

fee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on such property for the purposes for which the property was transferred, TVA may agree, upon request of the transferee and if necessary to accomplish such financing, and upon such conditions as it deems appropriate, to forbear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

4. Paragraph (d) of § 302.7 is revised to read as follows:

§ 302.7 Procedure for effecting compliance.

(d) *Other means authorized by law.* No action to effect compliance by any other means authorized by law shall be taken until (1) TVA has determined that compliance cannot be secured by voluntary means, (2) the recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance, and (3) the expiration of at least 10 days from the mailing of such notice to the recipient or other person. During this period of at least 10 days additional efforts shall be made to persuade the recipient or other person to comply with the regulation and to take such corrective action as may be appropriate.

5. Paragraph (d) (1) of § 302.8 is revised to read as follows:

§ 302.8 Hearings.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with the procedures contained in 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 TVA and the recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

6. A new paragraph (g) is added to § 302.9 as follows:

§ 302.9 Decisions and notices.

(g) *Posttermination proceedings.* (1) A 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 he satisfies the terms and conditions of that order for such eligibility or if he brings himself into compliance with this regulation and provides reasonable as-

urance that he will fully comply with this regulation.

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

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

1. The title of § 302.11 is revised, the existing language of the section is designated paragraph (a), and a new paragraph (b) is added, all to read as follows:

§ 302.11 Effect on other regulations; supervision and coordination.

(a) *Effect on other regulations.* All regulations, orders, or like directions heretofore issued by TVA which impose requirements designed to prohibit any discrimination against individuals on the ground of race, color, or national origin under any program to which this regulation applies, and which authorize the suspension or termination of or refusal to grant or to continue financial assistance to any recipient of such assistance under such program for failure to comply with such requirements, are hereby superseded to the extent that such discrimination is prohibited by this part, except that nothing in this part shall be deemed to relieve any person of any obligation assumed or imposed under any such superseded regulation, order, instruction, or like direction prior to the effective date of this part. Nothing in this part, however, shall be deemed to supersede any of the following (including future amendments thereof): (1) Executive Order 11246 and regulations issued thereunder, or (2) any other regulations or instructions, insofar as they prohibit discrimination on the ground of race, color, or national origin in any program or situation to which this regulation is inapplicable, or prohibit discrimination on any other ground.

(b) *Supervision and coordination.* TVA may from time to time assign to officials of other departments or agencies of the Government with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of title VI of the Act and this part (other than responsibility for final decision as provided in

§ 302.9), including the achievement of effective coordination and maximum uniformity within the Executive Branch of the Government in the application of title VI and this part 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 TVA.

8. The heading of Appendix A is revised to read:

APPENDIX A—FEDERAL FINANCIAL ASSISTANCE TO WHICH THESE REGULATIONS APPLY

Effective date. The foregoing amendments will become effective on July 5, 1973.

DATED: June 1, 1972.

TENNESSEE VALLEY
AUTHORITY,
LYNN SEEGER,
General Manager.

[FR Doc. 73-13307 Filed 7-3-73; 8:45 am]

**Title 22—Foreign Relations
CHAPTER I—DEPARTMENT OF STATE
SUBCHAPTER O—CIVIL RIGHTS
[Dept. Reg. 108.675]**

**PART 141—NONDISCRIMINATION IN
FEDERALLY-ASSISTED PROGRAMS OF
THE DEPARTMENT OF STATE—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964**

Miscellaneous Amendments

A notice of proposed rulemaking was published in the FEDERAL REGISTER on December 9, 1971 (36 FR 23464-23466) to amend Part 141 of Title 22 of the Code of Federal Regulations. The amendments were uniform amendments issued for the purpose of effecting necessary clarification to the Title VI regulations proposed by all Government agencies having Title VI responsibilities.

As a result of comments received, certain changes have been made to the proposed amendments to conform to the uniform agency amendments. A new provision (vii) is added to section 141.3 to prohibit discrimination in the selection of planning and advisory boards; the requirement that a recipient take affirmative action to eliminate discrimination is clarified in § 141.5; § 141.5(b) is amended to require that recipients maintain data showing the extent to which minority group persons receive the benefits of Federal financial assistance; and § 141.6(b) is revised to extend the time limit for filing complaints from 90 days to 180 days.

Accordingly, Part 141 is amended as set forth below.

1. Section 141.2 is revised to read as follows:

§ 141.2 Application of this part.

This part applies to any program for which Federal financial assistance, as defined in this part, is authorized under a law administered by the Department including, but not limited to, the Federally

assisted programs and activities listed in Appendix A of this part. It applies to Federal financial assistance of any form, including property which may be acquired as a result of and in connection with such assistance, extended under any such program after the effective date of this regulation, even if the application is approved prior to such effective date. This part does not apply to: (a) Any Federal financial assistance by way of insurance of guaranty contracts; (b) money paid, property transferred, or other assistance extended under any such program before the effective date of this regulation; (c) any assistance to any individual who is the ultimate beneficiary under any such program; or (d) any employment practice, under any such program, of any employer, employment agency, or labor organization, except to the extent described in § 141.3(d), or (e) any assistance to an activity carried on outside the United States by a person, institution, or other entity not located in the United States. The fact that a program or activity is not listed in Appendix A of this part shall not mean, if Title VI of the Act is otherwise applicable, that such program is not covered. Transfers of surplus property in the United States are subject to regulations issued by the Administrator of General Services (41 CFR 101-6.2).

2. In § 141.3, subparagraphs (1) (vi) are amended and a new subparagraph (vii) is added to paragraph (b); paragraph (b) (2) is amended; and new paragraphs (b) (5) and (d) are added to read as follows:

§ 141.3 Discrimination prohibited.

(b) * * *

(1) * * *

(vi) Deny an individual an opportunity to participate in the program through the provision of services or otherwise 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 in accordance with paragraph (d) 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 types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the location or site of any facilities, or services, or the class of individuals to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program or the class of individuals to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration or select locations or sites for any facilities or services, 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 re-

spect individuals of a particular race, color, or national origin.

(5) (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.

