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Sequence Number: 03-48-10
Notice ID(s): 1241 – 1244
File Date: 03/30/2010

Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204. For questions and copies of the notice, contact the person listed below.

Agency/Board/Commission:	Tennessee Human Rights Commission
Division:	Title VI Compliance Program
Contact Person:	M. J. Thomas, Director
Address:	710 James Robertson Parkway, Suite 100, Nashville, Tennessee 37243-1219
Phone:	(615) 741-5825 or 800-251-3589
Email:	Marcus.Thomas@tn.gov

Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

ADA Contact:	M. J. Thomas, Director
Address:	710 James Robertson Parkway, Suite 100, Nashville, Tennessee 37243-1219
Phone:	(615) 741-5825 or 800-251-3589
Email:	Marcus.Thomas@tn.gov

Hearing Locations

Address 1:	Tennessee Human Rights Commission (Central Office)	
Address 2:	~~710 James Robertson Parkway, Suite 100~~	
City:	Nashville, Tennessee	
Zip:	37243-1219	
Hearing Date :	05/25/10	
Hearing Time:	9:00 a.m.	__x_CST ___EST

The location for the Nashville hearing has been changed to TN Twrs., OIR Training Ctr. (Cheatham Room), 3rd Fl., 312 Rosa Parks Blvd, Nashville, TN.

Address 1:	Jackson-Madison County Library	
Address 2:	433 E. Lafayette Street	
City:	Jackson, TN	
Zip:	38301	
Hearing Date :	05/27/10	
Hearing Time:	10:30 a.m.	__x_CST ___EST

Address 1:	531 Henley Street, Suite 701 (next door to Holiday Inn)		
Address 2:	Large conference room		
City:	Knoxville, TN		
Zip:	37902		
Hearing Date :	06/03/10		
Hearing Time:	1:30 p.m.	___CST __x__EST	

Additional Hearing Information:

For a copy of this notice of rulemaking hearing, contact: M. J. Thomas, Tennessee Human Rights Commission, 710 James Robertson Parkway, Suite 100, Nashville, Tennessee 37243-1219, and (615) 741-5825 or (800) 251-3589 or FAX 253-1886.

An initial set of draft rules has been prepared for public review and comment. The draft rules are available for review on the Commission's web site under "Title VI Compliance Program," "Title VI Links" at http://tn.gov/humanrights/title_VI/title_VI.html . They are also available for review at the Nashville Central Office (see address below). The office hours are from 8:00 AM to 4:30 PM, Monday through Friday (excluding holidays).

Tennessee Human Rights Commission
Central Office
Andrew Johnson Tower
710 James Robertson Parkway, Suite 100
Nashville, TN 37243-1219

Oral or written comments are invited at the hearing. In addition, written comments may be submitted prior to or after the public hearing to: Tennessee Human Rights Commission, Title VI Compliance Program, Attention: M. J. Thomas, 710 James Robertson Parkway, Suite 100, Nashville, TN 37243-1219; telephone 615-741-5825 or (800) 251-3589 or FAX 615-253-1886. However, such written comments must be received by the Commission no later than 4:30 PM CST, June 15, 2010, in order to assure consideration.

Revision Type (check all that apply):

___ Amendment
_x_ New
_x_ Repeal

Rule(s) (**ALL** chapters and rules contained in filing must be listed. If needed, copy and paste additional tables to accommodate more than one chapter. Please enter only **ONE** Rule Number/Rule Title per row.)

Chapter Number	**Chapter Title**
1500-01-01	General Provisions
Rule Number	**Rule Title**
1500-01-01-.01	Purpose
1500-01-01-.02	Filing of Reports and Preservation of Records
1500-01-01-.03	Construction and Amendment of Commission Rules
1500-01-01-.04	Incorporation of Federal Guidelines

Chapter Number	Chapter Title
1500-01-02	Employment, Public Accommodation and Housing Complaints
Rule Number	**Rule Title**
1500-01-02-.01	Practice and Procedure
1500-01-02-.02	Investigation and Conciliation
1500-01-02-.03	Commission Hearings
1500-01-02-.04	Orders Issued by the Commission
1500-01-02-.05	Guidelines for Advertisement

Chapter Number	Chapter Title
1500-01-03	Title VI Compliance Program
Rule Number	**Rule Title**
1500-01-03-.01	Application
1500-01-03-.02	Definitions
1500-01-03-.03	Discrimination Prohibited
1500-01-03-.04	Assurance Required
1500-01-03-.05	Compliance
1500-01-03-.06	Conduct of Investigations
1500-01-03-.07	Coordination and Training
1500-01-03-.08	Monitoring

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to http://state.tn.us/sos/rules/1360/1360.htm)

Repeal

Chapter 1500-01, Rules for Acting Upon Complaints of Discrimination, is repealed in its entirety.

Authority: T.C.A. §§ 4-5-202 et seq. and 4-21-202.

New Rules

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1500-01
Rules for Acting Upon Complaints of Discrimination

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1500-01-02 Employment, Public Accommodation and Housing Complaints

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1500-01-01 General Provisions

1500-01-01.01 Purpose.

The purpose of the following rules is to establish a uniform system for the administration and handling of complaints of discrimination made to the Tennessee Human Rights Commission (THRC). The rules establish guidelines for the Commission, the Commission's staff, employers, housing providers, real estate brokers, salespersons or operators, financial institutions, persons owning or operating places of public accommodation, resort or amusement, and state departments and agencies subject to Title VI of the Civil Rights Act of 1964 (Title VI). These rules are subject to any superseding federal or state law and are not to be construed as limiting the rule of the Commission in other areas.

Authority: T.C.A. § 4-21-202.

1500-01-01-.02 Filing of Reports and Preservation of Records

(1) Filing of Reports. The Commission may require employers, employment agencies, and labor organizations in the State of Tennessee subject to Tennessee Code Annotated, Title 4, Chapter 21, Tennessee Code Annotated, Title 8, Chapter 50, Section 103 and/or subject to the Federal Civil Rights Act of 1964, 42 USC Section 2000e as amended, to file the appropriate standard employment information reports (i.e., Employer's Information Reports [EEO1]) to the offices designated by the Commission on an annual basis.

(2) The Commission reserves the right to require reports about the employment practices of individual employers or groups of employers whenever such information has not been furnished to the U.S. Equal Employment Opportunity Commission or to the Tennessee Human Rights Commission as prescribed by the law and the rules and regulations of the two (2) Commissions. In connection with the investigation of a complaint, the Commission reserves the right to require an employer to provide such information that has not been received by the Commission whose information is more than six (6) months out-of-date. Where the appropriate Equal Employment Opportunity form job categories or the appropriate THRC form job categories do not provide a breakdown descriptive of the employer's actual job categories, the Commission may require a more descriptive work force breakdown.

(3) The provisions respecting confidentiality of information contained in Section 709(e) of the U.S. Civil Rights Act of 1964, T.C.A. § 10-7-504, T.C.A. § 4-21-303(d), 29 CFR Parts 1601.22 and 1601.26 shall be observed by all Commissioners and Commission staff of the Tennessee Human Rights Commission.

(a) The Commission's complaint files, investigative files, and complaint record-keeping system shall be confidential, except that the Commission shall make the investigative file available to the complainant, the respondent, their attorneys, and any state or federal law enforcement agency seeking to enforce anti-discrimination statutes, upon written request and after legal review. The identity of individuals interviewed as witnesses shall remain confidential except when the disclosure of their identity becomes necessary at the time of public hearing. The Commission may charge a reasonable fee for any copies made pursuant to a file copy request.

(b) Review and removal of confidential material from investigative files provided to parties or their attorneys shall be conducted or supervised by a Commission staff attorney and shall be conducted in a manner to protect the privacy of all involved parties and non-parties. Material to be removed shall include, but shall not be limited to, confidential witness information; intra-Commission notes; memoranda or other items which would reveal recommendations, impressions, strategy, or deliberative process relating to the investigation, settlement or litigation; credit reports; arrest and/or conviction records; and all attorney work product. All sensitive medical information and sensitive personnel file information concerning the complainant or others, provided by persons other than the party requesting the file and which is not relevant to the issues raised in the charge, shall be removed. Where such information concerning persons other than the complainant is relevant to the issues raised in the charge, names and other identifying information shall be redacted before disclosure in order to protect the persons' privacy.

