the development of comprehensive employee training programs; and for the development of cooperative programs with state and local agencies, including sharing of information, deferring of enforcement activities, and providing technical assistance (§ 1-206);
- Initiate cooperative programs between and among agencies, including the development of sample memoranda of understanding, designed to improve the coordination of Title VI and related statutes (§ 1-207).

Under the Attorney General's delegation, the Civil Rights Division is responsible for reviewing and providing clearance of subregulatory guidance interpreting Title VI. While each federal agency extending federal financial assistance has primary responsibility for implementing Title VI with respect to its recipients, overall coordination in identifying legal and operational standards, and ensuring consistent application and enforcement, rests with DOJ's Civil Rights Division. The section within the Civil Rights Division that provides Title VI assistance and oversight to agency civil rights offices is the Federal Coordination and Compliance Section (FCS).

The Civil Rights Division employs a variety of strategies for meeting its coordination mandate, some of which are discussed in more detail below.

1. Department of Justice Clearance Authority

Executive Order 12250 provides that the Attorney General must approve federal regulations that effectuate Title VI (and other civil rights statutes, including Title IX and Section 504). 42 U.S.C. § 2000d-1; Exec. Order No. 12250 at § 1-1. This includes the provisions of comprehensive regulations that govern, in part, a federal agency's Title VI implementation or enforcement. For example, if a federal agency drafts a rule governing administrative complaints, the rule is subject to DOJ clearance requirements to the extent it affects how Title VI may be enforced.

In addition, federal implementing directives (whether in the nature of regulations or implementing guidance) that agencies issue under any of the laws covered by Executive Order 12250 are "subject to the approval of the Attorney General, who

may require that some or all of them be submitted for approval before taking effect.” *Id.* § 1-402. These documents include regulations issued to effectuate statutes that “provide in whole or in part, that no person in the United States shall, on the ground of race, color, national origin, handicap, religion, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.” *Id.* § 1-201(d). The authority to review such guidance documents has been delegated to the Assistant Attorney General for Civil Rights. 28 C.F.R. § 0.51(a) (“The Assistant Attorney General in charge of the Civil Rights Division shall, except as reserved herein, exercise the authority vested in and perform the functions assigned to the Attorney General by Executive Order 12250 (‘Leadership and Coordination of Nondiscrimination Laws’”).

The DOJ clearance role is critical to its responsibility to ensure consistent and effective enforcement. Agencies should contact FCS early in the development of documents encompassed within the DOJ clearance requirements.

2. Legal and Policy Guidance

DOJ develops formal and informal guidance regarding implementation of Title VI, including legal interpretations of the statute and regulations. DOJ, including the Civil Rights Division, has issued guidance in a range of formats, including notice-and-comment rulemaking; directives; frequently asked questions; tips and tools documents; promising practices documents; and correspondence to federal agencies, recipients, or beneficiaries. These documents generally are sent directly to interested stakeholders and also made available online. Because of DOJ’s unique government-wide coordination function, such interpretations of Title VI are entitled to special deference from the courts. *See, e.g., United States v. Maricopa Cty.*, 915 F. Supp. 2d 1073, 1080 (D. Ariz. 2012) (citing *Consol. Rail Corp. v. Darrone*, 465 U.S. 624, 634 (1984); *Andrus v. Sierra Club*, 442 U.S. 347, 357-58 (1979)).³

³ Federal civil rights agency interpretations of their own Title VI regulations are entitled to “substantial deference” where they “reflect its ‘fair and considered judgment on the matter in question.’” *Biediger v. Quinnipiac Univ.*, 691 F.3d 85, 96-97 (2d Cir. 2012) (affording deference to U.S. Department of Education policy guidance interpreting Title IX); *see also Thomas Jefferson Univ. v. Shalala*, 512 U.S. 504, 512 (1994) (agency’s permissible interpretation of its own regulation normally “must be given controlling weight unless it is plainly erroneous or inconsistent with the regulation”); *T.E. v. Pine Bush Cent. Sch. Dist.*, No. 12-CV-2303 KMK, 2014 WL 5591066, at *18 (S.D.N.Y. Nov. 4, 2014) (“agency interpretations of ambiguities in an agency’s own regulation merit ‘substantial deference’”). Because multiple agencies provide federal financial assistance to a wide variety of recipients, many of which issue guidance and other similar documents, the coordination

DOJ's legal guidance review function plays a particularly important role in ensuring consistency of legal interpretation across the federal government. For example, where two agencies have conflicting interpretations of what constitutes federal financial assistance under Title VI, DOJ's coordination role authorizes it to determine the final government-wide position on the matter.

3. Legal Counsel and Technical Assistance

DOJ, through the Civil Rights Division's FCS, provides ongoing technical assistance, including legal and policy review, to federal funding agencies. On an almost daily basis, the FCS staff answers questions from staff working in other federal agencies. FCS also provides direct assistance to individual agencies, including legal or technical assistance on novel or complex investigations.

FCS also conducts periodic in-depth reviews of agency Title VI enforcement programs, including both Case Assistance Reviews (CAR) and Technical Assistance Reviews (TAR). Section 1-302 of Executive Order 12250 directs the Attorney General periodically to evaluate the implementation of the nondiscrimination provisions of the laws the Executive Order covers, including Title VI; advise the heads of the agencies concerned on the results of those evaluations; and provide recommendations for needed improvement in implementation or enforcement. A Title VI CAR involves a holistic assessment of an agency's administrative case docket in order to identify the critical enforcement matters requiring legal assistance and potential preparation for judicial enforcement, identify and develop solutions to any recurring barriers to effective enforcement, and inform the development of DOJ's technical assistance and training programs. A Title VI TAR is a focused assessment of selected aspects, functions, or issues concerning an agency's Title VI implementation and enforcement. A TAR is designed to yield helpful and practical recommendations to strengthen and improve an agency's Title VI enforcement. FCS undertakes both types of reviews cooperatively with the agency.

role delegated to the Civil Rights Division under 28 C.F.R. § 0.51(a) seeks to ensure consistent federal government interpretation of Title VI and other federal financial assistance statutes.

4. Coordination and Clearinghouse

When a complainant files a complaint either with multiple funding agencies that fund a particular recipient or a complaint that implicates multiple agencies, FCS sometimes coordinates the investigation. FCS's role may involve bringing together representatives from the various agencies to ensure that they approach and conduct their investigations in a consistent manner. In other instances, FCS may partner with an agency in an investigation. In addition, FCS has significant government-wide coordination responsibilities to act as a clearinghouse for review and referral of mail from the public; non-governmental organizations; federal, state, and local agencies; and others concerning civil rights matters. Agencies should contact FCS when they receive complaints as to which they do not have jurisdiction and do not know where the complaint should be forwarded.

DOJ also leads 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.

5. Oversight and Coordination

In implementing Executive Order 12250, DOJ periodically evaluates Title VI implementation as well as the implementation of the other nondiscrimination provisions of the laws that the Order covers. DOJ does this in a variety of ways, including requiring agencies that administer federal financial assistance to submit reports to FCS describing their past year's performance and upcoming plans to implement Title VI. DOJ also can request information on the major components of an agency's civil rights enforcement program, including budget and staffing for external civil rights activities, complaint investigations, pre-award and post-award compliance reviews, regulatory and policy development, outreach and technical assistance, and training. Pursuant to Executive Order 12250, Section 1-401, agencies must cooperate with any such requests. Information gathered in these reports plays an essential role in refining DOJ's coordination and compliance activities.

B. Judicial Enforcement of Title VI

DOJ also serves as the federal government's litigator. Title VI authorizes DOJ to enforce Title VI through the filing of civil actions. DOJ, on behalf of Executive

agencies, may seek injunctive relief, specific performance, or other remedies when agencies have referred determinations of recipients' noncompliance to DOJ for judicial enforcement. DOJ may also file statements of interest and amicus briefs regarding Title VI issues in private litigation. Litigation is assigned to DOJ's Civil Rights Division. In addition, DOJ is responsible for representing agency officials should they be named as defendants in private Title VI litigation.

A 1965 guidance, now codified at 28 C.F.R. § 50.3, specified that court enforcement may be obtained through the following:

- (1) a suit to obtain specific enforcement of assurances, covenants running with federally provided property, statements of compliance, or desegregation plans filed pursuant to agency regulations;
- (2) a suit to enforce compliance with other titles of the 1964 Act, other Civil Rights Acts, or constitutional or statutory provisions requiring nondiscrimination; and
- (3) initiation of or intervention or other participation in, a suit for other relief designed to secure performance.