(d) *Employment practices.* (1) Where a primary objective of the Federal financial assistance to a program to which this part applies is to provide employment, a recipient may not (directly or through contractual or other arrangements) subject an 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), including programs where a primary objective of the Federal financial assistance is: (i) To reduce the unemployment of such individuals or to help them through employment to meet subsistence needs; (ii) to assist such individuals through employment to meet expenses incident to the commencement or continuation of their education or training; (iii) to provide work experience which contributes to the education or training of such individuals; or (iv) to provide remunerative activity to such individuals who because of severe handicaps cannot be readily absorbed in the competitive labor market.

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

3. In § 141.4, paragraphs (a) and (b) (1) are revised and a new paragraph (c) is added to read as follows:

§ 141.4 Assurances required.

(a) *General.* (1) Every application for Federal financial assistance to carry out a program to which this part applies, as a condition to its approval and the extension of any Federal financial assistance pursuant to the application, shall

contain or be accompanied by an assurance that the program will be conducted or the facility operated in compliance with all requirements imposed by or pursuant to this part. The assurance shall obligate the recipient for the period during which Federal financial assistance is extended pursuant to the application.

(2) In any case where the Federal assistance is to provide, or is in the form of personal property, or real property or structures or any interest therein, or such property is acquired as a result of and in connection with such assistance, the assurance shall obligate the recipient, or, in case of subsequent transfers, the transferees, for the period during which the property is used for a purpose for which the Federal assistance was, or is extended, or for another purpose involving the provision of similar services and benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer. Any assurance relating to property provided under or acquired as a result of or in connection with such assistance shall as appropriate require any instrument effecting or recording transfer, title or other evidence of ownership or right to possession, to include a covenant or condition assuring nondiscrimination for the period of obligation of the recipient or any transferee, which may contain a right to be reserved to the Department to revert title or right to possession. Where no transfer of property is involved, but property is improved or any interest of the recipient or transferee therein is increased as a result of a program of Federal financial assistance, the recipient or transferee shall agree to include such covenant or condition in any subsequent transfer of such property. Failure to comply with any such conditions or requirements contained in such assurances shall render the recipient and the transferees, where appropriate, presumptively in noncompliance.

(3) The responsible Departmental official shall specify the form of the foregoing assurances for each program, and the extent to which like assurances will be required of subgrantees, contractors and subcontractors, transferees, successors in interest, and other participants in the program. Any such assurance shall include provisions which give the United States a right to seek its judicial enforcement.

(b) *Assurances from institutions.* (1) In the case of any application for Federal financial assistance to an institution of higher education, including assistance for construction, for research, for a special training project, for a student loan program, or for any other purpose, the assurance required by this section shall extend to admission practices and to all other practices relating to the treatment of students.

(c) *Elementary and secondary schools.* The requirements of paragraph (a) (1) of this section, with respect to any elementary or secondary school or school system shall be deemed to be satisfied if such school or school system (1) is sub-

ject to a final order of a court of the United States for the desegregation of such school or school system, and provides an assurance that it will comply with such order, or (2) submits a plan the desegregation of such school or school system which the responsible official of the Department of Health, Education, and Welfare determines is adequate to accomplish the purposes of the Act and this part within the earliest practicable time, and provides reasonable assurance that it will carry out such plan; in any case of continuing Federal financial assistance the responsible official of the Department of Health, Education, and Welfare may reserve the right to redetermine, after such period as may be specified by him, the adequacy of the plan to accomplish the purposes of the Act and this part. In any case in which a final order of a court of the United States for the desegregation of such school or school system is entered after submission of such a plan, such plan shall be revised to conform to such final order, including any future modification of such order.

4. Section 141.5(b) is revised to read as follows:

§ 141.5 Compliance information.

(b) *Compliance reports.* Each recipient shall keep such records and submit to the responsible Departmental official or his designee timely, complete and accurate compliance reports at such times, and in such form and containing such information, as a responsible Departmental official or his designee may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this part. In general, recipients should have available for the Department racial and ethnic data showing the extent to which members of minority groups are beneficiaries of Federally assisted programs. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this part.

5. Section 141.6(b) is revised to read as follows:

§ 141.6 Conduct of investigations.

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

6. Section 141.7(a) is revised to read as follows:

§ 141.7 Procedure for effecting compliance.

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

7. In § 141.8, paragraphs (b), (d), and (e) are amended to read as follows:

§ 141.8 Hearings.

(b) *Time and place of hearing.* Hearings shall normally be held at the offices of the Department in Washington, D.C., at a time fixed by the responsible Departmental official. Hearings shall be held before an official designated by the Secretary other than the responsible Departmental official, in accordance with 5 U.S.C. 3105 and 3344 (formerly section 11 of the Administrative Procedure Act).

(d) Procedures, evidence, and record.

(1) The hearing, decision, and any administrative review thereof shall be conducted with as much conformity as is practicable with 5 U.S.C. 554-557 (formerly 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 at the outset of or during the hearing.

(e) *Consolidated or joint hearings; hearings before other agencies.* In cases in which the same or related facts are asserted to constitute noncompliance with this part with respect to two or more programs to which this part applies, or noncompliance with this part and regulations of one or more other Federal departments or agencies issued under Title VI of the Act, the Secretary may, by agreement with such other departments or agencies where applicable,

provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules of procedures not inconsistent with this part, except that procedural requirements of the hearing agency if other than this Department may be adopted insofar as it is determined by the Secretary that variations from the procedures described in this section or elsewhere as may be required under this part do not impair the rights of the parties. The Secretary may also transfer the hearing of any complaint to any other department or agency, with the consent of that Department or Agency, (1) where Federal financial assistance to the applicant or recipient of the other Department or Agency is substantially greater than that of the Department of State, or (2) upon determination by the Secretary that such transfer would be in the best interests of the Government of effectuating this part. Final decisions in all such cases, insofar as this part is concerned, shall be made in accordance with § 141.9.

8. A new paragraph (g) is added to § 141.9 to read as follows:

§ 141.9 Decisions and notices.

(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 regulation and provides reasonable assurance that it will fully comply with this regulation.