(c) The Executive Director, or Commission staff member designated by the Executive Director, is authorized and empowered to certify all documents or records which are a part of the files and records of the Commission.

(4) Any personnel or employment record made or kept by an employer (including, but not limited to, application forms submitted by applicants; other records having to do with hiring, promotion, demotion, transfer, layoff or termination; rates of pay or other terms of compensation; and selection for training or apprenticeship) shall be preserved by the employer for a period of six (6) months from the date of the making of the record or termination of an employee. The personnel records of an individual terminated shall be kept for a period of six (6) months from the date of the making of the record or termination of an employee. Where a complaint of discrimination has been filed, the respondent employer shall preserve all personnel records relevant to the complainant until final disposition of the complaint. The term "personnel records relevant to the complaint," includes, but is not limited to, personnel or employment records relating to the complainant and to all other employees holding positions similar to that held or sought by the complainant, as well as application forms or test papers completed by an unsuccessful applicant or by all other candidates for the same position as that for which the complainant applied and was rejected. The date of "final disposition of the complaint" means the date of the statutory period within which the complainant, the intervenor, or the Commission may bring an action in chancery or circuit court, or the date on which such litigation is terminated, whichever is later.

(5) If a person fails to make, keep, or preserve records or make reports in accordance with these regulations, the Commission may seek an order requiring compliance from chancery or circuit court.

(6) The Commission may require all employers, labor unions, and employment agencies subject to the jurisdiction of the EEOC to file a duplicate of information furnished to EEOC with the Commission for whichever reporting interval required of them by EEOC.

(7) Any record made or kept by real estate brokers, salespersons, or operators, and financial institutions, (including, but not limited to, application forms submitted by applicants; leases; rental payment histories; loan agreements and terms thereto; credit reports; complaints and lease violations; and other records having to do with the provision of housing) shall be preserved by the real estate brokers, salespersons, or operators, and financial institutions for a period of six (6) months from the date of the making of the record or the termination of a lease or loan agreement. The records of an evicted individual or an individual denied a housing opportunity shall be kept for a period of six (6) months from the date of the making of the record or the denial of the opportunity. When a complaint of discrimination has been filed, the respondent real estate brokers, salespersons, or operators, and financial institutions shall preserve all housing records relevant to the complainant until final disposition of the complaint. The term "housing records relevant to the complaint," includes, but is not limited to, application or housing records relating to the complainant and to all other applicants or tenants holding or seeking opportunities similar to that held or sought by the complainant, as well as application forms or papers completed by an unsuccessful applicant or by all other applicants for the same opportunity as that for which the complainant applied and was rejected. The date of "final disposition of the complaint" means the date of the statutory period within which the complainant, the intervenor, or the Commission may bring an action in chancery or circuit court, or the date on which such litigation is terminated, whichever is later.

Authority: T.C.A. §§ 4-21-202, 4-21-303, 4-21-308, and 10-7-504.

1500-01-01-.03 Construction and Amendment of Commission Rules

(1) Availability of rules. The rules and regulations of the Commission and any amendments, additions, or modifications thereof, shall be available to the public at any office of the Commission and at the office of the Tennessee Secretary of State.

(2) Construction of rules and pleadings.

(a) These rules and regulations shall be liberally construed to effectuate the purposes and provisions of Tennessee Code Annotated, Title 4, Chapter 21, and the policies of the Tennessee Human Rights Commission.

(b) All pleadings shall be liberally construed with a view to effect justice between the parties.

(3) Amendment of Rules. New rules may be adopted and any rule may be amended or rescinded by the Commission at a regular or special meeting, provided that notice of the proposed adoption, amendment, or rescission has been given in writing to all members of the Commission at least ten (10) days before the meeting at which action is to be taken. Such ten (10) days notice shall not be required when two-thirds of the membership of the Commission approves in writing any such adoption, amendment, or rescission. All such amendments and the process for amending Commission rules shall comply with Tennessee statutes governing the amendment of Tennessee Administrative Regulations, Tennessee Code Annotated, Title 4, Chapter 5.

Authority: T.C.A. § 4-21-202.

1500-01-01-.04 Incorporation of Federal Guidelines

(1) The guidelines on religious discrimination promulgated by the United States Equal Employment Opportunity Commission, which appear in 29 Code of Federal Regulation Part 1605, are adopted, as hereinafter amended, and are incorporated by reference.

(2) The guidelines on sex discrimination promulgated by the United States Equal Employment Opportunity Commission, which appear in 29 Code of Federal Regulations Part 1604, are adopted, as hereinafter amended, and are incorporated by reference.

(3) The guidelines on employment testing issued by the United States Equal Employment Opportunity Commission, which appear in 29 Code of Federal Regulations Part 1607, are adopted, as hereinafter amended, and are incorporated by reference.

(4) The regulations on discriminatory housing advertisements issued by the United States Department of Housing and Urban Development, which appear in 24 Code of Federal Regulations Part 100.75, are adopted, as hereinafter amended, and are incorporated by reference.

(5) The regulations applicable to the Title VI Compliance Program, which appear in 28 Code of Federal Regulations Subpart C, are adopted, as hereinafter amended, and are incorporated by reference.

(6) Any federal guideline or regulation adopted and incorporated under this part that is inconsistent with the Tennessee Human Rights Act, or any regulation promulgated thereunder, shall be superseded by the Tennessee Human Rights Act or the appropriate regulation promulgated thereunder.

Authority: T.C.A. § 4-21-202.

1500-01-02 Employment, Public Accommodation and Housing Complaints

1500-01-02-.01 Practice and Procedure.

(1) Definitions. When used in this regulation:

(a) "Act" includes the Tennessee Human Rights Act, T.C.A Title 4, and Chapter 21, and the Tennessee Handicap Act, T.C.A. Title 8 Chapter 50 Section 103.

(b) "Administrative Determination" means the determination reached by the Commission pursuant to the investigative findings made, and legal conclusions drawn, following an investigation under the Act.

(c) "Chairman" means the duly elected Chairman of the Tennessee Human Rights Commission or, in the event of his or her absence or inability to act, the Vice-chairman, who has been designated by the Commission, or if such Vice-chairman is unable to act, a Commissioner designated by the Commissioners.

(d) "Commission" means the Tennessee Human Rights Commission.

(e) "Commissioner" or "Commissioners" mean any person appointed by the Governor to serve on the Commission.

(f) "Complainant" means the person by whom or on whose behalf a complaint is filed.

(g) "Discriminatory Practice" means any direct or indirect act or practice of exclusion, distinction, restriction, segregation, limitation, refusal, denial, or any other act or practice which constitutes different treatment or preference of a person or persons based on race, creed, color, religion, sex, age, national origin, or handicap.

(h) "Employer" includes the state, or any political or civil subdivision thereof, any person employing eight (8) or more persons within the state, or any person acting as an agent of an employer, directly or indirectly;

(i) "Employment agency" means any person or agency, public or private, regularly undertaking, with or without compensation, to procure employees for an employer or to procure for persons opportunities to work for an employer.

(j) "Executive Director" means the individual appointed by the Commissioners pursuant to Commission bylaws as the administrative head of the Commission. The Executive Director shall be empowered with the authority to appoint the necessary professional, technical, and clerical staff, which shall be covered by and subject to the provisions of the rules and regulations, to carry out the provisions of the Act and these rules. Any powers vested in the Executive Director, and any duties imposed upon him or her by the Act or these rules and regulations, may be exercised or discharged by the Executive Director or the Executive Director's designee in his or her absence. In the event the

Executive Director becomes incapacitated to the extent that he or she can no longer perform his or her duties, such duties may be performed by the Deputy Director, or, in the absence of the Deputy Director, a designee selected by the Executive Director before incapacitation.

(k) "Financial institution" means a bank, banking organization, mortgage company, insurance company or other lender to whom application is made for financial assistance for the purchase, lease, acquisition, construction, rehabilitation, repair, maintenance or improvements of real property, or an individual employed by or acting on behalf of a financial institution.

(l) "Handicap" means, with respect to a person:

1. A physical or mental impairment that substantially limits one (1) or more of such person's major life activities;

2. A record of having such an impairment; or

3. Being regarded as having such an impairment.

4. "Handicap" does not include current, illegal use of, or addiction to, a controlled substance.

