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Subpart A—Equal Employment Opportunity Within the Department of Justice

AUTHORITY: 5 U.S.C. 301, 28 U.S.C. 509, 510; E.O. 11246, 3 CFR 1964–1965 Comp., p. 339; E.O. 11478, 3 CFR 1966–1970 Comp., p. 803.

§ 42.1 Policy.

(a) It is the policy of the Department of Justice to seek to eliminate discrimination on the basis of race, color, religion, sex, sexual orientation, national origin, marital status, political affiliation, age, or physical or mental handicap in employment within the Department and to assure equal employment opportunity for all employees and applicants for employment.

(b) No person shall be subject to retaliation for opposing any practice prohibited by the above policy or for participating in any stage of administrative or judicial proceedings related to this policy.

[Order No. 2037–96, 61 FR 34730, July 3, 1996; 61 FR 43119, Aug. 20, 1996]

§ 42.2 Designation of Director of Equal Employment Opportunity and Complaint Adjudication Officer.

(a) In compliance with the regulations of the Equal Employment Opportunity Commission (29 CFR 1613.204(c)), the Assistant Attorney General for Administration is hereby designated as Director of Equal Employment Opportunity for the Department of Justice with responsibilities for administration of the Equal Employment Opportunity Program within the Department. The Director of Equal Employment Opportunity shall publish and implement the Department of Justice regulations, which shall include a positive action program to eliminate causes of discrimination and shall include procedures for processing complaints of discrimination within the Department.

(b) The Assistant Attorney General in charge of the Civil Rights Division shall appoint a Complaint Adjudication Officer, who shall render final decisions for the Department of Justice on complaints of discrimination filed by employees and applicants for employment in the Department pursuant to the Department's Equal Employment Opportunity Regulations. In rendering decisions, the Complaint Adjudication Officer shall order such remedial action as may be appropriate, whether or not there is a finding of discrimination, but in cases where no discrimination is found any remedial action ordered shall have the prior approval of the Assistant Attorney General in charge of the Civil Rights Division, who shall consult with the Deputy Attorney General on the matter.

[Order No. 420–69, 34 FR 12281, July 25, 1969, as amended by Order No. 721–77, 42 FR 25725, May 19, 1977; Order No. 731–77, 42 FR 35646, July 11, 1977; Order No. 899–80, 45 FR 43703, June 30, 1980; Order No. 960–81, 46 FR 52357, Oct. 27, 1981]

§ 42.3 Responsibility for Department of Justice Equal Opportunity Recruitment Program.

The Assistant Attorney General for Administration shall be responsible for establishing and implementing the Department of Justice Equal Opportunity Recruitment Program under 5 U.S.C. 7201.

[Order No. 865–79, 44 FR 77157, Dec. 31, 1979, as amended by Order No. 960–81, 46 FR 52357, Oct. 27, 1981]

Subpart B [Reserved]

Subpart C—Nondiscrimination in Federally Assisted Programs—Implementation of Title VI of the Civil Rights Act of 1964 [1]

AUTHORITY: 42 U.S.C. 2000d–2000d–7; E.O. 12250, 45 FR 72995, 3 CFR, 1980 Comp., p. 298.

SOURCE: Order No. 365–66, 31 FR 10265, July 29, 1966, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes by Order No. 2679–2003, appear at 68 FR 51364, Aug. 26, 2003.

§ 42.101 Purpose.

The purpose of this subpart is to implement the provisions of title VI of the Civil Rights Act of 1964, 78 Stat. 252 (hereafter referred to 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 otherwise be subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Justice.

§ 42.102 Definitions.

As used in this subpart—

(a) The term *responsible Department official* with respect to any program receiving Federal financial assistance means the Attorney General, or Deputy Attorney General, or such other official of the Department as has been assigned the principal responsibility within the Department for the administration of the law extending such assistance.

(b) The term *United States* includes the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and all other territories and possessions of the

[1] See also 28 CFR 50.3. Guidelines for enforcement of Title VI, Civil Rights Act.

United States, and the term *State* includes any one of the foregoing.

(c) 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.

(d) The terms *program or activity* and *program* mean all of the operations of any entity described in paragraphs (d)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (d)(1), (2), or (3) of this section.

(e) 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.

(f) 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, including any successor, assign, or transferee thereof, but such term does not include any ultimate beneficiary.

(g) The term *primary recipient* means any recipient which is authorized or required to extend Federal financial assistance to another recipient.

(h) 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.

(i) The term *academic institution* includes any school, academy, college, university, institute, or other association, organization, or agency conducting or administering any program, project, or facility designed to educate or train individuals.

(j) The term *disposition* means any treatment, handling, decision, sentencing, confinement, or other prescription of conduct.

(k) The term *governmental organization* means the political subdivision for a prescribed geographical area.

[Order No. 365–66, 31 FR 10265, July 29, 1966, as amended by Order No. 699–77, 42 FR 15315, Mar. 21, 1977; Order No. 960–81, 46 FR 52357, Oct. 27, 1981; Order No. 2679–2003, 68 FR 51363, 51364, Aug. 26, 2003]

§ 42.103 Application of this subpart.

This subpart applies to any program for which Federal financial assistance is authorized under a law administered by the Department. It applies to money paid, property transferred, or other Federal financial assistance extended after the date of this subpart pursuant to an application whether approved before or after such date. This subpart does not apply to:

(a) Any Federal financial assistance by way of insurance or guaranty contracts, or

(b) Employment practices except to the extent described in § 42.104(c).

[Order No. 365–66, 31 FR 10265, July 29, 1966, as amended by Order No. 519–73, 38 FR 17955, July 5, 1973]

§ 42.104 Discrimination prohibited.

(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 subpart applies.

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

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

(ii) 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;

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

(iv) 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;

(v) 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 disposition, service, financial aid, function or benefit provided under the program; or

(vi) 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 (including the opportunity to participate in the program as an employee but only to the extent set forth in paragraph (c) of this section).

(vii) 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 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 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 respects individuals of a particular race, color, or national origin.

(3) 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 to which this subpart 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 subpart.

(4) 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 all portions of the recipient's program or activity, including facilities, equipment, or property provided with the aid of Federal financial assistance.

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

(6)(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.

(c) *Employment practices.* (1) Whenever a primary objective of the Federal financial assistance to a program to which this subpart 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. The requirements applicable to construction employment under any such program shall be those specified in or pursuant to part III of Executive Order 11246 or any Executive order which supersedes it.

(2) In regard to Federal financial assistance which does not have providing employment as a primary objective, the provisions of paragraph (c)(1) 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 paragraph (c)(1) of this section shall apply to the extent necessary to assure equality of opportunity to and nondiscriminatory treatment of beneficiaries.

[Order No. 365–66, 31 FR 10265, July 29, 1966, as amended by Order No. 519–73, 38 FR 17955, July 5, 1973; Order No. 2679–2003, 68 FR 51364, Aug. 26, 2003]

§ 42.105 Assurance required.

(a) *General.* (1) Every application for Federal financial assistance to which this subpart 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 subpart. 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. The responsible Department official shall specify the form of the foregoing assurances, and the extent to which like assurances will be required of subgrantees, contractors, and subcontractors, transferees, successors in interest, and other participants. 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 with 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 convenant 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 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 are appropriate to the statute under which the real property is obtained and to the nature of the grant and the grantee.

(b) *Assurances from government agencies.* In the case of any application from any department, agency, or office of any State or local government for 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.

(c) *Assurance from academic and other institutions.* (1) 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.

(2) 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.

(d) *Continuing Federal financial assistance.* Any State or State agency applying for continuing Federal financial assistance subject to this regulation shall as a condition for the extension of such assistance:

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

(2) Provide for such methods of administration as are found by the responsible Department official to give reasonable assurance that the primary recipient and all other recipients of Federal financial assistance under such program will comply with this regulation.

[Order No. 365–66, 31 FR 10265, July 29, 1966, as amended by Order No. 519–73, 38 FR 17955, July 5, 1973; Order No. 2679–2003, 68 FR 51364, Aug. 26, 2003]

§ 42.106 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 subpart and shall provide assistance and guidance to recipients to help them comply voluntarily with this subpart.

(b) *Compliance reports.* Each recipient shall keep such records and submit to the responsible Department official or

his designee timely, complete, and accurate compliance reports at such times, and in such form and containing such information, as the responsible Department official or his designee may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this subpart. 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 in which a primary recipient extends Federal financial assistance to any other recipient or subcontracts with any other person or group, 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 under this subpart.

(c) *Access to sources of information.* Each recipient shall permit access by the responsible Department official or his designee 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 subpart. 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.

(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 subpart and its applicability to the program for 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 subpart.

[Order No. 365–66, 31 FR 10265, July 29, 1966, as amended by Order No. 519–73, 38 FR 17955, July 5, 1973]

§ 42.107 Conduct of investigations.

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

(b) *Complaints.* Any person who believes himself or any specific class of individuals to be subjected to discrimination prohibited by this subpart may by himself or by a representative file with the responsible Department official or his designee 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 or his designee.

(c) *Investigations.* The responsible Department official or his designee will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this subpart. 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 this subpart occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this subpart.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this subpart, the responsible Department official or his designee 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 for in § 42.108.

(2) If an investigation does not warrant action pursuant to paragraph (d)(1) of this section, the responsible Department official or his designee 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 subpart, or because

he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subpart. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purpose of this subpart, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

[Order No. 365–66, 31 FR 10265, July 29, 1966, as amended by Order No. 519–73, 38 FR 17955, July 5, 1973]

§ 42.108 Procedure for effecting compliance.

(a) *General*. If there appears to be a failure or threatened failure to comply with this subpart and if the noncompliance or threatened noncompliance cannot be corrected by informal means, the responsible Department 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 with this subpart. Such other means include, but are not limited to:

(1) Appropriate proceedings brought by the Department 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 proceeding under State or local law.

(b) *Noncompliance with assurance requirement*. If an applicant or recipient fails or refuses to furnish an assurance required under § 42.105, 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 subpart, Federal financial assistance may be suspended, terminated, or refused in accordance with the procedures of title VI and this subpart. The Department shall not be required to provide assistance in such a case during the pendency of administrative proceedings under this subpart, except that the Department will continue assistance during the pendency of such proceedings whenever such assistance is due and payable pursuant to a final commitment made or an application finally approved prior to the effective date of this subpart.

(c) *Termination of or refusal to grant or to continue Federal financial assistance*. 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 on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this subpart,

(3) The action has been approved by the Attorney General pursuant to § 42.110, and

(4) The expiration of 30 days after the Attorney General 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 effect 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 Attorney General, and

(3) The recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance.

§ 42.109 Hearings.

(a) *Opportunity for hearing*. Whenever an opportunity for a hearing is required by § 42.108(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the

affected applicant or recipient. That 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 that action. The notice shall (1) Fix a date, not less than 20 days after the date of such notice, within which the applicant or recipient may request that the responsible Department official schedule the matter for hearing, or (2) advise the applicant or recipient that a hearing concerning the matter in question has been scheduled and advise the applicant or recipient of the place and time of that hearing. 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 the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. 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 afforded by section 602 of the Act and § 42.108(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 Department in Washington, DC, at a time fixed by the responsible Department official, unless he determines that the convenience of the applicant or recipient or of the Department requires that another place be selected. Hearings shall be held before the responsible Department official or, at his discretion, before a hearing examiner designated in accordance with 5 U.S.C. 3105 and 3344 (section 11 of the Administrative Procedure Act).

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

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with 5 U.S.C. 554–557 (sections 5–8 of the Administrative Procedure Act), and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the Department 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.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this subpart, 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 whenever 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 the 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.

(e) *Consolidated or joint hearings.* In cases in which the same or related facts are asserted to constitute noncompliance with this subpart with respect to two or more Federal statutes, authorities, or other means by which Federal financial assistance is extended and to which this subpart applies, or noncompliance with this subpart and the regulations of one or more other Federal Departments or agencies issued under title VI of the Act, the Attorney General may, by agreement with such other departments or agencies, whenever appropriate, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules of procedure not inconsistent with this subpart. Final decisions in such cases, insofar as this

subpart is concerned, shall be made in accordance with § 42.110.

[Order No. 365–66, 31 FR 10265, July 29, 1966, as amended by Order No. 519–73, 38 FR 17955, July 5, 1973]

§ 42.110 Decisions and notices.

(a) *Decisions 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. Whenever 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 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 the record or on 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 a 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 the record whenever a hearing is waived.* Whenever a hearing is waived pursuant to § 42.109(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 findings, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this subpart with which it is found that the applicant or recipient has failed to comply.

(e) *Approval by Attorney General.* Any final decision of a responsible Department official (other than the Attorney General) 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 subpart or the Act, shall promptly be transmitted to the Attorney General, who may approve such decision, vacate it, or remit or mitigate any sanction imposed.

(f) *Content 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, to which this regulation applies, and may contain such terms, conditions, and other provisions as are consistent with, and will effectuate the purposes of, the Act and this subpart, including provisions designed to assure that no Federal financial assistance to which this regulation applies will thereafter be extended 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 subpart, or to have otherwise failed to comply with this subpart, unless and until, it corrects its noncompliance and satisfies the responsible Department official that it will fully comply with this subpart.

(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 subpart and

provides reasonable assurance that it will fully comply with this subpart.

(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 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 paragraph are pending, sanctions imposed by the order issued under paragraph (f) of this section shall remain in effect.

[Order No. 365–66, 31 FR 10265, July 29, 1966, as amended by Order No. 519–73, 38 FR 17956, July 5, 1973]

§ 42.111 Judicial review.

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

§ 42.112 Effect on other regulations; forms and instructions.

(a) *Effect on other regulations.* Nothing in this subpart shall be deemed to supersede any provision of subpart A or B of this part or Executive Order 11114 or 11246, as amended, or of any other regulation or instruction which prohibits discrimination on the ground of race, color, or national origin in any program or situation to which this subpart is inapplicable, or which prohibits discrimination on any other ground.

(b) *Forms and instructions.* Each responsible Department official, other than the Attorney General or Deputy Attorney General, shall issue and promptly make available to interested persons forms and detailed instructions and procedures for effectuating this subpart as applied to programs to which this subpart applies and for which he is responsible.

(c) *Supervision and coordination.* The Attorney General may from time to time assign to officials of the Department, or 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 subpart (other than responsibility for final decision as provided in § 42.110(e)), including the achievement of the effective coordination and maximum uniformity within the Department and within the Executive Branch of the Government in the application of title VI of the Act and this subpart to similar programs and in similar situations. Any action taken, determination made, or requirement imposed by an official of another Department or agency acting pursuant to an assignment of responsibility under this subsection shall have the same effect as though such action had been taken by the Attorney General.

[Order No. 365–66, 31 FR 10265, July 29, 1966, as amended by Order No. 519–73, 38 FR 17956, July 5, 1973; Order No. 568–74, 39 FR 18646, May 29, 1974]

APPENDIX A TO SUBPART C OF PART 42—FEDERAL FINANCIAL ASSISTANCE ADMINISTERED BY THE DEPARTMENT OF JUSTICE TO WHICH THIS SUBPART APPLIES

NOTE: Failure to list a type of Federal assistance in appendix A shall not mean, if title VI is otherwise applicable, that a program is not covered.

1. Assistance provided by the Office of Justice Programs (OJP), the Bureau of Justice Assistance (BJA), the National Institute of Justice (NIJ), the Bureau of Justice Statistics (BJS), and the Office of Juvenile Justice and Delinquency Prevention (OJJDP), including block, formula, and discretionary grants, victim compensation payments, and victim assistance grants (title I of the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3701–3796, as amended (Pub. L. 90–351, as amended by Pub. L. 93–83, Pub. L. 93–415, Pub. L. 94–430, Pub. L. 94–503, Pub. L. 95–115, Pub. L. 96–157, and Pub. L. 98–473); the Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. 5601–5751, as amended (Pub. L. 93–415, as amended by Pub.

L. 94–503, Pub. L. 95–115, Pub. L. 96–509, and Pub. L. 98–473); the Victims of Crime Act of 1984, 42 U.S.C. 10601–10604, (Pub. L. 98–473)).

2. Assistance provided by the Bureau of Prisons (BOP) including technical assistance to State and local governments for improvement of correctional systems; training of law enforcement personnel, and assistance to legal services programs (18 U.S.C. 4042).

3. Assistance provided by the National Institute of Corrections (NIC) including training, grants, and technical assistance to State and local governments, public and private agencies, educational institutions, organizations and individuals, in the area of corrections (18 U.S.C. 4351–4353).

4. Assistance provided by the Drug Enforcement Administration (DEA) including training, joint task forces, information sharing agreements, cooperative agreements, and logistical support, primarily to State and local government agencies (21 U.S.C. 871–886).

5. Assistance provided by the Community Relations Service (CRS) in the form of discretionary grants to public and private agencies under the Cuban-Haitian Entrant Program (title V of the Refugee Education Assistance Act of 1980, Pub. L. 96–422).

6. Assistance provided by the U.S. Parole Commission in the form of workshops and training programs for State and local agencies and public and private organizations (18 U.S.C. 4204).

7. Assistance provided by the Federal Bureau of Investigation (FBI) including field training, training through its National Academy, National Crime Information Center, and laboratory facilities, primarily to State and local criminal justice agencies (Omnibus Crime Control and Safe Streets Act of 1968, as amended 42 U.S.C. 3701–3796).

8. Assistance provided by the Immigration and Naturalization Service (INS) including training and services primarily to State and local governments under the Alien Status Verification Index (ASVI); and citizenship textbooks and training primarily to schools and public and private service agencies (8 U.S.C. 1360, 8 U.S.C. 1457).

9. Assistance provided by the United States Marshals Service through its Cooperative Agreement Program for improvement of State and local correctional facilities (Pub. L. 99–180, 99 Stat. 1142).

10. Assistance provided by the Attorney General through the Equitable Transfer of Forfeited Property Program (Equitable Sharing) primarily to State and local law enforcement agencies (21 U.S.C. 881(e)).

