Title 38—Pensions, Bonuses, and Veterans’ Relief

CHAPTER I—VETERANS ADMINISTRATION

PART 18—NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS OF THE VETERANS ADMINISTRATION—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Miscellaneous Amendments

Pursuant to recommendations of the Interagency Committee for Uniform Title VI Regulation Amendments for the purpose of putting into effect clarifications to the regulations enacted pursuant to Title VI of the Civil Rights Act of 1964, Part 18, Chapter 1 of Title 38, Code of Federal Regulations, Nondiscrimination in Federally-Assisted Programs of the Veterans Administration—Effectuation of Title VI of the Civil Rights Act of 1964, is being amended.

The amendments are as follows:

§ 18.2 Application of this part.

This part applies to any program for which Federal financial assistance is authorized under a law administered by the Veterans Administration, including the federally-assisted programs and activities listed in Appendix A to this part. It applies to money paid, property transferred, or other Federal financial assistance extended under any such program after the effective date of this part pursuant to an application approved prior to such effective date. This part does not apply to—

(a) any Federal financial assistance by way of insurance or guaranty contracts, (b) money paid, property transferred, or other financial assistance extended under any such program before the effective date of this part, (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 § 18.3.

The fact that a program or activity is not covered by this part shall not mean, if title VI of the Act is otherwise applicable, that such program is not covered. Other programs under statutes now in force or hereinafter enacted may be covered in part by notice published in the Federal Register.

2. In § 18.3, paragraph (b) is amended to read as follows:

§ 18.3 Discrimination prohibited.

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

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

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

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

(D) Restrict an individual in any way in the enjoyment of any advantage or privilege extended by government to any other individual, or to any other individual who is a member of a particular race, color, or national origin.

(ii) Provide any service, financial aid, or other benefit to an individual which results in limiting participation by any program to which this part applies.

(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 part applies on the grounds of race, color, or national origin.

3. In title 38, parts 1704, 1705, and 17965
submission of such an assurance. In the case of an application for Federal financial assistance to provide real property 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 real property or structures are used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. In the case of personal property the assurance shall obligate the recipient for the period during which he retains ownership or possession of the property. In all other cases the assurance shall obligate the recipient for the period during which Federal financial assistance is extended pursuant to the application. The responsible agency 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.

(2) Transfers of surplus property are subject to regulations issued by the Administrator of General Services (41 CFR Subpart 101-106).

(b) Continuing State programs. Every application by a State or a State agency to carry out a program involving continuing Federal financial assistance to which this part applies (including programs listed in App. A to this part) shall as a condition to its approval and the extension of any Federal financial assistance pursuant to the application (1) contain or be accompanied by a statement that the program is (or, in the case of a new program, will be) conducted in compliance with all requirements imposed by or pursuant to this part, (2) provide or be accompanied by provision for such methods of administration for the program as are found by the responsible agency official to give reasonable assurance that the applicant and recipients of Federal financial assistance under such program will comply with all requirements imposed by or pursuant to this part. In any case in which the recipient is claiming financial assistance under a continuing program pursuant to arrangements entered into prior to the effective date of this part, the assurances provided by this paragraph shall be incorporated into the application or claim for assistance on or after the effective date of this part.

(c) Elementary and secondary schools. The requirements of paragraph (a) or (b) of this section with respect to an elementary 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 desegregation of such school or school system which the responsible agency official determines is adequate to accomplish the purposes of the Act and this part, at the earliest practicable time, and provides reasonable assurance that it will carry out such plan; in any case of continuing Federal financial assistance removed or not extended, a responsible agency official may reserve the right to redefine, after such period as may be specified by him, the adequacy of the plan to accomplish the purposes of the Act 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.

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

§ 18.5 [Revoked]

4. Section 18.3 is revoked. See Appendix B of this part.

5. In § 18.5 paragraph (b) is amended to read as follows:

§ 18.6 Compliance information.

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

6. In § 18.7, paragraph (b) is amended to read as follows:

§ 18.7 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 act with the responsible agency 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 agency official or his designee.

7. In § 18.8, paragraph (d) is amended to read as follows:

§ 18.8 Procedure for effecting compliance.

(d) Other means authorized by law. No action to effect compliance with title VI of the Act by any other means authorized by law shall be taken by the Veterans Administration until (1) the responsible agency official determines 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.

8. In § 18.9, paragraphs (b) and (d) (1) are amended to read as follows:

§ 18.9 Hearings.