(m) "Hearing examiner" means one (1) or more persons or Commissioners, designated by the Commission to conduct a hearing. The Commission has the sole power to determine qualifications of the hearing examiner.

(n) "Housing accommodation" includes improved and unimproved property and means a building, structure, lot or part thereof that is used or occupied, or is intended, arranged or designed to be used or occupied, as the home or residence of one (1) or more individuals.

(o) "Investigator" shall mean a member of the Commission staff designated by the Executive Director, or an approved contractor designated by the Executive Director, empowered to investigate the allegations of a complaint.

(p) "Labor organization" includes any organization that exists for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment, or for other mutual aid or protection in relation to employment or any agent acting for a labor organization.

(q) "National origin" includes the national origin of an ancestor.

(r) "No Reasonable Cause" means that after an investigation, the Commission has determined by a preponderance of the evidence that the respondent has not engaged in a discriminatory practice.

(s) "Person" or "Persons" includes one (1) or more individuals, governments, governmental agencies, public authorities, labor organizations, corporations, legal representatives, partnerships, associations, trustees, trustees in bankruptcy, receivers, mutual companies, joint stock companies, trusts, unincorporated organizations or other organized groups of persons.

(t) "Places of public accommodation, resort or amusement" includes any place, store or other establishment, either licensed or unlicensed, that supplies goods

or services to the general public or that solicits or accepts the patronage or trade of the general public, or that is supported directly or indirectly by government funds, except that:

1. A bona fide private club is not a place of public accommodation, resort or amusement if its policies are determined solely by its members; and

2. Its facilities or services are available only to its members and their bona fide guests.

(u) "Real estate broker" or "real estate salesperson" means an individual, whether licensed or not, who, on behalf of others, for a fee, commission, salary, or other valuable consideration, or who with the intention or expectation of receiving or collecting the same, lists, sells, purchases, exchanges, rents or leases real estate, or the improvements thereon, including options, or who negotiates or attempts to negotiate on behalf of others such activity; or who advertises or holds such individual out as engaged in such activities; or who negotiates or attempts to negotiate on behalf of others a loan secured by mortgage or other encumbrance upon a transfer of real estate, or who is engaged in the business of charging an advance fee or contracting for collection of a fee in connection with a contract whereby such individual undertakes to promote the sale, purchase, exchange, rental, or lease of real estate through its listing in a publication issued primarily for such purpose; or an individual employed by or acting on behalf of a real estate broker or salesperson.

(v) "Real estate operator" means any individual or combination of individuals, labor unions, joint apprenticeship committees, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees in bankruptcy, receivers or other legal or commercial entities, or the county or any of its agencies, that is engaged in the business of selling, purchasing, exchanging, renting or leasing real estate, or the improvements thereon, including options, or that derives income, in whole or in part, from the sale, purchase, exchange, rental or lease of real estate; or an individual employed by or acting on behalf of a real estate operator.

(w) "Real estate transaction" includes the sale, exchange, rental or lease of real property.

(x) "Real property" includes buildings, structures, real estate, lands, tenements, leaseholds, cooperatives, condominiums, and hereditaments, corporeal and incorporeal, or any interest in these.

(y) "Reasonable Cause" means that after an investigation, the Commission has determined by a preponderance of the evidence that the respondent has engaged in a discriminatory practice.

(z) "Respondent" means the person, employer, employment agency, labor organization, housing providers, real estate brokers, salespersons or operators, financial institutions, and persons owning or operating places of public accommodation, resort or amusement against whom a complaint is filed.

(aa) "Verified" means sworn to or affirmed before a notary public, or supported by a declaration in writing under penalty of perjury.

(2) Complaint. Who may file:

(a) Any individual claiming to be aggrieved by a discriminatory practice or about to be injured by a discriminatory practice, may, individually, or through his or her authorized representative, make, sign, and file with the Commission a written verified complaint. Assistance in drafting and filing complaints, including language interpretation, shall be available to complainants at the Commission's offices or from any Commission staff member who has been duly authorized to do so by the Executive Director. A person who is incompetent of filing for oneself or a person who has not attained eighteen (18) years of age must file through a legal parent, legal guardian or legal custodian.

(b) A Commissioner may also make and file a written verified complaint.

(c) Upon receiving a complaint submitted by the United States Equal Employment Opportunity Commission (EEOC) or the United States Department of Housing and Urban Development (HUD), the Executive Director, or his or her designated representative, acting in the name of the Commission, may issue a verified complaint in writing and attach thereto the materials, if any, submitted by the federal government.

(3) Complaint Form. The complaint shall be in writing and verified. The Commission shall make available to the public a standardized complaint form upon request. The complaint shall contain the following:

(a) The full name and address of the complainant.

(b) The name and address of the person, employer, labor organization, employment agency, government agency, place of public accommodation, real estate broker, salesperson or operator, or financial institution against whom the complaint is made.

(c) A short and plain statement of the claim showing that the complainant is entitled to relief under the Tennessee Human Rights Act.

(d) The dates and times of the alleged discriminatory practice, if known, and, if the alleged discriminatory practice is of a continuing nature, the dates between which those continuing acts of discrimination are alleged to have occurred, if known.

(e) A statement as to whether any action, civil or criminal, instituted by the complainant in any other forum, based upon the same grievance as is alleged in the complaint, has been instituted, together with a statement as to the status or disposition of such other action.

(f) The Complainant is responsible for keeping the Commission informed of any changes in his or her contact information.

(4) Time of filing complaint. A complaint alleging discrimination must be filed within one hundred eighty (180) days after the alleged discriminatory practice occurs. If the alleged discriminatory practice is of a continuing nature, the date of occurrence is the date of the last discriminatory act, or the date of which the complaint shall have been filed if the discriminatory practice continues.

(5) Place of filing complaint. A complaint may be filed with the Commission at any of the Commission's offices.

(6) Manner of filing complaint. A complaint may be filed by personal delivery, express delivery, ordinary mail, registered mail, certified mail, or electronic facsimile. The original copy of a complaint filed by electronic facsimile shall be physically delivered to the Commission within ten (10) business days of electronic transmission.

(7) Amendment of complaint. The Commission, the presiding hearing examiner, or the complainant may reasonably and fairly amend a complaint, subject to the following limitations:

(a) The power to amend a complaint may be exercised before the issuance of a notice of filing by the Commission's staff with the consent of the complainant, and after the issuance of a notice of filing by the presiding hearing examiner upon motion by the Commission.

(b) The power to amend a complaint may be exercised before the issuance of a notice of filing by the complainant as a matter of right, and after the issuance of a notice of filing at the discretion of the presiding hearing examiner if he or she determines such amendment serves the interest of justice.

(c) A complaint may be amended to cure technical defects or omissions, including failure to verify the charge, or to clarify allegations made therein. Such amendments and amendments alleging additional acts which constitute unlawful employment practices related to or growing out of the subject matter of the original complaint will relate back to the date the complaint was first received.

(8) Substitution and Addition of Parties.

(a) A complaint may be amended by the complainant to substitute or name additional parties as respondent(s) if such parties are successors or assigns of a named respondent. Mere misnomer of a party shall not be grounds for dismissal and may be cured at any time by amendment of the complaint. A person may be added as party respondent, even if that person is not a successor or an assignee of the named respondent, if the following terms and conditions are met:

1. The charge in the case was filed within one hundred eighty (180) days of the date of the discriminatory practice allegedly committed by the person sought to be added as a party respondent;

2. The failure to join the person as a party respondent was inadvertent;

3. The person sought to be added as a party respondent was given notice of the filing of the charge at the time the original charge was filed;

4. The nature of the original charge was such that the person sought to be added knew, within the one hundred eighty (180) day period, that the charge grew out of a transaction or occurrence involving or concerning him, her or it;

5. The addition of the person sought to be named as a party respondent does not raise new factual questions which were not considered by the Commission in its investigation; and

6. The cause of action alleged against the person sought to be made a party respondent in the case arises out of the same transaction or occurrence set out in the original complaint.

(b) If a party to a complaint dies, the proper party or parties may be substituted upon motion to the Commission. If a motion to substitute is not filed within ninety (90) days after the death is suggested of record, the complaint may be dismissed as to the deceased party.

(c) No party shall be added as a party respondent except as provided in this section.