11. Assistance provided by the Department of Justice participating agencies that conduct specialized training through the National Center for State and Local Law Enforcement Training, a component of the Federal Law Enforcement Training Center (FLETC), Glenco, Georgia (Pursuant to Memorandum Agreement with the Department of Treasury).

[Order No. 1204–87, 52 FR 24449, July 1, 1987]

Subpart D—Nondiscrimination in Federally Assisted Programs—Implementation of Section 815(c)(1) of the Justice System Improvement Act of 1979

AUTHORITY: Secs. 802(a), 815(c), and 817(d) of the Justice System Improvement Act of 1979, 42 U.S.C. 3701, *et seq.*, as amended (Pub. L. 90–351, as amended by Pub. L. 93–83, Pub. L. 93–415, Pub. L. 94–503, and Pub. L. 96–157 (December 27, 1979) (JSIA) and Sec. 262 of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, 42 U.S.C. 5672 (Pub. L. 93–415, as amended by Pub. L. 95–115)).

SOURCE: 45 FR 28705, Apr. 30, 1980, unless otherwise noted.

§ 42.201 Purpose and application.

(a) The purpose of this subpart is to implement the provisions of section 815(c) of the Justice System Improvement Act of 1979 (42 U.S.C. 3789d(c); title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d; and title IX of the Education Amendments of 1972, 20 U.S.C. 1681, *et seq.*, to the end that no person in any State shall on the ground of race, color, national origin, sex, or religion be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment in connection with any program or activity funded in whole or in part with funds made available under either the Justice System Improvement Act or the Juvenile Justice Act by the Law Enforcement Assistance Administration, the National Institute of Justice, or the Bureau of Justice Statistics. These regulations also implement Executive Order 12138, which requires all Federal agencies awarding financial assistance to take certain steps to advance women's business enterprise.

(b) The regulations in this subpart apply to the delivery of services by, and employment practices of recipients administering, participating in, or substantially benefiting from any program or activity receiving Federal financial assistance extended under the Justice

System Improvement Act of 1979, or the Juvenile Justice and Delinquency Prevention Act of 1974, as amended.

(c) Where a private recipient which receives such assistance through a unit of government is engaged in prohibited discrimination, the Office of Justice Assistance, Research, and Statistics will invoke the enforcement procedures of this subpart (§ 42.208, *et seq.*) against the appropriate unit of government for failure to enforce the assurances of nondiscrimination given it by the private recipient pursuant to § 42.204(a). Where a private recipient receives assistance either directly from the Law Enforcement Assistance Administration, the National Institute of Justice, or the Bureau of Justice Statistics or through another private entity which receives funds directly from one of those agencies, compliance will be enforced pursuant to section 803(a) of the Justice System Improvement Act.

§ 42.202 Definitions.

(a) *JSIA* means the Justice System Improvement Act of 1979, Public Law 96–157, 42 U.S.C. 3701, *et seq.*

(b) *Juvenile Justice Act* means title I and II of the Juvenile Justice and Delinquency Prevention Act of 1974, Public Law 93–415, as amended by Public Law 94–503 and Public Law 95–115.

(c) *OJARS* or *Office* means the Office of Justice Assistance, Research, and Statistics.

(d) *LEAA* means the Law Enforcement Assistance Administration.

(e) *NIJ* means the National Institute of Justice.

(f) *BJS* means the Bureau of Justice Statistics.

(g) *Employment practices* means all terms and conditions of employment including but not limited to, all practices relating to the screening, recruitment, referral, selection, training, appointment, promotion, demotion, and assignment of personnel, and includes advertising, hiring, assignments, classification, discipline, layoff and termination, upgrading, transfer, leave practices, rate of pay, fringe benefits, or other forms of pay or credit for services rendered and use of facilities.

(h) *Investigation* includes fact-finding efforts and, pursuant to § 42.205(c)(3), attempts to secure the voluntary resolution of complaints.

(i) *Compliance review* means a review of a recipient's selected employment practices or delivery of services for compliance with the provisions of section 815(c)(1) of the Justice System Improvement Act, or this subpart.

(j) *Noncompliance* means the failure of a recipient to comply with section 815(c)(1) of the Justice System Improvement Act, or this subpart.

(k) *Program or activity* means the operation of the agency or organizational unit of government receiving or substantially benefiting from financial assistance awarded, e.g., a police department or department of corrections.

(l) *Pattern or practice* means any procedure, custom, or act affecting or potentially affecting, more than a single individual in a single or isolated instance.

(m) *Religion* includes all aspects of religious observance and practice as well as belief.

(n) *Recipient* means any State or local unit of government or agency thereof, and any private entity, institution, or organization, to which Federal financial assistance is extended directly, or through such government or agency, but such term does not include any ultimate beneficiary of such assistance.

(o) *State* means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands;

(p) *Unit of local government* means any city, county, township, town, borough, parish, village or other general purpose political subdivision of a State, an Indian tribe which performs law enforcement functions as determined by the Secretary of the Interior, or, for the purpose of assistance eligiblity, any agency of the District of Columbia government or the U.S. Government performing law enforcement functions in and for the District of Columbia;

(q) *Combination* as applied to States or units of local government means any grouping or joining together of such States or units for the purpose of preparing, developing, or implementing a criminal justice program or project;

(r) *Criminal justice council* or *CJC* means the agency designated by a State to perform the functions listed in section 402(b)(1) of the Justice System Improvement Act.

(s) All masculine terms such as *he*, *his*, and *him* should be construed to mean their respective feminine counterparts, *she*, *hers*, and *her*, where appropriate.

[45 FR 28705, Apr. 30, 1980; 45 FR 54037, Aug. 14, 1980]

§ 42.203 Discrimination prohibited.

(a) No person in any State shall on the ground of race, color, religion, national origin, or sex be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or denied employment in connection with any program or activity funded in whole or in part with funds made available under the JSIA or the Juvenile Justice Act.

(b) A recipient may not, directly or through contractual or other arrangements, on the grounds set forth in paragraph (a) of this section:

(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 his 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, or financial aid or benefit under the program;

(5) 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 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 him an opportunity to do so which is different from that afforded others under the program;

(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;

(8) Subject any individual to physical abuse or summary punishment, or deny any individual the rights guaranteed by the Constitution to all persons;

(9) Subject any individual to discrimination in its employment practices in connection with any program or activity funded in whole or in part with funds made available under the JSIA or the Juvenile Justice Act;

(10) Use any selection device in a manner which is inconsistent with the Department of Justice Uniform on Employee Selection Guidelines, 28 CFR 50.14.

(c) In matters involving employment discrimination, section 815(c)(1) of the JSIA shall be interpreted by the Office consistently with title VII of the Civil Rights Act of 1964, Public Law 88–352, 79 Stat. 253, as amended by the Equal Employment Opportunity Act of 1972, Public Law 92–261, 87 Stat. 103, and the Pregnancy Discrimination Act, Public Law 95–555, 92 Stat. 2076.

(d) The use of a minimum height or weight requirement which operates to disproportionately exclude women and persons of certain national origins, such as persons of Hispanic or Asian descent, is a violation of this subpart, unless the recipient is able to demonstrate convincingly, through use of supportive factual data, that the requirement has been validated as set forth in the Department of Justice Guidelines on Employee Selection Procedures, 28 CFR 50.14.

(e) A recipient, in determining the type of disposition, services, financial aid, benefits, or facilities which will be provided under any program, or the class of individuals to whom, or the situations in which, such will be provided under any 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 under section 815(c)(1) of the JSIA, or have the effect of defeating or substantially impairing accomplishment

of the objectives of the program as respects individuals of a particular race, color, sex, national origin, or religion.

(f) 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, subjecting them to discrimination under, or denying them employment in connection with any program or activity to which this subpart applies; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the JSIA, the Juvenile Justice Act, or this subpart.

(g) For the purposes of this section, the disposition, services, financial aid, or benefits provided under a program or activity 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.

(h) The enumeration of specific forms of prohibited discrimination in paragraphs (b) through (g) of this section does not limit the generality of the prohibition in paragraph (a) of this section.

(i)(1) In administering a program regarding which the recipient has previously discriminated against persons on the ground of race, color, religion, national origin, or sex, the recipient must take affirmative action to overcome the effects of prior discrimination.

(2) 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, religion, national origin, or sex.

(j) Nothing contained in this subpart shall be construed as requiring any recipient to adopt a percentage ratio, quota system, or other program to achieve racial balance. The use of goals and timetables is not use of a quota prohibited by this section.

[45 FR 28705, Apr. 30, 1980, as amended at 45 FR 54036, Aug. 14, 1980]

§ 42.204 Applicants' obligations.

(a) Every application for Federal financial assistance to which this subpart applies shall, as a condition of approval of such application and the extension of any Federal financial assistance pursuant to such application, contain or be accompanied by an assurance that the applicant will comply with all applicable nondiscrimination requirements and will obtain such assurances from its subgrantees, contractors, or subcontractors to which this subpart applies, as a condition of the extension of Federal financial assistance to them.

(b) Every unit of State or local government and every agency of such unit that applies for a grant of $500,000 or more under the JSIA or the Juvenile Justice Act, must submit a copy of its current Equal Employment Opportunity Program (if required to develop one under 28 CFR 42.301, *et. seq.*) to OJARS at the same time it submits its grant application. No application for $500,000 or more will be approved until OJARS has approved the applicant's EEOP.

(c) Every application for Federal financial assistance from a State or local unit of government or agency thereof shall contain an assurance that in the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing, on the ground of race, color, religion, national origin, or sex against the recipient State or local government unit, or agency, the recipient will forward a copy of the finding to the appropriate CJC and to OJARS.

[45 FR 28705, Apr. 30, 1980, as amended at 45 FR 54037, Aug. 14, 1980]

§ 42.205 Complaint investigation.

(a) The Office shall investigate complaints filed by or on behalf of an individual claiming to be aggrieved, that allege a violation of section 815(c)(1) of the JSIA, or this subpart.

(b) No complaint will be investigated if it is received more than one year

after the date of the alleged discrimination, unless the time for filing is extended by the Director of OJARS for good cause shown.

(c) The Office shall conduct investigations of complaints as follows:

(1) Within 21 days of receipt of a complaint, the Office shall:

(i) Ascertain whether it had jurisdiction under paragraphs (a) and (b) of this section;

(ii) If jurisdiction is found, notify the recipient alleged to be discriminating of its receipt of the complaint; and

(iii) Initiate the investigation.

(2) The investigation will ordinarily be initiated by a letter requesting data pertinent to the complaint and advising the recipient of:

(i) The nature of the complaint, and, with the written consent of the complainant, the identity of the complainant;

(ii) The programs or activities affected by the complaint;

(iii) The opportunity to make, at any time prior to receipt of the Office's preliminary findings, a documentary submission, responding to, rebutting, or denying the allegations made in the complaint; and

(iv) The schedule under which the complaint will be investigated and a determination of compliance or non-compliance made.

Copies of this letter will also be sent to the chief executive of the appropriate unit(s) of government, and to the appropriate CJC.

(3) Within 150 days or, where an on-site investigation is required, within 175 days after the initiation of the investigation, the Office shall advise the complainant, the recipient, the chief executive(s) of the appropriate unit(s) of government, and the appropriate CJC of:

(i) Its investigative findings;

(ii) Where appropriate, its recommendations for compliance; and

(iii) If it is likely that satisfactory resolution of the complaint can be obtained, the recipient's opportunity to request the Office to engage in voluntary compliance negotiations prior to the Director of OJARS' determination of compliance or non-compliance.

(4) If, within 30 days, the Office's recommendations for compliance are not met, or voluntary compliance is not secured, the matter will be forwarded to the Director of OJARS for a determination of compliance or non-compliance. The determination shall be made no later than 14 days after the conclusion of the 30-day period. If the Director makes a determination of non-compliance with section 815(c)(1) of the JSIA, the Office shall institute administrative proceedings pursuant to § 42.208 *et seq*.

(5) If the complainant or another party, other than the Attorney General, has filed suit in Federal or State court alleging the same discrimination alleged in a complaint to OJARS, and, during OJARS' investigation, the trial of that suit would be in progress, OJARS will suspend its investigation and monitor the litigation through the court docket and, where necessary, contacts with the complainant. Upon receipt of notice that the court has made a finding of a pattern or practice of discrimination within the meaning of § 42.208, the Office will institute administrative proceedings pursuant to § 42.208, *et seq*. Upon receipt of notice that the court has made a finding affecting only the complainant, the Office will adopt the findings of the court as its investigative findings pursuant to § 42.205(c)(3).

(6) The time limits listed in paragraphs (c)(1) through (c)(5) of this section shall be appropriately adjusted where OJARS requests another Federal agency or another branch of the Department of Justice to act on the complaint. OJARS will monitor the progress of the matter through liaison with the other agency. Where the request to act does not result in timely resolution of the matter, OJARS will institute appropriate proceedings pursuant to this section.

[45 FR 28705, Apr. 30, 1980; 45 FR 54037, Aug. 14, 1980]

§ 42.206 Compliance reviews.

(a) The Office shall periodically conduct:

(1) Pre-award compliance reviews of all applicants requesting a grant from LEAA, NIJ, or BJS for $500,000 or more; and

(2) Post-award compliance reviews of selected recipients of LEAA, NIJ, or BJS assistance.

(b) *Pre-award reviews.* The Office shall review selected formula, discretionary, and national priority applications for $500,000 or more in order to determine whether the application presents a possibility of discrimination in the services to be performed under the grant, or in the employment practices of the applicant. In those instances where it finds such a possibility, the Office shall special condition, disapprove or take other action with respect to the application to assure that the project complies with section 815(c)(1) of the JSIA.

(c) *Post-award reviews.* The Office shall seek to review those recipients which appear to have the most serious equal employment opportunity problems, or the greatest disparity in the delivery of services to the minority and non-minority or male and female communities they serve. Selection for review shall be made on the basis of:

(1) The relative disparity between the percentage of minorities, or women, in the relevant labor market, and the percentage of minorities, or women, employed by the recipient;

(2) The percentage of women and minorities in the population receiving program benefits;

(3) The number and nature of discrimination complaints filed against a recipient with OJARS or other Federal agencies;

(4) The scope of the problems revealed by an investigation commenced on the basis of a complaint filed with the Office against a recipient or by a pre-award compliance review; and

(5) The amount of assistance provided to the recipient.

(d) Within 15 days after selection of a recipient for review, the Office shall inform the recipient that it has been selected and will initiate the review. The review will ordinarily be initiated by a letter requesting data pertinent to the review and advising the recipient of:

(1) The practices to be reviewed;

(2) The programs or activities affected by the review;

(3) The opportunity to make, at any time prior to receipt of the Office's investigative findings, a documentary submission responding to the Office, explaining, validating, or otherwise addressing the practices under review; and

(4) The schedule under which the review will be conducted and a determination of compliance or non-compliance made.

Copies of this letter will also be sent to the chief executive of the appropriate unit(s) of government, and to the appropriate CJC.

(e) Within 150 days or, where an onsite investigation is required, within 175 days after the initiation of the review, the Office shall advise the recipient, the chief executive(s) of the appropriate unit(s) of government, and the appropriate CJC, of:

(1) Its investigative findings;

(2) Where appropriate, its recommendations for compliance; and

(3) The opportunity to request the Office to engage in voluntary compliance negotiations prior to the Director of OJARS' determination of compliance or noncompliance.

(f) If, within 30 days, the Office's recommendations for compliance are not met, or voluntary compliance is not secured, the Director of OJARS shall make a determination of compliance or non-compliance. The determination shall be made no later than 14 days after the conclusion of the 30-day negotiation period. If the Director makes a determination of non-compliance with section 815(c) of the JSIA, the Office shall institute administrative proceedings pursuant to § 42.208, *et seq.*

[45 FR 28705, Apr. 30, 1980; 45 FR 54037, Aug. 14, 1980]

§ 42.207 Compliance information.

(a) Each recipient shall:

(1) Keep such records, and submit to OJARS such timely, complete, and accurate information as OJARS may request to determine whether the recipient is complying with section 815(c)(1) of the JSIA; and

(2) Permit reasonable access by OJARS to its books, documents, papers, and records, to the extent necessary to determine whether the recipient is complying with section 815(c)(1) of the JSIA.

(b) Failure to comply with § 42.207(a) shall subject the recipient to the sanctions provided in section 803(a) of the JSIA, 42 U.S.C. 3783(a).

§ 42.208 Notice of noncompliance.

(a) Whenever the Office has:

(1) Received notice of a finding, after notice and opportunity for a hearing by:

(i) A Federal court (other than in an action brought by the Attorney General under section 815(c)(3) of the JSIA);

(ii) A State court; or

(iii) A Federal or State administrative agency (other than the Office under paragraph (a)(2) of this section); to the effect that there has been a pattern or practice of discrimination in violation of section 815(c)(1) of the JSIA; or

(2) Made a determination after an investigation by the Office pursuant to § 42.205 or § 42.206 of this subpart that a State government or unit of general local government, or agency thereof, is not in compliance with this subpart, or section 815(c)(1) of the JSIA, or this subpart: the Office shall, within 10 days after such occurrence, notify the chief executive of the affected State and, if the action involves a unit of general local government, the chief executive of such unit of general local government, that such program or activity has been so found or determined not to be in compliance with this subpart or section 815(c)(1) of the JSIA or this subpart, and shall request each chief executive notified under this section with respect to such violation to secure compliance.

(b) For the purposes of this section, notice means:

(1) Publication in—

(i) Employment Practices Decisions, Commerce Clearinghouse, Inc.;

(ii) Fair Employment Practices, Bureau of National Affairs, Inc.;

(iii) The United States Law Week, Bureau of National Affairs, Inc.; or

(iv) Federal Supplement, Federal Reporter, or Supreme Reporter, West Publishing Company; or

(2) Receipt by the Office of a reliable copy of a pattern or practice finding, made after a due process hearing from any source.