(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 Departmental official to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information establishing that the applicant or recipient has met the requirements of paragraph (g)(1) of this section. If the responsible Departmental official determines that those requirements have been satisfied, he shall restore such eligibility, but such determination shall be in writing and shall be supported by evidence and findings of fact which shall be retained by the Department.

(3) If the responsible Departmental 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 Departmental official. The burden of substantiating compliance with the requirements of paragraph (g)(1) of this section shall be on the applicant or recipient. While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (f) of this section shall remain in effect.

9. In § 141.11, paragraph (b) is amended to read as follows:

§ 141.11 Effect on other regulations; forms and instructions.

(b) *Supervision and coordination.* The Secretary 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 department or agencies, responsibilities in connection with the effectuation of the purposes of Title VI of the Act and this part including the achievement of effectiveness coordination and maximum uniformity within the Department and within the executive branch of the Government in the application of Title VI and this part to similar programs and in similar situations. 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 responsible official of this Department.

10. In § 141.12, paragraphs (e) and (f) are amended and a new paragraph (j) is added to read as follows:

§ 141.12 Definitions.

(e) 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, and (4) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance or other benefits to individuals whether provided through employees of the recipient of Federal financial assistance or provided by others through contracts or other arrangements with the recipient.

(f) The term "program" includes any program, project, or activity for the provision of services, financial aid, or other benefits to individuals whether provided through employees of the recipient of Federal financial assistance or provided by others through contracts or other arrangements with the recipient. Services, financial aid, or other benefits shall include those provided with the aid of or through any facility provided for by the aid of any non-Federal funds, property, or other resources required to be expended or made available for the program to meet matching requirements or other conditions in order to receive Federal assistance.

(j) 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.

11. The title of Appendix A is changed to read as follows:

GRANTS AND ACTIVITIES TO WHICH THIS PART APPLIES

(Sec. 602, Civil Rights Act of 1964, 78 Stat. 252; sec. 4, 63 Stat. 111, as amended; 42 U.S.C. 2000d; 22 U.S.C. 2658)

Effective date. These amendments shall be effective on July 5, 1973.

[SEAL]

JOHN N. IRWIN II,
Acting Secretary of State.

AUGUST 31, 1972.

[FR Doc. 73-13290 Filed 7-3-73; 8:45 am]

CHAPTER II—AGENCY FOR INTERNATIONAL DEVELOPMENT, DEPARTMENT OF STATE

[A.I.D. Reg. 9]

PART 209—NON-DISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS OF THE AGENCY FOR INTERNATIONAL DEVELOPMENT—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Miscellaneous Amendments

On December 9, 1971, a notice of proposed rule making was published in the *FEDERAL REGISTER* (36 FR 23466) proposing amendments to Part 209 of title 22, Code of Federal Regulations, for the purpose of effecting necessary clarifications of this Agency's regulations implementing Title VI of the Civil Rights Act of 1964. The proposed amendments were published on behalf of this Agency by the Department of Justice, pursuant to that Department's responsibility under Executive Order 11247, to coordinate enforcement of Title VI.

Interested persons were invited to participate in the consideration of the proposed amendments by submitting written comments to the Assistant Attorney General, Civil Rights Division, Department of Justice, within thirty days of the publication of the notice of proposed rule making.

Comments on these amendments have been received and reviewed by the Civil Rights Division. On the basis of those comments, this Agency has been advised by the Civil Rights Division that no additions are required to be made to the proposed amendments. The Civil Rights Division has recommended that we take the necessary steps to adopt the proposals as final amendments.

Accordingly, the proposed amendments are hereby adopted without change and are set forth below.

Effective date. These amendments shall become effective on July 5, 1973.

Dated May 18, 1972.

JOHN A. HANNAH,
Administrator, Agency for International Development.

§ 209.4 [Amended]

1. The present § 209.4(b) (3) is redesignated as § 209.4(b) (4).

2. The present § 209.4(b) (4) is redesignated as § 209.4(b) (5).

3. The following new paragraph is added to the regulation and is designated as § 209.4(b) (3):

(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 regulation applies, on the grounds 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 regulation.

4. The following new paragraph is added to the regulation and is designated as § 209.4(b) (6):

(6) This regulation does not prohibit the consideration of race, color, or national origin if the purpose and effect are to remove or overcome the consequences of practices or impediments which have restricted the availability, or participation in, the program or activity receiving Federal financial assistance, on the grounds of race, color or national origin. Where previous discriminatory practice or usage tends, on the grounds of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this Regulation applies, the applicant or recipient has an obligation to take reasonable action to remove or overcome the consequences of the prior discriminatory practice or usage, and to accomplish the purposes of the Act.

5. Section 209.5(a) (2) is revised to read as follows:

§ 209.5 Assurance required.

(a) * * *

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

under which the real property is obtained and to the nature of the grant and the grantee. In such event if a transferee of real property proposed to mortgage or otherwise encumber the real property as security for financing construction of new or improvement of existing facilities on such property for the purposes for which the property was transferred, the Administrator may agree, upon request of the transferee and if necessary to accomplish such financing, and upon such conditions as he deems appropriate, to forbear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

7. Section 209.8(d) is revised to read as follows:

§ 209.8 Procedure for effecting compliance.

(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 Agency official has determined that compliance cannot be secured by voluntary means, (2) the recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance, and (3) the expiration of at least 10 days from the mailing of such notice to the recipient or other person. During this period of at least 10 days additional efforts shall be made to persuade the recipient or other person to comply with this part and to take such corrective action as may be appropriate.

§ 209.9 [Amended]

8. The last sentence of § 209.9(b) is revised to read as follows: "Hearings shall be held before the Administrator or before a hearing examiner designated in accordance with 5 U.S.C. 3105 and 3344 (section 11 of the Administrative Procedure Act)."

9. The first sentence of § 209.9(d) (1) is revised to read as follows:

(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 proper (and not inconsistent with this 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.

10. The following new paragraphs are added to the regulation and designated as § 209.10(f):

§ 209.10 Decisions and notices.