(9) Postponement of Hearing Date. If a complaint is amended after a reasonable cause finding, a hearing date postponement may be granted to the respondent upon request to the hearing examiner. In no event shall such hearing date be more than ten (10) days later than the original hearing date.

(10) No Reasonable Cause determination. If it is determined that there is no reasonable cause to believe that the respondent has engaged in a discriminatory practice, the Commission, Executive Director, or a Commission staff member designated by the Executive Director, shall furnish a copy of the determination letter to the complainant, the respondent, and such public officers and persons as the commission deems proper.

(11) Reasonable Cause determination. If it is determined that there is reasonable cause to believe that the respondent has engaged in a discriminatory practice, the Commission, Executive Director, or a Commission staff member designated by the Executive Director, shall furnish a copy of the determination letter to the complainant and the respondent, and shall specifically name the statute(s) deemed to have been violated.

(12) Withdrawal of complaint. Upon the written request of the complainant or the complainant's representative, stating the reasons for such a request, a complaint, or any part thereof, may be withdrawn, subject to approval by the Commission. Such withdrawal shall be without prejudice to the rights of the complainant. A withdrawn complaint may be re-filed, provided such filing occurs within one hundred eighty (180) days of the discriminatory act originally alleged.

(13) Dismissal of complaint. The Commissioners, the Executive Director, or a Commission staff member designated by the Executive Director, may dismiss a complaint at any time, for reasons including, but not limited to, lack of probable cause, lack of jurisdiction, or lack of complainant cooperation, whether upon the face of the complaint, after investigation, or after conference, conciliation and persuasion. If a complaint is dismissed, the Executive Director, or a Commission staff member designated by the Executive Director, shall notify the parties by mail of such determination and of the complainant's right to apply to the Commission for reconsideration of such dismissal. In any dismissed case that is dual-filed with either EEOC or HUD, the Commission shall refer the complaint to the appropriate federal agency for investigation. In housing cases in which the respondent claims an exemption under T.C.A. Section 4-21-602(a)(1) and (2) for property occupied by a family member, the Commission will forward such complaints to HUD for appropriate action.

(14) Reconsideration of complaint.

(a) The complainant, within thirty (30) days after receiving a copy of the order dismissing the complaint, may file with the Commission an application for reconsideration of the order. Such application must be in writing and must specifically state the grounds upon which it is based. Grounds for reconsideration shall include, but not be limited to, the production of new evidence; evidence not properly considered during the investigation; or evidence obtained from new witnesses.

(b) Upon receipt of an application for reconsideration, a Commissioner, the Executive Director, or a Commission staff member designated by the Executive Director shall reconsider the complaint. The Executive Director may designate a different investigator to initiate a new investigation of the complaint. If a new investigation is conducted, the investigator may consider the evidence gathered in the initial investigation. The Commission shall, within thirty (30) days, make a new determination of no reasonable cause or reasonable cause.

(c) Dismissal of a complaint may be reconsidered by the Commission on its own initiative at any time within thirty (30) days after such dismissal. Notice of such reconsideration shall be provided by the Commission to all parties to the complaint.

(15) Nature of discriminatory practice notices and who must post. Every employer, employment agency, labor organization, real estate broker, salesperson, or operator, and financial institution subject to Tennessee Code Annotated (T.C.A.), Title 4, Chapter 21 and Tennessee Code Annotated Title 8 Chapter 50, Section 103, hereinafter referred to as the Tennessee Human Rights Act, and Tennessee Handicap Act, or Act, shall post and maintain at their establishments fair employment practice notices and/or fair housing practice notices furnished by the Tennessee Human Rights Commission indicating the substantive provisions of the Tennessee Human Rights Act, where complaints may be filed, and such other information as the Tennessee Human Rights Commission deems pertinent.

(16) Where employers, employment agencies, real estate brokers, salespersons, or operators, and financial institutions must post. With respect to employers and employment agencies, such notices must be posted conspicuously in easily accessible areas frequented by employees and applicants for employment, and at or near each location where the employees' services are performed. With respect to real estate brokers, salespersons, or operators, and financial institutions, such notices must be posted conspicuously in areas frequented by residents and individuals seeking housing opportunities.

(17) Where labor organizations must post. With respect to labor organizations, such notices must be posted conspicuously in easily accessible and well-lighted places customarily frequented by members and applicants for membership.

(18) Affirmative action plans. An affirmative action plan filed with the Commission pursuant to T.C.A. §4-21-406(b) that has not been approved in writing within ninety (90) days of its filing with the Commission shall be deemed to be disapproved by the Commission. The Commission shall publish and shall make available upon request guidelines for evaluating or developing such plans.

(19) Complaints alleging violations of Title VI of the Civil Rights Act of 1964. Parties who wish to file a complaint against the Commission for violation of Title VI of the Civil Rights Act of 1964, 42 USC § 2000d, or T.C.A. § 4-21-904, should direct such complaints to the United States Department of Housing and Urban Development Fair

Housing and Equal Opportunity Office or the United States Equal Employment Opportunity Commission.

Authority: T.C.A. §§ 4-21-102, 4-21-302, 4-21-406, 4-21-602, 4-21-904, 4-21-905, and 8-50-103.

1500-01-02-.02 Investigation and Conciliation

(1) Investigation. After the filing of a complaint, the Executive Director or a subordinate supervisor designated by him or her shall designate an investigator from the Commission staff or from a group of approved contract investigators to investigate the complaint. The Chairman may at his or her discretion designate a Commissioner to direct the investigation as chief investigator. The designated investigator(s) shall make a prompt and thorough investigation of the allegations of the complaint.

(2) Production of evidence:

(a) An investigator may at any reasonable time request production of or access to premises, records, and documents relevant to the complaint.

(b) If a respondent fails to produce or fails to permit access to relevant evidence requested by the Commission, the Commission may apply to the chancery court of Davidson County or circuit court for the county in which such person is found, resides, or has such person's principal place of business, for an order requiring the respondent to produce or to permit access to such evidence. The Commission may also, in such situations and when presented with an unrebutted prima facie charge of discrimination, issue a finding of reasonable cause to believe that a discriminatory practice has occurred.

(3) Conference, conciliation, and persuasion:

(a) If the staff determines after investigation that reasonable cause exists to substantiate the allegations of the complaint, the investigator or Commission attorney shall report his or her recommendations to the Executive Director, who shall make a finding and report to the Commission. Upon a reasonable cause determination, the Commission is deemed a proper party to the action and the Complainant becomes an aggrieved party.

(b) After a reasonable cause determination, the Commission staff shall endeavor to eliminate the unlawful discriminatory practice by conference, conciliation, and persuasion.

(c) The Commission staff shall notify the respondent(s) that a particular meeting or conversation is for the purpose of attempting to conciliate the complaint. These requirements shall not be construed to limit the power of the Commission to conduct further investigations in preparation for a hearing or for other purposes in connection with its statutory duties, nor shall they be construed to prohibit the use of evidence obtained through such investigations.

(d) If a complaint subsequently proceeds to a hearing, no testimony shall be given or received concerning any offers or counteroffers made in an effort to conciliate the case.

(4) If, as a result of conference, conciliation, or persuasion, the commission staff is able to secure voluntary compliance that eliminates any unlawful discriminatory practice, a conciliation agreement shall be prepared. The conciliation agreement shall set forth

all measures to be taken by the parties, including provisions for compliance reports, and shall be signed by the respondent(s) and the Executive Director of the Commission. The complainant may sign as an aggrieved party. During conference, conciliation or persuasion, the Commission is not bound to, but shall consider, reasonable damages proposed by the Complainant. If a conciliation agreement is entered into, the commission shall issue and serve on the complainant an order stating its terms. A copy of the order shall be delivered to the respondent, and such public officers and persons as the commission deems proper.

(5) Administrative Closure. Upon the execution of a conciliation agreement, the Commission shall administratively close the complaint, and the Executive Director shall notify the complainant, respondent and the Commissioners of the terms of such disposition. Disposition of a case by conference, conciliation, or persuasion shall not preclude the Commission, whenever justice so requires, from reconsidering the terms of such conciliation at any time and from taking such further action as it may deem necessary upon notice to the parties.