(c) When the Office receives notice of a finding which has been made more than 120 days prior to receipt, the Office will determine if the finding is currently applicable.

(1) In determining the current applicability of the finding, the Office will contact the clerk of the court and the office of the deciding judge (or the appropriate agency official) to determine whether any subsequent orders have been entered.

(2) If the information is unavailable through the clerk or the office of the judge (or the appropriate agency official), the Office will contact the attorneys of record for both the plaintiff and defendant to determine whether any subsequent orders have been entered, or if the recipient is in compliance.

(3) If, within 10 days of receipt of notice, it is not determined through the procedures set forth in paragraphs (c)(1) and (2) of this section, that the recipient is in full compliance with a final order of the court (or agency) within the meaning of § 42.211(b), the Office will notify the appropriate chief executive of the recipient's noncompliance as provided in § 42.208(a).

(d) For purposes of paragraph (a)(1)(iii) of this section a finding by a Federal or State administrative agency shall be deemed rendered after notice and opportunity for a hearing if it is rendered pursuant to procedures consistent with the provisions of subchapter II of chapter 5, title 5, U.S. Code (the Administrative Procedures Act).

(e) The procedures of a Federal or State administrative agency shall be deemed to be consistent with the Administrative Procedure Act (APA) if:

(1) The agency gives all interested parties opportunity for—

(i) The submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment when time, the nature of the proceeding, and the public interest permit; and

(ii) Hearing on notice, and a decision by an individual who did not participate in the investigation or prosecution of the matter.

(2) A party is entitled to be represented by counsel or other qualified representative, to present his case or

defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts; and

(3) The record shows the ruling on each finding, conclusion, or exception presented. All decisions, including initial recommended, and tentative decisions, shall be a part of the record and shall include a statement of—

(i) Findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record; and

(ii) The appropriate rule, order, sanction, relief, or definal thereof.

(f) If within 10 days of receipt of notice the Office cannot determine whether the finding was rendered pursuant to procedures consistent with the APA, it shall presume the APA procedures were applied, and send notification under § 42.208(a) to the appropriate chief executive(s).

(g) Each notification under § 42.208(a) shall advise the appropriate chief executive of:

(1) The program or activity determined to be in noncompliance;

(2) The general legal and factual basis for its determination;

(3) The Office's request to secure compliance;

(4) The action to be taken by the Office and the provisions of law under which the proposed action is to be taken should the chief executive fail to secure compliance; and

(5) The right of the recipient to request a preliminary hearing, pursuant to § 42.212, and a full hearing, pursuant to § 42.213.

§ 42.209 Compliance secured.

(a) In the event a chief executive secures compliance after notice pursuant to § 42.208, the terms and conditions with which the affected State government or unit of general local government agrees to comply shall be set forth in writing and signed by the chief executive of the State, by the chief executive of such unit (in the event of a violation by a unit of general local government), and by the Director of OJARS.

(b) Prior to the effective date of the agreement, the Office shall send a copy of the agreement to each complainant, if any, with respect to such violation, and to the appropriate CJC.

(c) The chief executive of the State, or the chief executive of the unit (in the event of a violation by a unit of general local government) shall file semi-annual reports with the Office detailing the steps taken to comply with the agreement.

(d) Within 15 days of receipt of such reports, the Office shall send a copy to each complainant, if any.

(e) The Director of OJARS shall also determine a recipient to be in compliance if it complies fully with the final order or judgement of a Federal or State court, pursuant to § 42.211 (a)(2) and (b), or if found by such court to be in compliance with section 815(c)(1).

§ 42.210 Compliance not secured.

(a) If, at the conclusion of 90 days after notification of noncompliance with section 815(c)(1):

(1) Compliance has not been secured by the chief executive of that State or the chief executive of that unit of general local government; and

(2) An administrative law judge has not made a determination under § 42.212 that it is likely the State government or unit of local government will prevail on the merits;

the Office shall notify the Attorney General that compliance has not been secured and shall cause to have suspended further payment of any funds under the JSIA or Juvenile Justice Act, as appropriate, to the specific program or activity in which the noncompliance has been found.

(b) If a hearing is requested pursuant to § 42.213, the suspension of funds shall be effective for a period of not more than 30 days after the conclusion of the hearing, or in the absence of a hearing under § 42.213, funds shall be suspended for not more than 120 days, unless there has been an express finding by the Director of OJARS after notice and opportunity for such a hearing, that the recipient is not in compliance with section 815(c)(1) of the JSIA, or this subpart.

§ 42.211 Resumption of suspended funds.

(a) Payment of suspended funds made available under the JSIA or the Juvenile Justice Act shall resume only if—

(1) Such State government or unit of general local government enters into a compliance agreement signed by the Director of OJARS in accordance with § 42.209;

(2) Such State government or unit of general local government:

(i) Complies fully with the final order or judgment of a Federal or State court, if that order or judgement covers all matters raised by the Director of OJARS in the notice pursuant to § 42.208, or

(ii) Is found to be in compliance with section 815(c)(1) of the JSIA by such court;

(3) After a hearing, the Director of OJARS, pursuant to § 42.213, finds that noncompliance has not been demonstrated; or

(4) An administrative law judge has determined, under § 42.212, that it is likely that the State government or unit of local government will prevail on the merits.

(b) Full compliance with a court order, for the purposes of paragraph (2) of this section, includes the securing of an agreement to comply over a period of time, particularly in complex cases or where compliance would require an extended period of time for implementation.

§ 42.212 Preliminary hearing.

(a) Prior to the suspension of funds under § 42.210(a), but within the 90-day period after notification under § 42.208, the State government or unit of local government may request an expedited preliminary hearing on the record in accordance with 5 U.S.C. 554 in order to determine whether it is likely that the State government or unit of local government would, at a full hearing under § 42.213, prevail on the merits on the issue of the alleged noncompliance.

(b) The preliminary hearing shall be initiated within 30 days of request. The ALJ shall make his finding within 15 days after the conclusion of the preliminary hearing.

§ 42.213 Full hearing.

(a) At any time after notification of noncompliance under § 42.208, but before the conclusion of the 120-day suspension period referred to in § 42.210, a State government or unit of general local government may request a hearing on the record in accordance with 5 U.S.C. 554 in order to contest the findings of determination of noncompliance made under § 42.208. The Office shall initiate the hearing within 60 days of request.

(b) Within 30 days after the conclusion of the hearing, or, in the absence of a hearing, at the conclusion of the 120-day period referred to in § 42.210, the Director of OJARS shall make a finding of compliance or noncompliance.

(1) If the Director makes a finding of noncompliance, the Director shall:

(i) Notify the Attorney General in order that the Attorney General may institute a civil action under section 815(c)(3) of the JSIA;

(ii) Cause to have terminated the payment of funds under the JSIA and/or the Juvenile Justice Act; and

(iii) If appropriate, seek repayment of funds.

(2) If the Director makes a finding of compliance, payment of the suspended funds and reconsideration of applications shall resume.

§ 42.214 Judicial review.

Any State government or unit of general local government aggrieved by a final determination of the Office under § 42.213 may appeal such determination as provided in section 805 of the JSIA.

§ 42.215 Other actions authorized under the JSIA.

(a) The Director of OJARS may, at any time, request the Attorney General to file suit to enforce compliance with section 815(c)(1). OJARS will monitor the litigation through the court docket and liaison with the Civil Rights Division of the Department of Justice. Where the litigation does not result in timely resolution of the matter, and funds have not been suspended pursuant to § 42.215(b), OJARS will institute administrative proceedings unless enjoined from doing so by the court.

(b)(1) Whenever the Attorney General files a civil action alleging a pattern or practice of discriminatory conduct on the basis of race, color, religion, national origin, or sex in any program or activity of a State government or unit of local government which State government or unit of local government receives funds made available under the JSIA or the Juvenile Justice Act and the conduct allegedly violates or would violate the provisions of this subpart or section 815(c)(1) of the JSIA and neither party within 45 days after such filing has been granted such preliminary relief with regard to the suspension or payment of funds as may otherwise be available by law, the Director of OJARS shall suspend further payment of any funds under the JSIA and the Juvenile Justice Act to that specific program or activity alleged by the Attorney General to be in violation of the provisions of section 815(c)(1) of the JSIA until such time as the court orders resumption of payment.

(2) The Office expects that preliminary relief authorized by this subsection will not be granted unless the party making application for such relief meets the standards for a preliminary injunction.

(c)(1) Whenever a State government or unit of local government or any officer or employee thereof acting in an official capacity, has engaged or is engaging in any act or practice prohibited by section 815(c)(1) of the JSIA, a civil action may be instituted after exhaustion of administrative remedies by the person aggrieved in an appropriate U.S. District Court or in a State court or general jurisdiction.

(2) Administrative remedies shall be deemed to be exhausted upon the expiration of 60 days after the date the administrative complaint was filed with the Office or any other administrative enforcement agency, unless within such period there has been a determination by the Office or the agency on the merits of the complaint, in which case such remedies shall be deemed exhausted at the time the determination becomes final.

(3) The Attorney General, or a specifically designated assistant for or in the name of the United States may intervene upon timely application in any civil action brought to enforce compliance with section 815(c)(1) of the JSIA if he certifies that the action is of general public importance. In such action the United States shall be entitled to the same relief as if it had instituted the action.

APPENDIX A TO SUBPART D OF PART 42—COMMENTARY

Section 42.201(c). The compliance enforcement mechanism of section 815(c)(2) applies by its terms to State and local government. The prohibitions in section 815(c)(1), however, apply to all recipients of OJARS assistance. Accordingly, where a private entity which has received LEAA, NIJ, or BJS assistance through a State or local unit of government is determined by OJARS to be in non-compliance, OJARS will invoke the section 815(c)(2) mechanism against the appropriate unit of government for its failure to enforce the assurances of compliance given it by the private recipient, unless the unit has initiated its own compliance action against the private recipient. The fund termination procedures of section 803(a) will be invoked against non-complying private recipients which receive assistance directly from LEAA, NIJ, or BJS, or through another private entity.

Section 42.202(g). Section 815(c)(1) of the JSIA limits suspension and termination of assistance in the event of noncompliance to the ''programs or activity'' in which the noncompliance is found. The phrase ''program or activity'' was first used in section 815(c)(1) of the Crime Control Act of 1976, the substantially identical predecessor to section 815(c)(1).

House Report No. 94–1155 (94th Congress, 2d Session), at p. 26, explained the provision as follows:

''Suspension may be limited to the specific program or activity found to have discriminated, rather than all of the recipients' LEAA funds.

''For example, if discriminatory employment practices in a city's police department were cited in the notification, LEAA may only suspend that part of the city's payments which fund the police department. LEAA may not suspend the city's LEAA funds which are used in the city courts, prisons, or juvenile justice agencies.''

This passage makes it clear that OJARS need not demonstrate a nexus between the particular project funded and the discriminatory activity. See *Lau* v. *Nichols,* 414 U.S. 563, 566 (1974).

Sections 42.203(b) and 42.203(e–i). These provisions are derived from 28 CFR 42.104(b) of subpart C of the Department of Justice Nondiscrimination Regulations. Where appropriate ''sex'' and ''religion'' have been added

as prohibited grounds of discrimination, and ''denial of employment'' as another activity within the scope of section 815(c)(1).

Individual projects benefiting a particular sex, race, or ethnic group are not violative of section 815(c)(1) unless the granting agency or the recipient has engaged in a pattern of granting preferential treatment to one such group, and cannot justify the preference on the basis of a compelling governmental interest, in the case of racial or ethnic discrimination, or a substantial relationship to an important governmental function, in the case of sex discrimination.

Section 42.203(b)(10). On August 25, 1978, the Department of Justice, the Equal Employment Opportunity Commission, the Department of Labor and the then-Civil Service Commission published the Uniform Employee Selection Guidelines codified at 28 CFR 50.14. Since OJARS is a component of the Department, these guidelines are applicable to the selection procedures of LEAA, NIJ, and BJS recipients. See 44 FR 11996 (March 2, 1979) for a detailed commentary on the guidelines.

Section 42.203(c). In the Conference Report on section 518(c) of the Crime Control Act (the substantially identical predecessor of section 815(c)), the managers stated that ''In the area of employment cases brought under this section, it is intended by the conferees that the standards of title VII of the Civil Rights Act of 1964 apply.'' H. Rept. No. 94–1723 (94th Cong., 2d Sess.) at p. 32.

This section makes the OJARS standards of employment discrimination consistent with those used by the Civil Rights Division of the Department of Justice. It further clarifies that the burden shifts to the employer to validate its selection procedures once OJARS has demonstrated that those procedures disproportionately exclude an affected class. Discriminatory purpose on the part of the employer, which must be shown before the burden shifts in a Fourteenth Amendment case such as *Washington* v. *Davis,* 426 U.S. 229, 96 S. Ct. 2040 (1976), need not be shown in an employment discrimination case brought under section 815(c)(1).

Section 42.203(j). Section 815(b) of the JSIA reads:

''Notwithstanding any other provision of law, nothing contained in this title shall be construed to authorize the National Institute of Justice, the Bureau of Justice Statistics, or the Law Enforcement Assistance Administration (1) to require, or condition the availability or amount of a grant upon the adoption by an applicant or grantee under this title of a percentage ratio, quota system, or other program to achieve racial balance in any criminal justice agency; or (2) to deny or discontinue a grant because of the refusal of an applicant or grantee under this title to adopt such a ratio, system, or other program.''

In commenting on the Crime Control Act of 1976, Senator Roman Hruska of Nebraska explained the difference between quotas and goals and timetables as follows:

''Section 518(b) [now 815(b)] of the act prohibits the setting of quotas. This provision was unchanged, and this provision will still bind the Administration.

''LEAA does have an affirmative obligation under this law to seek to eliminate discriminatory practices, voluntarily, if possible, prior to resorting to fund termination. LEAA can request that a recipient eliminate the effect of past discrimination by requiring the recipient to commit itself to goals and timetables. The formulation of goals is not a quota prohibited by section 518(b) of the act. A goal is a numerical objective fixed realistically in terms of the number of vacancies expected and the number of qualified applicants available. Factors such as a lower attrition rate than expected, bona fide fiscal restraints, or a lack of qualified applicants would be acceptable reasons for not meeting a goal that has been established and no sanctions would accrue under the program.'' Cong. Rec. S 17320 (September 30, 1976, daily ed.).

The Senate Judiciary Committee Report on the JSIA also emphasized that section 815(b) does not ''undercut subsection (c) in any way; subsection (b) has been interpreted so as not to limit LEAA's anti-discrimination enforcement capabilities. Indeed, recent court decisions have made this abundantly clear. See, e.g., *United States* v. *City of Los Angeles,* No. 77–3460 (C.D. Cal. 2/1/79).'' S. Rept. 96–142, p. 57.

See also the Equal Employment Opportunity Commission Affirmative Action Guidelines, 44 FR 4422 (January 19, 1979).

Section 42.204. All grantees and subgrantees must make the assurances found in paragraph (a). Only State and local units of government and agencies thereof must make the assurance found in paragraph (c), since, as explained in the commentary on §42.201(c), the enforcement provisions of section 815(c)(2) apply only to governmental recipients.

Section 42.205(a). Where information available to the Office clearly and convincingly demonstrates that the complaint is frivolous or otherwise without merit, the complaint will not be investigated, and the complainant will be so advised.

Section 42.205(b). A one-year timeliness requirement is imposed to ensure that OJARS will be devoting its resources to the resolution of active issues, and to maximize the possibility that necessary witnesses and evidence are still available.

Examples of good cause which would clearly warrant an extension of the filing period are a statement from the complainant stating that he or she was unware of the discrimination until after a year had passed, or

that he or she was not aware that a remedy was available through OJARS.

Section 42.205(c)(1). Jurisdiction exists if the complaint alleges discrimination on a ground prohibited by section 815(c)(1), if the recipient was receiving funds at the time of the discrimination, and the respondent named in the complaint is a current recipient of LEAA, NIJ, or BJS assistance.

Prior to a determination of noncompliance, OJARS will attempt to negotiate voluntary compliance only during the 30-day period following receipt of the Office's preliminary findings, and only at the request of the recipient, as provided in § 42.205(c)(3). If a determination of noncompliance is made, OJARS will participate in voluntary compliance efforts during the 90-day period following the letter sent to the chief executive(s) under section 42.208.

Sections 42.205(c) (3) and (4) and 42.206(e). OJARS will notify the appropriate chief executive(s) of its recommendations during the voluntary resolution phase of both the complaint investigation and compliance review process. OJARS expects that the early involvement of the chief executive will often expedite the resolution of issues.

Section 42.205(c)(5). OJARS will initiate an investigation if the litigation discussed in this subparagraph becomes protracted or apparently will not resolve the matter within a reasonable time.

Section 42.205(c)(6). In order to effectively utilize the resources of other agencies, and to avoid duplication of effort, OJARS may request another agency to act on a particular complaint. OJARS expects this practice to be limited, and will attempt to ensure that any cooperative agreement reached with another agency is consistent with the timetables set forth in § 42.205(c).

Section 42.206(a). OJARS recognizes the practical impossibility of reviewing the compliance of each of its more than 39,000 recipients. The regulations seek to expedite the review process by reducing its length and narrowing its focus. Compliance reviews may, in some instances, be limited to specific employment practices, or other functions of a recipient, that appear to have the greatest adverse impact on an affected class.

Section 42.206(b). The factors listed will be considered cumulatively by OJARS in selecting recipients for reviews. OJARS will consider data from all sources, including information provided by both internal and external auditors.

Section 42.208(b). Upon receipt of the publications listed, OJARS will review the case reports for findings that may be violations of section 815(c)(1). In the case of the West Publishing Company reporters, OJARS will consult the topic ''Civil Rights'' in the Key Number Digests contained in the advance sheets.

