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# PART 195—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OF THE DEPARTMENT OF DEFENSE—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

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APPENDIX A TO PART 195—PROGRAMS TO WHICH THIS PART APPLIES

AUTHORITY: Sec. 602, 78 Stat. 252; 42 U.S.C. 2000d–1; and the laws referred to in appendix A.

SOURCE: 29 FR 19291, Dec. 31, 1964, unless otherwise noted. Redesignated at 56 FR 32965, July 18, 1991.

## § 195.1 Purpose.

The purpose of this part is to effectuate the provisions of Title VI of the Civil Rights Act of 1964 (referred to in this part as the "Act") to the end that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from any component of the Department of Defense.

## § 195.2 Definitions.

(a) *Component* means the Office of the Secretary of Defense, a military department or a Defense agency.

(b) *Responsible Department official* means the Secretary of Defense or other official of the Department of Defense or component thereof who by law or by delegation has the principal responsibility within the Department or component for the administration of the law extending such assistance.

(c) The term *United States* means the States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and the territories and possessions of the United States, and the term "State" means any one of the foregoing.

(d) The term *Federal financial assistance* includes:

(1) Grants and loans of Federal funds,

(2) The grant or donation of Federal property and interests in property,

(3) The detail of Federal personnel,

(4) 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

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

(e) The term *program* includes any program, project, or activity for the provision of services, financial aid, or other benefits to individuals, or for the provision of facilities for furnishing services, financial aid or other benefits to individuals. The services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any services, financial aid, or other 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 services, financial aid, or other benefits provided in or through a facility provided with the aid of Federal financial assistance or such non-Federal resources.

(f) The term *facility* includes 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.

(g) The term *recipient* means any State, political subdivision of any

State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organization, or other entity, or any individual, in any State, 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.

(h) The term *primary recipient* means any recipient which is authorized or required to extend Federal financial assistance to another recipient for the purpose of carrying out a program.

(i) The term *applicant* means one who submits an application, request, or plan required to be approved by a responsible Department official, or by a primary recipient, as a condition to eligibility for Federal financial assistance, and the term "application" means such an application, request or plan.

### § 195.3 Application.

This part applies to any program for which Federal financial assistance is authorized under a law administered by any component of the Department of Defense, including the federally assisted programs and activities listed in appendix A of this part. This directive applies to money paid, property transferred, or other Federal financial assistance extended under any such program after January 7, 1965 pursuant to an application approved prior to such date. This directive does not apply to: (a) Any Federal financial assistance by way of insurance guaranty contracts, (b) money paid, property transferred, or other assistance extended under any such program before January 7, 1965, (c) any assistance to any individual who is the ultimate beneficiary under any such program, or (d) any employment practice, under any such program, of any employer, employment agency, or labor organization, except as noted in § 195.4(b)(5) of this part. The fact that a program or activity is not listed in appendix A shall not mean, if title VI of the Act is otherwise applicable, that such program is not covered. Other programs under statutes now in force or hereinafter enacted may be added to this list by notice published in the FEDERAL REGISTER.

[29 FR 19291, Dec. 31, 1964, as amended at 38 FR 17959, July 5, 1973. Redesignated and amended at 56 FR 32965, July 18, 1991]

### § 195.4 Policy.

(a) *General.* No person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program to which this (part) applies.

(b) *Specific discriminatory actions prohibited.* (1) A recipient under any program to which this part applies may not, directly or through contractual or other arrangements, on the ground of race, color, or national origin:

(i) Deny an individual any service, financial aid, or other benefit provided under the program;

(ii) Provide any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;

(iii) In determining the site or location of facilities, a recipient may not make selections with the purpose of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any program to which this part applies, 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 the Act or this part.

(iv) Subject an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;

(v) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;

(vi) Treat an individual differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership or other requirement or condition which individuals must meet in order to be provided any service, financial aid, or other benefit provided under the program;

(vii) Deny an individual an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program;

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

(2) A recipient, in determining the types of services, financial aid, or other 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, other 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 have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals of a particular race, color, or national origin.