(6) In all cases in which a real estate operator claims as a defense a lack of evidence of financial ability of the complainant or tester under T.C.A. § 4-21-602(b), the Commission will investigate to see whether the requirement of financial ability is applied consistently regardless of the prospective applicant's membership in a protected class.

(7) No exemption for familial status shall be allowed under T.C.A. § 4-21-602(d)(1) for dwellings provided under any state or federal program specifically designed and operated to assist elderly persons, as defined in the state or federal program, unless the U.S. Department of Housing and Urban Development has already determined that the state or federal program is specifically designed and operated to assist elderly persons.

(8) With regard to housing complaints, the Commission staff shall complete the investigation and any attempts at conciliation, and make any determination of reasonable cause to believe that discrimination took place, within ninety (90) days of the filing of the complaint, unless such completion is impracticable. If the investigation cannot be completed within ninety (90) days, the Commission staff shall notify the complainant(s) and the respondent(s) in writing of the reasons for not doing so.

Authority: T.C.A. §§ 4-21-202, 4-21-303, 4-21-601, and 4-21-602.

1500-01-02-.03 Commission Hearings

(1) When hearing ordered:

(a) Discrimination in Employment Practices and Public Accommodations. Unless the Commission has issued an order of conciliation pursuant to T.C.A. § 4-21-303 it shall, within ninety (90) days of an administrative determination of reasonable cause to believe that discrimination took place, serve on the Respondent by mail or in person a written notice, together with a copy of the complaint as amended and a copy of the letter or determination, requiring the respondent to answer the allegation of the complaint at a hearing before a hearing examiner, or hearing examiners at a time and place designated by the hearing examiner. A copy of the notice shall be furnished to the Complainant and such other persons the Commission deems necessary.

(b) Discrimination in Housing Practices. Unless the complaint has been resolved through a conciliation agreement pursuant to T.C.A. § 4-21-303, or if neither the complainant or respondent has elected for a civil action pursuant to T.C.A. § 4-21-312, or if the Commission has not acted upon the complaint pursuant to T.C.A. § 4-21-312, then upon a finding of reasonable cause, the Commission shall commence a hearing in the same manner as subsection (a).

(2) Selection of Hearing Examiner. The Commission may in its discretion appoint a person or persons, who it deems qualified to act as a hearing examiner or hearing examiners to preside over the Commission Hearing. The Commission may also elect to request the appointment of an Administrative Law Judge from the Secretary of State Administrative Procedures Division, or employ any other method of selection within the scope of its authority under the Act.

(3) Hearing Procedure. All hearings shall be conducted in accordance with the Tennessee Uniform Administrative Procedures Act, T.C.A. § 4-5-101 et seq.

(a) Representation at Hearing. At the hearing, Commission attorneys, or any other party as designated by the Commission who is licensed and qualified to practice law in the State of Tennessee, shall endeavor to support the allegations of the complaint and the determination made upon the resolution of the investigation of Commission staff. The complainant or complainants shall become an aggrieved party, or aggrieved parties, in the matter. A respondent, who has filed an answer or whose default in answering has been set aside for good cause shown, may appear at the hearing with or without representation, may examine and cross-examine witnesses and the complainant, and may offer evidence.

(b) Commencement of Action and Notice of Appearance and Filing. To commence a hearing, the Commission staff shall file a Notice of Appearance and Filing with the hearing officer. The notice shall include a copy of the complaint, a copy of the Commission's letter of determination, and a Notice of Appearance by the Commission. The notice shall be copied to the Respondent, or Respondent's authorized or registered agent, by mail or in person.

(c) Evidence at Hearing. In addition to evidence rules and procedures pursuant to the Uniform Administrative Procedures Act, T.C.A. § 4-5-101 et seq., the following evidentiary rules shall govern the Commission Hearing:

1. Efforts, statements, or offers made in the course of conference, conciliation, and/or persuasion shall not be admissible at a Commission Hearing.

2. Testimony taken at a hearing shall be under oath and transcribed pursuant to T.C.A. § 4-21-304.

3. In a proceeding under this chapter, production of written, visual communications, advertisement or other form of publication, written inquiry, or record, or other document purporting to have been made by a specific person shall be prima facie evidence that it was authorized by the person.

(4) Intervention by Aggrieved Parties. At the discretion of the Commission, the complainant, the complainant's private attorney, or any person, may intervene, examine and/or cross-examine witnesses, and present evidence.

(5) Subpoenas. Pursuant to T.C.A. § 4-21-309, upon written application to the commission, a party to a proceeding is entitled as of right to the issuance of subpoenas for deposition or hearing in the name of the Commission. A Commissioner, Commission attorney, or the Executive Director may issue a subpoena or subpoena duces tecum. When a subpoena or subpoena duces tecum is applied for and issued at the request of any party to a hearing or other proceeding, the cost of service, witnesses, and mileage fees, if any, shall be borne by the requesting party. When a subpoena or subpoena duces tecum is initiated and issued by a Commissioner, a Commission attorney, or the Executive Director, the cost of such service, witnesses, and mileage fees, if any, shall be borne by the Commission.

(6) Default at Hearing. If the Respondent fails to answer the complaint at the Commission Hearing, the Commission may enter the Respondent's default, except pursuant to T.C.A. § 4-21-304(f).

(7) Public hearings. All Commission hearings shall be open to the public.

Authority: T.C.A. §§ 4-5-101 et seq., 4-21-304, 4-21-309, and 4-21-312.

1500-01-02-.04 Orders Issued by the Commission

(1) After a Commission Hearing, findings of fact, conclusions of law, and Commission Orders shall be issued pursuant to and in accordance with T.C.A. § 4-21-305.

(2) Judicial Review. The Commission, the Complainant, or the Respondent may seek judicial review of an adverse finding of the Commission, including an order dismissing a complaint or stating the terms of a conciliation agreement, by filing a petition in court.

(a) Judgment adverse to the Commission. The Commission may petition to rehear in the event the judgment at a Commission Hearing is adverse to its position in the matter. The Commission shall petition pursuant to, and in accordance with, the Rules of the Tennessee Administrative Procedures Division.

(b) Judgment Adverse to the Complainant or Respondent. The Complainant or the Respondent may appeal an adverse final order of a Commission Hearing, or Commission Order, dismissal of the complaint, or any other final agency determination pursuant to, and in accordance with, T.C.A. § 4-21-307.

Authority: T.C.A. §§ 4-21-202, 4-21-305, and 4-21-307

1500-01-02-.05 Guidelines for Advertisement

(1) It shall be a violation of Tennessee Code Annotated, Title 4, Chapter 21, for any employer, labor organization, or employment agency to cause to be published, printed, circulated, or displayed any advertisement or notice relating to employment, employment opportunities, job openings, union membership, apprentice programs, job training programs, licensing opportunities, or any of the terms, conditions, or privileges thereof, which is segregated on the basis of race, color, religion, national origin, or sex, or under any column heading which overtly, subtly, directly, or indirectly expresses any such limitation, specification, discrimination, or preference.

(2) It shall be a violation of Tennessee Code Annotated, Title 4, Chapter 21, for an employer, labor organization, or employment agency to cause to be published, printed, circulated, or displayed any advertisement or notice relating to employment,

employment opportunities, or any of the terms, conditions, or privileges thereof, the language of which expresses any limitation, specification, discrimination, or preference as to race, color, religion, national origin, or sex. A limitation, specification, discrimination, or preference as to religion, national origin or sex is not a violation where such limitation, specification, discrimination or preference is a "bona-fide occupational qualification" for the particular job advertised, as defined below in subparagraph (4).

(3) Whenever a "help wanted" advertisement or notice is to contain any job title or job description which is not clearly neutral in terms of sex, and the job advertised is not one for which sex is a bona-fide occupational "qualification" as defined in this regulation, the advertisement or notice should instead utilize a gender neutral job title.

(4) For the purpose of this regulation, "bona-fide occupational qualification" shall include only those vocational qualifications that are reasonably necessary to the normal operation of the particular business, enterprise, or apprentice or other training program. This exception shall be interpreted so that individuals will be considered for employment on the basis of their individual capacities, and not on the basis of any characteristic(s) generally attributable to their group. The employer, labor organization, or employment agency has the burden of establishing with the Tennessee Human Rights Commission that religion, national origin, or sex is a bona-fide occupational qualification.