Section 42.208(e). This subsection sets forth the minimum procedural safeguards that OJARS would require of an administrative hearing to assure the process was consistent with the Administrative Procedure Act. The sufficiency of other procedures that may vary in form but insure due process and the same opportunity for a fair hearing of both parties' evidence will be determined by OJARS on a case-by-case basis.

The Office will compile a list of State agencies whose procedures have been found consistent with the Administrative Procedure Act, and a list of State agencies whose procedures have been found inconsistent. When a finding of an agency not on either list is received, the Office will attempt to reliably determine the procedures used to render the findings.

Section 42.209(a). Although the signature of the appropriate chief executives are ultimately required on the compliance agreement, these regulations do not preclude them from delegating the responsibility for securing compliance during the 90-day period following notification, to State or local administrative or human rights agencies under their respective authority. A compliance agreement may be an agreement to comply over a period of time, particularly in complex cases or where compliance would require an extended period of time for implementation.

Section 42.209(b). The regulations require that a copy of the proposed compliance agreement be sent to the complainant, if any, before the effective date of the agreement. Although the Act would permit a copy to be sent as late as the effective date, OJARS believes the compliance agreement would be more likely to resolve all concerns and discourage litigation if the complainant's views were considered before it took effect.

Section 42.211(b). An example of a case where compliance would require an extended period of time for implementation would be a court order setting a goal of five years for an employer to raise the percentage of minorities in its workforce to parity with the percentage of minorities in the relevant geographical labor force.

Section 42.213. The full hearing will be conducted in accordance with JSIA Hearing and Appeal Procedures, 28 CFR 18.1, *et seq.*

Section 42.215(a). In a December 20, 1976 letter to the Administrator of LEAA, Congressman Peter Rodino, Chairman of the House Judiciary Committee, commented on the regulations proposed to implement the substantially identical nondiscrimination provisions of the Crime Control Act. He advised the Administrator that ''the committee intentionally omitted the word 'refer' from the law to ensure that LEAA would always retain administrative jurisdiction over a complaint filed with them. It is not appropriate

for LEAA to refer cases to the Civil Rights Division or other Federal or State agencies without monitoring the case for prompt resolution.''

Section 42.215(c)(2). The exhaustion of administrative remedies at the end of 60 days (unless the Office has made a determination) does not limit OJARS' authority to investigate a complaint after the expiration of that period. OJARS will continue to investigate the complaint after the end of the 60-day period, if necessary, in accordance with the provisions of § 42.205.

Subpart E—Equal Employment Opportunity Program Guidelines

AUTHORITY: Sec. 501 of the Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. 90–351, 82 Stat. 197, as amended.

SOURCE: 43 FR 28802, June 30, 1978, unless otherwise noted.

§ 42.301 Purpose.

The experience of the Law Enforcement Assistance Administration in implementing its responsibilities under the Omnibus Crime Control and Safe Streets Act of 1968, as amended (Pub. L. 90–351, 82 Stat. 197; Pub. L. 91–644, 84 Stat. 1881) has demonstrated that the full and equal participation of women and minority individuals in employment opportunities in the criminal justice system is a necessary component to the Safe Streets Act's program to reduce crime and delinquency in the United States.

§ 42.302 Application.

(a) *Recipient* means any State or local unit of government or agency thereof, and any private entity, institution, or organization, to which Federal financial assistance is extended directly, or through such government or agency, but such term does not include any ultimate beneficiary of such assistance.

(b) The obligation of a recipient to formulate, implement, and maintain an equal employment opportunity program, in accordance with this subpart, extends to State and local police agencies, correctional agencies, criminal court systems, probation and parole agencies, and similar agencies responsible for the reduction and control of crime and delinquency.

(c) Assignments of compliance responsibility for title VI of the Civil Rights Act of 1964 have been made by the Department of Justice to the Department of Health and Human Services, covering educational institutions and general hospital or medical facilities. Similarly, the Department of Labor, in pursuance of its authority under Executive Orders 11246 and 11375, has assigned responsibility for monitoring equal employment opportunity under government contracts with medical and educational institutions, and non-profit organizations, to the Department of Health and Human Services. Accordingly, monitoring responsibility in compliance matters in agencies of the kind mentioned in this paragraph rests with the Department of Health and Human Services, and agencies of this kind are exempt from the provisions of this subpart, and are not responsible for the development of equal employment opportunity programs in accordance herewith.

(d) Each recipient of LEAA assistance within the criminal justice system which has 50 or more employees and which has received grants or subgrants of $25,000 or more pursuant to and since the enactment of the Safe Streets Act of 1968, as amended, and which has a service population with a minority representation of 3 percent or more, is required to formulate, implement and maintain an equal employment opportunity program relating to employment practices affecting minority persons and women within 120 days after either the promulgation of these amended guidelines, or the initial application for assistance is approved, whichever is sooner. Where a recipient has 50 or more employees, and has received grants or subgrants of $25,000 or more, and has a service population with a minority representation of less than 3 percent, such recipient is required to formulate, implement, and maintain an equal employment opportunity program relating to employment practices affecting women. For a definition of ''employment practices'' within the meaning of this paragraph, see § 42.202(c).

(e) *Minority persons* shall include persons who are Black, not of Hispanic origin; Asian or Pacific Islanders; American Indians or Alaskan Native; or Hispanics. These categories are defined at 28 CFR 42.402(e).

(f) *Fiscal year* means the 12 calendar months beginning October 1, and ending September 30, of the following calendar year. A fiscal year is designated by the calendar year in which it ends.

[43 FR 28802, June 30, 1978, as amended by Order No. 960–81, 46 FR 52357, Oct. 27, 1981]

§ 42.303 Evaluation of employment opportunities.

(a) A necessary prerequisite to the development and implementation of a satisfactory equal employment opportunity program is the identification and analysis of any problem areas inherent in the utilization or participation of minorities and women in all of the recipient's employment phases (e.g., recruitment, selection, and promotion) and the evaluation of employment opportunities for minorities and women.

(b) In many cases an effective equal employment opportunity program may only be accomplished where the program is coordinated by the recipient agency with the cognizant Office of Personnel Management or similar agency responsible by law, in whole or in part, for the recruitment and selection of entrance candidates and selection of candidates for promotion.

(c) In making the evaluation of employment opportunities, the recipient shall conduct such analysis separately for minorities and women. However, all racial and ethnic data collected to perform an evaluation pursuant to the requirements of this section should be cross classified by sex to ascertain the extent to which minority women or minority men may be underutilized. The evaluation should include but not necessarily be limited to, the following factors:

(1) An analysis of present representation of women and minority persons in all job categories;

(2) An analysis of all recruitment and employment selection procedures for the preceding fiscal year, including such things as position descriptions, application forms, recruitment methods and sources, interview procedures, test administration and test validity, educational prerequisites, referral procedures and final selection methods, to insure that equal employment opportunity is being afforded in all job categories;

(3) An analysis of seniority practices and provisions, upgrading and promotion procedures, transfer procedures (lateral or vertical), and formal and informal training programs during the preceding fiscal year, in order to insure that equal employment opportunity is being afforded;

(4) A reasonable assessment to determine whether minority employment is inhibited by external factors such as the lack of access to suitable housing in the geographical area served by a certain facility or the lack of suitable transportation (public or private) to the workplace.

[43 FR 28802, June 30, 1978, as amended by Order No. 899–80, 45 FR 43703, June 30, 1980]

§ 42.304 Written equal employment opportunity program.

Each recipient's equal employment opportunity program shall be in writing and shall include:

(a) A job classification table or chart which clearly indicates for each job classification or assignment the number of employees within each respective job category classified by race, sex and national origin (include for example Hispanic, Asian or Pacific Islander, and American Indian or Alaskan Native). Also, principal duties and rates of pay should be clearly indicated for each job classification. Where auxiliary duties are assigned or more than one rate of pay applies because of length of time in the job or other factors, a special notation should be made. Where the recipient operates more than one shift or assigns employees within each shift to varying locations, as in law enforcement agencies, the number by race, sex and national origin on each shift and in each location should be identified. When relevant, the recipient should indicate the racial/ethnic mix of the geographic area of assignments by the inclusion of minority population and percentage statistics.

(b) The number of disciplinary actions taken against employees by race,

sex and national origin within the preceding fiscal year, the number and types of sanctions imposed (suspension indefinitely, suspension for a term, loss of pay, written reprimand, oral reprimand, other) against individuals by race, sex and national origin.

(c) The number of individuals by race, sex and national origin (if available) applying for employment within the preceding fiscal year and the number by race, sex and national origin (if available) of those applicants who were offered employment and those who were actually hired. If such data is unavailable, the recipient should institute a system for the collection of such data.

(d) The number of employees in each job category by race, sex and national origin who made application for promotion or transfer within the preceding fiscal year and the number in each job category by race, sex, and national origin who were promoted or transferred.

(e) The number of employees by race, sex, and national origin who were terminated within the preceding fiscal year, identifying by race, sex, and national origin which were voluntary and involuntary terminations.

(f) Available community and area labor characteristics within the relevant geographical area including total population, workforce and existing unemployment by race, sex and national origin. Such data may be obtained from the Bureau of Labor Statistics, Washington, DC, State and local employment services, or other reliable sources. Recipient should identify the sources of the data used.

(g) A detailed narrative statement setting forth the recipient's existing employment policies and practices as defined in § 42.202(c). Thus, for example, where testing is used in the employment selection process, it is not sufficient for the recipient to simply note the fact. The recipient should identify the test, describe the procedures followed in administering and scoring the test, state what weight is given to test scores, how a cut-off score is established and whether the test has been validated to predict or measure job performance and, if so, a detailed description of the validation study. Similarly detailed responses are required with respect to other employment policies, procedures, and practices used by the applicant.

(1) The statement should include the recipient's detailed analysis of existing employment policies, procedures, and practices as they relate to employment of minorities and women (see § 42.303) and, where improvements are necessary, the statement should set forth in detail the specific steps the recipient will take for the achievement of full and equal employment opportunity. The Department of Justice Guidelines on Employee Selection Procedures, 28 CFR part 50, set out the appropriate standards for nondiscriminatory selection procedures. Recipients of LEAA assistance using selection procedures which are not in conformity with the Department of Justice guidelines shall set forth the specific areas of nonconformity, the reasons which may explain any such nonconformity, and if necessary, the steps the recipient agency will take to correct any existing deficiency.

(2) The recipient should also set forth a program for recruitment of minority persons based on an informed judgment of what is necessary to attract minority applications including, but not necessarily limited to, dissemination of posters, use of advertising media patronized by minorities, minority group contacts and community relations programs. As appropriate, recipients may wish to refer to recruitment techniques suggested in revised order No. 4 of the Office of Federal Contract Compliance, U.S. Department of Labor, found at 41 CFR 60–2.24(e).

(h) Plan for dissemination of the applicant's Equal Employment Opportunity Program to all personnel, applicants and the general public. As appropriate, recipients may wish to refer to the recommendations for dissemination of policy suggested in revised order No. 4 of the Office of Federal Contract Compliance, U.S. Department of Labor, found at 41 CFR 60–2.21.

(i) Designation of specified personnel to implement and maintain adherence to the equal employment opportunity

program and a description of their specific responsibilities suggested in revised order No. 4 of the Office of Federal Contract Compliance, U.S. Department of Labor, found at 41 CFR 60–2.22.

§ 42.305 Recordkeeping and certification.

The equal employment opportunity program and all records used in its preparation shall be kept on file and retained by each recipient covered by these guidelines for subsequent audit or review by responsible personnel of the cognizant State planning agency or the LEAA. Prior to the authorization to fund new or continuing programs under the Omnibus Crime Control and Safe Streets Act of 1968, the recipient shall file a certificate with the cognizant State planning agency or with the LEAA Office of Civil Rights Compliance stating that the equal employment opportunity program is on file with the recipient. This form of the certification shall be as follows:

I, _____ (person filing the application) certify that the _____ (criminal justice agency) has formulated an equal employment program in accordance with 28 CFR 42.301, et seq., subpart E, and that it is on file in the Office of _____ (name), _____ (address), _____ (title), for review or audit by officials of the cognizant State planning agency or the Law Enforcement Assistance Administration as required by relevant laws and regulations.

The criminal justice agency created by the Governor to implement the Safe Streets Act within each State shall certify that it requires, as a condition of the receipt of block grant funds, that recipients from it have executed an Equal Employment Opportunity Program in accordance with this subpart, or that, in conformity with the terms and conditions of this regulation no equal employment opportunity programs are required to be filed by that jurisdiction.

§ 42.306 Guidelines.

(a) Recipient agencies are expected to conduct a continuing program of self-evaluation to ascertain whether any of their recruitment, employee selection or promotional policies (or lack thereof) directly or indirectly have the effect of denying equal employment opportunities to minority individuals and women.

(b) Equal employment program modification may be suggested by LEAA whenever identifiable referral or selection procedures and policies suggest to LEAA the appropriateness of improved selection procedures and policies. Accordingly, any recipient agencies falling within this category are encouraged to develop recruitment, hiring or promotional guidelines under their equal employment opportunity program which will correct, in a timely manner, any identifiable employment impediments which may have contributed to the existing disparities.

§ 42.307 Obligations of recipients.

The obligation of those recipients subject to these guidelines for the maintenance of an equal employment opportunity program shall continue for the period during which the LEAA assistance is extended to a recipient or for the period during which a comprehensive law enforcement plan filed pursuant to the Safe Streets Act is in effect within the State, whichever is longer, unless the assurances of compliance, filed by a recipient in accordance with § 42.204(a)(2), specify a different period.

§ 42.308 Noncompliance.

Failure to implement and maintain an equal employment opportunity program as required by these guidelines shall subject recipients of LEAA assistance to the sanctions prescribed by the Safe Streets Act and the equal employment opportunity regulations of the Department of Justice. (See 42 U.S.C. 3757 and 28 CFR 42.207.)

Subpart F—Coordination of Enforcement of Non-discrimination in Federally Assisted Programs

AUTHORITY: Executive Order 12250.

SOURCE: Order No. 670–76, 41 FR 52669, Dec. 1, 1976, unless otherwise noted.

§ 42.401 Purpose and application.

The purpose of this subpart is to insure that federal agencies which extend financial assistance properly enforce

title VI of the Civil Rights Act of 1964 and similar provisions in federal grant statutes. Enforcement of the latter statutes is covered by this subpart to the extent that they relate to prohibiting discrimination on the ground of race, color or national origin in programs receiving federal financial assistance of the type subject to title VI. Responsibility for enforcing title VI rests with the federal agencies which extend financial assistance. In accord with the authority granted the Attorney General under Executive Order 12250, this subpart shall govern the respective obligations of federal agencies regarding enforcement of title VI. This subpart is to be used in conjunction with the 1965 Attorney General Guidelines for Enforcement of title VI, 28 CFR 50.3.

[Order No. 670–76, 41 FR 52669, Dec. 1, 1976, as amended by Order No. 960–81, 46 FR 52357, Oct. 27, 1981]

§ 42.402 Definitions.

For purpose of this subpart:

(a) *Title VI* refers to title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d to 2000d–4. Where appropriate, this term also refers to the civil rights provisions of other federal statutes to the extent that they prohibit discrimination on the ground of race, color or national origin in programs receiving federal financial assistance of the type subject to title VI itself.

(b) *Agency* or *federal agency* refers to any federal department or agency which extends federal financial assistance of the type subject to title VI.

(c) *Program* refers to programs and activities receiving federal financial assistance of the type subject to title VI.

(d) *Assistant Attorney General* refers to the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

(e) Where designation of persons by race, color or national origin is required, the following designations shall be used:

(1) *Black, not of Hispanic Origin*. A person having origins in any of the black racial groups of Africa.

(2) *Hispanic*. A person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race.

(3) *Asian or Pacific Islander*. A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands. This area includes, for example, China, Japan, Korea, the Philippine Islands, and Samoa.

(4) *American Indian or Alaskan Native*. A person having origins in any of the original peoples of North America, and who maintain cultural identification through tribal affiliation or community recognition.

(5) *White, not of Hispanic Origin*. A person having origins in any of the original people of Europe, North Africa, or the Middle East. Additional subcategories based on national origin or primary language spoken may be used where appropriate, on either a national or a regional basis. Paragraphs (e)(1) through (e)(5) of this section, inclusive, set forth in this section are in conformity with the OMB Ad Hoc Committee on Race/Ethnic Categories' recommendations. To the extent that said designations are modified by the OMB Ad Hoc Committee, paragraphs (e)(1) through (e)(5) of this section, inclusive, set forth in this section shall be interpreted to conform with those modifications.

(f) *Covered employment* means employment practices covered by title VI. Such practices are those which:

(1) Exist in a program where a primary objective of the federal financial assistance is to provide employment, or

(2) Cause discrimination on the basis of race, color or national origin with respect to beneficiaries or potential beneficiaries of the assisted program.

§ 42.403 Agency regulations.

(a) Any federal agency subject to title VI which has not issued a regulation implementing title VI shall do so as promptly as possible and, no later than the effective date of this subpart, shall submit a proposed regulation to the Assistant Attorney General pursuant to paragraph (c) of this section.

(b) Any federal agency which becomes subject to title VI after the effective date of this subpart shall, within 60 days of the date it becomes subject to title VI, submit a proposed regulation to the Assistant Attorney General pursuant to paragraph (c) of this section.

(c) Regarding issuance or amendment of its regulation implementing title VI, a federal agency shall take the following steps:

(1) Before publishing a proposed regulation of amendment in the FEDERAL REGISTER, submit it to the Assistant Attorney General, Civil Rights Division;

(2) After receiving the approval of the Assistant Attorney General, publish the proposed regulation or amendment in the FEDERAL REGISTER for comment;

(3) After final agency approval, submit the regulation or amendment, through the Assistant Attorney General, to the Attorney General for final approval. (Executive Order 12250 delegates to the Attorney General the function, vested in the President by section 602 of title VI, 42 U.S.C. 2000d–1, of approving title VI regulations and amendments to them.)

