



Homeland Security

Summary and Conclusions of DHS Review Pursuant to Section 20(b) of Executive Order 14074, Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety

Introduction

Section 20(b)(ii) of Executive Order (EO) 14074, *Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety*, requires the Department of Homeland Security (DHS) to make the conclusions of its review of its implementation and administrative enforcement of Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. 2000d *et seq.*, as directed by EO 14074, Section 20(b)(i), publicly available, as appropriate. The following information is provided to satisfy this requirement.

Overview of Review

Purpose of Review

On May 25, 2022, President Biden issued EO 14074 on *Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety*. The Executive Order sets forth a series of executive actions to “strengthen public safety and the bonds of trust between law enforcement and the community and build a criminal justice system that respects the dignity and equality of all in America.” DHS is responsible for implementing over 30 executive actions as part of the EO, including conducting a review as outlined in Section 20(b) – similar to a review conducted by the Department of Justice of its implementation and administrative enforcement of Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. 2000d *et seq.*, and of the nondiscrimination provisions of the Omnibus Crime Control and Safe Streets Act of 1968 (Safe Streets Act), 34 U.S.C. 10228.¹ This review covered DHS’s law enforcement-related grantmaking operations to ensure the Department provides sufficient oversight and accountability regarding implementation and administrative enforcement of Title VI.

Section 20(b) states:

¹ DHS does not enforce the Safe Streets Act.

(i) Within 30 days of the date of this order, and consistent with any other applicable guidance issued by the Attorney General, the head of every other Federal agency that provides grants to State, local, and territorial [Law Enforcement Agencies] (LEAs)] shall commence a [review similar to the U.S. Department of Justice review] of its law enforcement-related grantmaking operations and the activities of its grant recipients.

(ii) Within 180 days of the date of this order, the head of each Federal agency that provides grants to State, local, and territorial LEAs shall submit to the Assistant Attorney General for the Civil Rights Division of the [Department of Justice (DOJ)], for review under Executive Order 12250 of November 2, 1980 (Leadership and Coordination of Nondiscrimination Laws), a report of its review conducted pursuant to subsection (b)(i) of this section, including its conclusions and recommendations. Within 30 days following such review and clearance from the DOJ pursuant to this subsection, the head of each such agency shall make the conclusions of its review publicly available, as appropriate.

Within DHS, the Office for State and Local Law Enforcement (OSLLE) was charged with leading implementation of Section 20(b). OSLLE provides the Department with primary coordination, liaison, and advocacy for state, local, tribal, territorial, and campus LEAs. In leading this review, OSLLE worked in partnership with the DHS Office for Civil Rights and Civil Liberties (CRCL) and the Federal Emergency Management Agency (FEMA). CRCL integrates civil rights and civil liberties protections into DHS programs and activities and has delegated authority from the Secretary of Homeland Security to ensure compliance with Title VI in DHS recipient programs and activities. FEMA administers the majority of grants at DHS for which LEAs are eligible. Additionally, FEMA's Office of Equal Rights (OER), External Civil Rights Division contributed to DHS's Section 20(b) review and is responsible for ensuring recipients of FEMA financial assistance comply with civil rights obligations in connection with their public-facing programs and services.

Other DHS agencies and offices participating in or contributing to the Section 20(b) review include the Financial Assistance and Policy Oversight Office (FAPO), which is responsible for providing oversight, to include the issuance of policy, for all DHS financial assistance programs; and the Grants and Financial Assistance Division (GFAD), which administers cooperative agreement awards with several LEAs. Both FAPO and GFAD are within the DHS Management Directorate.

In conducting its 20(b) review, DHS held listening sessions in late 2022 with stakeholders from law enforcement, civil rights and civil liberties, and grant recipient communities to receive feedback.

Pursuant to the EO, DHS conducted its 20(b) review and submitted a report of its findings and conclusions to the Department of Justice, Civil Rights Division for review and clearance on March 13, 2023. The Department of Justice, Civil Rights Division granted clearance of DHS's report on March 17, 2023.