(5) The application of the bona-fide occupational qualification exception is not warranted when based on assumptions of the comparative general employment characteristics of persons of a particular religion, national origin, or sex, such as their turnover rate; stereotypical characteristics of the aforementioned classes, such as their mechanical ability or aggressiveness; customer, client, coworker, or employer preference; historical usage, tradition, or custom; or the necessity of providing separate facilities of a personal nature, such as rest rooms or dressing rooms. The above list is provided for purposes of example, and is not exhaustive or all-inclusive.

(6) Newspapers and other publications which print employment advertisements are encouraged to maintain lists of discriminatory terms and permissible substitutes and to instruct their employees to advise employers, labor organizations, or employment agencies of these terms and to have copies of these regulations available for distribution to advertisers upon request.

(7) The use of language or any other word, term, phrase, or expression which tends to influence, persuade, dissuade, encourage, discourage, attract, or repel any person or persons because of their race, color, religion, national origin, or sex shall be considered a discriminatory practice in violation of Tennessee Code Annotated, Title 4, Chapter 21.

(8) Nothing contained in this regulation shall be deemed to prohibit the Commission from including in any of its orders against any respondent employer, labor organization, or employment agency a provision requiring such respondent to include in any advertisement or notice regarding any employment or licensing opportunity the term "equal opportunity," or any substantially similar term, in any notice or advertisement.

Authority: T.C.A. § 4-21-202.

1500-01-03 Title VI Compliance Program

1500-01-03-.01 Application

These rules implement 2009 Public Chapter 437, as codified in Tennessee Code Annotated (T.C.A.), Title 4, Chapter 21, Section 203, requiring the Tennessee Human Rights Commission to verify that all state governmental entities that are recipients of Federal financial assistance comply with Title VI of the Civil Rights Act of 1964 by developing a statewide Title VI implementation plan, investigating allegations of noncompliance with Title VI and serving as the central coordinating agency for technical assistance, consultation and resources. These rules shall govern all state departments and agencies that receive Federal financial assistance in the state of Tennessee, to the end that no person shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity.

1500-01-03-.02 Definitions

(1) "Applicant" means one who submits an application, request, or plan required to be approved by a primary recipient, as a condition to eligibility for Federal financial assistance, and the term "application" means such an application, request or plan.

(2) "Assurance" means a written statement or contractual agreement signed by the head of an organization or agency agreeing to administer federally assisted programs in accordance with civil rights laws and regulations.

(3) "Commission" means the Tennessee Human Rights Commission.

(4) "Complainant" means the person by whom or on whose behalf a complaint is filed.

(5) "Contractor" means any entity or individual who provides any function or service that requires the performance or delivery of assistance to beneficiaries under the terms of a contract with a department or agency.

(6) "Facility" means all or any portion of structures, equipment, or other real or personal property or interests therein, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration, or acquisition of facilities.

(7) "Federal financial assistance" means:

(a) Grants and loans of Federal funds;

(b) The grant or donation of Federal property and interests in property;

(c) The detail of Federal personnel;

(d) The sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient; and,

(e) Any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(8) "Limited English Proficiency (LEP)" means not speaking English as a primary language and having a limited ability to read, speak, or understand English. Individuals that might experience LEP are entitled to language assistance with respect to a particular type of service, benefit, or encounter.

(9) "Primary recipient" means any department or agency that is authorized or required to extend Federal financial assistance to another recipient or subrecipient for the purpose of carrying out a program.

(10) "Program" or "program or activity" means any program, project, or activity for the provision of services, financial aid, or other benefits to individuals (including education or training, rehabilitation, or other services or disposition, whether provided through employees of the recipient of Federal financial assistance or provided by others through contracts or other arrangements with the recipient, and including work opportunities and cash or loan or other assistance to individuals), or for the provision of facilities for furnishing services, financial aid, or other benefits to individuals. The disposition, services, financial aid, or benefits provided under a program receiving Federal financial assistance shall be deemed to include any disposition, services, financial aid, or benefits provided with the aid of Federal financial assistance or with the aid of any non-Federal funds, property, or other resources required to be expended or made available for the program to meet matching requirements or other conditions which must be met in order to receive the Federal financial assistance, and to include any disposition, services, financial aid, or benefits provided in or through a facility provided with the aid of Federal financial assistance or such non-Federal resources.

(11) "Recipient" means any state department or agency in Tennessee, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assign, or transferee thereof, but such term does not include any ultimate beneficiary under any such program. Many programs have two recipients—a primary recipient and a subrecipient. A primary recipient is authorized or required to extend Federal financial assistance to another recipient for the purpose of carrying out a program. A subrecipient is any entity or person that receives Federal financial assistance from a primary recipient to carry out a program. Both the primary recipient and subrecipient are covered by and must conform to the federal and state regulations pertaining to Title VI.

(12) "responsible Official" means the Title VI Coordinator or other designated person assigned with the responsibility within a department or agency of ensuring compliance with Title VI.

(13) "responsible State official" means any Commissioner or other head official of any governmental entity that is a recipient of Federal financial assistance.

(14) "Subcontract" means an agreement entered into by a contractor with any entity or individual who agrees to perform any function or service on behalf of the contractor which requires the performance or delivery of assistance to beneficiaries.

(15) "Subcontractor" means any entity or individual that provides any function or service which requires the performance or delivery of assistance to beneficiaries under the terms of a contract with a contractor.

(16) "Subrecipient" means any entity or person that receives Federal financial assistance from a primary recipient to carry out a program. A subrecipient may include any local, county government, institution, local entity or organization, or any other entity charged with carrying out a program.

1500-01-03-.03 Discrimination Prohibited

(1) It is a discriminatory practice for any state department or agency receiving federal funds making it subject to Title VI of the Civil Rights Act of 1964, or for any entity or

person receiving such federal funds from a state agency, to exclude a person from participation under any program or activity on the basis of race, color, or national origin.

(2) Specific discriminatory actions prohibited

(a) A recipient under any program or activity to which this section applies may not, directly or through contractual or other arrangements, on the ground of race, color, or national origin:

1. Deny an individual any disposition, service, financial aid, or benefit provided under the program;

2. Provide any disposition, service, financial aid, or benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;

3. Subject an individual to segregation or separate treatment in any matter related to the receipt of any disposition, service, financial aid, or benefit under the program;

4. Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any disposition, service, financial aid, or benefit under the program;

5. Treat an individual differently from others in determining whether such person satisfies any admission, enrollment, quota, eligibility, membership, or other requirement or condition which individuals must meet in order to be provided any disposition, service, financial aid, function or benefit provided under the program;

6. Deny an individual an opportunity to participate in the program through the provision of services or otherwise or afford such person an opportunity to do so which is different from that afforded others under the program (including the opportunity to participate in the program as an employee but only to the extent set forth in paragraph (3) below); or,

7. Deny a person the opportunity to participate as a member of a planning or advisory body which is an integral part of the program.

(b) A recipient, in determining the type of disposition, services, financial aid, benefits, or facilities which will be provided under any such program, or the class of individuals to whom, or the situations in which, such services, financial aid, benefits, or facilities will be provided under any such program, or the class of individuals to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or which have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, or national origin.

(c) In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any program on the ground of race, color, or national origin; or with the purpose or

effect of defeating or substantially impairing the accomplishment of the objectives of Title VI, T.C.A. §4-21-904 or this regulation.

(d) For the purposes of this section the disposition, services, financial aid, or benefits provided under a program receiving Federal financial assistance shall be deemed to include any portion of any program or function or activity conducted by any recipient of Federal financial assistance which program, function, or activity is directly or indirectly improved, enhanced, enlarged, or benefited by such Federal financial assistance or which makes use of any facility, equipment or property provided with the aid of Federal financial assistance.

(e) The enumeration of specific forms of prohibited discrimination in this paragraph and in paragraph (3) of this section does not limit the generality of the prohibition in paragraph (1) of this section.

(f) In administering a program regarding which the recipient has previously discriminated against persons on the ground of race, color, or national origin, the recipient must take affirmative action to overcome the effects of prior discrimination. Even in the absence of such prior discrimination, a recipient in administering a program may take affirmative action to overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color, or national origin.