(f) *Post Termination Proceedings.* (1) An applicant or recipient adversely

affected by an order issued under paragraph (e) 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 regulation and provides reasonable assurance that it will fully comply with this regulation.

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (e) of this section may at any time request the responsible Agency 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 subparagraph (1) of this paragraph. If the responsible Agency official determines that those requirements have been satisfied, he shall restore such eligibility.

(3) If the responsible Agency 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 Agency official. The applicant or recipient will be restored to such eligibility if it proves at such a hearing that it satisfied the requirements of subparagraph (1) of this paragraph. While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (e) of this section shall remain in effect.

§ 209.12 [Amended]

11. The last sentence of § 209.12(a) is revised to read as follows:

"Nothing in this part, however, shall be deemed to supersede any of the following (including future amendment thereof):

"(1) Executive Order 11246, and regulations issued thereunder, or (a) any other regulation or instruction insofar as it prohibits discrimination on the grounds of race, color, or national origin in any program or situation to which this part is inapplicable, or prohibits discrimination on any other ground."

12. The following new sentence is added to § 209.12 (b) at the end thereof: "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 responsible official of this Agency."

13. The title of Appendix A to the regulation is revised to read as follows:

FEDERAL FINANCIAL ASSISTANCE TO WHICH THIS REGULATION APPLIES

[FR Doc. 73-13292 Filed 7-3-73; 8:45 am]

Title 24—Housing and Urban Development

SUBTITLE A—OFFICE OF THE SECRETARY, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. R-71-107]

PART 1—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

The purpose of these regulations is to further effectuate the provisions of title VI of the Civil Rights Act of 1964 and to make the Department of Housing and Urban Development's regulations consistent with the uniform amendments being adopted by Federal agencies under that title. On December 9, 1971 (36 FR 23467), the Department published a notice of proposed rule making to amend the existing regulations (29 FR 16280, Dec. 4, 1964, amended 32 FR 14819, Oct. 26, 1967 and 36 FR 8784, May 13, 1971) with comments to be submitted to the Department of Justice.

The comments received have been evaluated by the Department of Justice and HUD, and in response to these comments, the following changes have been made to the proposed regulations as noticed. In other respects, the amendment is adopted as published in the notice of rule making.

In § 1.4(b), a new item (vii) has been added to the list of prohibitions, that of discriminating in the selection of members of planning or advisory boards where the recipient of Federal aid has control over the board and the board is an integral part of the program receiving Federal aid.

Section 1.6(b) has been revised to expressly provide that racial and ethnic data should be made available by the recipient to the Department as part of the information necessary for determining compliance.

Section 1.4(b)(6) has been reworded and divided into two subparagraphs in order to clarify that affirmative action is required in those programs where discrimination as prohibited by § 1.4 has previously occurred, but may also be taken where conditions have resulted in limiting participation in a program to persons of a particular race, color or national origin.

In § 1.7(b) the time allowed a complainant for filing a complaint has been changed from 90 days to 180 days in order to make these regulations consistent with other civil rights laws. (42 U.S.C. 2000e-5(e); 42 U.S.C. 3610(b); 41 CFR 60-1.21)

Accordingly, Part 1 of Subtitle A of Title 24 of the Code of Federal Regulations is amended as follows:

- | | |
|------|------------------------|
| Sec. | |
| 1.1 | Purpose. |
| 1.2 | Definitions. |
| 1.3 | Application of Part 1. |

- Sec.
 1.4 Discrimination prohibited.
 1.5 Assurances required.
 1.6 Compliance information.
 1.7 Conduct of investigations.
 1.8 Procedure for effecting compliance.
 1.9 Hearings.
 1.10 Decisions and notices.
 1.11 Judicial review.
 1.12 Effect on other regulations; forms and instructions.

Appendix A.

Authority: The provisions of this Part 1 issued under sec. 602, 78 Stat. 252, 42 U.S.C. 2000d-1; sec. 7(d), 79 Stat. 670, 42 U.S.C. 3535(d); and the laws listed in Appendix A to this Part 1.

§ 1.1 Purpose.

The purpose of this Part 1 is to effectuate the provisions of title VI of the Civil Rights Act of 1964 (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 be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Housing and Urban Development.

§ 1.2 Definitions.

As used in this Part 1—

(a) The term "Department" means the Department of Housing and Urban Development.

(b) The term "Secretary" means the Secretary of Housing and Urban Development.

(c) The term "responsible Department official" means the Secretary or, to the extent of any delegation of authority by the Secretary to act under this Part 1, any other Department official to whom the Secretary may hereafter delegate such authority.

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

(e) The term "Federal financial assistance" includes (1) grants, loans, and advances 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. The term "Federal financial assistance" does not include a contract of insurance or guaranty.

(f) The term "recipient" means any State, political subdivision of any State, or instrumentality of any State or politi-

cal 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 or activity, or who otherwise participates in carrying out such program or activity (such as a redeveloper in the Urban Renewal Program), including any successor, assign, or transferee thereof, but such term does not include any ultimate beneficiary under any such program or activity.

(g) The term "applicant" means one who submits an application, contract, request, or plan requiring Department approval as a condition to eligibility for Federal financial assistance, and the term "application" means such an application, contract, request, or plan.

§ 1.3 Application of Part 1.

This Part 1 applies to any program or activity for which Federal financial assistance is authorized under a law administered by the Department, including any program or activity assisted under the statutes listed in Appendix A of this Part 1. It applies to money paid, property transferred, or other Federal financial assistance extended to any such program or activity on or after January 3, 1965. This Part 1 does not apply to (a) any Federal financial assistance by way of insurance or guaranty contracts, (b) money paid, property transferred, or other assistance extended to any such program or activity before January 3, 1965, (c) any assistance to any person who is the ultimate beneficiary under any such program or activity, or (d) any employment practice, under any such program or activity, of any employer, employment agency, or labor organization, except to the extent described in § 1.4(e). The fact that certain financial assistance is not listed in Appendix A shall not mean, if title VI of the Act is otherwise applicable, that such financial assistance is not covered. Other financial assistance under statutes now in force or hereinafter enacted may be added to this list by notice published in the *FEDERAL REGISTER*.