(d) The title VI regulation of each federal agency shall be supplemented with an appendix listing the types of federal financial assistance, i.e., the statutes authorizing such assistance, to which the regulation applies. Each such appendix shall be kept up-to-date by amendments published, at appropriate intervals, in the FEDERAL REGISTER. In issuing or amending such an appendix, the agency need not follow the procedure set forth in paragraph (c) of this section.

[Order No. 670–76, 41 FR 52669, Dec. 1, 1976, as amended by Order No. 960–81, 46 FR 52357, Oct. 27, 1981]

§ 42.404 Guidelines.

(a) Federal agencies shall publish title VI guidelines for each type of program to which they extend financial assistance, where such guidelines would be appropriate to provide detailed information on the requirements of title VI. Such guidelines shall be published within three months of the effective date of this subpart or of the effective date of any subsequent statute authorizing federal financial assistance to a new type of program. The guidelines shall describe the nature of title VI coverage, methods of enforcement, examples of prohibited practices in the context of the particular type of program, required or suggested remedial action, and the nature of requirements relating to covered employment, data collection, complaints and public information.

(b) Where a federal agency determines that title VI guidelines are not appropriate for any type of program to which it provides financial assistance, the reasons for the determination shall be stated in writing and made available to the public upon request.

§ 42.405 Public dissemination of title VI information.

(a) Federal agencies shall make available and, where appropriate, distribute their title VI regulations and guidelines for use by federal employees, applicants for federal assistance, recipients, beneficiaries and other interested persons.

(b) State agency compliance programs (see § 42.410) shall be made available to the public.

(c) Federal agencies shall require recipients, where feasible, to display prominently in reasonable numbers and places posters which state that the recipients operate programs subject to the nondiscrimination requirements of title VI, summarize those requirements, note the availability of title VI information from recipients and the federal agencies, and explain briefly the procedures for filing complaints. Federal agencies and recipients shall also include information on title VI requirements, complaint procedures and the rights of beneficiaries in handbooks, manuals, pamphlets and other material which are ordinarily distributed to the public to describe the federally assisted programs and the requirements for participation by recipients and beneficiaries. To the extent that recipients are required by law or regulation to publish or broadcast program information in the news media, federal agencies and recipients shall insure that such publications and broadcasts state that the program in question is

an equal opportunity program or otherwise indicate that discrimination in the program is prohibited by federal law.

(d)(1) Where a significant number or proportion of the population eligible to be served or likely to be directly affected by a federally assisted program (e.g., affected by relocation) needs service or information in a language other than English in order effectively to be informed of or to participate in the program, the recipient shall take reasonable steps, considering the scope of the program and the size and concentration of such population, to provide information in appropriate languages to such persons. This requirement applies with regard to written material of the type which is ordinarily distributed to the public.

(2) Federal agencies shall also take reasonable steps to provide, in languages other than English, information regarding programs subject to title VI.

§ 42.406 Data and information collection.

(a) Except as determined to be inappropriate in accordance with paragraph (f) of this section or § 42.404(b), federal agencies, as a part of the guidelines required by § 42.404, shall in regard to each assisted program provide for the collection of data and information from applicants for and recipients of federal assistance sufficient to permit effective enforcement of title VI.

(b) Pursuant to paragraph (a) of this section, in conjunction with new applications for federal assistance (see 28 CFR 50.3(c) II A) and in any applications for approval of specific projects or significant changes in applications for continuation or renewal of assistance (see 28 CFR 50.3(c) II B), and at other times as appropriate, federal agencies shall require applicants and recipients to provide relevant and current title VI information. Examples of data and information which, to the extent necessary and appropriate for determining compliance with title VI, should be required by agency guidelines are as follows:

(1) The manner in which services are or will be provided by the program in question, and related data necessary for determining whether any persons are or will be denied such services on the basis of prohibited discrimination;

(2) The population eligible to be served by race, color and national origin;

(3) Data regarding covered employment, including use or planned use of bilingual public-contact employees serving beneficiaries of the program where necessary to permit effective participation by beneficiaries unable to speak or understand English;

(4) The location of existing or proposed facilities connected with the program, and related information adequate for determining whether the location has or will have the effect of unnecessarily denying access to any persons on the basis of prohibited discrimination;

(5) The present or proposed membership, by race, color and national origin, in any planning or advisory body which is an integral part of the program;

(6) Where relocation is involved, the requirements and steps used or proposed to guard against unnecessary impact on persons on the basis of race, color or national origin.

(c) Where additional data, such as demographic maps, the racial composition of affected neighborhoods or census data, is necessary or appropriate, for understanding information required in paragraph (b) of this section, federal agencies shall specify, in their guidelines or in other directives, the need to submit such data. Such additional data should be required, however, only to the extent that it is readily available or can be compiled with reasonable effort.

(d) Pursuant to paragraphs (a) and (b) of this section, in all cases, federal agencies shall require:

(1) That each applicant or recipient promptly notify the agency upon its request of any lawsuit filed against the applicant or recipient alleging discrimination on the basis of race, color or national origin, and that each recipient notify the agency upon its request of any complaints filed against the recipient alleging such discrimination;

(2) A brief description of any applicant's or recipient's pending applications to other federal agencies for assistance, and of federal asssistance

being provided at the time of the application or requested report;

(3) A statement by any applicant describing any civil rights compliance reviews regarding the applicant conducted during the two-year period before the application, and information concerning the agency or organization performing the review; and periodic statements by any recipient regarding such reviews;

(4) A written assurance by any applicant or recipient that it will compile and maintain records required, pursuant to paragraphs (a) and (b) of this section, by the agency's guidelines or other directives.

(e) Federal agencies should inquire whether any agency listed by the applicant or recipient pursuant to paragraph (d)(2) of this section has found the applicant or recipient to be in noncompliance with any relevant civil rights requirement.

(f) Where a federal agency determines that any of the requirements of this section are inapplicable or inappropriate in regard to any program, the basis for this conclusion shall be set forth in writing and made available to the public upon request.

§ 42.407 Procedures to determine compliance.

(a) *Agency staff determination responsibility*. All federal agency staff determinations of title VI compliance shall be made by, or be subject to the review of, the agency's civil rights office. Where federal agency responsibility for approving applications or specific projects has been assigned to regional or area offices, the agency shall include personnel having title VI review responsibility on the staffs of such offices and such personnel shall perform the functions described in paragraphs (b) and (c) of this section.

(b) *Application review*. Prior to approval of federal financial assistance, the federal agency shall make written determination as to whether the applicant is in compliance with title VI (see 28 CFR 50.3(c) II A). The basis for such a determination under ''the agency's own investigation'' provision (see 28 CFR 50.3(c) II A(2)), shall be submission of an assurance of compliance and a review of the data submitted by the applicant. Where a determination cannot be made from this data, the agency shall require the submission of necessary additional information and shall take other steps necessary for making the determination. Such other steps may include, for example, communicating with local government officials or minority group organizations and field reviews. Where the requested assistance is for construction, a pre-approval review should determine whether the location and design of the project will provide service on a nondiscriminatory basis and whether persons will be displaced or relocated on a nondiscriminatory basis.

(c) *Post-approval review*. (1) Federal agencies shall establish and maintain an effective program of post-approval compliance reviews regarding approved new applications (see 28 CFR 50.3(c) II A), applications for continuation or renewal of assistance (28 CFR 50.3(c) II B) and all other federally assisted programs. Such reviews are to include periodic submission of compliance reports by recipients to the agencies and, where appropriate, field reviews of a representative number of major recipients. In carrying out this program, agency personnel shall follow agency manuals which establish appropriate review procedures and standards of evaluation. Additionally, agencies should consider incorporating a title VI component into general program reviews and audits.

(2) The results of post-approval reviews shall be committed to writing and shall include specific findings of fact and recommendations. A determination of the compliance status of the recipient reviewed shall be made as promptly as possible.

(d) *Notice to assistant attorney general*. Federal agencies shall promptly notify the Assistant Attorney General of instances of probable noncompliance determined as the result of application reviews or post-approval compliance reviews.

§ 42.408 Complaint procedures.

(a) Federal agencies shall establish and publish in their guidelines procedures for the prompt processing and

disposition of complaints. The complaint procedures shall provide for notification in writing to the complainant and the applicant or recipient as to the disposition of the complaint. Federal agencies should investigate complaints having apparent merit. Where such complaints are not investigated, good cause must exist and must be stated in the notification of disposition. In such cases, the agency shall ascertain the feasibility of referring the complaint to the primary recipient, such as a State agency, for investigation.

(b) Where a federal agency lacks jurisdiction over a complaint, the agency shall, wherever possible, refer the complaint to another federal agency or advise the complainant.

(c) Where a federal agency requires or permits recipient to process title VI complaints, the agency shall ascertain whether the recipients' procedures for processing complaints are adequate. The federal agency shall obtain a written report of each such complaint and investigation and shall retain a review responsibility over the investigation and disposition of each complaint.

(d) Each federal agency shall maintain a log of title VI complaints filed with it, and with its recipients, identifying each complainant by race, color, or national origin; the recipient; the nature of the complaint; the dates the complaint was filed and the investigation completed; the disposition; the date of disposition; and other pertinent information. Each recipient processing title VI complaints shall be required to maintain a similar log. Federal agencies shall report to the Assistant Attorney General on January 1, 1977, and each six months thereafter, the receipt, nature and disposition of all such title VI complaints.

§ 42.409 Employment practices.

Enforcement of title VI compliance with respect to covered employment practices shall not be superseded by state and local merit systems relating to the employment practices of the same recipient.

§ 42.410 Continuing State programs.

Each state agency administering a continuing program which receives federal financial assistance shall be required to establish a title VI compliance program for itself and other recipients which obtain federal assistance through it. The federal agencies shall require that such state compliance programs provide for the assignment of title VI responsibilities to designated state personnel and comply with the minimum standards established in this subpart for federal agencies, including the maintenance of records necessary to permit federal officials to determine the title VI compliance of the state agencies and the sub-recipient.

§ 42.411 Methods of resolving noncompliance.

(a) Effective enforcement of title VI requires that agencies take prompt action to achieve voluntary compliance in all instances in which noncompliance is found. Where such efforts have not been successful within a reasonable period of time, the agency shall initiate appropriate enforcement procedures as set forth in the 1965 Attorney General Guidelines, 28 CFR 50.3. Each agency shall establish internal controls to avoid unnecessary delay in resolving noncompliance, and shall promptly notify the Assistant Attorney General of any case in which negotiations have continued for more than sixty days after the making of the determination of probable noncompliance and shall state the reasons for the length of the negotiations.

(b) Agreement on the part of a noncomplying recipient to take remedial steps to achieve compliance with title VI shall be set forth in writing by the recipient and the federal agency. The remedial plan shall specify the action necessary for the correction of title VI deficiencies and shall be available to the public.

§ 42.412 Coordination.

(a) The Attorney General's authority under Executive Order 12250 is hereby delegated to the Assistant Attorney General, Civil Rights Division.

(b) Consistent with this subpart and the 1965 Attorney General Guidelines, 28 CFR 50.3, the Assistant Attorney General may issue such directives and take such other action as he deems

necessary to insure that federal agencies carry out their responsibilities under title VI. In addition, the Assistant Attorney General will routinely provide to the Director of the Office of Management and Budget copies of all inter-agency survey reports and related materials prepared by the Civil Rights Division that evaluate the effectiveness of an agency's title VI compliance efforts. Where cases or matters are referred to the Assistant Attorney General for investigation, litigation or other appropriate action, the federal agencies shall, upon request, provide appropriate resources to the Assistant Attorney General to assist in carrying out such action.

[Order No. 670–76, 41 FR 52669, Dec. 1, 1976, as amended by Order No. 699–77, 42 FR 15315, Mar. 21, 1977; Order No. 960–81, 46 FR 52357, Oct. 27, 1981]

§ 42.413 Interagency cooperation and delegations.

(a) Where each of a substantial number of recipients is receiving assistance for similar or related purposes from two or more federal agencies, or where two or more federal agencies cooperate in administering assistance for a given class of recipients, the federal agencies shall:

(1) Jointly coordinate compliance with title VI in the assisted programs, to the extent consistent with the federal statutes under which the assistance is provided; and

(2) Designate one of the federal agencies as the lead agency for title VI compliance purposes. This shall be done by a written delegation agreement, a copy of which shall be provided to the Assistant Attorney General and shall be published in the FEDERAL REGISTER.

(b) Where such designations or delegations of functions have been made, the agencies shall adopt adequate written procedures to assure that the same standards of compliance with title VI are utilized at the operational levels by each of the agencies. This may include notification to agency personnel in handbooks, or instructions on any forms used regarding the compliance procedures.

(c) Any agency conducting a compliance review or investigating a complaint of an alleged title VI violation shall notify any other affected agency upon discovery of its jurisdiction and shall subsequently inform it of the findings made. Such reviews or investigations may be made on a joint basis.

(d) Where a compliance review or complaint investigation under title VI reveals a possible violation of Executive Order 11246, title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e), or any other federal law, the appropriate agency shall be notified.

§ 42.414 Federal agency staff.

Sufficient personnel shall be assigned by a federal agency to its title VI compliance program to ensure effective enforcement of title VI.

§ 42.415 Federal agency title VI enforcement plan.

Each federal agency subject to title VI shall develop a written plan for enforcement which sets out its priorities and procedures. This plan shall be available to the public and shall address matters such as the method for selecting recipients for compliance reviews, the establishment of timetables and controls for such reviews, the procedure for handling complaints, the allocation of its staff to different compliance functions, the development of guidelines, the determination as to when guidelines are not appropriate, and the provision of civil rights training for its staff.

Subpart G—Nondiscrimination Based on Handicap in Federally Assisted Programs or Activities—Implementation of Section 504 of the Rehabilitation Act of 1973

AUTHORITY: 5 U.S.C. 301; 28 U.S.C. 509, 510; 29 U.S.C. 706, 794; E.O. 12250.

SOURCE: 45 FR 37622, June 3, 1980, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes by Order No. 2679–2003, appear at 68 FR 51364, 51365, 51366, Aug. 26, 2003.

GENERAL PROVISIONS

§ 42.501 Purpose.

The purpose of this subpart is to implement section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap in any program or activity receiving Federal financial assistance.

§ 42.502 Application.

This subpart applies to each recipient of Federal financial assistance from the Department of Justice and to each program or activity receiving such assistance. The requirements of this subpart do not apply to the ultimate beneficiaries of Federal financial assistance in the program or activity receiving Federal financial assistance.

§ 42.503 Discrimination prohibited.

(a) *General.* No qualified handicapped person shall, solely on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity receiving Federal financial assistance.

(b) *Discriminatory actions prohibited.* (1) A recipient may not discriminate on the basis of handicap in the following ways directly or through contractual, licensing, or other arrangements under any program or activity receiving Federal financial assistance:

(i) Deny a qualified handicapped person the opportunity accorded others to participate in the program or activity receiving Federal financial assistance;

(ii) Deny a qualified handicapped person an equal opportunity to achieve the same benefits that others achieve in the program or activity receiving Federal financial assistance;

(iii) Provide different or separate assistance to handicapped persons or classes of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons or classes of handicapped persons with assistance as effective as that provided to others;

(iv) Deny a qualified handicapped person an equal opportunity to participate in the program or activity by providing services to the program;

(v) Deny a qualified handicapped person an opportunity to participate as a member of a planning or advisory body;

(vi) Permit the participation in the program or activity of agencies, organizations or persons which discriminate against the handicapped beneficiaries in the recipient's program;

(vii) Intimidate or retaliate against any individual, whether handicapped or not, for the purpose of interfering with any right secured by section 504 or this subpart.

(2) A recipient may not deny a qualified handicapped person the opportunity to participate in any program or activity receiving Federal financial assistance on the ground that other specialized aid, benefits, or services for handicapped persons are available.

(3) A recipient may not, directly or through contractual, licensing, or other arrangements, utilize criteria or methods of administration that either purposely or in effect discriminate on the basis of handicap, defeat or substantially impair accomplishment of the objectives of the recipient's program or activity with respect to handicapped persons, or perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same State.

(4) A recipient may not, in determining the location or design of a facility, make selections that either purposely or in effect discriminate on the basis of handicap or defeat or substantially impair the accomplishment of the objectives of the program or activity with respect to handicapped persons.

(5) A recipient is prohibited from discriminating on the basis of handicap in aid, benefits, or services operating without Federal financial assistance where such action would discriminate against the handicapped beneficiaries or participants in any program or activity of the recipient receiving Federal financial assistance.

(6) Any entity not otherwise receiving Federal financial assistance but using a facility provided with the aid of Federal financial assistance after the effective date of this subpart is prohibited from discriminating on the basis of handicap.

(c) The exclusion of nonhandicapped persons or specified classes of handicapped persons from aid, benefits, or services limited by Federal statute or executive order to handicapped persons or a different class of handicapped persons is not prohibited by this subpart.

(d) Recipients shall administer programs or activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

(e) Recipients shall insure that communications with their applicants, employees and beneficiaries are effectively conveyed to those having impaired vision and hearing.

(f) A recipient that employs fifteen or more persons shall provide appropriate auxiliary aids to qualified handicapped persons with impaired sensory, manual, or speaking skills where a refusal to make such provision would discriminatorily impair or exclude the participation of such persons in a program or activity receiving Federal financial assistance. Such auxiliary aids may include brailled and taped material, qualified interpreters, readers, and telephonic devices. Attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature are not required under this section. Departmental officials may require recipients employing fewer than fifteen persons to provide auxiliary aids when this would not significantly impair the ability of the recipient to provide its benefits or services.

(g) The enumeration of specific forms of prohibited discrimination in this subpart is not exhaustive but only illustrative.

§ 42.504 Assurances required.