Focus Areas of Review

In conducting its review under Section 20(b)(ii), DHS examined: (1) the types of grants and other financial assistance DHS provides to LEAs, whether as recipients or subrecipients; (2) the extent to which that information is identified and tracked; and (3) existing mechanisms within DHS to ensure LEA recipients comply with Title VI and other non-discrimination laws, with a particular focus on the DHS Civil Rights Evaluation Tool, which is the Department's data collection and technical assistance tool that recipients are required to complete and submit with their nondiscrimination policies and other related information.

DHS Implementation and Enforcement of Title VI and Other Non-Discrimination Authorities

Title VI and other Applicable Laws

Title VI prohibits recipients of Federal financial assistance from discriminating against any person in the United States on the basis of race, color, or national origin in the provision of services.

Through Delegation 19003², CRCL has responsibility for ensuring that all DHS Federally-assisted programs or activities (e.g., grant programs, and other types of Federal assistance) are administered in accordance with Title VI and other civil rights authorities, including Section 504 of the Rehabilitation Act of 1973³ (prohibiting discrimination based on disability in programs or activities receiving Federal financial assistance and in any program or activity conducted by an Executive agency), Title IX of the Education Amendments Act of 1972⁴ (prohibiting discrimination based on sex in education programs and activities receiving Federal financial assistance), the Age Discrimination Act of 1975⁵ (prohibiting discrimination based on age in programs and activities receiving Federal financial assistance), and DHS regulation at 6 CFR Part 19 (prohibiting discrimination based on religion in social service programs administered by DHS).

The DHS Title VI implementing regulation, 6 CFR Part 21, *Nondiscrimination on the Basis of Race, Color, or National Origin in Programs or Activities Receiving Federal Financial Assistance from the Department of Homeland Security*, requires that recipients of DHS financial assistance carry out their programs and activities in a nondiscriminatory manner and maintain and furnish compliance information as determined necessary by DHS to ascertain compliance.

CRCL coordinates with FEMA and other DHS agencies that administer grants and other types of financial assistance to ensure that recipients understand and can meet their civil rights

² Delegation to the Officer for Civil Rights and Civil Liberties for Matters Involving Civil Rights and Civil Liberties, including Equal Employment Opportunity and Workplace Diversity, 10/26/2012).

³ 29 U.S.C. § 794

⁴ 20 U.S.C. §§ 1681–1688

⁵ [42 U.S.C. § 6101](#) *et seq.*

obligations.⁶ Within CRCL, compliance and enforcement activities under Title VI and other Federally assisted nondiscrimination authorities are carried out by the Antidiscrimination Group Section in CRCL's Programs Branch. The Department's Title VI Coordinator is a senior policy advisor working in this section of CRCL.

FEMA ensures that FEMA-assisted programs are carried out without discrimination under various authorities, including Title VI and the nondiscrimination provision of the Robert T. Stafford Disaster Relief and Emergency Assistance Act.⁷ The FEMA Title VI implementing regulation, *Nondiscrimination in Federally-Assisted Programs*, 44 CFR Part 7, predates the DHS Title VI regulation and requires FEMA recipients to carry out their programs and activities in a nondiscriminatory manner and maintain and furnish compliance information as determined necessary to ascertain compliance. Responsibilities within FEMA for compliance and enforcement activities under Title VI are carried out by FEMA OER.

DHS Title VI Oversight in Grantmaking

DHS identified and reviewed existing oversight and compliance mechanisms within the Department to support recipient LEAs' compliance with Title VI and other nondiscrimination authorities. Mechanisms in DHS that support such compliance include:

- Grant Terms and Conditions/Assurances⁸
- Data Collection Tool (Civil Rights Evaluation Tool) and related Technical Assistance
- Policy, Guidance, and Resources
- Other Technical Assistance and Training (including monthly webinars to recipients)
- Compliance Reviews
- Complaint Investigations
- Outreach to Program Beneficiaries and Stakeholders
- Intra and Interagency Coordination

Civil Rights Data Collection and Technical Assistance: DHS Civil Rights Evaluation Tool Program

The DHS Civil Rights Evaluation Tool (CRET) is a two-page data collection instrument and technical assistance tool designed to assist recipients, as defined in 2.CFR Part 200, in understanding and meeting their civil rights obligations. DHS began implementing the tool in April 2018 after receiving approval from the Office of Management and Budget.