(3) Employment practices

(a) Whenever a primary objective of the Federal financial assistance to a program to which this regulation applies, is to provide employment, a recipient of such assistance may not (directly or through contractual or other arrangements) subject any individual to discrimination on the ground of race, color, or national origin in its employment practices under such program (including recruitment or recruitment advertising, employment, layoff, or termination, upgrading, demotion, or transfer, rates of pay or other forms of compensation, and use of facilities). That prohibition also applies to programs as to which a primary objective of the Federal financial assistance is: (i) to assist individuals, through employment, to meet expenses incident to the commencement or continuation of their education or training, or (ii) to provide work experience which contributes to the education or training of the individuals involved.

(b) In regard to Federal financial assistance which does not have providing employment as a primary objective, the provisions of paragraph (3)(a) of this section apply to the employment practices of the recipient if discrimination on the ground of race, color, or national origin in such employment practices tends, on the ground of race, color, or national origin, to exclude persons from participation in, to deny them the benefits of or to subject them to discrimination under the program receiving Federal financial assistance. In any such case, the provisions of this subparagraph shall apply to the extent necessary to assure equality of opportunity to and nondiscriminatory treatment of beneficiaries.

1500-01-03-.04 Assurance Required

(1) General

(a) Every application for Federal financial assistance to carry out a program to which this regulation applies, and every application for Federal financial

assistance to provide a facility shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to the application, contain or be accompanied by an assurance that the program will be conducted or the facility operated in compliance with all requirements imposed by or pursuant to this subparagraph. In the case where the Federal financial assistance is to provide or is in the form of personal property, or real property or interest therein or structures thereon, such assurance shall obligate the recipient, or, in the case of a subsequent transfer, the transferee, for the period during which the property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer. In all other cases, such assurance shall obligate the recipient for the period during which Federal financial assistance is extended pursuant to the application.

(b) In the case of real property, structures or improvements thereon, or interest therein, which was acquired through a program of Federal financial assistance, or in the case where Federal financial assistance is provided in the form of a transfer of real property or interest therein from the Federal Government, the instrument effecting or recording the transfer shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. Where no transfer of property is involved, but property is improved under a program of Federal financial assistance, the recipient shall agree to include such a covenant in any subsequent transfer of such property.

(2) Assurances from governmental entities. In the case of any application from any subrecipient, such as a department, agency, or office of any county or local government for funds that may include Federal financial assistance for any specified purpose, the assurance required by this section, shall extend to any other department, agency, or office of the same governmental unit if the policies of such other department, agency, or office will substantially affect the project for which Federal financial assistance is requested.

(3) Assurance from academic and other institutions

(a) In the case of any application for Federal financial assistance for any purpose to an academic institution, the assurance required by this section shall extend to admission practices and to all other practices relating to the treatment of students.

(b) The assurance required with respect to an academic institution, detention or correctional facility, or any other institution or facility, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals as students, patients, wards, inmates, persons subject to control, or clients of the institution or facility or to the opportunity to participate in the provision of services, disposition, treatment, or benefits to such individuals, shall be applicable to the entire institution or facility. If, in any such case, the assistance sought is for the construction of a facility or part of a facility, the assurance shall in any event extend to the entire facility and to facilities operated in connection therewith.

(4) Assurances from contractors. State departments or agencies shall require any and all contractors to sign statements of assurances or include such language of assurance in the contract to be signed by such contractor. For example, a statement

contained in the contractual language should express that "the [Contractor] will comply, and all its subcontractors will comply, with the nondiscrimination requirements of Title VI, and other appropriate civil rights statutes, as applicable."

(5) Continuing state programs. Any state department or agency administering a program which receives continuing Federal financial assistance subject to this regulation shall as a condition for the extension of such assistance:

(a) Provide a statement that the program is (or, in the case of a new program, will be) conducted in compliance with this regulation; and,

(b) Provide for such methods of administration (e.g. policies) as are found by the Commission during the review of the annual implementation plan or periodic compliance review to give reasonable assurance that the primary recipient and all other recipients of Federal financial assistance under such program will comply with this regulation.

1500-01-03-.05 Compliance

(1) Cooperation and assistance. Each responsible State official shall, to the fullest extent practicable, seek the cooperation of its departmental/agency staff, subrecipients and contractors in obtaining compliance with this regulation and shall provide assistance and guidance to subrecipients to help them comply voluntarily with this regulation.

(2) Compliance reports

(a) Each recipient and subrecipient shall keep such records and submit to the Commission timely, complete, and accurate compliance reports at such times, and in such form and containing such information, as the Commission may determine to be necessary to ascertain whether the recipient and its subrecipients have complied or is complying with this regulation. In general, recipients and subrecipients should have available for the Commission racial and ethnic data showing the extent to which members of minority groups are beneficiaries of federally assisted programs. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient or contracts with any other person or group, such other recipient or contractor shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this regulation.

(b) Records and information which may be deemed as part of an agency's compliance report shall be included in the implementation plan that is submitted annually as set forth in these regulations. In addition, the Commission may request that any state department or agency submit a separate compliance report with reasonable notice of at least thirty (30) days when seeking additional information related to any investigation, audit or other periodic assessment conducted by the Commission.

(3) Access to sources of information. Each recipient and subrecipient shall permit access by the Commission during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities, as may be pertinent to ascertain compliance with this regulation. Whenever any information required of a recipient is in the exclusive possession of any other agency, institution, or person and that agency, institution, or person fails or refuses to furnish that information, the recipient shall so certify in its report and set forth the efforts which it

has made to obtain the information. Asserted considerations of privacy or confidentiality may not operate to bar the Commission from evaluating or seeking to verify compliance with this regulation. Information of a confidential nature obtained in connection with compliance evaluation or verification shall not be disclosed except where necessary in formal enforcement proceedings or where otherwise required by law.

(4) Information to beneficiaries and participants. Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this regulation and its applicability to the program under which the recipient receives Federal financial assistance, and make such information available to them in such manner as the Commission finds necessary to apprise such persons of the protections against discrimination assured them by Title VI, T.C.A. §4-21-904 and this regulation.

1500-01-03-.06 Conduct of Investigations

(1) Complaints

(a) Complainants alleging discrimination based on race, color or national origin by a recipient may file a written verified complaint with the Commission. Complaints may also be filed with the Commission if the recipient is unknown or the recipient program or activity is associated with joint federal funding.

(b) Complaints must be filed within one hundred eighty (180) days after the alleged discriminatory practice occurs.

(2) Investigations

(a) The Commission will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with these regulations. The investigation should include, whenever appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with these regulations occurred, and other factors relevant to a determination as to whether the recipient has failed to comply.

(b) The Commission may investigate allegations of noncompliance with Title VI made against any recipient or its subrecipient(s); however, the Commission reserves the right to refer any complaint to the appropriate department or agency for investigation and resolution.

1. The responsible State official or responsible Official shall report the commencement of an investigation to the Commission within ten (10) days.

2. The department or agency shall submit a summary of its investigation to the Commission prior to notifying the complainant.

3. The Commission shall not investigate a complaint that is pending with a court of law or another state or federal department or agency.

4. If a complainant is dissatisfied with any state department or agency's finding following such investigation, the complainant may file with the federal agency that provides the funding.

(3) Resolution of matters

(a) If an investigation pursuant to paragraph (2) of this section indicates a failure to comply, the Commission will so inform the department or agency and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in paragraph (4) of this section.

(b) If an investigation does not warrant action pursuant to paragraph (3)(a) of this section, the Commission will so inform the department or agency and the complainant, if any, in writing.

(c) Intimidation or retaliatory acts prohibited

1. No recipient, subrecipient or other related entity or person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of Title VI, T.C.A. §4-21-904 or this regulation, or because an individual has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this regulation.

2. The identity of a complainant shall be kept confidential except to the extent necessary to carry out the purpose of this regulation, including the conduct of any investigation arising thereunder.

(4) Procedure for effecting compliance

(a) If there appears to be a failure or threatened failure for any recipient to comply with these regulations and if the noncompliance or threatened noncompliance cannot be corrected by informal means in conjunction with the responsible State official and responsible Official, the Commission shall report its findings and recommendations to the governor and to each member of the general assembly.

(b) If there appears to be a failure or threatened failure for any subrecipient to comply with these regulations and if the noncompliance or threatened noncompliance cannot be corrected by informal means, the responsible State official may suspend or terminate, or refuse to grant or continue Federal financial assistance, or use any other means authorized by law, to induce compliance by the subrecipient with this regulation. Such other means include any applicable proceeding under state or local law.