(3) As used in this section the services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any service, financial aid, or other benefit provided in or through a facility provided with the aid of Federal financial assistance.

(4)(i) 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.

(ii) 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.

(5) Where a primary objective of the Federal financial assistance is not to provide employment, but nevertheless discrimination on the grounds of race, color or national origin in the employment practices of the recipient or other persons subject to this Directive tends, on the grounds of race, color, or national origin of the intended beneficiaries, to exclude intended beneficiaries from participation in, to deny them benefits of, or to subject them to discrimination under any program to which this Directive applies, the recipient or other persons subject to this Directive are prohibited from (directly or through contractual or other arrangements) subjecting an individual to discrimination on the grounds 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 and/or other forms of compensation; and use of facilities), to the extent necessary to assure equality of opportunity to, and nondiscriminatory treatment of the beneficiaries. Any action taken by a component pursuant to this provision with respect to a state or local agency subject to Standards for a Merit System of Personnel Administration, 45 CFR part 70, shall be consistent with those standards and shall be coordinated with the U.S. Civil Service Commission.

(6) The enumeration of specific forms of prohibited discrimination in this section does not limit the generality of the prohibition in paragraph (a) of this section.

[29 FR 19291, Dec. 31, 1964, as amended at 38 FR 17959, July 5, 1973]

### § 195.5 Responsibilities.

(a) The Assistant Secretary of Defense (Manpower) shall be responsible for insuring that the policies of this part are effectuated throughout the Department of Defense. He may review from time to time as he deems necessary the implementation of these policies by the components of the Department of Defense.

(b) The Secretary of each Military Department is responsible for implementing this part with respect to programs and activities receiving financial assistance from his Military Department; and the Assistant Secretary of Defense (Manpower) is responsible for similarly implementing this part with respect to all other components of the Department of Defense. Each may

designate official(s) to fulfill this responsibility in accordance with § 195.2(b).

(c) The Assistant Secretary of Defense (Manpower) or, after consultation with the Assistant Secretary of Defense (Manpower), the Secretary of each Military Department or other responsible Department official designated by the Assistant Secretary of Defense (Manpower) may assign to officials of other departments or agencies of the Government, with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of Title VI of the Act and this part (other than responsibility for final decision as provided in § 195.11), including the achievement of effective coordination and maximum uniformity within the Department and within the Executive Branch of the Government in the application of Title VI and this part to similar programs and in similar situations.

[29 FR 19291, Dec. 31, 1964. Redesignated and amended at 56 FR 32965, July 18, 1991]

### § 195.6 Assurances required.

(a) *General.* (1)(i) Every application for Federal financial assistance to carry out a program to which this part applies, except a program to which paragraph (b) of this section 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 part.

(ii) 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, the assurance shall obligate the recipient, or, in the case of a subsequent transfer, the transferee, for the period during which the property or structures are used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services and benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer. In all other cases the assurance shall obligate the recipient for the period during which Federal financial assistance is extended pursuant to the application. In any case in which Federal financial assistance is extended without an application having been made, such extension shall be subject to the same assurances as if an application had been made. The responsible Department official shall specify the form of the foregoing assurances for each program, and the extent to which like assurances will be required of subguarantees, contractors and subcontractors, transferees, successors in interest, and other participants in the program. Any such assurance shall include provisions which give the United States a right to seek its judicial enforcement.

(2) 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, or for as long as the recipient retains ownership or possession of the property, whichever is longer. 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. Where the property is obtained from the Federal Government, such covenant may also include a condition coupled with a right to be reserved by the Department to revert title to the property in the event of a breach of the covenant where, in the discretion of the responsible Department official, such a condition and right of reverter is appropriate to the program under which the real property is obtained and to the nature of the grant and the grantee. In the event a

transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing facilities on such property for the purposes for which the property was transferred, the responsible Department official may agree, upon request of the transferee and if necessary to accomplish such financing, and upon such conditions as he deems appropriate, to forbear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective. In programs receiving Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, to the extent that rights to space on, over, or under any such property are included as part of the program receiving such assistance, the nondiscrimination requirements of this part shall extend to any facility located wholly or in part in such space.

