Office of the Attorney General

Washington, D.C. 20530

September 27, 2010

2010-AGF-CL-00035

MEMORANDUM: FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES PROVIDING FEDERAL FINANCIAL ASSISTANCE

FROM: THE ATTORNEY GENERAL

SUBJECT: Enforcement of Nondiscrimination Laws in Programs and Activities that Receive American Recovery and Reinvestment Act Funding

Since the enactment of the American Recovery and Reinvestment Act of 2009 (Recovery Act), the federal government has distributed a large number of federal grants as part of the effort to stimulate the American economy. The federal government has an ongoing responsibility to ensure that all Americans receive the benefit of programs and activities that receive federal financial assistance.[1]

Pursuant to Executive Order 12250, the Department of Justice (DOJ) has taken a number of steps to ensure that federal agencies are effectively fulfilling their obligation to enforce statutes that prohibit discrimination in programs or activities that receive Recovery Act funds. Under the Executive Order, DOJ is charged with ensuring the consistent and effective enforcement of Title VI of the Civil Rights Act of 1964 (prohibiting discrimination on the basis of race, color, and national origin, including with respect to language access for limited English proficient persons), Section 504 of the Rehabilitation Act of 1973 (prohibiting discrimination on the basis of disability), Title IX of the Education Amendments Act of 1972 (prohibiting gender discrimination in education and training programs), and a variety of program-specific statutes that prohibit discrimination in federally funded programs.

Because these prohibitions apply to recipients of Recovery Act funding, it is imperative that federal agencies ensure that grant recipients do not discriminate. Indeed, on April 3, 2009, the Office of Management and Budget issued Updated Implementing Guidance for the American Recovery and Reinvestment Act of 2009, stating that "agencies should encourage recipients to implement best practices for ensuring that all individuals – regardless of race, gender, age, and national origin – benefit from the Recovery Act."

[1] This Memorandum does not extend to federal contracting, which is not covered under Executive Order 12250. However, federal contractors receiving Recovery Act funds may be covered by Executive Order 11246, Section 503 of the Rehabilitation Act of 1973, and the Vietnam Veterans Readjustment Act of 1974 (VEVRAA). The Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) enforces these and other requirements related to federal contract compliance. *See* http://www.dol.gov/ofcc/arra_web.html.

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Federal agencies have done an outstanding job delivering funds to recipients as quickly as possible, in order to achieve the Recovery Act's purpose of further stimulating the economy and creating jobs. There are, however, steps that federal agencies can take to encourage nondiscrimination in Recovery Act funded programs. As an initial step, federal agencies should examine their current practices for ensuring nondiscrimination in Recovery Act funded programs, and evaluate whether these are effective at detecting and deterring discriminatory conduct. As they oversee and distribute funds, agencies should examine their practices to ensure that the benefits of these economic stimulus programs are distributed in a nondiscriminatory manner. Specifically, agencies should take necessary steps to ensure that this money is spent in a manner that does not exclude, or otherwise discriminate against, any individual in violation of Title VI, Title IX, or Section 504. None of these efforts will require new regulatory initiatives. Existing regulations that permit agencies to enforce Title VI, Title IX, and Section 504 should let us do the job. Federal agencies should consider the following approaches:

- Federal funding agencies should post prominent notices on their websites concerning the applicability of Title VI, Title IX, and Section 504 to projects funded by the Recovery Act.
- Federal agencies should require recipients to adhere to the terms of their civil rights assurances and other agreements, including any provisions pertaining to the collection and analysis of racial and ethnic data.
- Federal agencies should utilize readily available data, such as census data, through demographic mapping and other technologies, to identify situations in which racially or ethnically identifiable communities may be harmed by, or excluded from the benefits of, a Recovery Act funded project. Such circumstances may warrant pre- or post-award compliance reviews or technical assistance to applicants and recipients of Recovery Act funding.

Pursuant to the DOJ Title VI Coordination Regulation, 28 C.F.R. § 42.412, I have delegated to the Civil Rights Division my authority to promulgate directives to federal agencies to ensure that federal agencies carry out their responsibilities to vigorously enforce these statutes. I have instructed the Civil Rights Division to utilize its oversight authority fully and to assist agencies in achieving nondiscrimination. This may include information sharing, training, targeted partnerships, and the provision of technical assistance on data collection and other topics pertinent to civil rights enforcement.

In the coming weeks, staff in the Civil Rights Division's Federal Coordination and Compliance Section (FCS) will reach out to their agency counterparts to discuss current practices for enforcing the prohibitions of Title VI, Title IX, and Section 504. I urge you to share periodically with FCS any initiatives for enforcing grant-related civil rights laws or new approaches that you have adopted, as well as any substantial Recovery Act case developments. Moreover, in accordance with the Guidelines for the Enforcement of Title VI, 28 C.F.R, § 50.3, and the DOJ Title VI Coordination Regulation, 28 C.F.R. § 42.407(d), you should discuss with

FCS any potential refusals and terminations of assistance or formal enforcement actions under consideration.

I look forward to working with you to further strengthen and improve enforcement of civil rights laws throughout the nation. The economic stimulus initiative presents us with a unique opportunity and obligation to ensure that federal dollars are spent in a manner that is consistent with our nation's civil rights laws. Thank you for your continued partnership in this critically important endeavor.

If you have any questions, please call Christine Stoneman, Special Legal Counsel in the Federal Coordination and Compliance Section of the Civil Rights Division at (202) 616-6744.