(c) Noncompliance with assurance requirement. If an applicant or recipient fails or refuses to furnish an assurance required under 1500-01-03-.04, or fails or refuses to comply with the provisions of the assurance it has furnished, or otherwise fails or refuses to comply with any requirement imposed by or pursuant to Title VI or this regulation, Federal financial assistance may be suspended, terminated, or refused in accordance with the procedures of this regulation.

1500-01-03-.07 Coordination and Training

(1) While primary responsibility for compliance with Title VI rests directly with the responsible State official, in order to assure coordination of Title VI compliance and consistency among agencies, each department and agency that receives Federal financial assistance shall advise the Commission of the progress and results related

to resolving any programmatic issues that prevent appropriate investigation of complaints.

(2) Title VI training shall be made available at least annually by each recipient to employees, subrecipients, contractors and program area liaisons. The training shall provide information on Title VI provisions, application to program operations, the identification of Title VI issues and resolution of complaints. Each state department and agency shall provide a summary of the training conducted during the previous state fiscal year and training planned for the upcoming state fiscal year in the annual Title VI implementation plan.

(3) Each responsible Official for a department or agency (e.g. Title VI Coordinator for a department) shall, attend annually at least one session of Title VI training to be sponsored by the Commission. The training shall provide a forum to discuss any updates or changes in the Title VI implementation plan and reporting requirements, as well as updates and changes in Title VI and related civil rights laws.

1500-01-03-.08 Monitoring

(1) Periodic compliance reviews.

(a) The Commission shall from time to time review the practices of recipients (e.g. state departments and agencies) to determine whether they are complying with these regulations.

(b) The Commission shall report its activities, findings and recommendations, including whenever there is a finding by the Commission that any recipient (e.g. a state department or agency) has not met the requirements of these rules, to the governor and to each member of the general assembly.

(2) Title VI implementation plan required

(a) It shall be a violation for any state governmental entity that receives Federal financial assistance to fail to develop annually an implementation plan pursuant to T.C.A. §4-21-901, et seq.

(b) The implementation plan shall be submitted to the Commission no later than October 1. The annual implementation plan shall include reports and updates of any subrecipient(s) and/or contractor(s), if applicable. Each agency's plan shall include a comprehensive list that identifies all of the state entity's subrecipients and contractors (not including subcontractors).

(3) Contents of the Title VI implementation plan

(a) Table of contents. Table of contents shall include, at minimum, the sections listed in parts (1) - (14) with pagination and identify any attachments or appendices containing information required by this subparagraph.

1. Overview

(i) Nondiscrimination Policy/Statement;

(ii) Provide a clear and brief description of the agency mission, structure and operations; and,

(iii) Organization and staffing of department's Civil Rights/Title VI Unit.

2. Data collection and analysis

   (i) At minimum, this section shall list the total number of complaints received for the preceding state fiscal year, to include the following:

      (I) Number of complaints closed administratively or for lack of jurisdiction;

      (II) Number of complaints referred to another state department or agency;

      (III) Number of complaints resolved (after investigation, settlement, etc.); and,

      (IV) Number of complaints referred by the state department or agency to a federal agency because a complainant was dissatisfied with the state agency investigation and outcome.

   (ii) Include racial and ethnic data showing the extent to which members of minority groups are beneficiaries of federally assisted programs and/or services.

3. Definitions. Definitions of all common terms stated in the plan shall be included in this section to ensure that agency staff, recipients and beneficiaries have consistent applicable definitions.

4. Programs or activities subject to Title VI

   (i) Identify each program and/or activity and the federal dollar amount received for the current year; and,

   (ii) Identify each federal grant, loan or subsidy not included in the previous list, which may not be considered a program or activity and the federal dollar amount received for each. If included in the list above, then disregard.

5. Scope of Title VI applicability to programs and activities. Specify prohibited discrimination practices under Title VI and where applicable, provide examples of prohibited discrimination practices in relation to agency activities.

6. Limited English Proficiency (LEP) Plan

   (i) All state departments or agencies subject to Title VI shall include its LEP policy, to include the entity's procedure that is followed by staff when confronted with circumstances where language assistance is required; the implementation plan shall include the entity's LEP policy and procedure within this section as an attachment or as an appendix item.

   (ii) The LEP policy shall list translator services (staff and/or contractors) utilized by the agency.

(iii) Provide a breakdown of the various languages confronted by the department or agency as a result of on-site and telephonic encounters from the public.

(iv) List other steps and goals toward breaking down barriers to LEP challenges, if applicable.

7. Complaint procedures

(i) Describe complaint procedures followed by the department or agency;

(ii) Attach a copy of the complaint form utilized by the department or agency; and,

(iii) Describe agency procedures related to investigations, report of findings, hearings and appeals, if applicable.

8. Compliance/noncompliance reporting

(i) In the case of any program under which a primary recipient extends Federal financial assistance to any subrecipient or contracts with any other person or group, such subrecipient and/or contractor shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under these rules.

(ii) Identify actions to be taken by the agency upon a finding of noncompliance, including:

(I) Processing;

(II) Reporting;

(III) Resolution;

(IV) Enforcement of corrective actions; and,

(V) Monitoring of programs.

(iii) Minority representation on planning board or advisory body and of agency staff

(I) List and describe any internal and external advisory boards or bodies for the department or agency. If none, explain the reason(s) for not utilizing advisory bodies;

(II) Identify the percentage of minority representation on any agency board or advisory body or provide an ethnic/racial breakdown of the boards/advisory bodies;

(III) How are the members of the advisory boards or bodies selected?

(IV) If minority representation is deficient on these advisory bodies, describe what policy the agency shall implement to ensure minority participation; and,

(V) Identify the racial/national origin composition of the department or agency's staff.

9. Title VI training plan

(i) Describe training program, percentage of staff in attendance and dates that training was offered to staff, subrecipients and contractors.

(ii) List proposed dates for future training programs that will be offered to staff, subrecipients and contractors.

10. Public notice and outreach

(i) Identify how the department or agency disseminates information about the following to its clients and constituents:

(I) Title VI implementation plan;

(II) Complaint procedures;

(III) Nondiscrimination policy;

(IV) Programs and services; and,

(V) Participation on planning boards and advisory bodies.

(ii) Identify how the department or agency informs the public about the agency contact person, office or division responsible for distribution of information related to this part.

(iii) List the methods used by the department or agency to inform the public about the process for obtaining grants or bidding on contracts subject to Title VI, if applicable.

11. Evaluation procedures of Title VI implementation plan

(i) Describe how the agency plans to address any existing needs and plan deficiencies; and,

(ii) Provide a timeline for meeting the above plans.

12. Statement of assurances. Agencies need to determine the particular form of written assurance for subrecipients and contractors and provide to the Commission the following:

(i) A statement that the department or agency (recipient), subrecipients and contractors have complied with Title VI. This statement shall be consistent with any assurances provided by the state department or agency to the applicable federal agency which provides funding for covered activities.

(ii) Provide a sample "statement of assurances" form which is used by the department or agency. If the department or agency did not have any subrecipients or contractors for any given state fiscal year, then it should state this fact in this section of the annual implementation plan.

(iii) Identify each subrecipient and/or contractor that signed a statement of assurances provided by the department or agency for the preceding fiscal year. If not applicable, then explain.

(iv) A statement that any and all subrecipients or contractors of a state department or agency shall make available a Title VI implementation plan to be reviewed by the Commission upon demand.

13. Responsible Official. Provide the name, title, address and telephone number of the Title VI Coordinator or other designated person assigned with the responsibility within a department or agency of ensuring compliance with Title VI.

Authority: T.C.A. § 4-21-202; T.C.A. § 4-21-901, et seq.; 28 CFR Part 42, Subpart C.

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

F. H. GUZMAN
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY, TENN.
My Commission Expires JULY 3, 2012

Date: 3/30/10

Signature: Beverly L. Watts

Name of Officer: Beverly L. Watts

Title of Officer: Executive Director

Subscribed and sworn to before me on: 3/30/10

Notary Public Signature: F. H. Guzman

My commission expires on: 7/3/12

Department of State Use Only

Filed with the Department of State on: 3/30/10

Tre Hargett
Secretary of State

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