(a) *Assurances.* Every application for Federal financial assistance covered by this subpart shall contain an assurance that the program or activity will be conducted in compliance with the requirements of section 504 and this subpart. Each agency within the Department that provides Federal financial assistance shall specify the form of the foregoing assurance and shall require applicants for Department financial assistance to obtain like assurances from subgrantees, contractors and subcontractors, transferees, successors in interest, and others connected with the program or activity. Each Department agency shall specify the extent to which an applicant will be required to confirm that the assurances provided by secondary recipients are being honored. Each assurance shall include provisions giving notice that the United States has a right to seek judicial enforcement of section 504 and the assurance.

(b) *Assurances from government agencies.* Assurances from agencies of State and local governments shall extend to any other agency of the same governmental unit if the policies of the other agency will affect the program or activity for which Federal financial assistance is requested.

(c) *Assurances from institutions.* The assurances required with respect to any institution or facility shall be applicable to the entire institution or facility.

(d) *Duration of obligation.* Where the Federal financial assistance is to provide or is in the form of real or personal property, the assurance will obligate the recipient and any transferee for the period during which the property is being used for the purpose for which the Federal financial assistance is extended or for another purpose involving the provisions of similar benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer. In all other cases the assurance will obligate the recipient for the period during which Federal financial assistance is extended.

(e) *Covenants.* With respect to any transfer of real property, the transfer document shall contain a covenant running with the land assuring nondiscrimination on the condition described in paragraph (d) of this section. Where the property is obtained from the Federal Government, the 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.

(f) *Remedies.* The failure to secure either an assurance or a sufficient assurance from a recipient shall not impair the right of the Department to enforce

the requirements of section 504 and this subpart.

§ 42.505 Administrative requirements for recipients.

(a) *Remedial action.* If the Department finds that a recipient has discriminated against persons on the basis of handicap in violation of section 504 or this subpart, the recipient shall take the remedial action the Department considers necessary to overcome the effects of the discrimination. This may include remedial action with respect to handicapped persons who are no longer participants in the recipient's program or activity but who were participants in the program when such discrimination occurred, and with respect to handicapped persons who would have been participants in the program had the discrimination not occurred.

(b) *Voluntary action.* A recipient may take steps, in addition to the requirements of this subpart, to increase the participation of qualified handicapped persons in the recipient's program or activity.

(c) *Self-evaluation.* (1) A recipient shall, within one year of the effective date of this subpart, evaluate and modify its policies and practices that do not meet the requirements of this subpart. During this process the recipient shall seek the advice and assistance of interested persons, including handicapped persons or organizations representing handicapped persons. During this period and thereafter the recipient shall take any necessary remedial steps to eliminate the effects of discrimination that resulted from adherence to these policies and practices.

(2) A recipient employing fifty or more persons and receiving Federal financial assistance from the Department of $25,000 or more shall, for at least three years following completion of the evaluation required under paragraph (c)(1) of this section, maintain on file, make available for public inspection, and provide to the Department on request:

(i) A list of the interested persons consulted,

(ii) A description of areas examined and problems identified, and

(iii) A description of modifications made and remedial steps taken.

(d) *Designation of responsible employee.* A recipient employing fifty or more persons and receiving Federal financial assistance from the Department of $25,000 or more shall designate at least one person to coordinate compliance with this subpart.

(e) *Adoption of grievance procedures.* A recipient employing fifty or more persons and receiving Federal financial assistance from the Department of $25,000 or more shall adopt grievance procedures that incorporate due process standards (*e.g.* adequate notice, fair hearing) and provide for the prompt and equitable resolution of complaints alleging any action prohibited by this subpart. Such procedures need not be established with respect to complaints from applicants for employment. An employee may file a complaint with the Department without having first used the recipient's grievance procedures.

(f) *Notice.* (1) A recipient employing fifty or more persons and receiving Federal financial assistance from the Department of more than $25,000 shall, on a continuing basis, notify participants, beneficiaries, applicants, employees and unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of handicap in violation of section 504 and this subpart. The notification shall state, where appropriate, that the recipient does not discriminate in its programs or activities with respect to access, treatment or employment. The notification shall also include identification of the person responsible for coordinating compliance with this subpart and where to file section 504 complaints with the Department and, where applicable, with the recipient. A recipient shall make the initial notification required by this paragraph within 90 days of the effective date of this subpart. Methods of initial and continuing notification may include the posting of notices, publication in newspapers and magazines, placement of notices in recipients' publication, and distribution of memoranda or other written communications.

(2) Recruitment materials or publications containing general information

that a recipient makes available to participants, beneficiaries, applicants, or employees shall include a policy statement of nondiscrimination on the basis of handicap.

(g) The Department may require any recipient with fewer than fifty employees and receiving less than $25,000 in Federal financial assistance to comply with paragraphs (c)(2) and (d) through (f) of this section.

(h) The obligation to comply with this subpart is not affected by any State or local law or requirement or limited employment opportunities for handicapped persons in any occupation or profession.

EMPLOYMENT

§ 42.510 Discrimination prohibited.

(a) *General.* (1) No qualified handicapped person shall on the basis of handicap be subjected to discrimination in employment under any program or activity receiving Federal financial assistance.

(2) A recipient shall make all decisions concerning employment under any program or activity receiving Federal financial assistance in a manner which insures that discrimination on the basis of handicap does not occur and may not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of handicap.

(3) A recipient may not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped applicants or employees to discrimination prohibited by this section. The relationships referred to in this paragraph include relationships with employment and referral agencies, labor unions, organizations providing or administering fringe benefits to employees of the recipient, and organizations providing training and apprenticeships, and with civil service agencies in State or local units of government.

(b) *Specific activities.* The prohibition against discrimination in employment applies to the following activities:

(1) Recruitment, advertising, and application processing;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;

(3) Pay and any other form of compensation and changes in compensation, including fringe benefits available by virtue of employment, whether or not administered by the recipient;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absence, sick leave, or any other leave;

(6) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and selection for leaves of absence to pursue training;

(7) Employer-sponsored activities, including those that are social or recreational; and

(8) Any other term, condition, or privilege of employment.

(c) In offering employment or promotions to handicapped individuals, recipients may not reduce the amount of compensation offered because of any disability income, pension or other benefit the applicant or employee receives from another source.

(d) A recipient's obligation to comply with this section is not affected by any inconsistent term of any collective bargaining agreement to which it is a party.

§ 42.511 Reasonable accommodation.

(a) A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the recipient can demonstrate, based on the individual assessment of the applicant or employee, that the accommodation would impose an undue hardship on the operation of its program or activity.

(b) Reasonable accommodation may include making facilities used by employees readily accessible to and usable by handicapped persons, job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices (*e.g.*, telecommunication or other telephone devices), the provisions of readers or qualified interpreters, and other similar actions.

(c) Whether an accommodation would impose an undue hardship on the operation of a recipient's program or activity depends upon a case-by-case analysis weighing factors that include:

(1) The overall size of the recipient's program or activity with respect to number of employees, number and type of facilities, and size of budget;

(2) The type of the recipient's operation, including the composition and structure of the recipient's workforce; and

(3) The nature and cost of the accommodation needed.

A reasonable accommodation may require a recipient to bear more than an insignificant economic cost in making allowance for the handicap of a qualified applicant or employee and to accept minor inconvenience which does not bear on the ability of the handicapped individual to perform the essential duties of the job.

§ 42.512 Employment criteria.

(a) A recipient may not use any employment test or other selection criterion that tends to screen out handicapped persons unless:

(1) The test score or other selection criterion, as used by the recipient, is shown to be job-related for the position in question, and

(2) Alternative job-related tests or criteria that tend to screen out fewer handicapped persons are not shown by the appropriate Department officials to be available.

(b) A recipient shall administer tests using procedures (*e.g.*, auxiliary aids such as readers for visually-impaired persons or qualified sign language interpreters for hearing-impaired persons) that accommodate the special problems of handicapped persons to the fullest extent, consistent with the objectives of the test. When a test is administered to an applicant or employee who has a handicap that impairs sensory, manual, or speaking skills, the test results must accurately reflect the applicant's or employee's job skills, aptitude, or whatever other factor the test purports to measure, rather than reflecting the applicant's or employee's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

§ 42.513 Preemployment inquiries.

(a) Except as provided in paragraphs (b) and (c) of this section, a recipient may not conduct a preemployment medical examination and may not make preemployment inquiry of an applicant as to whether the applicant is a handicapped person or as to the nature or severity of a handicap. A recipient may, however, make preemployment inquiry into an applicant's ability to perform job-related functions.

(b) When a recipient is taking remedial action to correct the effects of past discrimination pursuant to § 42.505(a) of this subpart, when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its Federally assisted program or activity pursuant to § 42.505(b) of this subpart, or when a recipient is taking affirmative action pursuant to section 503 of the Act, the recipient may invite applicants for employment to indicate whether and to what extent they are handicapped: *Provided*, That:

(1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary efforts;

(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential as provided in paragraph (d) of this section, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with this part.

(c) Nothing in this section shall prohibit a recipient from conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty: *Provided*, That:

(1) All entering employees are subjected to such an examination regardless of handicap, and

(2) The results of such an examination are used only in accordance with the requirements of this subpart.

(d) The applicant's medical record shall be collected and maintained on separate forms and kept confidential, except that the following persons may be informed:

(1) Supervisors and managers regarding restrictions on the work of handicapped persons and necessary accommodations;

(2) First aid and safety personnel if the condition might require emergency treatment; and

(3) Government officials investigating compliance with the Act upon request for relevant information.

ACCESSIBILITY

§ 42.520 Discrimination prohibited.

Recipients shall insure that no qualified handicapped person is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination under any program or activity receiving Federal financial assistance because the recipient's facilities are inaccessible to or unusable by handicapped persons.

§ 42.521 Existing facilities.

(a) *Accessibility*. A recipient shall operate each program or activity to which this subpart applies so that when each part is viewed in its entirety it is readily accessible to and usable by handicapped persons. This section does not require a recipient to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons.

(b) *Compliance procedures*. A recipient may comply with the requirement of paragraph (a) of this section through acquisition or redesign of equipment, reassignment of services to accessible buildings, assignment of aids to beneficiaries, delivery of services at alternate accessible sites, alteration of existing facilities, or any other method that results in making its program or activity accessible to handicapped persons. A recipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with paragraph (a) of this section. In choosing among methods for meeting the requirement of paragraph (a) of this section, a recipient shall give priority to those methods that serve handicapped persons in the most integrated setting appropriate.

(c) *Small providers*. If a recipient with fewer than fifteen employees finds, after consultation with a handicapped person seeking its services, that there is no method of complying with § 42.521(a) other than making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the handicapped person to other available providers of those services that are accessible.

(d) *Time period*. A recipient shall comply with the requirement of paragraph (a) of this section within ninety days of the effective date of this subpart. However, where structural changes in facilities are necessary, such changes shall be made as expeditiously as possible and shall be completed no later than three years from the effective date of this subpart. If structural changes to facilities are necessary, a recipient shall, within six months of the effective date of this subpart, develop a written plan setting forth the steps that will be taken to complete the changes together with a schedule for making the changes. The plan shall be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons and shall be made available for public inspection. The plan shall, at a minimum:

(1) Identify physical obstacles in the recipient's facilities that limit the accessibility of its program or activity to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve full accessibility under § 42.521(a) and, if the time period of the transition plan is longer than one year, identify the steps that will be taken during each year of the transition period; and

(4) Indicate the person responsible for implementation of the plan.

(e) *Notice*. The recipient shall adopt and implement procedures to insure that interested persons, including mentally retarded persons or persons with impaired vision or hearing, special

learning problems, or other disabilities, can obtain information as to the existence and location of services, activities, and facilities that are accessible to and usable by handicapped persons.

[45 FR 37622, June 3, 1980, as amended by Order No. 2679–2003, 68 FR 51364, Aug. 26, 2003]

§ 42.522 New construction.

(a) *Design and construction.* Each new facility constructed by, on behalf of, or for the use of a recipient shall be designed and constructed in such a manner that the facility is readily accessible to and usable by handicapped persons, if the construction was commenced after the effective date of this subpart. Any alterations to existing facilities shall, to the maximum extent feasible, be made in an accessible manner. Any alterations to existing facilities shall, to the maximum extent feasible, be made in an accessible manner.

(b) *Conformance with Uniform Federal Accessibility Standards.* (1) Effective as of March 7, 1988, design, construction, or alteration of buildings in conformance with sections 3–8 of the Uniform Federal Accessibility Standards (UFAS) (appendix A to 41 CFR subpart 101–19.6) shall be deemed to comply with the requirements of this section with respect to those buildings. Departures from particular technical and scoping requirements of UFAS by the use of other methods are permitted where substantially equivalent or greater access to and usability of the building is provided.

(2) For purposes of this section, section 4.1.6(1)(g) of UFAS shall be interpreted to exempt from the requirements of UFAS only mechanical rooms and other spaces that, because of their intended use, will not require accessibility to the public or beneficiaries or result in the employment or residence therein of persons with physical handicaps.

(3) This section does not require recipients to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member.

[45 FR 37622, June 3, 1980, as amended by Order 1249–88, 53 FR 3206, Feb. 4, 1988]

PROCEDURES

§ 42.530 Procedures.

(a) The procedural provisions applicable to title VI of the Civil Rights Act of 1964 (28 CFR 42.106–42.110) apply to this subpart except that the provision contained in §§ 42.110(e) and 42.108(c)(3) which requires the Attorney General's approval before the imposition of any sanction against a recipient does not apply to programs or activities funded by LEAA, NIJ, BJS, OJARS and OJJDP. The applicable provisions contain requirements for compliance information (§ 42.106), conduct of investigations (§ 42.107), procedure for effecting compliance (§ 42.108), hearings (§ 42.109), and decisions and notices (§ 42.110). (See appendix C.)

(b) In the case of programs or activities funded by LEAA, NIJ, BJS, OJARS and OJJDP, the timetables and standards for investigation of complaints and for the conduct of compliance reviews contained in § 42.205(c)(1) through (c)(3) and § 42.206 (c) and (d) are applicable to this subpart except that any finding of noncompliance shall be enforced as provided in paragraph (a) of this section. (See appendix D.)

(c) In the case of programs or activities funded by LEAA, NIJ, BJS, OJARS and OJJDP, the refusal to provide requested information under paragraph (a) of this section and § 42.106 will be enforced pursuant to the provisions of section 803(a) of title I of the Omnibus Crime Control and Safe Streets Act, as amended by the Justice System Improvement Act of 1979, Public Law 96–157, 93 Stat. 1167.

(d) For acts of discrimination occurring prior to the effective date of this subpart, the 180-day limitation period for filing of complaints (§ 42.107 of this title) will apply from that date.

(e) The Department will investigate complaints alleging discrimination in violation of section 504 occurring prior to the effective date of this subpart where the language of the statute or HEW's interagency guidelines (43 FR 2132, January 13, 1978) implementing Executive Order 11914 (41 FR 17871, April 28, 1976) provided notice that the challenged policy or practice was unlawful.

DEFINITIONS

§ 42.540 Definitions.

As used in this subpart the term:

(a) *The Act* means the Rehabilitation Act of 1973, Public Law 93–112, as amended (29 U.S.C. 701 *et seq.*).

(b) *Section 504* means section 504 of the Act (29 U.S.C. 794).

(c) *Department* means the Department of Justice.

(d) *LEAA* means the Law Enforcement Assistance Administration; *NIJ* means the National Institute of Justice; *BJS* means the Bureau of Justice Statistics; *OJARS* means the Office of Justice Assistance, Research and Statistics; *OJJDP* means Office of Juvenile Justice and Delinquency Prevention.

(e) *Recipient* means any State or unit of local goverment, any instrumentality of a State or unit of local government, any public or private agency, institution, organization, or other public or private entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferree of a recipient, but excluding the ultimate beneficiary of the assistance.

(f) *Federal financial assistance* means any grant, cooperative agreement, loan, contract (other than a direct Federal procurement contract or a contract of insurance or guaranty), subgrant, contract under a grant or any other arrangement by which the Department provides or otherwise makes available assistance in the form of:

(1) Funds;

(2) Services of Federal personnel;

(3) Real and personal property or any interest in or use of such property, including:

(i) Transfers or leases of such property for less than fair market value or for reduced consideration; and

(ii) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government;

(4) Any other thing of value by way of grant, loan, contract or cooperative agreement.

(g) *Facility* means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property.

(h) *Program or activity* means all of the operations of any entity described in paragraphs (h) (1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (h)(1), (2), or (3) of this section.

(i) *Ultimate beneficiary* is one among a class of persons who are entitled to benefit from, or otherwise participate in, programs or activities receiving Federal financial assistance and to whom the protections of this subpart extend. The ultimate beneficiary class may be the general public or some narrower group of persons.

(j) *Benefit* includes provision of services, financial aid or disposition (*i.e.*,

treatment, handling, decision, sentencing, confinement, or other prescription of conduct).

(k) *Handicapped person.* (1) *Handicapped person* means any person who (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment. For purposes of employment, such term does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others.

(2) As used in this subpart the phrase:

(i) *Physical or mental impairment* means:

(A) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive; genitourinary; hemic and lymphatic; skin; and endocrine;

(B) Any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

The term *physical or mental impairment* includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug and alcohol abuse.

(ii) *Major life activities* mean functions such as caring for one's self, performing manual tasks walking, seeing, hearing, speaking, breathing, learning, and working.

(iii) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(iv) *Is regarded as having an impairment* means:

(A) Has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation;

(B) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(C) Has none of the impairments defined in paragraph (k)(2)(i) of this section but is treated by a recipient as having such an impairment.

(l) *Qualified handicapped person* means:

(1) With respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question;

(2) With respect to services, a handicapped person who meets the essential eligibility requirements for the receipt of such services.

(m) *Handicap* means any condition or characteristic that renders a person a handicapped person as defined in paragraph (k) of this section.