§ 1.4 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 or activity to which this Part 1 applies.

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

(i) Deny a person any housing, accommodations, facilities, services, financial aid, or other benefits provided under the program or activity;

(ii) Provide any housing, accommodations, facilities, services, financial aid, or other benefits to a person which are different, or are provided in a different manner, from those provided to others under the program or activity;

(iii) Subject a person to segregation or separate treatment in any matter related to his receipt of housing, accommodations, facilities, services, financial aid, or other benefits under the program or activity;

(iv) Restrict a person in any way in access to such housing, accommodations, facilities, services, financial aid, or other benefits, or in the enjoyment of any advantage or privilege enjoyed by others in connection with such housing, accommodations, facilities, services, financial aid, or other benefits under the program or activity;

(v) Treat a person differently from others in determining whether he satisfies any occupancy, admission, enrollment, eligibility, membership, or other requirement or condition which persons must meet in order to be provided any housing, accommodations, facilities, services, financial aid, or other benefits provided under the program or activity;

(vi) Deny a person opportunity to participate in the program or activity 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 or activity (including the opportunity to participate in the program or activity 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) (i) A recipient, in determining the types of housing, accommodations, facilities, services, financial aid, or other benefits which will be provided under any such program or activity, or the class of persons to whom, or the situations in which, such housing, accommodations, facilities, services, financial aid, or other benefits will be provided under any such program or activity, or the class of persons to be afforded an opportunity to participate in any such program or activity, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons 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 or activity as respect to persons of a particular race, color, or national origin.

(ii) A recipient, in operating low-rent housing with Federal financial assistance under the United States Housing Act of 1937, as amended (42 U.S.C. 1401 et seq.), shall assign eligible applicants to dwelling units in accordance with a plan, duly adopted by the recipient and approved by the responsible Department official, providing for assignment on a community-wide basis in sequence based upon the date and time the application is received, the size or type of unit suitable, and factors affecting preference or priority established by the recipient's regulations, which are not inconsistent with the objectives of title VI of the Civil Rights Act of 1964 and this Part 1. The plan may allow an applicant to refuse a tendered

vacancy for good cause without losing his standing on the list but shall limit the number of refusals without cause as prescribed by the responsible Department official.

(iii) The responsible Department official is authorized to prescribe and promulgate plans, exceptions, procedures, and requirements for the assignment and reassignment of eligible applicants and tenants consistent with the purpose of subdivision (ii) of this subparagraph, this Part 1, and title VI of the Civil Rights Act of 1964, in order to effectuate and insure compliance with the requirements imposed thereunder.

(3) In determining the site or location of housing, accommodations, or facilities, an applicant or recipient 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 Part 1 applies, on the ground of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this Part 1.

(4) As used in this Part 1 the housing, accommodations, facilities, services, financial aid, or other benefits provided under a program or activity receiving Federal financial assistance shall be deemed to include any housing, accommodations, facilities, services, financial aid, or other benefits provided in or through a facility provided with the aid of Federal financial assistance.

(5) The enumeration of specific forms of prohibited discrimination in paragraphs (b) and (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 should take affirmative action to overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color or national origin.

Where previous discriminatory practice or usage tends, on the ground of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this Part 1 applies, the applicant or recipient has an obligation to take reasonable action to remove or overcome the consequences of the prior discriminatory practice or usage, and to accomplish the purpose of the Act.

(c) *Employment practices.* (1) Where a primary objective of the Federal financial assistance to a program or activity to which this Part 1 applies is to provide employment, a recipient may not, directly or through contractual or other arrangements, subject a person to discrimination on the ground of race, color, or national origin in its employment

practices under such program or activity (including recruitment or recruitment advertising, employment, layoff, termination, upgrading, demotion, transfer, rates of pay or other forms of compensation and use of facilities). The requirements applicable to construction employment under such program or activity shall be those specified in or pursuant to Part III of Executive Order 11246 or any executive order which supersedes or amends it.

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

§ 1.5 Assurances required.

(a) *General.* (1) Every contract for Federal financial assistance to carry out a program or activity to which this Part 1 applies, executed on or after January 3, 1965, and every application for such Federal financial assistance submitted on or after January 3, 1965, shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to such contract or application, contain or be accompanied by an assurance that the program or activity will be conducted and the housing, accommodations, facilities, services, financial aid, or other benefits to be provided will be operated and administered in compliance with all requirements imposed by or pursuant to this Part 1. In the case of a contract or application where the Federal financial assistance is to provide or is in the form of personal property or real property or interest therein or structures thereon, the assurance shall obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the property 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 the assurance shall obligate the recipient for the period during which Federal financial assistance is extended pursuant to the contract or application. The responsible Department official shall specify the form of the foregoing assurance for such program or activity, and the extent to which like assurances will be required of subgrantees, contractors and subcontractors, transferees, successors in interest, and other participants in the program or activity. 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 interests therein, acquired through a program of Federal financial assistance the instrument effecting any disposition by the recipient of such real property, structures or improvements thereon, or interests therein, shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. In the case where Federal financial assistance is provided in the form of a transfer of real property or interests therein from the Federal Government, the instrument effecting or recording the transfer shall contain such a covenant.

(3) In program receiving Federal financial assistance in the form, or for the acquisition, of real property or an interest in real property, to the extent that rights to space on, over, or under any such property are included as part of the program receiving such assistance, the nondiscrimination requirements of this Part 1 shall extend to any facility located wholly or in part in such space.

(b) *Preexisting contracts—funds not disbursed.* In any case where a contract for Federal financial assistance, to carry out a program or activity to which this Part 1 applies, has been executed prior to January 3, 1965, and the funds have not been fully disbursed by the Department, the responsible Department official shall, where necessary to effectuate the purposes of this Part 1, require an assurance similar to that provided in paragraph (a) of this section as a condition to the disbursement of further funds.