31 Fed. Reg. 5292, 5292 (Apr. 2, 1966).⁴ In subsequent regulations, agencies were directed, upon failure to obtain voluntary compliance from a noncomplying program or activity, to "initiate appropriate enforcement procedures" in accordance with the 1965 Title VI guidelines. 41 Fed. Reg. 52,669 (Dec. 1, 1976) (now codified at 28 C.F.R. § 42.411). In this regard, the Coordination Regulations direct agencies to advise DOJ if they are unable to achieve voluntary compliance and to request that DOJ assist in seeking resolution of the matter. *Id.* § 42.411(a). Agencies should submit Title VI and other civil rights matters for litigation if they cannot be resolved administratively (that is, when the agency determines that informal resolution or fund termination is not a viable solution). FCS provides assistance to agencies in making determinations of noncompliance, including providing pre-enforcement legal counsel when it appears it may be difficult to obtain a voluntary resolution.

⁴ In the 1965 guidance, the Department identified three alternative measures that could be undertaken to secure compliance: (1) court enforcement, including "initiation of or intervention or other participation in, a suit for other relief designed to secure performance;" (2) administrative action; and (3) other efforts to induce voluntary compliance. *Id.*

IV: INTERPLAY OF TITLE VI WITH TITLE IX, SECTION 504, THE FOURTEENTH AMENDMENT, AND TITLE VII

Title VI prohibits discrimination based on race, color, or national origin in programs and activities receiving federal financial assistance. Specifically, Title VI provides 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.

42 U.S.C. § 2000d. Title VI served as the model for several subsequently promulgated statutes that prohibit discrimination on other grounds in federally assisted programs or activities, including Title IX (sex discrimination in education programs) and Section 504 (disability discrimination). *See U.S. Dep't of Transp. v. Paralyzed Veterans of Am.*, 477 U.S. 597, 600 n.4 (1986); *Grove City Coll. v. Bell*, 465 U.S. 555, 566 (1984) (Title IX was patterned after Title VI); *Consol. Rail Corp. v. Darrone*, 465 U.S. 624 (1984) (Section 504 patterned after Titles VI and IX).¹ Accordingly, courts have “relied on case law interpreting Title VI as generally applicable to later statutes.” *Paralyzed Veterans*, 477 U.S. at 600 n.4.

The three statutes do not treat all issues identically. For example, Title VI statutorily restricts claims of employment discrimination to instances where a “primary objective” of the financial assistance is to provide employment. 42 U.S.C. § 2000d-3. An employment discrimination claim against a recipient of federal financial assistance that otherwise might raise a Title VI issue must be brought under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., if a “primary objective” is not employment. No such restriction applies to Title IX or Section 504. *See N. Haven Bd. of Educ. v. Bell*, 456 U.S. 512, 530 (1982) (“[T]he legislative history thus corroborates our reading of the statutory language and verifies the Court of Appeals’ conclusion that employment discrimination comes within the prohibition of Title IX.”); *Bentley v. Cleveland Cty. Bd. of Comm’rs*, 41 F.3d 600 (10th Cir. 1994) (Section 504 claim alleging discriminatory termination of former employee).

¹ In addition, Title II of the Americans with Disabilities Act of 1990, as amended, uses Title VI enforcement procedures through reference to the process noted in Section 504. 42 U.S.C. § 12131.

Courts also have held that Title VI adopts or follows the Fourteenth Amendment's standard of proof for intentional discrimination, *see Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265, 412-18 (1978); and, generally, the Title VII standard of proof for disparate impact. *See Guardians Ass'n v. Civil Serv. Comm'n of City of New York*, 463 U.S. 582, 639 (1983); *Elston v. Talladega Cty. Bd. of Educ.*, 997 F.2d 1394, 1405 n.11, 1407 n.14 (11th Cir. 1993) (*see, infra*, Section V, ch. 1). Accordingly, cases under these constitutional and statutory provisions may shed light on the Title VI analysis in a given situation.

Finally, cases decided under Title VIII of the Civil Rights Act of 1968, the Fair Housing Act, 42 U.S.C. § 3601 et seq., may also be instructive regarding the disparate impact analysis under Title VI.