(3) The assurance required in the case of a transfer of surplus personal property shall be inserted in a written agreement by and between the Department of Defense component concerned and the recipient.

(b) *Continuing State programs.* Every application by a State agency to carry out a program involving continuing Federal financial assistance to which this part applies shall as a condition to its approval and the extension of any Federal financial assistance pursuant to the application (1) contain or be accompanied by a statement that the program is (or, in the case of a new program, will be) conducted in compliance with all requirements imposed by or pursuant to this part, and (2) provide or be accompanied by provision for such methods of administration for the program as are found by the responsible Department official to give reasonable assurance that the applicant and all recipients of Federal financial assistance under such program will comply with all requirements imposed by or pursuant to this part. In cases of continuing State programs in which applications are not made, the extension of Federal financial assistance shall be subject to the same conditions under this subsection as if applications had been made.

(c) *Assurances from institutions.* (1) In the case of Federal financial assistance to an institution of higher education, the assurance required by this section shall extend to admission practices and to all other practices relating to the treatment of students.

(2) The assurance required with respect to an institution of higher education, or any other institution, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals as students of the institution or to the opportunity to participate in the provision of services or other benefits to such individuals, shall be applicable to the entire institution unless the applicant establishes, to the satisfaction of the responsible Department official, that the institution's practices in designated parts or programs of the institution will in no way affect its practices in the program of the institution for which Federal financial assistance is sought, or the beneficiaries of or participants in such program. 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.

(d) *Elementary and secondary schools.* The requirement of paragraph (a), (b), or (c) of this section, with respect to any elementary or secondary school or school system shall be deemed to be satisfied if such school or school system (1) is subject to a final order of a court of the United States for the desegregation of such school or school system, and provides an assurance that it will comply with such order, including any future modification of such order, or (2) submits a plan for the desegregation of such school or school system which the responsible official of the Department of Health, Education, and Welfare determines is adequate to accomplish the purposes of the Act and this part, and provides reasonable assurance that it will carry out such plan; in any case of continuing Federal financial assistance the said Department officer may reserve the right to redetermine, after such period as may be specified by him, the adequacy of the plan to accomplish the purpose of

the Act or this part within the earliest practicable time. In any case in which a final order of a court of the United States for the desegregation of such school or school system is entered after submission of such a plan, such plan shall be revised to conform to such final order, including any future modification of said order.

[29 FR 19291, Dec. 31, 1964, as amended at 38 FR 17960, July 5, 1973]

### § 195.7 Compliance information.

(a) *Cooperation and assistance.* Each responsible Department official shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with this part and shall provide assistance and guidance to recipients to help them comply voluntarily with this part.

(b) *Compliance reports.* Each recipient shall keep such records and submit to the responsible Department official timely, complete and accurate compliance reports at such times, and in such form and containing such information, as the responsible Department official may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this part. In general, recipients should have available for the Department 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, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations imposed pursuant to this part.

(c) *Access to sources of information.* Each recipient shall permit access by the responsible Department official 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 part. Where any information required of a recipient is in the exclusive possession of any other institution or person and this institution or person shall fail or refuse to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this part 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 responsible Department official finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part.

[29 FR 19291, Dec. 31, 1964, as amended at 38 FR 17960, July 5, 1973]

### § 195.8 Conduct of investigations.

(a) *Periodic compliance reviews.* The responsible Department official or his designee(s) shall from time to time review the practices of recipients to determine whether they are complying with this part.

(b) *Complaints.* Any person who believes himself or any specific class of individuals to be subjected to discrimination prohibited by this part may by himself or by a representative file with the responsible Department official a written complaint. A complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the responsible Department official.

(c) *Investigations.* The responsible Department official will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation should include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination of whether the recipient has failed to comply with this part.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this part, the responsible Department official will so inform the recipient 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 in § 195.9.

(2) If an investigation does not warrant action pursuant to paragraph (d)(1) of this section, the responsible Department official will so inform the recipient and the complainant, if any, in writing.

(e) *Intimidatory or retaliatory acts prohibited.* No recipient or other 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 the Act or this part, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of complainants shall not be disclosed except when necessary to carry out the purposes of this part including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

[29 FR 19291, Dec. 31, 1964, as amended at 38 FR 17960, July 5, 1974. Redesignated and amended at 56 FR 32965, July 18, 1991]

### § 195.9 Procedure for effecting compliance.

(a) *General.* If there appears to be a failure or threatened failure to comply with this part, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law as determined by the responsible Department official. Such other means may include, but are not limited to (1) a reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking, and (2) any applicable proceedings under State or local law.

(b) *Noncompliance with § 195.6.* If an applicant fails or refuses to furnish an assurance required under § 195.6 or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that section Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. The component of the Department of Defense concerned shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under such paragraph except that the component shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an application therefor approved prior to the effective date of this part.

(c) *Termination of or refusal to grant or to continue Federal financial assistance.* Except as provided in paragraph (b) of this section no order suspending, terminating or refusing to grant or continue Federal financial assistance shall become effective until (1) the responsible Department official has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means, (2) there has been an express finding, after opportunity for a hearing (as provided in § 195.10), of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this part, (3) the action has been approved by the Secretary of Defense pursuant to § 195.11, and (4) the expiration of 30 days after the Secretary of Defense has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action. Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) *Other means authorized by law.* No action to affect compliance by any other means authorized by law shall be taken until (1) the responsible Department official has determined that compliance cannot be secured by voluntary means, (2) the action has been approved by the Assistant Secretary of Defense (Manpower), (3) the recipient or other person has been notified of its failure

to comply and of the action to be taken to effect compliance, and (4) the expiration of at least 10 days from the mailing of such notice to the recipient or other person. During this period of at least 10 days additional efforts shall be made to persuade the recipient or other person to comply with this part and to take such corrective action as may be appropriate.

[29 FR 19291, Dec. 31, 1964. Redesignated and amended at 56 FR 32965, July 18, 1991]

**§ 195.10 Hearings.**

(a) *Opportunity for hearing*. Whenever an opportunity for a hearing is required by § 195.9, reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either (1) fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request of the responsible Department official that the matter be scheduled for hearing or (2) advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of hearing. An applicant or recipient may waive a hearing and submit written information and argument. The failure of an applicant or recipient to request a hearing under this paragraph or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under section 602 of the Act and § 195.11(c) and consent to the making of a decision on the basis of such information as is available.

(b) *Time and place of hearing*. Hearings shall be held at the offices of the responsible component of the Department of Defense in Washington, D.C., at a time fixed by the responsible Department official unless he determines that the convenience of the applicant or recipient or of the component requires that another place be selected. Hearings shall be held before the responsible Department official or, at his discretion, before a hearing examiner designated by him.

(c) *Hearing examiner*. The examiner shall be a field grade officer or civilian employee above the grade of GS–12 (or the equivalent) who shall be a person admitted to practice law before a Federal court or the highest court of a State.

(d) *Right to counsel*. In all proceedings under this section, the applicant or recipient and the responsible component of the Department shall have the right to be represented by counsel.

(e) *Procedures*. (1) The recipient shall receive an open hearing at which he or his counsel may examine any witnesses present. Both the responsible Department official and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(f) *Consolidated or joint hearings*. In cases in which the same or related facts are asserted to constitute noncompliance with this part with respect to two or more programs to which this part applies, or noncompliance with this part and the regulations of one or more other Federal departments or agencies issued under Title VI of the

Act, the Assistant Secretary of Defense (Manpower), the Secretary of a Military Department, or other responsible Department official designated by the Assistant Secretary of Defense (Manpower) after consultation with the Assistant Secretary of Defense (Manpower) may, by agreement with such other departments or agencies where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of appropriate procedures not inconsistent with this part. Final decisions in such cases, insofar as this part is concerned, shall be made in accordance with § 195.11.