⁶ FEMA, the U.S. Coast Guard (USCG), and GFAD have grantmaking authority in DHS. Information about DHS grants, including grants to LEAs, can be found at [USAspending](#).

⁷ Section 308 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5151 (Nondiscrimination in disaster assistance). Section 308 is implemented in FEMA regulations at 44 CFR § 206.11.

⁸ Grant recipients, when accepting an award of assistance from DHS, including its awarding agencies, agree to comply with the applicable Federal nondiscrimination laws as part of the terms and conditions of award. The Fiscal Year 2022 Standard Terms and Conditions can be found at [DHS Standard Terms and Conditions | Homeland Security](#).

All recipients of DHS financial assistance are required to complete the CRET within 30 days of notice of award.⁹ Through the CRET submission process, recipients provide data on their civil rights complaints, policies, and procedures to CRCL. CRCL, in coordination with FEMA OER, reviews the data and provides detailed feedback and technical assistance to recipients on addressing any gaps and establishing or improving basic civil rights policies and procedures related to nondiscrimination in their programs and activities.

DHS recipients are required to complete the tool once every two years from the date they last submitted the tool (if DHS financial assistance is continuing).

The CRET has five sections: Section 1-Instructions; Section 2-Organization Information; Section 3-Civil Rights Requirements; Section 4-Required Information; and Section 5-Additional Information.

Figure 1 Section 4-Required Information, requests eight items as shown in the following chart¹⁰:

Section 4: Required Information	
1.	<p>Provide the total number of complaints or lawsuits against the recipient during the past three years alleging discrimination on the basis of race, color or national origin (including limited English proficiency), sex, age, disability, religion, or alleging retaliation. For each complaint or lawsuit, state the following:</p> <ul style="list-style-type: none"> a. Employment or non-employment related; b. Basis (race; color; national origin, including limited English proficiency; sex; age; disability; religion); or alleging retaliation; and c. Status (pending, closed with findings, closed with no findings). <p>Additionally, if a court or administrative agency made a finding of discrimination in a non-employment complaint for the above three (3) years, forward a copy of the complaint and findings to DHS.</p> <p>Responses should not include personally identifiable information (PII) that is outside of public record. PII is any information that permits the identity of an individual to be directly or indirectly inferred, including any information which is linked or linkable to an individual.</p>
2.	<p>Provide a brief description of any civil rights compliance reviews regarding the recipient conducted during the two (2) year period before this award of DHS Federal financial assistance.</p>
3.	<p>Provide a statement affirming that staff has been designated to coordinate and carry out the responsibilities for compliance with civil rights laws, and a description of the responsibilities of any such staff.</p>

⁹ Subrecipients are not required to complete or submit the tool. However, recipients are required to monitor their subrecipients' compliance with Title VI and other civil rights requirements as subrecipients have the same obligations to comply with applicable civil rights requirements.

¹⁰ The Civil Rights Evaluation Tool can be found at [DHS Civil Rights Evaluation Tool | Homeland Security](#).

4.	Provide a copy of the recipient's nondiscrimination policy statement referencing the laws and regulations in Section 3.
5.	Provide a copy of the recipient's discrimination complaints process.
6.	Provide a copy of the recipient's plan to ensure compliance in subrecipient programs (only applies to state administering agencies and other recipients that provide assistance to subrecipients). The plan should describe the process for conducting reviews of subrecipients.
7.	Provide copies of the recipient's policy and procedures used to ensure nondiscrimination and equal opportunity for persons with disabilities to participate in and benefit from the recipient's programs and services.
8.	Provide copies of the recipient's policy and procedures regarding the requirement to provide meaningful access to programs and services to individuals with limited English proficiency (LEP).