(c) *Preexisting contracts—periodic payments.* In any case where a contract for Federal financial assistance, to carry out a program or activity to which this Part 1 applies, has been executed prior to January 3, 1965, and provides for periodic payments for the continuation of the program or activity, the recipient shall, in connection with the first application for such periodic payments on or after January 3, 1965, (1) submit a statement that the program or activity is being conducted in compliance with all requirements imposed by or pursuant to this Part 1 and (2) provide such methods of administration for the program or activity as are found by the responsible Department official to give reasonable assurance that the recipient will comply with all requirements imposed by or pursuant to this Part 1.

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

(2) The assurance required with respect to an institution of higher education, hospital, or any other institution, insofar as the assurance relates to the

institution's practices with respect to admission or other treatment of persons as students, patients, or clients of the institution or to the opportunity to participate in the provision of services or other benefits to such persons, shall be applicable to the entire institution unless the applicant establishes, to the satisfaction of the responsible Department official, that the institution's practices in designated parts or programs of the institution will in no way affect its practices in the program of the institution for which Federal financial assistance is sought, or the beneficiaries of or participants in such program. If in any such case the assistance sought is for the construction of a facility or part of a facility, the assurance shall in any event extend to the entire facility and to facilities operated in connection therewith.

(e) *Elementary and secondary schools.* The requirements of this section with respect to any elementary or secondary school or school system shall be deemed to be satisfied if such school or school system (1) is subject to a final order of a court of the United States for the desegregation of such school or school system, and provides an assurance that it will comply with such order, including any future modification of such order, or (2) submits a plan for the desegregation of such school or school system which the responsible official of the Department of Health, Education, and Welfare determines is adequate to accomplish the purposes of the Act and this Part 1 within the earliest practicable time, and provides reasonable assurance that it will carry out such plan.

§ 1.6 Compliance information.

(a) *Cooperation and assistance.* The responsible Department official and each Department official who by law or delegation has the principal responsibility within the Department for the administration of any law extending financial assistance subject to this Part 1 shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with this Part 1 and shall provide assistance and guidance to recipients to help them comply voluntarily with this Part 1.

(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 Part 1. 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.

(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 Part 1. Where any information required of a recipient is in the exclusive possession of any other agency, institution, or person and this agency, institution, or person shall fail or refuse to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this Part 1 and its applicability to the program or activity under which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the responsible Department official finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this Part 1.

§ 1.7 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 Part 1.

(b) *Complaints.* Any person who believes himself or any specific class of persons to be subjected to discrimination prohibited by this Part 1 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 shall make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this Part 1. The investigation should include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this Part 1 occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this Part 1.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this Part 1, 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 § 1.8.

(2) If an investigation does not warrant action pursuant to subparagraph (1) of this paragraph 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 person for the purpose of interfering with any right or privilege secured by title VI of the Act or this Part 1, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Part 1. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this Part 1, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

§ 1.8 Procedure for effecting compliance.

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

(b) *Noncompliance with § 1.5.* If an applicant fails or refuses to furnish an assurance required under § 1.5 or otherwise fails or refuses to comply with the requirement imposed by or pursuant to that section, Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. The Department shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under such paragraph, except that the Department shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to a contract therefor approved prior to January 3, 1965.

(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 Part 1, (3) the action has been approved by the Secretary, and (4) the expiration of 30 days after the Secretary has filed with the committees of the House and Senate having legislative jurisdiction over the program or activity 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 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 recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance, and (3) the expiration of at least 10 days from the mailing of such notice to the applicant or recipient. During this period of at least 10 days additional efforts shall be made to persuade the applicant or recipient to comply with this Part 1 and to take such corrective action as may be appropriate.

§ 1.9 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 1.8(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either (1) fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request of the responsible Department official that the matter be scheduled for hearing, or (2) advise the applicant or recipient that the matter in question has been set down for hearing at a stated time and place. 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 (a) or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under section 602 of the Act and § 1.8(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, D.C., at a time fixed by the responsible Department official unless he determines that the convenience of the applicant or recipient or of the 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 sections 3105 and 3344 of title 5, United States Code.

(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 and in accordance with the Practice and Procedure for Hearings issued by the Department and published in Part 2 of this subtitle 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 at the outset of or during the hearing.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this Part 1, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the Department and the applicant or recipient, 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 Part 1 with respect to two or more programs or activities to which this Part 1 applies, or noncompliance with this Part 1 and the regulations of one or more other Federal departments or agencies issued under title VI of the Act, the Secretary may, by agreement with such other departments or agencies, where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules of procedure not inconsistent with this Part 1. Final decisions in such cases insofar as this Part 1 is concerned, shall be made in accordance with § 1.10.

§ 1.10 Decisions and notices.

(a) *Decision by person other than the responsible Department official.* If the hearing is held by a hearing examiner, such hearing examiner shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the responsible Department official for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient by

certified or registered mail, return receipt requested. Where the initial decision is made by the hearing examiner, the applicant or recipient may, within the period provided for in the rules of Practice and Procedure for Hearings issued by the Department (Part 2 of this subtitle), file with the responsible Department official his exceptions to the initial decision, with his reasons therefor. In the absence of exceptions, the responsible Department official may on his own motion within 45 days after the initial decision serve on the applicant or recipient a notice that he will review the decision. Upon the filing of such exceptions or of such notice of review the responsible Department official shall review the initial decision and issue his own decision thereon including the reasons therefor. In the absence of either exceptions or a notice of review the initial decision shall constitute the final decision of the responsible Department official, in which event a copy shall also be sent to the complainant.

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

(c) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to § 1.9(a) a decision a hearing examiner or 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, by certified or registered mail, return receipt requested.

(d) *Rulings required.* Each decision of a hearing examiner or responsible Department official shall set forth his ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this Part 1 with which it is found that the applicant or recipient has failed to comply.

(e) *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 the program or activity involved and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this Part 1, including provisions designed to assure that no Federal financial assistance will thereafter be extended for such program or activity to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to this Part 1, or to

have otherwise failed to comply with this Part 1, unless and until it corrects its noncompliance and satisfies the responsible Department official that it will fully comply with this Part 1.

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

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (e) 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 subparagraph (1) of this paragraph. If the responsible Department official determines that those requirements have been satisfied, he shall restore such eligibility.

(3) If the responsible Department official denies any such request, the applicant or recipient may submit a request for a hearing in writing, specifying why it believes such official to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record, in accordance with the Practice and Procedure for Hearings issued by the Department (Part 2 of this subtitle). The applicant or recipient will be restored to such eligibility if it proves at such a hearing that it satisfied the requirements of subparagraph (1) of this paragraph. While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (e) of this section shall remain in effect.

§ 1.11 Judicial review.

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

§ 1.12 Effect on other regulations; forms and instructions.

(a) *Effect on other regulations.* All regulations, orders, or like directions heretofore issued by any officer of the Department which impose requirements designed to prohibit any discrimination against persons on the ground of race, color, or national origin under any program or activity to which this Part 1 applies, and which authorize the suspension or termination of or refusal to grant or to continue Federal financial assistance to any applicant or recipient for failure to comply with such requirements, are hereby superseded to the extent that such discrimination is prohibited by this Part 1, except that nothing in this Part 1 shall be deemed to relieve any person of any obligation assumed or imposed under any such superseded regulation, order, instruction, or like direction prior to January 3, 1965. Nothing in this Part 1, however, shall be deemed

to supersede any of the following (including future amendments thereof):

(1) Executive Orders 11246 and 11375 and regulations issued thereunder, or
(2) Executive Order 11063 and regulations issued thereunder, or any other order, regulations or instructions, insofar as such order, regulations, or instructions, prohibit discrimination on the ground of race, color, or national origin in any program or activity or situation to which this Part 1 is inapplicable, or prohibit discrimination on any other ground.

(b) *Forms and instructions.* The responsible Department official shall assure that forms and detailed instructions and procedures for effectuating this Part 1 are issued and promptly made available to interested persons.

(c) *Supervision and coordination.* The Secretary 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 department or agency, responsibilities in connection with the effectuation of the purposes of title VI of the Act and this Part 1 (other than responsibility for final decision as provided in § 1.10), including the achievement of effective coordination and maximum uniformity within the Department and within the Executive Branch of the Government in the application of title VI and this Part 1 to similar programs or activities 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 paragraph shall have the same effect as though such action had been taken by the responsible official of this Department.

Effective date. This part shall be effective July 5, 1973.

JAMES T. LYNN,
Secretary of Housing
and Urban Development.

JUNE 29, 1973

APPENDIX A

FEDERAL FINANCIAL ASSISTANCE OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT TO WHICH THIS PART 1 APPLIES

1. Advance Acquisition of Land. Sec. 704, Housing and Urban Development Act of 1965, 42 U.S.C. 3104.
2. Advice and Assistance with respect to Housing for Low and Moderate Income Families. Sec. 106, Housing and Urban Development Act of 1968, as amended by Sec. 903(a) Housing and Urban Development Act of 1970, 12 U.S.C. 1701x.
3. Alaska Housing Assistance. Sec. 1004, Demonstration Cities and Metropolitan Development Act of 1966, 42 U.S.C. 3371.
4. College Housing Program. Title IV, Housing Act of 1950, 12 U.S.C. 1749.
5. Community Disposition Program. Atomic Energy Community Act of 1955, secs. 11-13, 21, 31-36, 41-43, 51-57, 61-66, 101-103, 111-119, 42 U.S.C. 2301; E.O. 11105, 28 F.R. 3909.
6. Comprehensive Planning Assistance and Comprehensive Planning Research and Demonstration Programs. Sec. 701, Housing Act of 1954, 40 U.S.C. 461.
7. Counseling Service to Mortgagees and Prospective Mortgagees. Sec. 237(e), National Housing Act, 12 U.S.C. 1715z-2.
8. Federal-State Training and City Planning and Urban Studies Fellowship Programs. Title VIII, Housing Act of 1964, 20 U.S.C. 801-807.

9. Grants for Housing Management Training. Sec. 803, Housing Act of 1964, 83 Stat. 393 (1969), 84 Stat. 1809 (1970), 20 U.S.C. 803.

10. Home Ownership for Lower Income Families. Sec. 235, National Housing Act, 12 U.S.C. 1715z.

11. Housing for Elderly or Handicapped. Sec. 202, Housing Act of 1959, 12 U.S.C. 1701q.

12. Loan and Grant Assistance for Planning Housing Projects in Appalachia, sec. 207, Appalachian Regional Development Act of 1965, as amended, 81 Stat. 237, 40 U.S.C. App. 207.

13. Low-Income Housing Demonstration Grant Program. Sec. 207, Housing Act of 1961, 42 U.S.C. 1436.

14. Low-Rent Public Housing Program (including housing in private accommodations). United States Housing Act of 1937, 42 U.S.C. 1401.

15. Model Cities Program. Title I, Demonstration Cities and Metropolitan Development Act of 1966, 42 U.S.C. 3301.

16. National Flood Insurance Program. Title XIII, Housing and Urban Development Act of 1968, 42 U.S.C. 4001.

17. Neighborhood Facilities Grants. Sec. 703, Housing and Urban Development Act of 1965, 42 U.S.C. 3103.

18. New Communities. Title IV, Housing and Urban Development Act of 1968, 42 U.S.C. 3901.

19. Loans and Grants for New Community Development Programs. Secs. 710 to 729, Housing and Urban Development Act of 1970, 42 U.S.C. 4511.

20. New Technologies in the Development of Housing for Lower Income Families. Sec. 108, Housing and Urban Development Act of 1968, 12 U.S.C. 1701z.

21. Open-Space Land Programs. Title VII, Housing Act of 1961, 42 U.S.C. 1500. Note.

22. Public Facilities Liquidating Programs. See, generally, title II of Independent Offices Appropriation Act of 1955, Public Law 83-428, 12 U.S.C. 1701g-5.

23. Public Facility Loans Program. Title II, Housing Amendments of 1955, 42 U.S.C. 1491-1497 except 1492(a)(2) Assistance for Mass Transportation Facilities and Equipment (transferred to Secretary of Transportation by Reorganization Plan No. 2 of 1968, 33 F.R. 6965).

24. Public Works Acceleration Act Program. Public Works Acceleration Act, 42 U.S.C. 2641.

25. Public Works Planning Advances. Sec. 702, Housing Act of 1954, 40 U.S.C. 462.

26. Rehabilitation Loan Program. Sec. 312, Housing Act of 1964, 42 U.S.C. 1452b.

27. Rent Supplement Program. Sec. 101, Housing and Urban Development Act of 1965, 12 U.S.C. 1701s.

28. Rental and Cooperative Housing for Lower Income Families. Sec. 236, National Housing Act, 12 U.S.C. 1715z-1.

29. Research and Technology. Title V, Housing and Urban Development Act of 1970, 12 U.S.C. 1701z-1—1701z-4.

30. Sale of Surplus Federal Land for Housing, sec. 414, Housing and Urban Development Act of 1969, 40 U.S.C. 484b.

31. Special Assistance Functions. Sec. 305, National Housing Act, 12 U.S.C. 1720, including purchase of below market interest rate mortgages insured by FHA under sec. 221(d)(3), National Housing Act, 12 U.S.C. 1715(d)(3).

32. Technical Assistance to Contractors or Subcontractors. Sec. 911(b), Housing and Urban Development Act of 1970, 15 U.S.C. 694(a). Note.

33. Urban Information and Technical Assistance Services. Title IX, Demonstration Cities and Metropolitan Development Act of 1966, 42 U.S.C. 3351-3356.

34. Urban Mass Transportation Programs (Research, Development and Demonstration

Projects; Grants for Technical Studies; Grants for Research and Training). Secs. 6(a), 9, and 11 of the "Urban Mass Transportation Act of 1964, as amended"; Reorganization Plan No. 2 of 1963, 33 FR 6965; 49 U.S.C. 1605(a), 1607(a), 1609(c).

35. Urban Renewal Demonstration Grant Program. Sec. 314, Housing Act of 1954, 42 U.S.C. 1452a.

36. Urban Renewal Program (Urban Renewal Projects and Neighborhood Development Programs, Code Enforcement Programs, Demolition Programs, Rehabilitation Grants, Interim Assistance Grants, and Community Renewal Programs). Title I, Housing Act of 1949, 42 U.S.C. 1450.

37. Urban Research and Technology. Title III, Housing Act of 1948, 12 U.S.C. 1701e, 1701f; sec. 602, Housing Act of 1956, 12 U.S.C. 1701d-3; and secs. 1010 and 1011, Demonstration Cities and Metropolitan Development Act of 1966, 42 U.S.C. 3372 and 3373.

38. Water and Sewer Facilities Grants. Sec. 702, Housing and Urban Development Act of 1965, 42 U.S.C. 3102.

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Title 28—Judicial Administration

CHAPTER I—DEPARTMENT OF JUSTICE

[Order No. 519-73]

PART 42—NONDISCRIMINATION; EQUAL EMPLOYMENT OPPORTUNITY; POLICIES AND PROCEDURES

Subpart C—Nondiscrimination in Federally Assisted Programs—Implementation of Title VI

REGULATIONS TO IMPLEMENT TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 WITH RESPECT TO FEDERAL ASSISTANCE ADMINISTERED BY THE DEPARTMENT OF JUSTICE

By virtue of the authority vested in me by section 602 of Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d-1, Subpart C of Part 42 of Title 28, Code of Federal Regulations, is amended as follows:

§ 42.103 [Amended]

1. Section 42.103 is amended by deleting in the last sentence the phrase "(b) any employment practice concerning which the primary purpose of the Federal assistance is not that of providing employment as described in § 42.104 (c)" and substituting the following: "(b) employment practices except to the extent described in § 42.104(c)."

2. Section 42.104(b) is amended by adding the following new subparagraph (1)(vii) at the end thereof, and by renumbering subparagraphs (3) and (4) as (4) and (5) and adding new subparagraphs (3) and (6) as set forth below. Section 42.104(c) is amended by designating the present provision as subparagraph (1) and adding the following sentence at the end thereof and by adding the following new subparagraph (2):

§ 42.104 Discrimination prohibited.

(b) *Specific discriminatory actions prohibited.* (1) . . .

(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.

(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.

(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) (1) . . . 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.

3. In § 42.105, paragraph (a) is amended by designating the present provision as subparagraph (1) and by substituting the following for the second sentence of that provision; by adding a new subparagraph (2) reading as set forth below; and by adding a new paragraph (d), reading as set forth below.

§ 42.105 Assurance required.

(a) *General.* (1) . . . 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. . . .

(2) In the case of real property, structures or improvements thereon, or interest therein, which was acquired through a program of Federal financial assistance, or in the case where Federal financial assistance is provided in the form of a transfer of real property or interest therein from the Federal Government, the instrument effecting or recording the transfer shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. Where no transfer of property is involved, but property is improved under a program of Federal financial assistance, the recipient shall agree to include such a covenant in any subsequent transfer of such property. Where the property is obtained from the Federal Government, such covenant may also include a condition coupled with a right to be reserved by the Department to revert title to the property in the event of a breach of the covenant where, in the discretion of the responsible Department official, such a condition and right of reverter are appropriate to the program under which the real property is obtained and to the nature of the grant and the grantee.

(d) *Continuing State programs.* Any State or State agency administering a program which receives 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.

§ 42.106 [Amended]

4. Section 42.106(b) is amended by inserting the following after the first sentence: "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."

§ 42.107 [Amended]

5. Section 42.107(b) is amended by deleting "90 days" and substituting "180 days."

§ 42.109 [Amended]

6. In § 42.109, paragraph (b) is amended by deleting the phrase "section 11 of the Administrative Procedure Act" and substituting the following: "5 U.S.C. 3105 and 3344 (section 11 of the Administrative Procedure Act)." Paragraph (d) of § 42.109 is amended by deleting the phrase "sections 5 through 8 of the Administrative Procedure Act (5 U.S.C. 1004 through 1007)" and substituting the following: "5 U.S.C. 554-557 (sections