[29 FR 19291, Dec. 31, 1964, as amended at 30 FR 133, Jan. 7, 1965. Redesignated and amended at 56 FR 32965, July 18, 1991]

### § 195.11 Decisions and notices.

(a) *Decision by person other than the responsible department official.* If the hearing is held by a hearing examiner such hearing examiner shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the responsible Department official for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient. Where the initial decision is made by the hearing examiner the applicant or recipient may within 30 days of the mailing of such notice of initial decision file with the responsible Department official his exceptions to the initial decision, with his reasons therefor. In the absence of exceptions, the responsible Department official may on his own motion within 45 days after the initial decision serve on the applicant or recipient a notice that he will review the decision. Upon the filing of such exceptions or of such notice of review the responsible Department official shall review the initial decision and issue his own decision thereon including the reasons therefor. In the absence of either exceptions or a notice of review the initial decision shall constitute the final decision of the responsible Department official.

(b) *Decisions on record or review by the responsible department official.* Whenever a record is certified to the responsible Department official for decision or he reviews the decision of a hearing examiner pursuant to paragraph (a) of this section or whenever the responsible Department official conducts the hearing, the applicant or recipient shall be given reasonable opportunity to file with him briefs or other written statements of its contentions, and a copy of the final decision of the responsible Department official shall be given in writing to the applicant or recipient and to the complainant, if any.

(c) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to § 195.10(a), a decision shall be made by the responsible Department official on the record and a copy of such decision shall be given in writing to the applicant or recipient, and to the complainant, if any.

(d) *Rulings required.* Each decision of a hearing officer or responsible Department official shall set forth his ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this part with which it is found that the applicant or recipient has failed to comply.

(e) *Approval by the Secretary of Defense.* Any final decision of a responsible Department official which provides for the suspension or termination of, or the refusal to grant or continue Federal financial assistance, or the imposition of any other sanction available under this part or the Act, shall promptly be transmitted to the Secretary of Defense, who may approve such decision, may vacate it, or remit or mitigate any sanction imposed.

(f) *Contents of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, under the program involved, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this part, including provisions designed to assure that no Federal financial assistance will thereafter be extended under such program to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to this part, or to have otherwise failed to comply

with this part, unless and until it corrects its noncompliance and satisfies the responsible Department official that it will fully comply with this part.

(g) *Post-termination proceedings.* (1) An applicant or recipient adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this part and provides reasonable assurance that it will fully comply with this part.

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (f) of this section may at any time request the responsible Department official to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of paragraph (g)(1) of this section. If the responsible Department official determines that those requirements have been satisfied, he shall restore such eligibility.

(3) If the responsible Department official denies any such request, the applicant or recipient may submit a request for a hearing in writing, specifying why it believes such official to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record, in accordance with rules of procedure issued by the responsible Department official. The applicant or recipient will be restored to such eligibility if it proves at such a hearing that it satisfied the requirements of paragraph (g)(1) of this section. While proceedings under this subsection are pending, the sanctions imposed by the order issued under paragraph (f) of this section shall remain in effect.

[29 FR 19291, Dec. 31, 1964, as amended at 38 FR 17960, July 5, 1973. Redesignated and amended at 56 FR 32965, July 18, 1991]

### § 195.12 Judicial review.

Action taken pursuant to section 602 of the Act is subject to judicial review as provided in section 603 of the Act.

### § 195.13 Effect on other issuances.

All issuances heretofore issued by any officer of the Department of Defense or its components which impose requirements designed to prohibit any discrimination against individuals on the ground of race, color, or national origin under any program to which this part applies, and which authorize the suspension or termination of or refusal to grant or to continue Federal financial assistance to any applicant for or recipient of such assistance under such program for failure to comply with such requirements, are hereby superseded to the extent that such discrimination is prohibited by this part, except that nothing in this part shall be deemed to relieve any person of any obligation assumed or imposed under any such superseded regulation, order, instruction, or like direction prior to the effective date of this part. Nothing in this part, however, shall be deemed to supersede any of the following (including future amendments thereof):

(a) Executive Orders 10925 and 11114 and issuances thereunder,

(b) The "Standards for a Merit System of Personnel Administration," issued jointly by the Secretaries of Defense, of Health, Education, and Welfare, and of Labor, 28 FR 734, or

(c) Executive Order 11063 and issuances thereunder, or any other issuances, insofar as such Order or issuances prohibit discrimination on the ground of race, color, or national origin in any program or situation to which this part is inapplicable, or prohibit discrimination on any other ground.