(n) *Drug abuse* means:

(1) The use of any drug or substance listed by the Department of Justice in 21 CFR 1308.11, under authority of the Controlled Substances Act, 21 U.S.C. 801, as a controlled substance unavailable for prescription because:

(i) The drug or substance has a high potential for abuse,

(ii) The drug or other substance has no currently accepted medical use in treatment in the United States,

(iii) There is a lack of accepted safety for use of the drug or other substance under medical supervision;

(2) The misuse of any drug or substance listed by the Department of Justice in 21 CFR 1308.12 through 1308.15 under authority of the Controlled Substances Act as a controlled substance available for prescription.

Examples of (1) include certain opiates and opiate derivatives (*e.g.*, heroin) and hallucinogenic substances (*e.g.*, marihuana, mescaline, peyote) and depressants (*e.g.*, methaqualone). Examples of (2) include opium, coca leaves, methadone, amphetamines and barbiturates.

(o) *Alcohol abuse* includes alcoholism but also means any misuse of alcohol

which demonstrably interferes with a person's health, interpersonal relations or working.

[45 FR 37622, June 3, 1980, as amended by Order No. 2679–2003, 68 FR 51364, Aug. 26, 2003]

APPENDIX A TO SUBPART G OF PART 42—FEDERAL FINANCIAL ASSISTANCE ADMINISTERED BY THE DEPARTMENT OF JUSTICE TO WHICH THIS SUBPART APPLIES

NOTE: Failure to list a type of Federal assistance in appendix A shall not mean, if section 504 is otherwise applicable, that a program or activity is not covered.

EDITORIAL NOTE: For the text of appendix A to subpart G, see appendix A to subpart C of this part.

[Order No. 1204–87, 52 FR 24450, July 1, 1987]

APPENDIX B TO SUBPART G OF PART 42 [RESERVED]

APPENDIX C TO SUBPART G OF PART 42—DEPARTMENT REGULATIONS UNDER TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 (28 CFR 42.106–42.110) WHICH APPLY TO THIS SUBPART

EDITORIAL NOTE: For the text of appendix C, see §§ 42.106 through 42.110 of this part.

APPENDIX D TO SUBPART G OF PART 42—OJARS' REGULATIONS UNDER THE OMNIBUS CRIME CONTROL AND SAFE STREETS ACT, AS AMENDED, WHICH APPLY TO THIS SUBPART (28 CFR 42.205 AND 42.206)

EDITORIAL NOTE: For the text of appendix D, see §§ 42.205 and 42.206 of this part.

Subpart H—Procedures for Complaints of Employment Discrimination Filed Against Recipients of Federal Financial Assistance

AUTHORITY: E.O. 12250, 45 FR 72995, 3 CFR, 1980 Comp., p. 298; E.O. 12067, 43 FR 28967, 3 CFR, 1978 Comp., p. 206.

SOURCE: Order No. 992–83, 48 FR 3577, Jan. 25, 1983, unless otherwise noted.

§ 42.601 Purpose and application.

The purpose of this regulation is implement procedures for processing and resolving complaints of employment discrimination filed against recipients of Federal financial assistance subject to title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, the State and Local Fiscal Assistance Act of 1972, as amended, and provisions similar to title VI and title IX in Federal grant statutes. Enforcement of such provisions in Federal grant statutes is covered by this regulation to the extent they relate to prohibiting employment discrimination on the ground of race, color, national origin, religion or sex in programs receiving Federal financial assistance of the type subject to title VI or title IX. This regulation does not, however, apply to the Omnibus Crime Control and Safe Streets Act of 1968, as amended, the Juvenile Justice and Delinquency Prevention Act, as amended, the Comprehensive Employment Training Act of 1973, as amended, or Executive Order 11246.

§ 42.602 Exchange of information.

EEOC and agencies shall share any information relating to the employment policies and practices of recipients of federal financial assistance that may assist each office in carrying out its responsibilities. Such information shall include, but not necessarily be limited to, affirmative action programs, annual employment reports, complaints, investigative files, conciliation or compliance agreements, and compliance review reports and files.

§ 42.603 Confidentiality.

When an agency receives information obtained by EEOC, the agency shall observe the confidentiality requirements of sections 706(b) and 709(e) of title VII as would EEOC, except in cases where the agency receives the same information from a source independent of EEOC or has referred a joint complaint to EEOC under this regulation. In such cases, the agency may use independent source information or information obtained by EEOC under the agency's investigative authority in a subsequent title VI, title IX or revenue sharing act enforcement proceeding. Agency questions concerning confidentiality shall be directed to the Associate Legal Counsel for Legal Services, Office of Legal Counsel of EEOC.

§ 42.604 Standards for investigation, reviews and hearings.

In any investigation, compliance review, hearing or other proceeding, agencies shall consider title VII case law and EEOC Guidelines, 29 CFR parts 1604 through 1607, unless inapplicable, in determining whether a recipient of Federal financial assistance has engaged in an unlawful employment practice.

§ 42.605 Agency processing of complaints of employment discrimination.

(a) Within ten days of receipt of a complaint of employment discrimination, an agency shall notify the respondent that it has received a complaint of employment discrimination, including the date, place and circumstances of the alleged unlawful employment practice.

(b) Within thirty days of receipt of a complaint of employment discrimination an agency shall:

(1) Determine whether it has jurisdiction over the complaint under title VI, title IX, or the revenue sharing act; and

(2) Determine whether EEOC may have jurisdiction over the complaint under title VII of or the Equal Pay Act.

(c) An agency shall transfer to EEOC a complaint of employment discrimination over which it does not have jurisdiction but over which EEOC may have jurisdiction within thirty days of receipt of a complaint. At the same time, the agency shall notify the complainant and the respondent of the transfer, the reason for the transfer, the location of the EEOC office to which the complaint was transferred and that the date the agency received the complaint will be deemed the date it was received by EEOC.

(d) If any agency determines that a complaint of employment discrimination is a joint complaint, then the agency may refer the complaint to EEOC. The agency need not consult with EEOC prior to such a referral. An agency referral of a joint complaint should occur within thirty days of receipt of the complaint.

(e) An agency shall refer to EEOC all joint complaints solely alleging employment discrimination against an individual. If an agency determines that special circumstances warrant its investigation of such a joint complaint, then the agency shall determine whether the complainant has filed a similar charge of employment discrimination with EEOC.

(1) If an agency determines that the complainant has filed a similar charge of employment discrimination with EEOC, then the agency may investigate the complaint if EEOC agrees to defer its investigation pending the agency investigation.

(2) If an agency determines that the complainant has not filed a similar charge of employment discrimination with the EEOC, then the agency may investigate the complaint if special circumstances warrant such action. In such cases, EEOC shall defer its investigation of the referred joint complaint pending the agency investigation.

(f) An agency shall not refer to EEOC a joint complaint alleging a pattern or practice of employment discrimination unless special circumstances warrant agency referral of the complaint to EEOC.

(g) If a joint complaint alleges discrimination in employment and in other practices of a recipient, an agency should, absent special circumstances, handle the entire complaint under the agency's own investigation procedures. In such cases, the agency shall determine whether the complainant has filed a similar charge of employment discrimination with EEOC. If such a charge has been filed, the agency and EEOC shall coordinate their activities. Upon agency request, EEOC should ordinarily defer its investigation pending the agency investigation.

(h) When a joint complaint is referred to EEOC for investigation, the agency shall advise EEOC of the relevant civil rights provision(s) applicable to the employment practices of the recipient, whether the agency wants to receive advance notice of any conciliation negotiations, whether the agency wants EEOC to seek information concerning the relationship between the alleged discrimination and the recipient's Federally assisted programs or activities and, where appropriate, whether a primary objective of the Federal financial

assistance is to provide employment. The agency shall also notify the complainant and the recipient of the referral, the location of the EEOC office to which the complaint was referred, the identity of the civil rights provision(s) involved, the authority of EEOC under this regulation and that the date the agency received the complaint will be deemed the date it was received by EEOC. Specifically, the notice shall inform the recipient that the agency has delegated to EEOC its investigative authority under title VI, title IX, or the revenue sharing act, and the relevant act's implementing regulations. The agency, therefore, may use information obtained by EEOC under the agency's investigative authority in a subsequent title VI, title IX or revenue sharing act enforcement proceeding.

[Order No. 992-83, 48 FR 3577, Jan. 25, 1983, as amended at 61 FR 33658, June 28, 1996]

§ 42.606 General rules concerning EEOC action on complaints.

(a) A complaint of employment discrimination filed with an agency, which is transferred or referred to EEOC under this regulation, shall be deemed a charge received by EEOC. For all purposes under title VII and the Equal Pay Act, the date such a complaint was received by an agency shall be deemed the date it was received by EEOC.

(b) When EEOC investigates a joint complaint it shall, where appropriate, seek sufficient information to allow the referring agency to determine whether the alleged employment discrimination is in a program or activity that receives Federal financial assistance and/or whether the alleged employment discrimination causes discrimination with respect to beneficiaries or potential beneficiaries of the assisted program.

(c) Upon referral of a joint complaint alleging a pattern or practice of employment discrimination, EEOC generally will limit its investigation to the allegation(s) which directly affect the complainant.

(d) If EEOC, in the course of an investigation of a joint complaint, is unable to obtain information from a recipient through voluntary means, EEOC shall consult with the referring agency to determine an appropriate course of action.

(e) If EEOC agrees to defer its investigation of a complaint of employment discrimination pending an agency investigation of the complaint, then EEOC shall give due weight to the agency's determination concerning the complaint.

§ 42.607 EEOC dismissals of complaints.

If EEOC determines that the title VII allegations of a joint complaint should be dismissed, EEOC shall notify the complainant and the recipient of the reason for the dismissal and the effect the dismissal has on the complainant's rights under the relevant civil rights provision(s) of the referring agency, and issue a notice of right to sue under title VII. At the same time, EEOC shall transmit to the referring agency a copy of EEOC's file.

§ 42.608 Agency action on complaints dismissed by EEOC.

Upon EEOC's transmittal of a dismissal under § 42.607 of this regulation, the referring agency shall determine within thirty days, what, if any, action the agency intends to take with respect to the complaint and then notify the complainant and the recipient. In reaching that determination, the referring agency shall give due weight to EEOC's determination that the title VII allegations of the joint complaint should be dismissed. If the referring agency decides to take action with respect to a complaint that EEOC has dismissed for lack of reasonable cause to believe that title VII has been violated, the agency shall notify the Assistant Attorney General and the Chairman of the EEOC in writing of the action it plans to take and the basis of its decision to take such action.

§ 42.609 EEOC reasonable cause determination and conciliation efforts.

(a) If EEOC, after investigation of a joint complaint, determines that reasonable cause exists to believe that title VII has been violated, EEOC shall advise the referring agency, the complainant and the recipient of that determination and attempt to resolve the

complaint by informal methods of conference, conciliation and persuasion. If EEOC would like the referring agency to participate in conciliation negotiations, EEOC shall so notify the agency and the agency shall participate. EEOC shall provide advance notice of any conciliation negotiations to referring agencies that request such notice, whether or not EEOC requests their participation in the negotiations.

(b) If EEOC's efforts to resolve the complaint by informal methods of conference, conciliation and persuasion fail, EEOC shall:

(1) Issue a notice of failure of conciliation to the recipient in accordance with 29 CFR 1601.25;

(2) Transmit to the referring agency a copy of EEOC's investigative file, including its Letter of Determination and notice of failure conciliation;

(3) If the recipient is not a government, governmental entity or political subdivision, determine whether EEOC will bring suit under title VII and, in accordance with 29 CFR 1601.28, issue a notice of right to sue under title VII;

(4) If the recipient is a government, governmental entity or political subdivision, refer the matter to the Attorney General in accordance with 29 CFR 1601.29. The Attorney General, or his or her delegate, will determine whether the Department of Justice will bring suit under title VII and, in accordance with 29 CFR 1601.28, issue a notice of right to sue under title VII.

§ 42.610 Agency enforcement of unresolved complaints.

(a) Upon EEOC's transmittal of a reasonable cause determination and notice of failure of conciliation under § 42.609(b)(2) of this regulation, the referring agency shall determine, within thirty days, whether the recipient has violated any applicable civil rights provision(s) which the agency has a responsibility to enforce. The referring agency shall give due weight to EEOC's determination that reasonable cause exists to believe that title VII has been violated.

(b) If the referring agency determines that the recipient has violated any applicable civil rights provision(s) which the agency has a responsibility to enforce, the agency shall so notify the complainant and the recipient and determine whether further efforts to obtain voluntary compliance are warranted. In reaching that determination, the agency shall give due weight to the failure of EEOC's efforts to resolve the complaint by informal methods. If the referring agency determines that further efforts to obtain voluntary compliance are not warranted or if such further efforts fail, the agency shall initiate appropriate enforcement proceedings under its own regulations.

(c) If the referring agency determines that the recipient has not violated any applicable civil rights provision(s) which the agency has a responsibility to enforce, the agency shall notify the complainant, the recipient, the Assistant Attorney General and the Chairman of the EEOC in writing of the basis of that determination.

§ 42.611 EEOC negotiated settlements and conciliation agreements.

If the parties enter into a negotiated settlement (as described in 29 CFR 1601.20) prior to a determination or a conciliation agreement (as described in 29 CFR 1601.24) after a determination, EEOC shall notify the referring agency that the complaint has been settled. The agency shall take no further action on the complaint of employment discrimination thereafter except that the agency may take the existence of the complaint into account in scheduling the recipient for a review under the agency's regulations.

§ 42.612 Interagency consultation.

(a) Before investigating whether the employment practices of a recipient of Federal financial assistance constitute a pattern or practice of unlawful discrimination or initiating formal administrative enforcement procedures on that basis, an agency shall, to the extent practical, consult with the Chairman of the EEOC and the Assistant Attorney General to assure that duplication of effort will be minimized.

(b) Prior to the initiation of any legal action against a recipient of Federal financial assistance alleging unlawful employment practices, the Department of Justice and/or EEOC shall, to the extent practical, notify the appropriate agency or agencies of the

proposed action and the substance of the allegations.

§ 42.613 Definitions.

As used in this regulation, the term:

(a) *Agency* means any Federal department or agency which extends Federal financial assistance subject to any civil rights provision(s) to which this regulation applies.

(b) *Assistant Attorney General* refers to the Assistant Attorney General, Civil Rights Division, United States Department of Justice, or his or her delegate.

(c) *Chairman of the EEOC* refers to the Chairman of the Equal Employment Opportunity Commission, or his or her delegate.

(d) *EEOC* means the Equal Empoyment Opportunity Commission and, where appropriate, any of its District Offices.

(e) *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.

For purposes of this regulation, the term *Federal financial assistance* also includes funds disbursed under the revenue sharing act.

(f) *Joint complaint* means a complaint of employment discrimination covered by title VII or the Equal Pay Act and by title VI, title IX, or the revenue sharing act.

(g) *Recipient* means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, 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 such program.

(h) *Revenue sharing act* refers to the State and Local Fiscal Assistance Act of 1972, as amended, 31 U.S.C. 1221 *et seq*.

(i) *Title VI* refers to title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d to 2000d–4. Where appropriate, *title VI* also refers to the civil rights provisions of other Federal statutes or regulations to the extent that they prohibit employment discrimination on the ground or race, color, religion, sex or national origin in programs receiving Federal financial assistance of the type subject to title VI itself.

(j) *Title VII* refers to title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, *et seq*.

(k) *Title IX* refers to title IX of the Education Amendments of 1972, 20 U.S.C. 1681 to 1683.

Subpart I—Nondiscrimination on the Basis of Age in Federally Assisted Programs or Activities; Implementation of the Age Discrimination Act of 1975

AUTHORITY: 42 U.S.C. 6103(a)(4); 45 CFR part 90.

SOURCE: Order No. 1843–94, 59 FR 6560, Feb. 11, 1994, unless otherwise noted.

GENERAL PROVISIONS

§ 42.700 Purpose.

(a) This subpart implements the Age Discrimination Act of 1975, as amended (42 U.S.C. 5101–6107) (Act). Subject to certain exceptions, the Act prohibits discrimination on the basis of age in programs or activities receiving federal financial assistance.

(b) The Secretary of Health and Human Services has issued a general regulation (45 CFR part 90) to guide other federal agencies regarding implementation of the Act. This subpart is generally based upon that general regulation.

§ 42.701 Application.

(a) This subpart applies to each program or activity that receives federal financial assistance from the Department of Justice.

(b) This subpart does not apply to employment practices, except to those occurring in programs or activities that receive federal financial assistance under the Job Training Partnership Act.

§ 42.702 Definitions.

As used in this subpart, the term:

Act means the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101–6107.

Action means any act, activity, policy, rule, standard, or method of administration; or the use of any policy, rule, standard, or method of administration.

Age distinction means any action using age or an age-related term.

Age-related term means a term that necessarily implies a particular age or range of ages (e.g., ''youth,'' ''juvenile,'' ''adult,'' ''older persons,'' but not ''student'').

Department means the Department of Justice.

Federal financial assistance means any grant, entitlement, loan, cooperative agreement, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the Department provides assistance in the form of:

(1) Funds;

(2) Services of federal personnel; or

(3) Real or personal property or any interest in or use of such property, including—

(i) Transfers or leases of property for less than fair market value or for reduced consideration; and

(ii) Proceeds from a subsequent transfer or lease of property if the federal share of its fair market value is not returned to the federal government.

FMCS means the Federal Mediation and Conciliation Service.

OJP means the Office of Justice Programs. OJP coordinates the work of the Bureau of Justice Assistance, the National Institute of Justice, the Bureau of Justice Statistics, and the Office of Juvenile Justice and Delinquency Prevention; OJP includes the Office for Victims of Crime.

Program or activity means all of the operations of any entity described in paragraphs (1) through (4) of this definition, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3) of this definition.