(b) Time and place of hearing. Hearings shall be held at the offices of the Veterans Administration in Washington, D.C., at a time fixed by the responsible agency official unless he determines that the convenience of the applicant or recipient or of the Veterans Administration requires that another place be selected. Hearings shall be held before the responsible agency official or, at his discretion, before a hearing examiner appointed in accordance with the provisions of title 5, United States Code, or detailed under section 3344 of title 5, United States Code.

(d) Procedures, evidence, and record.

(1) The hearing decision and any administrative findings on which it is based are conclusive 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 organized and not inconsistent with this section) re-
9. In §18.10, paragraphs (a), (b), (c), (d) and (e) are amended and paragraph (g) is added so that the amended and added material reads as follows:

§ 18.10 Decisions and notices.

(a) Procedure on decisions by hearing examiner. 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 agency. An initial decision and a copy of such initial decision or certification shall be mailed to the applicant or recipient, and to the complainant, if any.

(b) Initial decision of the responsible agency official. The applicant or recipient will have 45 days in which to review the initial decision. If the responsible agency official makes a final decision on the record and a written copy of such final decision shall be transmitted to the applicant or recipient, the complainant, if any, and to the responsible agency official.

(c) Record of record or review by the responsible agency official. Whenever a record is certified to the responsible agency official for decision or review, the record shall be in the form of a copy of the hearing examiner’s proposed decision, and shall be filed in a file with the responsible agency official. The record shall include a statement of the issues involved, a statement of the findings of fact and conclusions of law, and shall be signed by an authorized representative of the responsible agency official. The record shall also include the record of the hearing, if any.

(d) Effect on the initial decision. The decision of the responsible agency official shall be final for all purposes. The decision of the responsible agency official shall be final for all purposes. The decision of the responsible agency official shall be final for all purposes. The decision of the responsible agency official shall be final for all purposes. The decision of the responsible agency official shall be final for all purposes.

10. In §18.12, paragraphs (a) and (c) are amended so that the amended and added material reads as follows:

§ 18.12 Effect on other regulations, forms, and instructions.

(a) Effect on other regulations. All regulations, orders, or like directions prior to the effective date of this section, which provide for the suspension or termination of, or the refusal to grant or continue Federal financial assistance, or the imposition of any other sanction available under this part or the Act, shall provide for, in addition to the procedures set forth in this section, the possibility of a hearing under the rules set forth in this section, and shall identify the requirements imposed by or as determined by the responsible agency official.

(b) Effect on the initial decision. The decision of the responsible agency official shall be final for all purposes. The decision of the responsible agency official shall be final for all purposes. The decision of the responsible agency official shall be final for all purposes. The decision of the responsible agency official shall be final for all purposes. The decision of the responsible agency official shall be final for all purposes.
limited to the programs and activities listed in Appendix A to this part. The services, financial aid, or other benefits provided by the Federal financial assistance shall be deemed to include any services, financial aid or other benefits provided with the aid of Federal financial assistance or with the aid of any other Federal or non-Federal funds, in the selection of the ultimate beneficiary under any such program.

* * *

(h) The term "recipient" means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organization, or other entity, or any individual, in the United States, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assignee, or transferee thereof, but such term does not include any ultimate beneficiary under any such program.

(i) The term "applicant" means a person who submits an application, proposal, or plan to be approved by the Administrator, or by a recipient, as a condition to eligibility for Federal financial assistance, and "application" means such an application, request, or plan.

12. Appendix B (formerly § 18.5) is added to read as follows:

APPENDIX B

ILLUSTRATIVE APPLICATIONS

The following examples, without being exhaustive, will illustrate the application of the nondiscrimination provisions to certain programs of the Veterans Administration. (In all such programs, notice is provided to the recipients that nondiscrimination is required in the provision of services and facilities, including the facilities operated in connection therewith.)

(a) In grants which support the provision of health or welfare services for veterans in State homes, discrimination on the grounds of race, color, or national origin prohibited by title VI of the Civil Rights Act of 1964 (hereinafter referred to as the Act) in the admission or treatment of patients, or in the payment of any services, regardless of whether the services are provided by the State or a private agency, or in the handling of any other benefit provided with the aid of the Federal or non-Federal financial assistance.

(b) In grants to assist in the construction of a State home for veterans, discrimination in the admission or treatment of patients, or in the payment of any services, regardless of whether the services are provided by the State or a private agency, or in the handling of any other benefit provided with the aid of the Federal or non-Federal financial assistance.

(c) In grants to construct and equip veterans hospitals or medical centers, discrimination in the admission or treatment of patients, or in the payment of any services, regardless of whether the services are provided by the State or a private agency, or in the handling of any other benefit provided with the aid of the Federal or non-Federal financial assistance.

(d) In grants for the construction of a State home for veterans, discrimination in the admission or treatment of patients, or in the payment of any services, regardless of whether the services are provided by the State or a private agency, or in the handling of any other benefit provided with the aid of the Federal or non-Federal financial assistance.

(e) In grants for the renovation, remodeling, alteration or addition of existing veterans homes, discrimination in the admission or treatment of patients, or in the payment of any services, regardless of whether the services are provided by the State or a private agency, or in the handling of any other benefit provided with the aid of the Federal or non-Federal financial assistance.
(e) "Federal financial assistance" includes:
(1) Grants, loans, and advances of Federal funds;
(2) A grant or donation of Federal property and interests in property;
(3) The detail of Federal personnel;
(4) The sale or lease of, or the permission to use (on other than a casual or transient basis) Federal property or any interest in such property without consideration, or for less than adequate consideration for the purpose of assisting the recipient, or in recognition of the public interest to be served by such a 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.

(f) "Primary recipient" means any recipient which is authorized or required to extend Federal financial assistance to another recipient for the purpose of carrying out a program for which it receives Federal financial assistance.

(g) "Program" includes any program, project, or activity for the provision of services, financial assistance, or other benefits or facilities which will be provided through employees, facilities, or contracts with or for another recipient for the purpose of serving the public interest; or any program, project, or activity for the provision of services (or otherwise) or other benefits, or facilities will be provided under any such program, or (4) any employment practice under any such program, or (5) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(h) "Recipient" means any State, or any political subdivision or instrumentality thereof, any public or private agency, institution, organization, or other entity to which or whom Federal financial assistance is extended, directly or through another recipient, for any program, or who otherwise participates in carrying out such program, including education, training, health, welfare, housing, rehabilitation, or other services, whether provided through employees of the recipient of Federal financial assistance, or by others through contracts or arrangements with the recipient, and including work opportunities or other assistance to individuals, or for the provision of facilities, financial assistance, or other benefits to individuals. The services, financial assistance, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include (1) any services, financial assistance, or other benefits provided with the aid of Federal financial assistance or with the aid of any non-Federal funds, program, or project for which such aid is required to be expended or made available for the program to meet matching requirements or other conditions which must be met in order to receive the Federal financial assistance under any program or activity, and (2) any services, financial assistance, or other benefits provided in or through a facility provided with the aid of Federal financial assistance or such non-Federal resources.

(i) "Recipient" means any State, or any political subdivision or instrumentality thereof, any public or private agency, institution, organization, or other entity to which or whom Federal financial assistance is extended, directly or through another recipient, for any program, or who otherwise participates in carrying out such program, including education, training, health, welfare, housing, rehabilitation, or other services, whether provided through employees of the recipient of Federal financial assistance, or by others through contracts or arrangements with the recipient, and including work opportunities or other assistance to individuals, or for the provision of facilities, financial assistance, or other benefits to individuals. The services, financial assistance, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include (1) any services, financial assistance, or other benefits provided with the aid of Federal financial assistance or with the aid of any non-Federal funds, program, or project for which such aid is required to be expended or made available for the program to meet matching requirements or other conditions which must be met in order to receive the Federal financial assistance under any program or activity, and (2) any services, financial assistance, or other benefits provided in or through a facility provided with the aid of Federal financial assistance or such non-Federal resources.

§ 7.3 Applicability.
(a) This part applies to any program for which Federal financial assistance is authorized under a statute administered by the Agency, including all EPA grant programs and activities including, but not limited to, those listed in 40 CFR 30.301-4 and assistance under the Uniform Relocation Assistance and Land Acquisition Policies Act of 1970, 42 U.S.C. 4621 et seq. and the Disaster Relief Act of 1970, 42 U.S.C. 4401 et seq. It applies to any such program or activity to which money was paid, property transferred, or other Federal financial assistance or money was paid, property transferred, or other Federal financial assistance extended after the effective date of this part including assistance extended pursuant to an application approved prior to the effective date. This part does not apply to: (1) Any program funded only by Federal financial assistance by way of insurance or guaranty, (2) any such program or activity to which money was paid, property transferred, or other Federal financial assistance extended after the effective date of this part except where such assistance was subject to the title VI regulations of the Agency whose responsibilities are now exercised by this Agency, (3) any assistance to any individual who is the ultimate beneficiary under any such program, or (4) any employment practice under any such program, or (5) such a recipient which is authorized or required to extend Federal financial assistance to another recipient for the purpose of serving the public interest; or any program, project, or activity for the provision of services (or otherwise) or other benefits, or facilities will be provided under any such program, or (6) any employment practice under any such program, or (7) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

§ 7.4 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 subjected to discrimination under any program or activity to which this part applies.
(b) Specific discriminatory actions prohibited. (1) A recipient under any program to which this part applies may not, directly or indirectly, on the ground of race, color, or national origin:
(i) Deny a person any service, financial assistance, or other benefit provided under the program;
(ii) Provide to a person any service, financial assistance, or other benefit which is different, or is provided in a different manner, from that provided to others under the program;
(iii) Subject a person to segregation or separate treatment in any matter related to his receipt of any service, financial assistance, or other benefit under the program;
(iv) Restrict a person in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial assistance, or other benefit under the program;
(v) Treat a person differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership, or other requirement or condition which persons must meet in order to be provided any service, financial assistance, or other benefit provided under the program;
(vi) Deny a person an opportunity to participate in the program through the provision of services (or otherwise) or afford him an opportunity to participate in a manner different from that afforded others;
(vii) Deny a person the opportunity to participate as a member of any planning or decision-making group which is an integral part of the program.
(2) A recipient in determining the types of services, financial assistance, or other benefits or facilities which will be provided under any such program for the class of persons to whom, or the situations in which such services, financial assistance, other benefits, or facilities will be provided under any such program, or in determining employment opportunities, may not, directly or indirectly, discriminate, directly or indirectly, on the ground of race, color, or national origin, which have or may have the effect of subjecting a person to discrimination because of race, color, or national origin, or which have or may have the effect of defeating or substantially impairing accomplishment of the objectives of the program, project, or activity with respect to individuals of a particular race, color, or national origin.
(3) In any program receiving Federal financial assistance in the form, or for acquisition, construction, or operation of 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 that assistance, the nondiscrimination requirement of this part shall extend to any facility located wholly or in part in that space during the period of time stated in § 7.6(a)(2).
(4) The enumeration of specific forms of prohibited discrimination in this paragraph does not limit the generality of the prohibition in paragraph (a) of this section.
(c) Employment practices. (1) Where a primary objective of a program receiving Federal financial assistance to which this part applies is to provide employment, a recipient or other person or entity subject to this part must not discriminate, directly or indirectly, on the ground of race, color, or national origin in its employment practices under such program.
(2) Employment practices include recruitment, employment, advancement in employment, layoff, termination, firing, upgrading, promotion, transfer, rates of pay, or other forms of compensation or benefits, selection for training or apprenticeship, use of facilities, and treatment of employees. Each recipient shall take affirmative steps to assure that applicants are employed and employees are treated during employment without regard to race, color, or national origin. Where this part applies to construction employment, the applicable requirements shall be those specified in or pursuant to Part III of the Executive Order 11246, or any Executive order which may supersede it.
(3) 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 prac-
ties 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, and the Administrator may, in his discretion, require any interest therein or structure, or any real or personal property or right of possession of the property, whichever is longer. In all other cases the assurance shall obligate the recipient to take affirmative steps to ensure that the property is used for any purpose for which the Federal financial assistance is or was extended or for another purpose involving the provision of similar services or benefits, 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 to take affirmative steps to ensure that the property is used for any purpose for which the Federal financial assistance is or was extended or for another purpose involving the provision of similar services or benefits, as long as the recipient retains ownership or possession of the property, whichever is longer.

(3) Assistance for construction. In the case where the assistance is sought for the construction and if necessary to assure equality of opportunity to and nondiscriminatory treatment of beneficiaries.

(d) Site selection. A recipient may not make a site selection on the basis of race, color, or national origin.

(e) Construction projects. An EPA grantee of funds for the location, design, construction, or operation of a construction or sewage treatment plant may not deny access to, or use of, the facility being constructed or the system of which it is a part on the basis of race, color, or national origin.

§ 7.5 Affirmative action.

(a) Each applicant or recipient must take affirmative steps to ensure that the consequences of prior discrimination and to accomplish the purposes of the Act where previous practice or usage has in purpose or effect tended 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 rule applies, on the ground of race, color, or national origin.

(b) 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, or denying benefits to, persons of a particular race, color, or national origin.

§ 7.6 Assurances required.

(a) General. (1) Form of a assurance. Every application for Federal financial assistance to a program to which this part applies and every application for Federal financial assistance to provide a facility shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to the application, (1) contain or be accompanied by a statement that the program is, or in the case of a new program, will be conducted in compliance with the provisions of this part, and (2) provide or be accompanied by provision for such methods of administration for the program as are found by the Administrator to give reasonable assurance that the applicant and all recipients of Federal financial assistance under such program will comply with all requirements imposed by or under this part, and (3) provide or be accompanied by provision for such methods of administration for the program as are found by the Administrator to give reasonable assurance that the applicant and all recipients of Federal financial assistance under such program will comply with all requirements imposed by or under this part.

(b) Assurances from educational institutions. 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.

§ 7.7 Compliance information.

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

(b) Compliance reports. Each recipient shall keep such records and submit to the responsible Agency official or his designee timely, complete, and accurate compliance reports at such times, in such form, and containing such information as the responsible Agency official or his designee may determine to be necessary or useful to enable the Agency to ascertain whether the recipient or applicant has complied or is complying with this part. Recipients and applicants shall have available for Agency officials on request racial/ethnic and national origin data showing the extent to which minorities are or will be beneficiary of assistance under any program in which Federal financial assistance is or was extended.

(c) Continuation of State programs. Every application for Federal financial assistance to a program involving continuing State programs shall contain or be accompanied by a statement that the recipient is or will be conducting the project or program, or the facility operated in connection therewith, in accordance with all requirements imposed by or under this part.

(d) Access to source of information. Each recipient shall permit access by the responsible Agency official or his designee during normal business hours to such of its facilities, books, records, accounts, and other sources of information as may be relevant to a determination of whether or not the recipient is complying with this part. Where any information required or other responsibility under this part is not submitted by the recipient, the responsible Agency official shall not be permitted to obtain such information without the prior written consent of the recipient.

(e) Information to beneficiaries and participants. Each recipient shall make available to beneficiaries, participants, federa...
and other interested persons any information pertinent to the provisions of the Act, are prohibited.

§ 7.8 Investigations.

(a) Periodic compliance reviews. The Administrator shall from time to time review the practices of recipients to determine whether they are complying with this part.

(b) Complaints. Any person or entity who believes himself or any specific class of persons to be subjected to discrimination prohibited by this part may by himself or by a representative file with the Administrator a written complaint. This complaint shall be filed as promptly as possible after the date of the alleged discrimination.

(c) Investigations. The Administrator will conduct an investigation whenever a noncompliance review, report, complaint, or any other information indicates a failure to comply with this part. The investigation will include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the noncompliance occurred, and other factors relevant to a determination of whether the recipient has failed to comply with this part.

(d) Resolution of investigations. (1) If an investigation indicates a failure to comply with this part, the Administrator shall file a notice with the recipient and complainant, if any, in writing, and the matter shall be resolved by informal means whenever possible. If the Administrator determines that the matter cannot be resolved by such means, he shall file a complaint with a court of competent jurisdiction.

(2) If an investigation does not warrant action pursuant to paragraph (1) of this section, the Administrator will file a notice with the recipient and 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 to be subjected to discrimination prohibited by this Act, or any other person who has made a complaint to the Administrator or who has participated in any manner in an investigation, proceeding, or hearing under this part.

§ 7.9 Procedure for obtaining compliance.

(a) General. If compliance with this part cannot be assured by informal means, compliance with this part shall be effected by termination of or refusal to grant or to continue Federal assistance in accordance with the procedures of paragraph (b) of this section, or by any other means authorized by law in accordance with the procedures of paragraph (c) of this section, such other means include, but are not limited to, (1) a referral of the matter to the Department of Justice with a recommendation that appropriate judicial proceedings be brought by the United States under any law or assurance or contractual undertaking, and (2) any applicable proceeding under State or local law.

(b) Procedure for termination of refusal to grant or continue assistance. An order terminating or refusing to grant or continue Federal assistance shall become effective only after:

(1) The Administrator has advised the applicant or recipient of its failure to comply and has determined that compliance cannot be secured by voluntary means;

(2) There has been an express finding by the Administrator on a record of facts sufficient to grant or continue Federal assistance shall become effective only after:

(1) The Administrator has advised the applicant or recipient of its failure to comply and has determined that compliance cannot be secured by voluntary means;

(2) There has been an express finding by the Administrator on a record of facts sufficient to grant or continue Federal assistance;

(3) The action has been approved by the Administrator pursuant to § 7.11(e);

(4) The expiration of 30 days after the Administrator has filed with the Committee of the Senate having legislative jurisdiction over the program or activity involved, a full written report of the circumstances and the grounds for such action.

The termination or refusal to grant or continue assistance shall be limited to the particular political entity, or part thereof, or other recipient as to which a finding of noncompliance with title VI has been made and shall be limited in its effect to the particular program or part thereof, or other recipient as to which such noncompliance has been so found.

(c) Other means authorized by law. No action to effect compliance with title VI of the Act by any other means authorized by law shall be taken unless:

(1) The Administrator has determined that compliance cannot be secured by voluntary means, and the recipient or other person against whom action will be sought has been notified of such determination; and

(2) The expiration of at least 10 days from the mailing of such notice to the recipient or such other person. During this period of at least 10 days, additional efforts may be made to persuade the recipient or such other person to take such corrective action as may be appropriate.

§ 7.10 Hearings.

(a) Opportunity for hearing. Whenever an opportunity for a hearing is required by § 7.9(b), reasonable notice shall be given by certified mail, return receipt requested, to the affected applicant or recipient. This notice shall fix a date not less than 3 weeks after the date of receipt of such notice within which the applicant or recipient may file with the Administrator a request in writing that the matter be scheduled for hearing. A copy of such request or waiver of a hearing shall be mailed by certified mail (return receipt requested) to the applicant or recipient.

(b) Time and place of hearing. Hearings shall be held at the offices of the Agency in Washington, D.C., unless the Administrator determines that the convenience of the applicant or recipient or of the Agency requires that another place be selected. Hearings shall be held at a time fixed by the Administrator before which any party may be heard.

(c) Right to counsel. In any proceeding under this section, the applicant or recipient and the Agency shall have the right to be represented by counsel.


(2) Technical rules of evidence do not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony by the applicant or recipient to cross-examination by the recipient and the Agency shall be applied where reasonably necessary by the officer conducting the hearing. A transcript shall be made of the oral evidence except to the extent the substance thereof is reproduced in writing. 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 either (1) noncompliance with this part with respect to two or more types of Federal financial assistance to which this part applies, or (2) noncompliance with both this part and the regulations of one or more other Federal departments or agencies issued under title VI of the Act, the Administrator may, by agreement of the applicant or recipient and the Agency in Washington, D.C., unless the Administrator determines that the convenience of the applicant or recipient or of the Agency requires that another place be selected. Hearings shall be held at a time fixed by the Administrator before which any party may be heard.

(f) Procedure on decisions. (a) The Administrator shall make an initial decision, including his recommended findings and proposed decision, and a copy of such initial decision shall be mailed by certified mail (return receipt requested) to the applicant or recipient. The applicant or recipient may, within 30 days after the receipt of such
notice of initial decision, file with the Administrator his exceptions to the initial

decision, and his reasons therefor. In the absence of exceptions, the Admin­

istrator 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 receipt of such notice, or in the absence of notice, the Administrator shall

review the initial decision and issue his own decision thereon including the rea­
sons therefor. In the absence of either exceptions or a notice of review the ini­
tial decision shall, subject to paragraph (e) of this section, constitute the final
decision of the Administrator.

(b) Decisions on record on review by the Administrator. Whenever the Ad­

ministrator reviews the decision of a hearing examiner pursuant to paragraph
(a) of this section, the applicant or recipient, the Agency officials responsible,
and the complainant, if any, shall be given reasonable opportunity to file with him
briefs or other written statements of their contentions, and a written copy of
such decision shall be sent to the applicant or recipient and to the complainant, if
any.

(c) Decisions on record where a hearing is waived pursuant to § 7.10(a), a decision
shall be made by the Administrator on the record and a written copy of such
decision shall be sent to the applicant or recipient, and to the complainant, if
any.

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

(e) Approval by Administrator. Any decision by an official of the Agency,
other than the Administrator personally, which provides for the termination of, or
the refusal to grant or continue, Federal financial assistance from the Agency
is hereby superseded to the extent that the discrimination prohibited to
individuals on the ground of race, color, or national origin under any program to
which this part applies, shall have the same effect as though such action
were taken by the Administrator.

(f) Post-termination proceedings. (1) An applicant or recipient adversely
affected by or pursuant to paragraph (f) of this section shall be re­
stored to full eligibility to receive Fed­
eral financial assistance from the Agency if it satisfies the terms and conditions of
that order for such eligibility and brings
such part and provides reasonable assurance that it will
fully comply with this part in the future.

(2) Any applicant or recipient adversely
affected by or pursuant to paragraph (f) of this section may at
any time request the Administrator to re­
store fully its eligibility to receive Fed­
eral financial assistance from the Agency.

(3) If the Administrator denies any
request made under paragraph (g) (2) of this section, the applicant or recipient
may appeal to a hearing examiner pursuant to para­
graph (g) of this section, bringing a hearing, specifying why he believes him to
have been in error. It shall thereafter be

given an expeditious hearing, with a de­
cision on the record in accordance with
these rules or procedures issued by the Admin­
istrator. The applicant or recipient will be
restored to such eligibility if it proves at
such a hearing that it satisfied the re­
quirements of paragraph (g) (1) of this section.

(4) While proceedings under para­
graph (g) of this section are pending, the
sanctions imposed by the order is­

sued under paragraph (f) of this section shall remain in effect.

§ 7.12 Judicial review.

Action taken under the Act is subject
to judicial review as provided therein.

§ 7.13 Effect on other regulations, forms, and instructions.

(a) Effect on other regulations. All

regulations, orders, or like directions is­

sued before the effective date of this part by any officer of the Agency, or by
any predecessor of such an officer, which impose requirements designed to pro­
hibit any discrimination against in­
dividuals on the ground of race, color, or
national origin under any program to
which this part applies, and which au­

torize the termination of or refusal to
grant or to continue Federal financial
assistance from the Agency to any appli­
cant or recipient of such assistance under such program for failure to comply with such
requirements, are hereby superseded to the extent that the discrimination
prevented is prohibited by this part, except that nothing in this part shall relieve any person
of any obligation assumed or imposed un­
der any such regulations, orders, or like direction before the effec­
tive date of this part. Nothing in this part, however, supersedes any of the
following (including future amendments
thereof): (1) Executive Order 11246 (3
CFR 1965 Supp, page 167) and regula­
tions issued thereunder, or (2) any regu­
lations, orders, regulations, or instruc­
tions prohibiting discrimination on the
ground of race, color, or national origin
in any program of the government to which this part is inapplicable, or prohibit dis­

crimination on any other ground.

(b) Forms and instructions. The Ad­

ministrator shall issue and promptly
distribute all required forms and instruc­
tions, forms and detailed instructions and pro­
cedures for effectuating this part as ap­
piled to programs to which this part applies and for which he is responsible.

The Administrator may from time to time assign to officials of the Agency, or to
officials of other departments or agen­
cies of the government with the consent
of such department or agency, responsi­
bilities in connection with effectuation of the purposes of title VI of the Act and
this part including the achievement of effective coordination and maximum
uniformity within the Agency and within
the Executive Branch of the govern­
ment in the application of title VI and
this part to similar programs and in similar situations. The Administrator
may delegate in writing any function as­
signed (other than responsibility for final
decision as provided in § 7.11) to him by the Act or by this part. Any action
taken, determination made or require­
ment imposed by an official of another
department or agency acting pursuant to
an assignment or delegation of responsi­

bility under this section shall have the
same effect as though such action had been taken by the Administrator of the
Agency. All actions taken pursuant to this part with respect to EPA grants
including written communications to or
of any such grant applicant or grantee shall
be effected through the appropriate EPA
Grants Officer.

Title 41—Public Contracts and Property Management

CHAPTER 101—FEDERAL PROPERTY MANAGEMENT REGULATIONS

PART 101—6 MISCELLANEOUS REGULATIONS

Nondiscrimination in Federally Assisted Programs

On pages 23488 through 23491 of the

Federal Register of December 9, 1971, there was published a notice of a pro­
posed rule making to issue regulations designed to terminate or prohibit in­
cluding procedures designed to assure that no Federal financial assistance will
thereafter be extended under such pro­
gram to the applicant or recipient de­
termined by the Administrator to have failed to comply with requirements imposed by
or under this part unless and until it

corrects its noncompliance and satisfies
the Administrator that it will fully
comply with this part.