### § 195.14 Implementation.

The Secretary of each Military Department shall submit regulations implementing this part to the Assistant Secretary of Defense (Manpower).

## APPENDIX A TO PART 195—PROGRAMS TO WHICH THIS PART APPLIES

1. The Army and Air National Guard (Title 32, United States Code).

2. Various programs involving loan or other disposition of surplus property (various general and specialized statutory provisions including: 40 United States Code 483, 484, 512; 49 United States Code 1101–1119; 10

United States Code 2541, 2542, 2543, 2572, 2662, 7308, 7541, 7542, 7545, 7546, 7547).

3. National Program for Promotion of Rifle Practice (10 United States Code 4307 and annual Department of Defense Appropriation Act).

4. National Defense Cadet Corps Program (10 United States Code 3540(b), 4651).

5. Office of Civil Defense assistance to programs of adult education in civil defense subjects (50 United States Code App. 2281 (e), (f)).

6. Office of Civil Defense radiological instruments grants (50 United States Code App. 2281(h)).

7. Office of Civil Defense program (with Public Health Service) for development of instructional materials on medical self-help (50 United States Code App. 2281 (e), (f)).

8. Office of Civil Defense university extension programs for civil defense instructor training (50 United States Code App. 2281 (e)).

9. Office of Civil Defense programs for survival supplies and equipment, survival training, emergency operating center construction, and personnel and administrative expenses (50 United States Code App. 2281(i), 2285).

10. Office of Civil Defense Shelter Provisioning Program (50 United States Code App. 2281(h)).

11. Office of Civil Defense assistance to students attending Office of Civil Defense schools (50 United States Code App. 2281(e)).

12. Office of Civil Defense loans of equipment or materials from OCD stockpiles for civil defense, including local disaster purposes (50 United States Code App. 2281).

13. Navy Science Cruiser Program (SecNav Instruction 5720.19A).

14. Civil Air Patrol (10 United States Code 9441).

15. Research grants made under the authority of Pub. L. 85–934 (42 United States Code 1892).

16. Contracts with nonprofit institutions of higher education or with nonprofit organizations whose primary purpose is the conduct of scientific research, wherein title to equipment purchased with funds under such contracts may be vested in such institutions or organizations under the authority of Pub. L. 85–934 (42 United States Code 1891).

17. Army Corps of Engineers participation in cooperative investigations and studies concerning erosion of shores of coastal and lake waters (33 United States Code 426).

18. Army Corps of Engineers assistance in the construction of works for the restoration and protection of shores and beaches (33 United States Code 426e–h).

19. Public park and recreational facilities at water resource development projects under the administrative jurisdiction of the Department of the Army (16 United States Code 460d and Federal Water Project Recreation Act, Pub. L. 89–72, 79 Stat. 218, July 9, 1965).

20. Payment to States of proceeds of lands acquired by the United States for flood control, navigation, and allied purposes (33 United States Code 701–c–3).

21. Grants of easements without consideration, or at a nominal or reduced consideration, on lands under the control of the Department of the Army at water resource development projects (33 United States Code 558c and 702d–1; 10 United States Code 2668 and 2669); 43 United States Code 961; 40 United States Code 319).

22. Army Corps of Engineers assistance in the construction of small boat harbor projects (33 United States Code 540 and 577, and 47 Stat. 42, Feb. 10, 1932).

23. Emergency bank protection works constructed by the Army Corps of Engineers for protection of highways, bridge approaches, and public works (33 United States Code 701r).

24. Assistance to States and local interests in the development of water supplies for municipal and industrial purposes in connection with Army Corps of Engineers reservoir projects (Water Supply Act of 1958, 43 United States Code 390b).

25. Army Corps of Engineers contracts for remedial works under authority of section 111 of Act of July 3, 1958 (33 United States Code 633).

[29 FR 19291, Dec. 31, 1964, as amended at 31 FR 6831, May 7, 1966]

# PART 196—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

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