Recipient means any state or political subdivision, any instrumentality of a State or political subdivision, any public or private agency, institution, organization, or other entity, or any person to which federal financial assistance is extended, directly or through another recipient. ''Recipient'' includes any successor, assignee, or transferee, but does not include the ultimate beneficiary of the assistance.

Secretary means the Secretary of Health and Human Services or his or her designee.

United States means the fifty States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Trust Territory of the Pacific Islands, the Northern Marinas, and the territories and possessions of the United States.

[Order No. 1843–94, 59 FR 6560, Feb. 11, 1994, as amended by Order 2679–2003, 68 FR 51366, Aug. 26, 2003]

§§ 42.703–42.709 [Reserved]

STANDARDS FOR DETERMINING AGE DISCRIMINATION

§ 42.710 General prohibition.

(a) Subject to the exceptions discussed in §§ 42.711–42.713, no person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in any program or activity to which this subpart applies. This prohibition applies to actions taken by a recipient, directly or through contractual or other arrangements, that have the purpose or effect of discriminating on the basis of age.

(b) This prohibition encompasses treatment of elderly persons, children and any other age group. Unless one of the exception applies, the recipient may use neither a minimum age limit nor a maximum age limit in connection with receipt of benefits or services or other participation in a program or activity subject to this subpart.

§ 42.711 Exception; authorized by law.

(a) This subpart does not apply to an age distinction contained in a portion of a federal or state statute or a local statute or ordinance adopted by an elected, general-purpose legislative body which portion:

(1) Provides any benefits or assistance to persons on the basis of age;

(2) Establishes criteria for participation in age-related terms; or

(3) Describes intended beneficiaries or target groups in age-related terms.

(b) The exception set forth in paragraph (a) of this section does not extend to regulations adopted by an administrative agency pursuant to a specific statutory provision or otherwise.

§ 42.712 Exception; normal operation or statutory objective.

(a) A recipient may take an action that would otherwise be prohibited by § 42.710(a), if such action reasonably takes age into account as a factor necessary to the normal operation of or the achievement of any statutory objective of the program or activity.

(1) *Normal operation* refers to the operation of a program or activity without significant changes that would impair its ability to meet its objectives.

(2) A *statutory objective* of a program or activity is a purpose that is expressly stated in a federal or state statute or a local statute or ordinance adopted by an elected, general-purpose body.

(b) This exception applies when the following test is met—

(1) Age is used as a measure or approximation of one or more other characteristics;

(2) The other characteristic must be measured or approximated in order to continue the normal operation of the program or activity or to achieve any statutory objective of the program;

(3) The other characteristic can be reasonably measured or approximated by the use of age; and

(4) The other characteristic is impractical to measure directly on an individual basis.

(c) The question whether an age distinction comes within this section depends upon the particular facts, including the nature and purpose of the program or activity, the basis for and the nature and purpose of the age distinction, and the manner in which the age distinction is used.

§ 42.713 Exception; reasonable factors other than age.

(a) A recipient may take an action, otherwise prohibited by § 42.710(a), that affects age groups differently, if such differentiation is based upon reasonable factors other than age.

(b) This exception does not apply to the use of an explicit age distinction, but to conduct that has the effect of differentiating among age groups. This exception applies when the factor

(other than age) upon which the recipient's action is based bears a direct and substantial relationship to the normal operation of or achievement of a statutory objective of the program or activity.

§ 42.714 Special benefits.

If a recipient operating a program or activity provides special benefits to the elderly or to children, such use of age distinctions shall be presumed to be necessary to the normal operation of the program or activity, notwithstanding the provisions of § 42.712.

§ 42.715 Burden of proof regarding exceptions.

The burden of proving that an age distinction or other action falls within the exceptions described in § 42.712 and § 42.713 is on the recipient. This allocation of the burden of proof applies in proceedings by the Department to enforce the Act.

§§ 42.716–42.719 [Reserved]

DUTIES OF RECIPIENTS

§ 42.720 General responsibility.

Regarding any program or activity subject to this subpart, the recipient has primary responsibility to ensure compliance with the Act and this subpart. The recipient also has responsibility to maintain records, provide information, and to afford access to its records to the Department to the extent required to determine whether it is in compliance with the Act.

§ 42.721 Notice to subrecipients.

Any recipient that receives federal financial assistance from the Department and extends such assistance to subrecipients shall give its subrecipients written notice of their obligations under this subpart.

§ 42.722 Recipient assessment of age distinctions.

(a) As part of a compliance review under § 42.730 or complaint investigation under § 42.731, the Department may require a recipient employing the equivalent of 15 or more employees to complete a written self-evaluation, in a manner specified by the responsible Department official, of any age distinction imposed in its program or activity receiving federal financial assistance from the Department to assess the recipient's compliance with the Act.

(b) Whenever a recipient assessment indicates a violation of the Act and this subpart, the recipient shall take corrective action.

§ 42.723 Compliance information.

(a) Upon request by the Department, a recipient shall make available to the Department information necessary to determine whether the recipient is complying with this subpart.

(b) Each recipient shall permit reasonable access by the Department to the recipient's facilities, books, records and other sources of information concerning the recipient's compliance with this subpart.

§ 42.724 Remedial and affirmative action.

(a) If the Department finds that, in violation of this subpart, a recipient has discriminated on the basis of age, the recipient shall take remedial action that the Department considers necessary to overcome the effects of the discrimination.

(b) Even in the absence of a finding of discrimination, a recipient, in administering a program or activity, may take steps to overcome the effects of conditions that resulted in limited participation on the basis of age.

§ 42.725 Assurance of compliance.

Each recipient of federal financial assistance from the Department shall sign a written assurance as specified by the Department that it will comply with this subpart in its federally assisted programs or activities.

§§ 42.726–42.729 [Reserved]

COMPLIANCE PROCEDURES

§ 42.730 Compliance reviews.

The Department may conduct a pre-award or post-award compliance review of an applicant or a recipient to determine compliance with this subpart. When a compliance review indicates

probably noncompliance, the Department shall inform the applicant or recipient and shall promptly begin enforcement as described in § 42.733.

§ 42.731 Complaints.

(a) *General*. This section provides for the filing, by aggrieved persons, of complaints alleging violation of this subpart. Although the complaint process is limited to aggrieved persons, any person who has information regarding a possible violation of this subpart may provide it to the Department.

(b) *Receipt of complaints*. (1) Any aggrieved person, individually or as a member of a class, may file with the Department a written complaint alleging a violation of this subpart. A complaint may be filed by a representative of an aggrieved person. A complaint must be filed within 180 days of the date the complaint first knew of the alleged violation. However, this time limit may, for good cause shown, be extended by the Department.

(2) The Department shall promptly review each such complaint for sufficiency. A complaint will be deemed sufficient if it—

(i) Describes an action that may constitute a violation of this subpart; and

(ii) Contains information necessary for further processing (i.e., identifies the parties involved, states the date when the complainant first learned of the alleged violation, and is signed by the complainant).

(3) When a complaint is deemed sufficient, the Department shall promptly refer it to the FMCS for mediation.

(4) When a complaint is deemed insufficient, the Department shall advise the complainant of the reasons for that determination. A complainant shall be freely permitted to add information necessary for further processing.

(c) *Representation of parties*. During each stage of the complaint process, the complainant and the recipient may be represented by an attorney or other representative.

(d) *Assistance from the Department*. Any complainant or recipient may request from the Department information regarding the complaint process.

(e) *Mediation*. (1) When a complaint is referred for mediation, the complainant and the recipient shall participate in the mediation process to the extent necessary either to reach an agreement or to enable the mediator to determine that no agreement can be reached. No determination that an agreement is not possible shall be made until the mediator has conferred at least once, jointly or separately, with each of the parties.

(2) If the complainant and the recipient reach an agreement, they shall reduce the agreement to writing and sign it. The mediator shall send a copy of the agreement to the Department.

(3) If, after 60 days after the Department's receipt of a complaint, no agreement is reached or if, within that 60-day period, the mediator determines that no agreement can be reached, the mediator shall return the complaint to the Department.

(4) The mediator shall protect the confidentiality of information obtained during the mediation process. No mediator shall testify in any adjudicative proceeding, produce any document, or otherwise disclose any information obtained during the mediation process without prior approval of the Director of the FMCS.

(f) *Department investigations*. The Department shall promptly investigate any complaint that is unresolved after mediation or is reopened because of violation of a mediation agreement. An investigation should include a review of the pertinent actions or practices of the recipient and the circumstances under which the alleged discrimination occurred. During an investigation the Department shall take appropriate steps to obtain informal resolution of the complaint.

(g) *Resolution of matters*. (1) Where, prior to any finding by the Department of probable noncompliance with this subpart, discussions between the Department and the parties result in settlement of a complaint, the Department shall prepare an agreement to be signed by the parties and an authorized official of the Department. A settlement shall not affect the operation of any other enforcement efforts of the Department, including compliance reviews or investigation of other complaints involving the recipient.

(2) If the Department determines that an investigation pursuant to paragraph (f) of this section indicates probable noncompliance with this subpart, the Department shall inform the recipient and shall promptly begin enforcement pursuant to § 42.733.

(3) If the Department determines that an investigation does not indicate probable noncompliance, the Department shall inform the recipient and the complainant. The Department shall also inform the complainant of his or her right to bring a civil action as described in § 42.736.

§ 42.732 Prohibition against intimidation.

A recipient may not intimidate or retaliate against any person who attempts to assert a right secured by the Act and this suppart or who cooperates in any mediation, investigation, hearing, or other aspect of the Department's compliance procedure.

§ 42.733 Enforcement procedures.

(a) *Voluntary compliance*. When a compliance review or complaint investigation results in a finding of probable noncompliance with this subpart, the Department shall attempt to obtain voluntary compliance. An agreement for voluntary compliance shall describe the corrective action to be taken and time limits for such action and shall be signed by the recipient and an authorized official of the Department.

(b) *Means of enforcement*—(1) *General*. (i) The Department may seek to enforce this subpart—

(A) By administrative proceedings that may lead to termination or refusal of federal financial assistance to the particular program or activity; or

(B) By any other means authorized by law. Such other means include lawsuits by the Department of enjoin violations of this subpart.

(ii) To the extent consistent with the Act, the Department, in enforcing this subpart, shall follow the procedures applicable to enforcement of title VI of the Civil Rights Act of 1964.

(2) *Termination of federal financial assistance*. With regard to enforcement of this subpart through the termination or refusal of federal financial assistance, the Department shall follow the provisions of its title VI regulation concerning notice (28 CFR 42.180(c)), hearings (28 CFR 42.109), and decisions (28 CFR 42.110). However, with respect to programs or activities receiving federal financial assistance from a component of the Department's Office of Justice Programs (OJP), the requirement of 28 CFR 42.110(e) that a sanction be approved by the Attorney General shall not apply; that function may be performed by the Assistant Attorney General, OJP.

(3) *Other means of enforcement*. With regard to enforcement of this subpart through other means, the Department shall follow the procedures of 28 CFR 42.108(d). In addition, at least 30 days before commencing a lawsuit or taking other action pursuant to paragraph (b)(1)(i)(A) of this section, the Department shall send an appropriate report to the committees of the House of Representatives and the Senate having legislative jurisdiction over the program or activity involved.

(c) *Deferral*. When a proceeding for the termination or refusal or federal financial assistance is initiated pursuant to paragraph (b)(1)(i)(A) of this section, the Department may defer granting new federal financial assistance to the recipient.

(1) New federal financial assistance includes any assistance for which, during the deferral period, the Department requires an application or approval, including renewal or continuation of existing activities or authorization of new activities. New federal financial assistance does not include assistance approved prior to initiation of the administrative proceeding or increases in funding as a result of a change in the manner of computing formula awards.

(2) A deferral may not begin until the recipient has received a notice of opportunity for a hearing. A deferral may not continue for more than 60 days unless a hearing has begun within that time or the time for beginning the hearing has been extended by mutual consent of the recipient and the Department. A deferral may not continue for more than 30 days after the close of the hearing, unless the hearing results in a finding against the recipient.

§ 42.734 Alternative funding.

When assistance to a recipient is terminated or refused pursuant to § 42.733(b)(1)(i)(A), the Department may disburse the withheld funds directly to an alternate recipient serving the same area (i.e., a public or nonprofit private organization or agency or state or political subdivision of the state). Any such alternate recipient must demonstrate the ability to comply with the requirements of this subpart and to achieve the goals of the federal statute authorizing the assistance.

§ 42.735 Judicial review.

A final decision of the Department in an administrative proceeding pursuant to § 42.733(b)(1)(i)(A) is subject to judicial review as provided in section 306 of the Act, 42 U.S.C. 6105.

§ 42.736 Private lawsuits.

(a) Upon exhausting administrative remedies under the Act, a complainant may file a civil action to enjoin a violation of the Act. Administrative remedies are exhausted if—

(1) 180 days have elapsed since the complainant filed the complaint and the Department has made no finding with regard to the complaint; or

(2) The Department issues a finding, pursuant to § 42.731(g)(3), in favor of the recipient.

(b) Whenever administrative remedies are exhausted in accord with paragraph (a) of this section, the Department shall promptly inform the complainant that

(1) The complainant may bring a civil action in a United States district court for the district in which the recipient is located or transacts business;

(2) A complainant who prevails in such an action has the right to be awarded reasonable attorney's fees, if the complainant demands such an award in the complaint initiating the lawsuit;

(3) Before commencing the action, the complainant must give 30 days' notice by registered mail to the Secretary, the Attorney General, and the recipient;

(4) The notice must state the nature of the alleged violation, the relief requested, the court in which the action will be brought, and whether attorney's fees will be demanded; and

(5) The complainant may not bring an action if the same alleged violation by the recipient is the subject of a pending action in any court of the United States.

§§ 42.737–42.799 [Reserved]

APPENDIX A TO SUBPART I OF PART 42—FEDERAL FINANCIAL ASSISTANCE ADMINISTERED BY THE DEPARTMENT OF JUSTICE TO WHICH THIS SUBPART APPLIES

NOTE: Failure to list a type of federal assistance in appendix A shall not mean, if the Age Discrimination Act is otherwise applicable, that a program or activity is not covered. For the text of appendix A to subpart I, see appendix A to subpart C of this part.

APPENDIX B TO SUBPART I OF PART 42—AGE DISTINCTIONS IN FEDERAL STATUTES OR REGULATIONS AFFECTING FINANCIAL ASSISTANCE ADMINISTERED BY THE DEPARTMENT OF JUSTICE

Section 90.31(f) of HHS' the general regulations (45 CFR part 90) requires each federal agency to publish an appendix to its final regulation containing a list of age distinctions in federal statutes and regulations affecting financial assistance administered by the agency. This appendix is the Department's list of federal statutes and Department regulations that contain age distinctions that:

(1) Provide benefits or assistance to persons based upon age; or

(2) Establish criteria for participation in age-related terms; or

(3) Describe intended beneficiaries or target groups in age-related terms.

The Department administers financial assistance under the Juvenile Justice and Delinquency Prevention Act of 1974, as amended (42 U.S.C. 5601–5672). This statute reflects the basic distinction between criminal justice systems for adults and juvenile justice systems, and the entire statute is predicated upon making distinctions on the basis of age between juveniles and adults. Such age distinctions are set forth throughout this statute, including provisions establishing programs of financial assistance to juvenile justice systems and for purposes related to the prevention of juvenile delinquency. The Department's current regulations pertaining to formula grants under this statute are set forth at 28 CFR part 31 (CFDA No. 16.540). In order to implement the statutory purposes,

these regulations reflect the same age distinctions between juveniles and adults as are contained in the statute. The same statute also provides for discretionary special emphasis grants for which there are program announcements issued (CFDA No. 16.541), and this program also necessarily reflects the basic statutory distinction based on age.

The Department is authorized to extend financial assistance under the Missing Children's Assistance Act, as amended (42 U.S.C. 5771–5777). This law is concerned with problems related to missing children, and, thus, it contains many age-related references to children, including references in connection with the provision of financial assistance. Program announcements are issued in connection with this program (CFDA No. 16.543).

The Department is authorized to extend financial assistance pursuant to the Omnibus Crime Control and Safe Streets Act of 1968, as amended (42 U.S.C. 3701–3797). Among the statutory purposes of this law is the provision of grants addressing problems related to juvenile delinquency and problems related to crimes committed against elderly persons. Accordingly, this law also reflects the basic distinction between criminal justice systems for adults and juvenile justice systems. This law also singles out elderly persons as a special target group to benefit from its programs. The Department's regulations concerning block grants authorized under this statute are set forth at 28 CFR part 33. These regulations reflect the statutory authorizations for such block grants, which specifically authorize funds for, among other things, programs addressing problems related to juvenile delinquency and programs addressing the problem of crimes committed against elderly persons (CFDA No. 16.573). Similarly, the statute provides for discretionary grants to enhance and complement the block grants (CFDA No. 16.574) and has been amended to provide a focus on narcotics control (CFDA No. 16.580).

The Department is authorized to extend financial assistance under the Victims of Crime Act of 1984, as amended (42 U.S.C. 10601–10604). Among other things, in order to qualify for funds under one grant program, a state must certify that priority will be given to eligible crime victim assistance programs that help victims of certain crimes, including child abuse. In addition, among the services to victims of crime for which funding is available is ''short term child care services'' (CFDA Nos. 16.575 and 16.576).

The Department is authorized to make grants to Native American Indian tribes with funds reserved to the Office of Victims of Crime under the Victims of Crime act of 1984, as amended (42 U.S.C. 10601(g)). The primary purpose of the funding is to assist Native American Indian tribes with handling child abuse cases, particularly child sexual abuse (CFDA No. 16.583).

The Department is authorized to extend financial assistance to state and local authorities for narcotics control under the Anti-Drug Abuse Act of 1988 (Pub. L. 100–690, 102 Stat. 4181), which extends and/or modifies each of the previously noted laws. The statute reflects the basic distinction between criminal justice systems for adults and juveniles (CFDA Nos. 16.579 and 16.582).