Summary and Conclusions

Following its review, DHS identified opportunities to enhance its Title VI oversight in a number of ways, including through: improved compliance with the requirement to submit the CRET; enhancements to civil rights compliance and enforcement processes; increased technical assistance provided to LEAs regarding civil rights; greater intra- and interagency coordination; more robust stakeholder engagement and transparency about Title VI processes; integration of civil rights considerations and requirements in grant monitoring protocols; improved tracking of financial assistance to subrecipient LEAs; and further analysis to determine what improvements are needed to improve tracking of financial assistance in the form of donations or grants of DHS property, sale and lease of, or permission to use, DHS property at below market value, training, donation or use of equipment, details, or loans of DHS personnel.

The review—the first of its kind in DHS—revealed opportunities to address gaps related to data and information about DHS recipients and subrecipients, such as the ability to retrieve automated data on grant recipients and subrecipients by type of organization. Additionally, the review made apparent that strengthening or introducing certain practices and procedures could better support Title VI oversight and compliance with respect to LEAs. These opportunities, grouped in eight areas, are:

1. DHS Civil Rights Evaluation Tool

- Increase communication with all LEA recipients about the requirement to complete the CRET.
- Promote the monthly webinars hosted by CRCL on the CRET to all LEA recipients.
- Create technical assistance materials for recipients on developing and implementing their subrecipient monitoring plans to ensure compliance with Title VI and other Federal civil rights obligations in their subrecipients' programs.
- Consider forming a dedicated team within CRCL primarily responsible for providing technical assistance to LEA recipients on the CRET.

2. Compliance and Enforcement Processes

- Develop standard criteria and update procedures regarding conducting compliance reviews of DHS recipients and subrecipients.
- Explore potential enhanced mechanisms to enforce the requirement in the DHS Standard Terms and Conditions that recipients complete and submit the CRET.
- Examine the potential for developing an improved mechanism for the identification of categories or types of subrecipients (including LEAs).
- Enhance efforts to integrate Title VI considerations into CRCL's oversight activities related to the 287(g) Program.

3. Targeted Technical Assistance to LEAs

- Invite LEA subrecipients to monthly webinars delivered by CRCL on the CRET.
- Develop and provide tailored technical assistance to LEAs about Title VI and other Federal civil rights obligations, including the requirement to ensure subrecipients comply with Title VI and other Federal civil rights obligations.
- Enhance training and technical assistance regarding Title VI to LEA recipients, including but not limited to, training and targeted technical assistance on the provision of language access.

4. Intra-Agency Coordination

- Enhance information sharing between CRCL and DHS grant-making agencies about LEAs and other recipients that have (and have not) completed the CRET to improve grant monitoring related to Title VI and other Federal civil rights obligations.

5. Inter-Agency Coordination

- Improve coordination with DOJ to share responsibilities for Title VI oversight of those LEA recipients receiving financial assistance from both DHS and DOJ to leverage the agencies' respective authorities and to avoid duplication of efforts and/or burdens on recipients.

6. Stakeholder Engagement

- Regularly engage stakeholders, including civil rights and civil liberties stakeholders and LEA recipients and subrecipients, to provide information about Title VI oversight mechanisms and activities and receive feedback and their perspectives on LEA recipients' and subrecipients' compliance with Title VI.
- Explore methods to achieve greater transparency to recipients and the public about how the Department conducts its enforcement work under Title VI and other civil rights authorities, including by making additional information publicly available on DHS external webpages.
- Review the responses to a DOJ Request for Information to be published in the Federal Register that is expected to solicit the public's feedback on DOJ's efforts to ensure compliance with Title VI and the nondiscrimination provisions of the Safe Streets Act and consider how this input can be incorporated into DHS Title VI oversight programs.

7. Compliance Monitoring for Grants

- Review existing procedures and practices for compliance to ensure inclusion of effective and efficient monitoring of LEA recipients' compliance with Title VI and other civil rights obligations.

8. Tracking other Forms of Financial Assistance

- Conduct further analysis to determine what improvements are needed within DHS to improve identification and tracking of the provision of other types of Federal financial assistance to LEA recipients and subrecipients in the form of the sale or lease of, or permission to use DHS property at below market value; training; donations or use of equipment; and/or details or loans of DHS personnel.