

## § 8.5

(c) *Employment practices.* (1) Where a primary objective of the Federal financial assistance to a program to which this part applies is to provide employment, a recipient or other party subject to this part shall not, directly or through contractual or other arrangements, subject a person to discrimination on the ground of race, color, or national origin in its employment practices under such program (including recruitment or recruitment advertising, hiring, firing, upgrading, promotion, demotion, transfer, layoff, termination, rates of pay or other forms of compensation or benefits, selection for training or apprenticeship, use of facilities, and treatment of employees). Such recipients and other parties subject to this part shall take affirmative action to ensure that applicants are employed, and employees are treated during employment without regard to their race, color, or national origin. Such recipients and other parties subject to this part shall, as may be required by supplemental regulations, develop a written affirmative action program. The requirements applicable to construction employment under any such program shall be in addition to those specified in or pursuant to Part III of Executive Order 11246 or any Executive order which supersedes it. Federal financial assistance to programs under laws funded or administered by the Department which has as a primary objective the providing of employment include those set forth in Appendix A II of this part.

(2) Where a primary objective of the Federal financial assistance to a program to which this part applies is not to provide employment, but discrimination on the grounds of race, color, or national origin, in the employment practices of the recipient or other party subject to this part, tends, on the grounds of race, color, or national origin, to exclude persons from participating in, to deny them the benefits of, or to subject them to discrimination under any such program, the provisions of paragraph (c)(1) of this section shall apply to the employment practices of the recipient or other party subject to this part, to the extent necessary to assure equality of opportunity to, and

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nondiscriminatory treatment of such persons.

[38 FR 17938, July 5, 1973; 38 FR 23777, Sept. 4, 1973]

### § 8.5 Nondiscrimination clause.

(a) *Applicability.* Every application for, and every grant, loan, or contract authorizing approval of, Federal financial assistance to carry out a program and to provide a facility subject to this part, and every modification or amendment thereof, shall, as a condition to its approval and to the extension of any Federal financial assistance pursuant thereto, contain or be accompanied by an assurance that the program will be conducted in compliance with all requirements imposed by or pursuant to this part. The assurances shall be set forth in a nondiscrimination clause. The responsible Department official shall specify the form and contents of the nondiscrimination clause for each program as appropriate.

(b) *Contents.* Without limiting its scope or language in any way, a nondiscrimination clause shall contain, where determined to be appropriate, and in an appropriate form, reference to the following assurances, undertakings, and other provisions:

(1) That the recipient or other party subject to this part will not participate directly or indirectly in the discrimination prohibited by § 8.4, including employment practices when a program covering such is involved.

(2) That when employment practices are covered, the recipient or other party subject to this part will (i) in all solicitations or advertisements for employees placed by or for the recipient, state that qualified applicants will receive consideration for employment without regard to race, color, or national origin; (ii) notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding of the recipient's commitments under this section; (iii) post the nondiscrimination clause and the notice to labor unions in conspicuous places available to employees and applicants for employment; and (iv) otherwise comply with the requirements of § 8.4(c).

(3) That in a program involving continuing Federal financial assistance, the recipient thereunder (i) will state 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 (ii) will provide for such methods of administration for the program as are found by the responsible Department official to give reasonable assurance that all recipients of Federal financial assistance under such program and any other parties connected therewith subject to this part will comply with all requirements imposed by or pursuant to this part.

(4) That the recipient agrees to secure the compliance or to cooperate actively with the Department to secure the compliance by others with this part and the nondiscrimination clause as may be directed under an applicable program. For instance, the recipient may be requested by the responsible Department official to undertake and agree (i) to obtain or enforce or to assist and cooperate actively with the responsible Department official in obtaining or enforcing, the compliance of other recipients or of other parties subject to this part with the nondiscrimination required by this part; (ii) to insert appropriate nondiscrimination clauses in the respective contracts with or grants to such parties; (iii) to obtain and to furnish to the responsible Department official such information as he may require for the supervision or securing of such compliance; (iv) to carry out sanctions for noncompliance with the obligations imposed upon recipients and other parties subject to this part; and (v) to comply with such additional provisions as the responsible Department official deems appropriate to establish and protect the interests of the United States in the enforcement of these obligations. In the event that the cooperating recipient becomes involved in litigation with a noncomplying party as a result of such departmental direction, the cooperating recipient may request the Department to enter into such litigation to protect the interests of the United States.

(5) In the case of real property, structures or improvements thereon, or in-

terests therein, which are acquired for a program receiving 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 with 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 such event if 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 forebear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

(6) 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

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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.

(7) That a recipient shall not take action that is calculated to bring about indirectly what this part forbids it to accomplish directly.

(8) Provisions specifying the extent to which like assurances will be required of subgrantees, contractors and subcontractors, lessees, transferees, successors in interest, and other participants in the program.

(9) Provisions which give the United States a right to seek judicial enforcement of the assurances.

(10) In the case where any assurances are required from an academic, a medical care, detention or correctional, or any other institution or facility, insofar as the assurances relate to the institution's practices with respect to the admission, care, or other treatment of persons by the institution or with respect to the opportunity of persons to participate in the receiving or providing of services, treatment, or benefits, such assurances shall be applicable to the entire institution or facility. That requirement may be waived by the responsible Department official if the party furnishing the assurances establishes to the satisfaction of the responsible Department official that the practices in designated parts or programs of the institution or facility will in no way affect its practices in the program of the institution or facility for which Federal financial assistance is or is sought to be provided, or affect the beneficiaries of or participants in such program. If in any such case the assistance is or is sought for the construction of a facility or part of a facility, the assurances shall in any event extend to the entire facility and to facilities operated in connection therewith.

(11) In the case where the Federal financial assistance is in the form of or to aid in the acquisition of personal property, or real property or interest therein or structures thereon, the assurance shall obligate the recipients, or, in the case of a subsequent transfer, the transferee, for the period during which the property is used for a pur-

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pose 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 or transferee retains ownership or possession of the property, whichever is longer. In the case of any other type or form of assistance, the assurances shall be in effect for the duration of the period during which Federal financial assistance is extended to the program.

[38 FR 17938, July 5, 1973; 38 FR 23777, Sept. 4, 1973]

### §8.6 Applicability of this part to Department assisted programs.

The following examples illustrate the applicability of this part to programs which receive or may receive Federal financial assistance administered by the Department. The fact that a particular program is not listed does not indicate that it is not covered by this part. The discrimination referred to is that described in §8.4 against persons on the ground of race, color, or national origin.

(a) *Assistance to support economic development programs.* Discrimination in which recipients and other parties subject to this part shall not engage, directly or indirectly, includes discrimination in

(1) The letting of contracts or other arrangements for the planning, designing, engineering, acquisition, construction, rehabilitation, conversion, enlargement, installation, occupancy, use, maintenance, leasing, subleasing, sales, or other utilization or disposition of property or facilities purchased or financed in whole or in part with the aid of Federal financial assistance;

(2) The acquisition of goods or services, or the production, preparation, manufacture, marketing, transportation, or distribution of goods or services in connection with a program or its operations;

(3) The onsite operation of the project or facilities;

(4) Services or accommodations offered to the public in connection with the program; and

(5) In employment practices in connection with or which affect the program (as defined in §8.4(c)); in the following programs: